RELX—written evidence (FEO0052)

House of Lords Communications and Digital Committee inquiry into Freedom of Expression Online

How should the right to freedom of expression be protected online and how it should be balanced with other rights.

Introduction

1. RELX welcomes this opportunity to provide written evidence to the House of Lords Communications and Digital Committee's inquiry into the freedom of expression online. RELX is a UK-based, FTSE100, global provider of information-based analytics and decision tools for professional and business customers across a range of sectors, including financial services, science, technology, medical, healthcare and energy. We employ 33,000 people worldwide and support customers in 180 countries. We utilise technology and data to help our customers improve their decision making across the sectors we serve. For example, we help scientists make new discoveries, doctors and nurses improve the lives of patients, lawyers win cases, prevent online fraud and money laundering and insurance companies evaluate and predict risk.

2. This is a timely inquiry given the developing legislation in both the United Kingdom and the European Union and ongoing events around the world. We continue to live through a period of exceptional technological development. The questions thrown up by these changes are profound and complex and have far-reaching effects on our society. Balancing different and competing rights in this fast-changing environment is a perennial challenge for policy makers, as previously unenvisaged tensions come to light.

3. Our submission will focus on the interplay between freedom of expression and other rights, namely rights over intellectual property. We would be happy to discuss the contents of our response further with the Committee if that would be of use.

General Comments

4. As the Committee notes, freedom of expression is a fundamental right under Article 10 of the European Convention of Human Rights, as well as under other laws and agreements. It is critical that this right be upheld, whilst at the same time recognising that as with all such rights, freedom of expression is not held to be an entirely unqualified right. First, it can legitimately be limited on its own terms, such as when free expression may be harmful to others. Secondly, no Convention right has automatic precedence over any other, and decisions over which right should prevail are highly context dependent. Furthermore, whilst the digital environment provides much greater opportunities for freedom of expression than human society has ever enjoyed, it does not follow from this that the right should now take on any greater import in relation to others.

5. In policy debates of recent years, the most frequently observed tension has been between the right to freedom of expression and the right to the protection of property, as enshrined in Article 1 of the Protocol to the European Convention on Human Rights. The ability of the digital consumer to reproduce, distribute and communicate intellectual property potentially engages this right: as doing any of these acts without the permission of the rightsholder is an infringement of their property rights. This tension has been played out in numerous legal and political disputes as nefarious operators such as The Pirate Bay, Newzbin and others ran rampant across the property rights of music, film and other creative producers.

6. In these disputes, as creators fought to assert their rights over their property (as enshrined in international and national legislation) the cry would go up from the infringers that copyright represents a curtailment of the freedom of expression. The claim would be made that if an individual wished to express themselves by using the protected works of another individual, then they had a fundamental right to do so, and that concerns around intellectual property should be subjugated and swept aside.

7. This argument that copyright is a means of stifling expression is manifestly false. The entire raison d'etre of any artist, be they a scientific author, musician or artist, is to express themselves and communicate to the wider world. Copyright is the means by which their endeavours can be protected and rewarded. The very notion that copyright shuts down expression is preposterous.

8. Fortunately for the health and vitality of our creative sector and artists, policy-makers and the Courts have been largely dismissive of the "pirates'" argument, and rightly conclude that there is no such basis for ignoring the legal claims of creators. Current copyright law across the UK, the EU and indeed the world broadly reflects this consensus. However, this does not stop those who would facilitate infringement from continuing to push their case.

9. This tension was recently thrown into stark relief in the deliberations over the European Union Digital Single Market Directive of 2019 (2019/790). In myriad parliamentary debates, the media and other fora, activists argued that copyright protection amounted to a curtailment of expression, and that any efforts to prevent infringement of IP were equivalent to censorship. These groups – including some MEPs from The Pirate Party – essentially made the case that freedom of expression trumps all other considerations, including the ability of artists to be rewarded for their work. All that matters, in their eyes, is that a person can use any work in any manner they would like to: the fundamental property right of the creator do not figure in the calculation.

10. The latest front in this battle is presently at the Court of Justice of the European Union (CJEU). The government of Poland have brought a case against the Article 17 provisions of the Directive ("Use of Protected Content by Online Sharing Platforms") which seek to establish stronger rules to protect rightsholders from the unauthorised use of their works by digital platforms. It requires that platforms should seek authorisation for use, but

where this is not granted to take steps to prevent the availability of protected works, and to remove such works where they are notified. The argument being brought by Poland is that the measures to prevent availability are tantamount to censorship and put at risk and prejudice the right to the freedom of expression. The European Commission is contesting the claim and it – and indeed rightsholders – argue that it is not an act of censorship to deny the distribution of works without the permission of their owner.

11. This submission is not the venue to explore the rights and wrongs of this action and we must await the judgment of the CJEU with interest. However, the whole debate provides a stark and timely reminder that the tension between freedom of expression and property rights is active, and the freedom of expression is clearly being used as a fig leaf defence by those who commit acts of copyright infringement.

Responses to Individual Questions

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?

12. We do not believe the freedom of expression is under threat online. The online environment has dramatically increased the routes to exercise the right to free expression, from blogs, tweets, tik-tok videos and beyond. At the same time, there are more ways to use freedom of expression as an excuse to ride roughshod over other rights. The freedom of expression should be applied online as it is offline, with the same legal and societal norms. There should not be a difference in the way freedom of expression, with the caveats and limits that have been established on that freedom, is enforced online compared to offline.

How should good digital citizenship be promoted? How can education help?

13. There is a role for formal education in developing legal behaviours and good practice. Children are going online at an increasingly young age, and it is never too early to teach the basics of how to be safe and follow rules and the mainstream curriculum can be utilised for this purpose. Regulators also have an important role in making clear the online rules of engagement so that citizens are aware of their responsibilities in the digital environment. There is also a wider role for all platforms, providers and services to encourage good digital citizenship in their user-customer base alongside more formal educational programmes.

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?

14. The concept of user-generated content (UGC) is slippery, particularly from a copyright perspective. Every copyright work, from a scientific paper by a Nobel author to a Taylor Swift song is user-generated (in their case, the user and the author are synonymous). What is often meant by UGC are

"mash-ups", where a person might take one or more protected works and create a synthesised new work. But in these cases, the existing law is already clear: the copyright in the underlying works should be respected and any content comprised of these works cannot bypass the creator's rights.

15. As we have made clear in the response to question 1, enforcement should take place online in the same way that it does offline. The development of digital technologies should not be used as a reason not to enforce the law.

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

16. We believe this would be an unnecessary and onerous duty. It would create a huge level of uncertainty and is likely to lead to legal confusion. Newspapers and mainstream media have navigated the last three or four centuries without such a duty and freedom of expression has not visibly suffered. Whilst the digital environment is undoubtedly new and different it is not so obviously distinct that it would benefit from this duty.

17. This approach would also have the likely effect of entrenching the power of large social media platforms to make determinations on what is considered acceptable speech. These determinations should be a matter for democratically elected governments and not private companies.

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

18. The extant approach is broadly appropriate, where there is an implicit link between the role a platform plays and its exposure to liability. Platforms which passively transmit information without any interference - analogous to a postal service – are not deemed responsible for the information, if they do not have actual knowledge that it is illegal. When such knowledge is obtained the platforms then have an obligation to act upon it. On the other end of the scale (and as now enshrined in the Digital Single Market Directive), platforms which clearly actively promote and organise information for profit-making purposes have a higher degree of exposure to liability, and can be held to be acting illegally if they do not take active steps to license usage, or to prevent the availability of protected works where they have been given information about them.

To what extent should users be allowed anonymity online?

19. It should be for individual services to determine this. However, consideration should be given to how ensure the protection that anonymity is given to genuinely vulnerable individuals is not undermined by criminals or bad actors. Employing effective identity management solutions has the potential to resolve this complicated situation.

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?

20. Generally, we do not believe that mandating algorithmic transparency is an effective way to combat complex policy problems. Instead the focus of policy makers and regulators should be on the inputs and outputs of algorithms given these are the factors which have direct impacts.

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?

21. The EU Copyright in the Digital Single Market Directive strikes an effective balance between the right to free expression and the right to protect intellectual property. It does this by setting out explicit exceptions where copyright rules do not apply and the rights and obligations of different stakeholders, along a specific set of exceptions. As the US considers renewing its copyright and platform laws, we support the UK government in engaging with its legislators and policymakers to ensure the maintenance of strong and consistent approach.

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