

Robert Sharp—written evidence (FE00089)

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

1. I am a human rights activist, author and blogger. From 2009-2018 I was the Head of Campaigns at the free speech organisation English PEN. I am aware of PEN's submission to the inquiry and support all its observations.
2. I wish, however, to make my own submission that builds on the response of English PEN. Specifically, I wish to note a particular issue with online freedom of expression that has been present for many years, but has been given particular salience in recent weeks due to the banning of the President of the United States from the popular social media platforms.
3. The Committee asks respondents whether online and offline content should be treated differently. In response, English PEN states that

The practical distinction between online and offline content is becoming increasingly blurred, with most written content appearing either exclusively in digital form, or in both printed and digital formats.

This is a pertinent comment that deserves further commentary.

4. Now that most media outlets have their own website, it is no longer immediately apparent whether a given piece of content was originated online or through an older publishing medium.
5. All the traditional print publications have an online presence, reproducing their paper content while supplementing it with online-only pieces. Radio and TV broadcasts are typically available 'on demand' through podcasts, YouTube channels, or proprietorial apps. Mainstream journalists will typically 'break' news on their social media feeds.
6. It is not inconceivable that, in the near future, the mainstream media will eventually abandon print entirely; or that scheduled programming on allocated frequencies and channels will be ditched in favour of on-demand platforms. **If and when such a situation arises, perhaps the most important distinction will be 'social vs proprietorial' — whether a media outlet has access to its own digital delivery infrastructure, or whether it is entirely dependent on social media platforms for its access to an audience.** The latter group of 'content creators' (individuals, and small organisations) will therefore find themselves subjected to an additional layer of regulation imposed by the technology companies Terms of Service, which will themselves be affected by the kind of regulation envisaged by the Government's proposed Online Harms regulatory framework.

7. This is likely to create both gaps and overlaps in regulation. An eminent journalist who publishes a column via Substack will be subject to different and perhaps greater regulation than if they had published the same words on a 'broadsheet' website; while an established talk radio presenter will be subject to different and perhaps lesser regulation when recording a podcast instead of a radio programme. In both cases the audience would be substantially the same, reading or listening to the content on the same devices.
8. If this were purely about 'entertainment' content, this discrepancy may not be of any consequence. Creators allow social media companies to monetise their content in exchange for access to an audience, and there is nothing inherently wrong with this bargain. However, the content posted to these platforms also includes public interest news and political activism, which are subjected to the same mix of algorithmic boosting and Terms of Service constraints as everything else.
9. This is problematic for two reasons. First, the social media platforms are incentivised to promote content that earns them the most revenue, which is not the same as promoting information that society as a whole might find desirable. The algorithms promote more controversial and divisive content, while more considered journalism and commentary is marginalised.
10. Second, the arbiter of what is considered 'acceptable' speech is no longer a national parliament or court, but a panel of unelected executives based in Silicon Valley. As recent events in the United States have shown,¹ the decisions of the technology companies have been controversial and unsatisfactory. Even when accounts (such as @realDonaldTrump) have been suspended for apparent incitement to violence, these actions appear to be driven by events and fear of regulation, rather than by a consistent application of transparent principles.
11. When the content being removed is inciting and insurrectionist, it is easy to support the intervention of the social media executives. However, this state of affairs offers inadequate protection for controversial and offensive speech. There are several examples of technology companies collaborating with oppressive regimes to suppress dissident content,² and it is likely that, in their pursuit of new audiences, the technology companies will continue to acquiesce

¹ Twitter permanently suspends Trump's account' *BBC News* 9 January 2021 <https://www.bbc.co.uk/news/world-us-canada-55597840> (accessed 15th January 2021)

² For example: 'Shi Tao: China frees journalist jailed over Yahoo emails' *The Guardian* 8 September 2013 <https://www.theguardian.com/world/2013/sep/08/shi-tao-china-frees-yahoo> (accessed 15th January 2021); Ryan Gallagher 'Google Plans to Launch Censored Search Engine in China, Leaked Documents Reveal' *The Intercept* 1 August 2018 <https://theintercept.com/2018/08/01/google-china-search-engine-censorship/> (accessed 15th January 2021)

to the demands of such governments. Social media platforms might be private companies, but there is much to be said for holding them to the same internationally accepted human rights standards that we expect of governments.

12. I am eagerly awaiting the publication of *Silicon Values* (Verso, 23 March 2021, ISBN 978- 1788738804) by the leading digital rights campaigner Jillian C. York, which I understand deals with these issues in some depth.

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