



HM Government



ONLINE HARMS WHITE PAPER CONSULTATION

Helping make the UK the safest place in the world to be online

Q1.

Online Harms White Paper Consultation

The Online Harms White Paper sets out the government's plans for a world-leading package of online safety measures.

It proposes establishing in law a new duty of care towards users, which will be overseen by an independent regulator. Companies will be held to account for tackling a comprehensive set of online harms, ranging from illegal activity and content to behaviours which are harmful but not necessarily illegal.

This consultation aims to gather views on various aspects of the government's plans for regulation and tackling online harms, including:

- the online services in scope of the regulatory framework;
- options for appointing an independent regulatory body to implement, oversee and enforce the new regulatory framework;
- the enforcement powers of an independent regulatory body;
- potential redress mechanisms for online users; and
- measures to ensure regulation is targeted and proportionate for industry. This is an open public consultation. We particularly encourage responses from organisations, companies and others with relevant views, insights or evidence.

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Q2. The consultation will be open until 23:59 1st July 2019.

Q5. Are you responding to this consultation as a member of the public or on behalf of an organisation or interest group?

- Member of the public
- On behalf of an organisation
- On behalf of an interest group

Q63.

Privacy Notice

We are not collecting personal data for this consultation and your response will be anonymous.

If you have any questions please email:
onlineharmsconsultation@culture.gov.uk

This question was not displayed to the respondent.

Q64.

Privacy Notice

We are collecting basic contact details in this consultation.

For further information please see DCMS's Personal Information Charter:

<https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport/about/personal-information-charter#>

If you have any questions please contact:
onlineharmsconsultation@culture.gov.uk

Q6. What is the name and address of the organisation or interest group you represent?

Name of Organisation or Interest Group	Christian Legal Centre
Address Line 1	70 Wimpole St.
Address Line 2	
County	London
Post Code	W1G 8AX
Country	United Kingdom

Q7. What sector best describes the organisation or interest group you represent?

Public Interest

Q8. Please describe the organisation or interest group you represent and it's activities

Christian Legal Centre is a leading legal advocacy group in the United Kingdom dedicated to the protection of religious liberty and freedom of speech. We acted as counsel of record for several of the applicants in the seminal case of Ewedia and Others v. the United Kingdom, and have taken part in many of the precedent setting cases involving freedom of thought, conscience, and religion in the United Kingdom. Christian Concern's cases are frequently covered by British print and broadcast media.

Q9. How many employees are there in the organisation you represent?

Global

Based in the UK

Q10. How many members are there in the interest group you represent and how did you obtain the views of your members?

This question was not displayed to the respondent.

Q11.

If you are happy to be contacted, please provide your details below. If not, please move on to the next question.

Name

Email Address

Q52. What is your gender?

This question was not displayed to the respondent.

Q51. What is your age?

This question was not displayed to the respondent.

Q53. To which of these groups do you consider you belong?

This question was not displayed to the respondent.

Q47. Do you consider yourself to be disabled under the Equality Act 2010? The Equality Act 2010 defines a person as disabled if: they have a physical or mental impairment. the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.

This question was not displayed to the respondent.

Q62. To which of these groups do you consider you belong?

Other: please specify

This question was not displayed to the respondent.



TRANSPARENCY AND USER COMPLAINTS

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Q12.

Transparency and user complaints

The government proposes that the regulator have the power to require annual transparency reports from companies about harms on their platform, and the ability to demand additional information - to help build a culture of transparency, trust and accountability.

The regulator would not investigate individual pieces of content, but systematic breaches in organisations failing to uphold their duty of care. There should also be a role for Parliament in scrutinising the work of the regulator to ensure the system is transparent and accountable.

The questions in this section seek views on what further the government could do to create a culture of transparency across the tech sector, potential mechanisms for user redress and the potential role of Parliament in overseeing the regulatory framework.

Q13.

1. This government has committed to Annual Transparency Reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?

Please explain your answer in the box provided.

Yes

No

We are concerned about the online monitoring of opinions and speech, particularly where some opinions (particularly on moral, political or religious issues) are scrutinised more than others. The consequence is usually viewpoint discrimination where otherwise lawful content is being deemed hateful because it is not in step with the cultural zeitgeist. This leads to self-censorship, cultural over-sensitivity, and the vilification of entire segments of the population. Rather than preventing hate, it perpetuates it by enforcing moral tribalism.

Don't know

Q14.

2. Should designated bodies be able to bring 'super complaints' to the regulator in specific and clearly evidenced circumstances?

- Yes
- No
- Don't know

Q60. 2a. In what circumstances should this happen?

This question was not displayed to the respondent.

Q20.

3. What, if any, other measures should the government consider for users who wish to raise concerns about specific pieces of harmful content or activity, and/or breaches of the duty of care?

Self-policing by internet providers provides a more narrowly tailored way of ensuring free speech while still ensuring that speech which incites violence or is otherwise libellous or unlawful is promptly removed from the offending website. This position has been upheld by the European Court of Human Rights in *Delfi AS v. Estonia* and again in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, the latter judgement being particularly salient for the purposes of this consultation as it found that the over-regulation of internet content providers breached the Convention by failing to give appropriate weight to the importance of Article 10 in a democratic society.

Q21.

4. What role should Parliament play in scrutinising the work of the regulator, including the development of codes of practice?

We cannot answer the question as it puts the cart before the horse. We oppose the imposition of a regulator as a matter of principle in that it creates an existential threat to freedom of expression and subjects speech and opinion to over-regulation and censorship in a manner incompatible with the principles of a democratic and pluralistic society. As Strasbourg has shown in its recent judgements, more narrowly tailored and proportionate means exist with regard achieving the aim of punishing unlawful speech (the operative term being unlawful, rather than undesirable speech).



Q22.

Activities in scope of regulation

The government proposes that any companies that allow users to share or discover user-generated content or interact with each other online should be in scope of the new regulatory framework. These services are

offered by a very wide range of companies of all sizes, including social media platforms, file hosting sites, public discussion forums, messaging services and search engines.

The questions in this section relate to the companies in scope of regulation, and specifically how to define private communication channels and what measures should be applied to them.

Q23.

5. Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?

As related in the previous responses, more proportionate and narrow means exist to achieving the removal of unlawful content from internet content providers which maintain the appropriate level of deference to protecting free speech. However well meaning the intent of Parliament in wanting to regulate online content, the fact is that regulation leads to over-regulation, viewpoint discrimination and the stifling of debate and dissenting cultural opinions. The question of what constitutes 'hate' speech is underpinned by the fact that the concept lacks legal clarity and foreseeability and risks overzealously censoring lawful speech.

Q24.

6. In developing a definition for private communications, what criteria should be considered?

Pursuant to Section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The right to privacy is a fundamental freedom protected by Article 8 of the Convention. Exceptions to the basic principles for data protection are limited to those which are necessary for the protection of fundamental values in a democratic society. The importance of this principle in relation to data protection and private communications is evidenced by the European Court of Human Rights' recent referral to the Grand Chamber of *Big Brother Watch and Others v the United Kingdom*, application nos 58170/13, 62322/14, and 24960/19. It is also evidenced at the EU level by the relatively recent adoption of the GDPR regulation. It would strain credulity to limit private access to data on the one hand, while at the same time expanding government interference with private communications on the other. RIPA obligations should be read broadly to protect UK citizens from overly broad government regulation of data and speech. So too should Article 8 rights be strictly protected in relation to correspondence and data.

Q25.

7. Which channels or forums that can be considered private should be in scope of the regulatory framework?

As per our previous response, channels or forums which are considered private should not be within the scope of the regulatory framework unless they meet the threshold for having a warrant issued pursuant to Section 8 of RIPA. The Article 8 standard requires both necessity and proportionality. More narrowly tailored means exist for punishing criminal speech without causing a disproportionate chilling effect to lawful speech, particularly where that lawful speech might trigger an overly sensitive regulatory body because it offends, shocks or be disturbs. As settled ECHR case-law has made clear, allowing such speech is a requirement in a democratic society. The freedom to make statements that everyone already agrees with is no freedom at all.

Q26.

7a. What specific requirements might it be appropriate to apply to private channels and forums in order to tackle online harms?

As previously highlighted, the term private should be read broadly and any interference with private communications should be subject to the strict confines of a RIPA warrant.



THE REGULATOR AND ITS APPROACH

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Q27.

The regulator and its approach

The government proposes that an independent regulator will implement, oversee and enforce the new regulatory framework. The regulator will take a risk-based approach, prioritising action to tackle activity or content where there is the greatest evidence or threat of harm, or where children or other vulnerable users are at risk.

The regulator will also take a proportionate approach, expecting companies to do what is reasonable, depending on the nature of the harm and the resources and technology available to them. In addition, it will have a legal duty to pay due regard to innovation.

The questions in this section seek views on options for appointing or establishing an online harms regulator, how it should be funded, and the steps it can take to ensure its approach is targeted and risk-based, and supports businesses with compliance.

Q28.

8. What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?

History has shown that the duty of strict neutrality where value judgements about speech are at play is unworkable and unrealistic. In April, the United States government held congressional hearings about the perceived censorship of conservative content by major social media portals like Facebook and Twitter. Facebook has even brought on radically left-leaning groups like the Southern Poverty Law Centre to advise on what amounts to 'hate' content. This is the same group which hosts a 'hate' watch list which includes largely Christian and conservative groups, among which I have personally been singled out by them in one of their articles. We live in a cultural situation where the Judeo-Christian worldview about sensitive moral matters is slowly being targeted as 'hate' speech. For example, Felix Ngole, who is being supported by Christian Concern, was recently before the Court of Appeal regarding his removal from Sheffield University's Social Work Masters' program on the grounds that he cited 1 Corinthians 6:9 in a Facebook debate about same-sex marriage. His comments were deemed by the university to make him professionally unsuitable to practice social work. Similarly, pastoral school assistant Kristie Higgs was sacked from her job for re-posting Facebook articles with comments where she shared her concerns about RSE proposals and parental rights. Concerns which many parents in the UK are becoming increasingly vocal about.

Q29.

9. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?

We again formally register our concern that several questions in this consultation presuppose the establishment of a regulatory framework as a fait accompli. Numerous and serious fundamental concerns about privacy, data protection and freedom of speech and opinion are not appropriately addressed by the White Paper. In an age where inappropriate government surveillance of private citizens is a frequent headline in the news, it is not enough to suggest that such a regulatory body deserves the public trust simply on the word of the government that it will respect the rule of law.

Q30.

10. Should an online harms regulator should be:

- A new public body
- An existing public body

Q31.

10a. Which body, or bodies, should it be?

This question was not displayed to the respondent.

Q32. Please explain your preferred option: A new public body

This question was not displayed to the respondent.

Q33. Please explain your preferred option: An existing public body

This question was not displayed to the respondent.

Q35.

11. A new or existing regulator is intended to be cost neutral: on what basis should any funding contributions from industry be determined?

In 1983, then Prime Minister Margaret Thatcher remarked during the Conservative Party Conference that there is no such thing as public money, there is only taxpayer money. The same principle applies here that there is no such thing as a cost neutral regulator. Business is already over-regulated and subject to numerous taxes which at the end of the day has the consequence of meaning that companies are able to hire less employees and/or will pass the cost along to consumers. There is no public benefit to creating a mechanism which erodes both the right to privacy and freedom of expression and then passes on the bill to the consumer. We have opted not to answer question 12 of the consultation as it presupposes a regulatory framework and punishments for small and large businesses alike which will only act as a detriment to the economy and lead to overly sensitive self-policing of content which will undoubtedly filter out lawful content on the premise that it is out of step with the current cultural zeitgeist leading companies to wonder if it amounts to 'harmful' content. This would create a de facto situation where viewpoint discrimination would become the new industry standard.



Q36.

Enforcement

The government proposes that the regulator will have a range of enforcement powers to take action against companies that fail to fulfil their duty of care. These will include, for example, the power to issue substantial fines. Companies and others must also have confidence that the regulator is acting fairly and within its powers.

The questions in this section seek views on the proposed enforcement powers of the regulator, and whether there should be a separate statutory mechanism through which organisations can have the decisions of a regulator reviewed.

Q37.

12. Should the regulator be empowered to i) disrupt business activities, or ii) undertake ISP blocking, or iii) implement a regime for senior management liability? What, if any, further powers should be available to the regulator?

Please explain your answer in the box provided.

i) Disrupt business activities

ii) Undertake ISP blocking

iii) Implement a regime for senior management liability

Further powers

Q38.

13. Should the regulator have the power to require a company based outside the UK or EEA to appoint a nominated representative in the UK or EEA in certain circumstances?

Please explain your answer in the box provided.

Yes

No

For the same reasons we are opposed to a regulator policing UK firms, including adding an unnecessary economic and bureaucratic impediment to the tech sector, given the tremendous trade agreement uncertainty stemming from ongoing Brexit negotiations, now is not the time to disincentivize foreign business activity within the United Kingdom.

Don't know

Q39.

14. In addition to judicial review, should there be a statutory mechanism for companies to appeal against a decision of the regulator, as exists in relation to Ofcom under sections 192-196 of the Communications Act 2003?

Yes

No

Don't Know

Q40.

14a. In what circumstances should companies be able to use this statutory mechanism?

As any infringement of freedom of expression or freedom of thought, conscience and religion also implicates the Human Rights Act 1998, at a minimum a potential defendant should be able to avail themselves of a country court. In any case, any mechanism which allows for an appeal should be practical and effective. *Bellet v. France*, Application no. Application no. 23805, Judgement of 04 December 2005, § 38. The right of access to court is premised on the principle that a litigant must have a clear, practical opportunity to challenge an act that has interfered with their rights. *Id.*, § 36. Nor should it be forgotten that freedom of expression enjoys heightened scrutiny under Section 12 of the Human Rights Act 1998.

Q41.

14b. Should the appeal be decided on the basis of the principles that would be applied on an application for judicial review or on the merits of the case?

Each case should be assessed in the light of the special features of the proceedings in question. *Kurşun v. Turkey*, Application no. 22677/10, Judgement of 30 October 2018, §§103-104. There is no point in creating an alternative forum to hear liability cases if the principles that would be applied are identical to those of the original forum, that being judicial review. A remedy is only effective if it is available and sufficient. It must also be sufficiently certain not only in theory but also in practice. *McFarlane v. Ireland*, App. No. 31333/06, 10 September 2010, § 114; *Riccardi Pizzati v. Italy* [GC], App. No. 62361/00, Judgement of 29 March 2006, § 38. The essence of the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having her case determined on the merits by the competent court. *Zubac v. Croatia* [GC], Application no. 40160/12, Judgement of 5 April 2018, § 98. While this right is not absolute and may be subject to limitations, access to a fair and full hearing cannot be reduced or restricted in such a way, or to such an extent, that the very essence of the right is impaired as it has been here. *Stanev v. Bulgaria* [GC], Application no.36760/06. Judgement of 17 January 2012, § 229. The restrictions imposed on freedom to manifest all of the rights inherent in freedom of expression call for very strict scrutiny by the courts. Cf. *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749, § 44. The list of restrictions for freedom of expression, as contained in Article 10 of the Convention, is exhaustive and they are to be construed narrowly, within a limited margin of appreciation allowed for the State and only convincing and compelling reasons can justify restrictions on that freedom. *Wingrove v. the United Kingdom*, judgement of 25 November 1996, Reports of Judgements and Decision, 1996-V, p. 1956, § 53.



Q42.

Technology as part of the solution

The government proposes working with industry and civil society to develop a safety by design framework, and in future working with the regulator to encourage investment in and the adoption of internet safety technologies.

The questions in this section seek views on what the greatest barriers to innovation and adoption of internet safety technologies are in the UK, in what areas there is the greatest need for practical guidance to building products that are safe by design and the potential role of government in addressing these issues.

Q43.

15. What are the greatest opportunities and barriers for (i) innovation and (ii) adoption of safety technologies by UK organisations, and what role should government play in addressing these?

Innovation

Q44.

16. What, if any, are the most significant areas in which organisations need practical guidance to build products that are safe by design?



Q45.

Empowering users

The government proposes developing an online media literacy strategy, and for the regulator to have the power to require companies to report on their education and awareness raising activity.

The questions in this section seek views on what more the government could do alongside existing and proposed initiatives, and the potential role for a future regulator in terms of education and awareness initiatives.

Q46.

17. Should the government be doing more to help people manage their own and their children's online safety and, if so, what?

Please explain your answer in the box provided.

Yes

The policing of obscenity is more important than ever given the cultural mainstreaming of pornography. The victims are often two-fold: (a) The pornographic industry, by its nature, needs to constantly find new women and girls for its films and statistically does so by praying on vulnerable girls from broken families or with histories of addiction or abuse. (b) The prevalence of porn addiction, particularly among males and adolescence has grown exponentially in recent years. Addiction can lead to escalation for viewing of increasingly deviant acts of pornography to acting out on sexual fantasies when viewing alone no longer suffices. While viewing doesn't necessarily lead to acting out, the causal link between the two has been well established in credible academic literature. See e.g. Carnes, Patrick Phd (2001). *Out of the Shadows: Understanding Sexual Addiction* (3rd ed.) Centre City, MN: Hazleden Foundation.

Leading studies have also shown high levels of aggression in pornography in both verbal and physical forms. Of the 304 scenes analysed by a 2010 study published by the *Violence Against Women Journal*, 88.2% contained physical aggression, principally spanking, gagging, and slapping, while 48.7% of scenes contained verbal aggression, primarily name-calling. Perpetrators of aggression were usually male, whereas targets of aggression were overwhelmingly female. Targets most often showed pleasure or responded neutrally to the aggression. Bridges AJ et al, *Aggressive and sexual behaviour in best selling pornography videos: A Content Analysis Update*, *Violence Against Women*. 2010 Oct;16(10):1065-85. Extreme content has therefore become the new normal.

We therefore feel that if any action is taken by government in relation to online harms, it be done with regard to obscenity.

No

Q48.

18. What, if any, role should the regulator have in relation to education and awareness activity?

We are at an unprecedented time in history where the clash between parents and government (Parliament, DfE and Ofsted) is on full cultural display. Education has taken on a moralistic aggression which seeks to enforce the government's perceived values over those of parents with little regard shown to the government's obligations to respect the manner in which parents seek to raise their children in accordance with their own religious and philosophical beliefs. Protocol 1, Article 2 ECHR as read into UK law through the Human Rights Act 1998. Christian Concern has been supporting numerous parents and governors in recent months, most notably Rev. John Parker (<https://www.dailymail.co.uk/news/article-7070773/Vicar-resigns-schools-plan-eight-year-old-pupils-sex-change-secret-parents.html>) and Izzy Montague (<https://www.dailymail.co.uk/news/article-6425175/Mum-complained-gay-parade-sons-school-shocked-staff-member-wearing-t-shirt.html>), who have suffered detriments simply for exercising their belief that education should respect parental rights and not interfere with the manner in which Christian families seek to bring up their children. We are therefore concerned with any measures the government might propose for further education in line with its own values which many parents in this nation find controversial and political. The role of education is not proselytism towards a specific progressive worldview driven by moral signalling and the enforced teaching of a government mandated values system. The role of government is to assist parents in educating their children, it is not to usurp that role.

Location Data

Location: ([48.149993896484](#), [17.107803344727](#))

Source: GeoIP Estimation

