

Written evidence submitted by Global Partners Digital, Index on Censorship, Open Rights Group, and Article 19

Dear members of the DCMS sub-committee,

Re: Inquiry into Online Harms and Disinformation,

We write to you as human rights organisations strongly committed to defending freedom of expression, both offline and online. We recognise the importance of the issue which is currently the subject of this inquiry, and the risks that disinformation and misinformation pose during a health crisis. However, we have serious concerns that the approach taken by the committee to the subject may not consider the potential risks to important democratic rights such as freedom of expression, including journalism and the public's right to access information. In this short submission, we set out the basis for those concerns, in the hope that these risks are fully taken into account and acknowledged in the sub-committee's report.

1. The importance of freedom of expression during a pandemic

While we often hear that we are at “war” with coronavirus, this is no traditional war. The virus cannot hear what we say and respond to our strategy. Freedom of expression does not need to be severely censored as some would say is necessary during a conventional war to protect secretive information. In fact, the opposite is true. It is more important than ever that we are able to hold governments to account for their actions during this crisis. As we saw at the very beginning of this pandemic in China, the censoring of whistleblowers can hide uncomfortable truths that need to be exposed to save lives.¹ It is essential that we continue to protect free expression at this time.

2. The need for any measures to be temporary

We recognise that the health crisis may justify measures and actions by governments that would otherwise amount to interference with individuals' human rights. However, it is essential that any such actions to respond to an emergency only remain in place during the period of that emergency. As noted below, many governments are taking steps to restrict freedom of expression on the basis of the health crisis, but with no guarantee that such measures will not continue beyond it. In Hungary, for example, new legislation prohibits the publication of false or distorted facts that interfere with the successful protection of the public or that alarm or agitate the public.² This new criminal offence is punishable by up to five years in prison and is not temporary in its application, and indications are that it will be used to suppress media coverage

¹ BBC, “Li Wenliang: Coronavirus death of Wuhan doctor sparks anger”, 7 February 2020, available at: <https://www.bbc.co.uk/news/world-asia-china-51409801>.

² Holroyd, M., “Coronavirus: Human rights alarm as Hungary seeks indefinite extension to state of emergency”, *Euronews*, 23 March 2020, available at: <https://www.euronews.com/2020/03/23/coronavirus-human-rights-alarm-as-hungary-seeks-indefinite-extension-to-state-of-emergency>.

that the government disapproves of. Index on Censorship has been logging the incidents in which media freedom has been restricted to dramatic effect on a global Covid-19 map³ and have logged 91 incidents since 18 March. It is critically important that the UK does not go down the same route as some other countries, and develop legislation relating to disinformation or other “online harms” in response to a temporary crisis, if they are not time limited or proportional.

3. The continued application of international and European human rights law

The basic principles of international human rights law continue to apply even during a health crisis. This means that any interferences with freedom of expression, even to combat disinformation and misinformation must comply with those principles, namely that they be clearly and precisely set out in legislation, that they pursue a legitimate aim, and are necessary and proportionate (meaning that no alternative, less restrictive measures, would achieve the same aim).

4. Concerns around how “disinformation” is being used worldwide as an excuse to restrict freedom of expression and to attack media freedom

Many governments around the world are taking steps to restrict freedom of expression on the basis that certain forms of information or expression constitute disinformation or misinformation relating to the health crisis. Many of these measures are disproportionate, and are being used to stifle journalistic activity or to block important information from being made available to the public. For example, in recent weeks, a journalist in Serbia, Ana Lalic, was arrested by the police for reporting on a lack of PPE equipment at a hospital. The arrest was made on the basis of new regulations prohibiting the release of unauthorised or unverified information about the coronavirus outbreak.⁴

5. Concerns over the lack of transparency over what the UK government is doing currently, outside of any legal framework

As well as concerns over the legislative measures that many governments are developing, we also have serious concerns around informal government pressure, with no legal basis, for platforms to censor, filter or restrict content. We understand that the Cabinet Office has set up a “rapid response unit” which works with social media firms to remove fake news and harmful content.⁵ However there is no clarity over how the government is determining what constitutes

³ Available at:

https://www.google.com/maps/d/u/0/viewer?mid=1wEEngQJmAtNfz_0vKT1X4ANILwcW6rBB&ll=47.65750126267548%2C-37.6171875&z=1

⁴ Radio Free Europe / Radio Liberty, “Serbian Journalist Detained, Questioned Over Critical Coronavirus Article”, 2 April 2020, available at: <https://www.rferl.org/a/serbian-journalist-detained-questioned-over-critical-coronavirus-article/30525582.html>.

⁵ BBC, “Coronavirus: Fake news crackdown by UK government”, 30 March 2020, available at: <https://www.bbc.co.uk/news/technology-52086284>; Lovett, S., “Coronavirus: Tech companies must tackle ‘crackpot’ 5G conspiracies, says government after more masts damaged”, *The Independent*, 5 April 2020,

“fake news” or “harmful content” or what the expectations of social media platforms are. It is vital, in the interests of transparency and accountability, that any measures taken by the government to restrict the free flow of information are made public, and not decided behind closed doors.

6. The challenges currently faced by social media platforms, and the risks involved with forcing them to take further action

Our organisations provided evidence to the Department of Digital, Culture, Media and Sport in response to the Online Harms White Paper consultation highlighting the risks of over-removal of lawful and legitimate information by social media platforms. A lack of clarity over what is considered to be “harmful”, the risk of sanctions for non-compliance, and pressure to use AI and other forms of technology to automatically identify and filter content all incentivise the over-removal of information. Even without legislation in place, we have seen instances of social media companies removing legitimate and important information. Their response during the health crisis has provided further examples. An automated system developed by Facebook, for example, recently led to the blocking of individuals attempting to donate medical masks to healthcare workers.⁶ Further government pressure on social media companies to remove undefined categories of speech, even if well-intentioned, only exacerbates these risks.

From:

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available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-5g-conspiracy-theories-tech-companies-challenge-government-a9448261.html>

⁶ Isaac, M., “Facebook Hampers Do-It-Yourself Mask Efforts”, *The New York Times*, 5 April 2020, available at: <https://www.nytimes.com/2020/04/05/technology/coronavirus-facebook-masks.html>.