
Addressing harmful online content

A perspective from broadcasting and on-demand
standards regulation

About this document

In the UK and around the world, a debate is underway about whether regulation is needed to address a range of problems that originate online, affecting people, businesses and markets. The UK Government has announced its intention to legislate to improve online safety and intends to publish a White Paper this winter. In July the Digital, Culture, Media and Sport (DCMS) Committee of the House of Commons published an interim report on disinformation and ‘fake news’,¹ recommending that *“the Government uses the rules given to Ofcom under the Communications Act to set and enforce contents standards for television and radio broadcasters, [...] as a basis for setting standards for online content.”*

This discussion document is intended as a contribution to that debate, drawing on our experience of regulating the UK’s communications sector, and broadcasting in particular. It draws out the key lessons from the regulation of content standards – for broadcast and on-demand video services – and the insights that these might provide to policy makers into the principles that could underpin any new models for addressing harmful online content.

¹ House of Commons, DCMS Committee, *Disinformation and ‘fake news’: Interim Report*, 29 July 2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>

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1. Summary

This paper sets out a contribution to the debate over how people might be protected from online harm. We discuss how lessons from the regulation of standards in broadcasting might help to inform policymakers as they consider policy options. Ofcom is the UK's communications regulator, overseeing content standards in broadcasting and on-demand video, such as the BBC iPlayer, ITV Hub or Amazon Prime. As a statutory regulator, we have no view as to any institutional arrangements that might flow from these policy considerations.

The internet has revolutionised how people communicate and access news, entertainment and other media, creating an increasingly converged communications market, with the major UK communications companies increasingly in the business of telecoms, content and online distribution.

Innovation in online services has delivered major benefits to individuals and society. But there is an intensifying, global debate over how to address the various problems that people experience online. Issues include:

- people's exposure to harmful content and conduct;
- privacy and use of personal data;
- the growth in cyber-crime;
- concerns with the ways in which online businesses compete, and the impact of this on innovation, investment and consumer choice; and
- the potential effects on content production, including journalism, and media plurality.

Issues related to harmful content and conduct – including illegal and age-inappropriate content, misleading political advertising, 'fake news' and bullying – are particular areas of focus. The UK Government has said it will legislate to improve internet safety. The UK Parliament's Digital, Culture, Media and Sport (DCMS) Committee has published an interim report on disinformation and 'fake news', which includes a recommendation that existing broadcasting standards be used as the basis for new online standards.² New European legislation will extend some protections to activities of video sharing platforms like YouTube for the first time. The major online platforms have introduced a range of initiatives aimed at protecting their users from harmful content, although concerns remain around the consistency and effectiveness of these measures.

This debate focuses on online platforms, including video-sharing sites, social media networks and search engines. It therefore covers a wide range of online content – from 'TV-like' content published online by established media organisations, to individual posts or tweets from members of the public.

The regulatory regime covering online content has evolved in recent years, but there are still significant disparities in whether and how online content is regulated. The boundaries between broadcasting and the online world are being redrawn, with implications for whether the public understands what level of protection applies when using online services.

² House of Commons, DCMS Committee, *Disinformation and 'fake news': Interim Report*, 29 July 2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>

This discussion document considers some lessons, drawn from our experience as the regulator of broadcast and on-demand content, which might inform the design of any future regulatory regime for online content. We also identify some key challenges involved in transposing experiences from broadcasting regulation into online.

Alongside this paper, we are publishing new research conducted jointly with the Information Commissioner's Office (ICO) on people's experience of online safety issues. It found that seven in ten UK adult internet users report concerns about harmful content or conduct online, and a quarter say they have directly experienced some level of harm.

Key lessons from Ofcom's experience

Existing frameworks could not be transferred wholesale to the online world. We discuss specific challenges presented online, and how they might affect regulation - including:

- **Scale:** the sheer volume of text, audio and video generated or shared by online platforms is far beyond that available on broadcast television and radio.
- **Variety of content types, voices and opinions:** the diversity of types of content available online is much broader than that of traditional broadcast content and includes user generated content and conversations between people.
- **Role in content creation:** many online platforms do not create or commission the content that is accessed by their users, although they do have a role in determining what users see.
- **Service variety and innovation:** the nature and features of online platform services vary widely, including the level of control over what content users see.
- **Multinational nature of online platform operators:** many platform operators are not based in the UK, which may have implications for enforcement.

Audience expectations and context differ between broadcasting and online. In some areas, people's expectation of protection online maps closely to the standards that apply to broadcasting – the protection of minors, protection from illegal content and from a range of other harmful content and conduct. There are certain broadcasting standards – such as those for impartiality and accuracy – that might be undesirable or impractical to introduce online in the same way. Alternative approaches might focus on transparency, e.g. platforms making clear to users where news content comes from and whether it can be trusted.

However, certain principles from broadcasting regulation could be relevant as policymakers consider issues around online protection:

- **Protection and assurance** against harmful content and conduct.
- **Upholding freedom of expression.**
- **Adaptability over time** to allow for changing consumer behaviour and expectations, and innovation by industry to adjust how it can best protect its users.
- **Transparency**, both in terms of which services are regulated and of the rules underpinning the regulatory regime.
- **Enforcement** against bad behaviour, through proportionate and meaningful sanctions.
- **Independence** of decision-making that builds credibility and public trust.

We are engaging with fellow regulators whose duties – like ours – touch on the internet, to ensure our respective work programmes around potential online harms are coordinated. We will hold a conference in the first part of 2019 for UK and international regulators which have remits and expertise in these issues. We are working particularly closely with the ICO and the Competition and Markets Authority (CMA) and we are developing a joint programme of work and research with the ICO.

2. Introduction

As the UK's converged communications regulator, Ofcom oversees telecommunications, post, broadcast TV and radio, and has duties in relation to broadcast advertising. We regulate certain online video services, including on-demand services such as Amazon Prime.³ We have a statutory duty to promote media literacy, under which we carry out research into people's use of – and attitudes towards – various communications services, including online services such as social media and video sharing platforms; and we have some duties around media plurality. This remit reflects the increasing convergence of the companies and markets that we regulate.

In recent years, a wide-ranging, global debate has emerged about the risks faced by online users and how regulation should respond to this. Our research shows that the public has concerns about a wide range of issues, including harmful content, privacy and security. The UK Government has said it will publish a White Paper on online safety this winter, and several Parliamentary committees are carrying out related inquiries.⁴

This discussion document is intended as a contribution to current policy discussions, drawing on our experience of broadcasting regulation and our research. We hope that it will be a useful input to policymakers in the UK and abroad, and to regulatory forums such as the European Regulators Group for Audiovisual Media Services (ERGA). As a statutory regulator, we have no view as to any institutional arrangements that might flow from these policy considerations.

The rest of the paper is structured as follows:

- **Section 3** discusses the growing and multifaceted public debate about online harms – including, but not limited to, harms related to online content.
- **Section 4** discusses the current regulatory regime that applies to content-related harms within traditional media and online, as well as the debate on how regulation should evolve.
- **Section 5** details experience from broadcast and on-demand content regulation, highlighting key aspects that may be relevant in an online context; we also discuss challenges involved in transposing broadcasting experience into online.
- **Section 6** sets out some initial thoughts on online regulation, drawing on our considerations in the previous section; we outline some high-level principles that could be relevant for policymakers, and some insights, informed by our consumer research, on standards that might be set by Parliament for online harms.
- **Section 7** outlines our next steps.

³ We also regulate broadcasters' online live streams; catch-up services such as All4; and certain YouTube channels.

⁴ We set out current policy activities in Annex A1, p 29.

3. The public debate around online harms

The public's increasing use of online services has sparked a wide-ranging debate about online harms

The internet has delivered major benefits to individuals and society. More than 3.3 billion people worldwide use the internet, up by 70% since 2010,⁵ and this number is predicted to increase to 4.6 billion by 2021.⁶ In 2017, the 88% of UK adults who used the internet spent an average of 24 hours online each week. This is almost double the amount of time spent online in 2007.⁷

The internet's free and open nature is a vehicle for innovation that has enabled new business models and ways of delivering information and content, under relatively little specific regulatory oversight. It has never been easier or cheaper to communicate, or to produce and share content with others, and to do so at scale. Many valued online services are available at a lower price than their traditional equivalents and many are free at the point of use.

But these benefits have come at a price. New research conducted for Ofcom and the ICO, published alongside this document, reveals that 79% of adult internet users have concerns about going online. Specifically, among UK adult internet users:⁸

- around seven in ten (69%) report concerns about **harmful content or conduct online**, with around a quarter (26%) saying they have personally experienced some form of harm;
- over half (58%) are concerned about control over personal **data and privacy**, with over a quarter (28%) reporting experiencing harm; and
- over half (54%) are concerned about **hacking and security**, with a quarter (25%) reporting having been harmed.

Around the world, regulators and policymakers are taking steps to understand and address these and other issues. Concerns broadly fall into the following categories:

- **Harmful content and conduct** are the focus of multiple policy initiatives, including a revision of the European-wide Audiovisual Media Services (AVMS) Directive that will bring a degree of regulation in the EU (including, when implemented, in the UK)⁹ to video sharing platforms such as YouTube. Several countries including Germany and Australia have enacted new legislation. In the UK, the Government has committed to publishing a White Paper on its Internet Safety Strategy, which will include proposals for legislation to protect consumers from online harms including abusive conduct; in addition, the House of Commons DCMS Committee published an

⁵ ITU, *Internet users by region and country, 2010-2016*. <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/treemap.aspx>

⁶ Cisco, *VNI Global Fixed and Mobile Internet Traffic Forecasts*. <https://www.cisco.com/c/en/us/solutions/service-provider/visual-networking-index-vni/index.html#~cloud-forecast>

⁷ Ofcom, *Communications Market Report 2018*, page 14.

https://www.ofcom.org.uk/data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

⁸ Ofcom/ICO *Internet users' experience of harm online: summary of survey research*, 18 September 2018

⁹ The Government has indicated its intention to reach an agreement with the EU that includes an implementation period (the 'transition' period), such that these new rules will be transposed into UK legislation notwithstanding the UK's exit from the EU (see Chapter 3, the Department for Exiting the European Union white paper, July 2018, '*Legislating for the Withdrawal Agreement between the United Kingdom and the European Union*').

interim report on disinformation and ‘fake news’. Further details on these various initiatives can be found in the Annex.

- The General Data Protection Regulation (GDPR) has set common rules within the European Economic Area (EEA) on how organisations and individuals can **collect, process and store personal data**. Regulators in the UK, France, Germany and elsewhere have undertaken enforcement action and investigations around data protection. One example is the UK ICO’s investigation into the use of data analytics in political campaigns.
- **The cyber-security and resilience** of internet infrastructure has been addressed in recent legislation,¹⁰ which aims to improve the overall security and resilience of networks across the EU.
- Policymakers are considering the **competitive dynamics** of online markets, amid wider concerns from academics and other experts.¹¹ In the UK, the Treasury has appointed an expert panel to examine the UK’s competition regime in the context of the digital economy, feeding into a Government review of competition law.¹² In June 2018, the US Federal Trade Commission announced hearings into whether *“broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement law, enforcement priorities, and policy”*.¹³ In June 2017, the European Commission concluded that Google had *“abused its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service”*,¹⁴ and in July 2018 that Google had abused its dominance by imposing *“illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search”*.¹⁵ The EU Commission¹⁶ also recently proposed regulation on *“promoting fairness and transparency for business users of online intermediation services”*, together with the creation of an Observatory on the online platform economy.
- **The relationship between online platforms and content publishers is another area of policy discussion**. In the UK, the Cairncross Review, commissioned by the Government and reporting in early 2019, is looking¹⁷ at commercial relationships between online platforms and news publishers, among other things. In broadcasting, Ofcom recently consulted on the ease with which viewers can find public service broadcasting channels on their electronic TV guides. In the light of new duties in the Digital Economy Act (DEA),¹⁸ we are also seeking views on whether the

¹⁰ The Security of Network & Information Systems Regulations (NIS Regulations) place legal obligations on providers to protect UK critical services by improving cyber-security. For example, as a result of the NIS Regulations, Ofcom has powers to regulate the security and resilience of certain ‘critical’ components of the internet’s infrastructure, such as parts of the Domain Name System.

¹¹ See for example Barwise and Watkins: ‘The evolution of digital dominance: how and why we got to GAFA’ in Moore and Tambini (eds): *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple* (2018)

¹² <https://www.gov.uk/government/news/former-obama-advisor-to-examine-digital-competition-in-the-uk>

¹³ <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>

¹⁴ http://europa.eu/rapid/press-release_IP-17-1784_en.htm

¹⁵ http://europa.eu/rapid/press-release_IP-18-4581_en.htm

¹⁶ <https://ec.europa.eu/digital-single-market/en/platforms-to-business-trading-practices>

¹⁷ <https://www.gov.uk/government/consultations/call-for-evidence-on-sustainable-high-quality-journalism-in-the-uk>

¹⁸ The DEA 2017 introduced a duty for Ofcom to report on the provision by electronic programme guides of information about linear and video-on-demand (VOD) public service broadcasting services (section 95 DEA 2017).

current rules requiring these channels to be prominent on traditional TV platforms should be extended to online services and, if so, which online services should be in scope.¹⁹ In Australia, competition authorities are looking into the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets.²⁰

- **Online copyright and intellectual property protection** remain on-going concerns for publishers and content creators. Research suggests that pirated and unauthorised copyright material is available through a variety of online services, ranging from relatively complex services such as BitTorrent to simpler-to-access online streaming sites (often similar in appearance and behaviour to legitimate streaming services), and in some cases through social media pages.²¹
- The last year has seen intensifying debate around the alleged capacity of social media and other online services to encourage **addictive behaviour, with particular concern focused on the potential effects on children.**²² Providers including Facebook, Instagram and Google have launched or announced tools²³ that let users set time limits on app usage, mute notifications and check previous usage.

We have statutory duties that intersect with a number of these issues, as set out below:

¹⁹ Ofcom, *Review of rules for prominence of public service broadcasters and local TV. Consultation on proposed changes to the linear EPG Code and future of the regime*, 27 July 2018.

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/116273/consultation-epg-code-prominence-regime.pdf

²⁰ <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry>

²¹ Ofcom, *Online content study: changes in the distribution, discovery and consumption of lawful and unauthorised online content*, 1 March 2016. <https://www.ofcom.org.uk/research-and-data/internet-and-on-demand-research/online-copyright-infringement/online-content-mar-2016>

²² For example, see: The Telegraph, *Jeremy Hunt: Social media poses as great a threat to children as obesity*, 8 February 2018. <https://www.telegraph.co.uk/news/2017/10/31/facebook-urged-tell-children-spend-long-online/>

²³ For example, see: TechCrunch, *Google rolls out app time management controls*, 8 May 2018.

<https://techcrunch.com/2018/05/08/android-rolls-out-a-suite-of-time-management-controls-to-promote-more-healthy-app-usage/> and The Guardian, *Facebook and Instagram to let users set time limits*, 1 August 2018.

<https://www.theguardian.com/technology/2018/aug/01/facebook-and-instagram-to-let-users-set-time-limits>

Box 1: Ofcom's role in regulating content standards to protect audiences

Our key responsibilities related to content standards regulation include the following:

- Since our inception in 2003, we have been responsible for ensuring that audiences of broadcast TV are adequately protected, by requiring compliance with the Broadcasting Code. Audience protection has been a longstanding statutory duty in the UK, pre-dating Ofcom, and stemming from legislation in the 1950s.
- In 2010, following the Audiovisual Media Services Directive of 2007, Ofcom became responsible for the regulation of on-demand content, including broadcaster on-demand services like All4, and subscription services like Amazon Prime. This duty was previously performed jointly with our co-regulator – the Authority for Television on Demand (ATVOD). In 2015, ATVOD was merged with Ofcom.
- Our duties evolved in 2017 to include sole oversight of the BBC's output, including its websites and apps – the first time Ofcom had been given a role in relation to written online content.
- With the Advertising Standards Authority (ASA), Ofcom is responsible for the regulation of broadcast advertising; the ASA also oversees online commercial advertising on a self-regulatory basis. One requirement of the broadcast rules is that TV and radio programmes should be free from political advertising. In addition, Ofcom directly regulates party political and election broadcasts.

We discuss our experience of regulating broadcasting standards in Section 5. We also have statutory duties that touch on the internet, beyond the sphere of content regulation. These include²⁴ responsibilities to promote media literacy, which we define as the ability to use, understand and create media and communications in a variety of contexts, including online. We fulfil this duty by publishing research, including on people's experiences of online harm and their knowledge of internet safety practices (among many other aspects of media consumption). We also have duties to maintain sufficient media plurality, including by conducting public interest assessments for media mergers when requested by the Secretary of State.²⁵

We are working with UK and international regulators which have relevant remits and expertise in order to coordinate our respective work programmes where our duties touch on the internet. We will be holding a conference for fellow regulators in the first part of 2019. We are working particularly closely with the ICO and the CMA and we are developing a joint programme of work and research with the ICO on issues that straddle our respective remits.

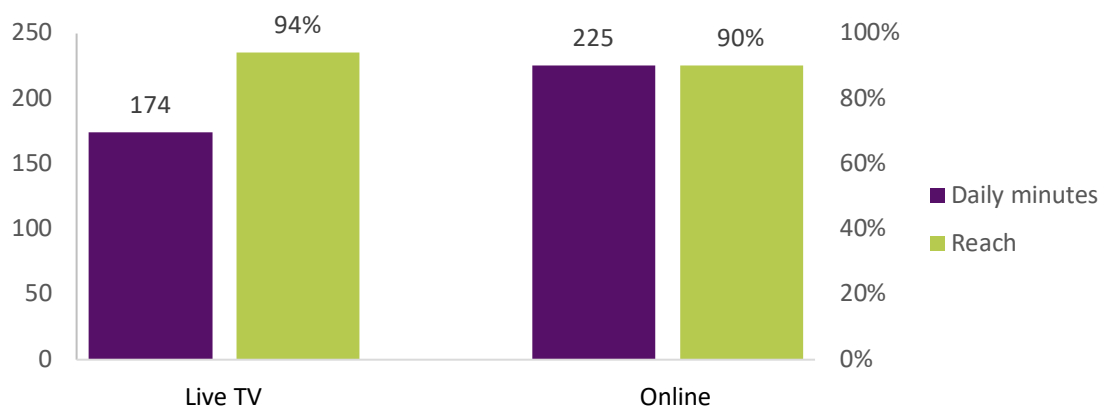
²⁴ Other responsibilities relating to the internet include enforcing 'net neutrality', requiring access providers to treat data traffic in a non-discriminatory manner; concurrent competition powers with the CMA in relation to communications matters; promoting the availability of high quality broadband and mobile networks; and setting obligations for telecoms providers to maintain the security and resilience of their networks - under the EU Networks and Information Systems Directive, our role has been expanded to include cyber security from 2018.

²⁵ For example, in 2017, Ofcom reported to the Secretary of State on public interest considerations around plans by 21st Century Fox to acquire the shares in Sky it did not already own (<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/findings-fox-sky-merger>) and in 2018 Ofcom did the same for the acquisition by Reach plc of certain publishing assets of Northern & Shell Media Group Ltd (<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/reach-trinity-mirror-northern-shell>)

Our research on media literacy finds that online content is a key area of concern

Increasingly, people are spending time with different forms of media on a wide range of services delivered through the internet. In 2017, the time that people spent online reached more than 200 minutes per day – more than the time spent watching TV, as Figure 1 below shows. These trends look set to continue. For example, forecasts suggest that average video viewing on the internet will continue to increase – from around 30 minutes per day in 2018, to 42 minutes in 2027, a 40% increase.²⁶

Figure 1: Average time spent (minutes / day) and reach for live TV and online, 2017

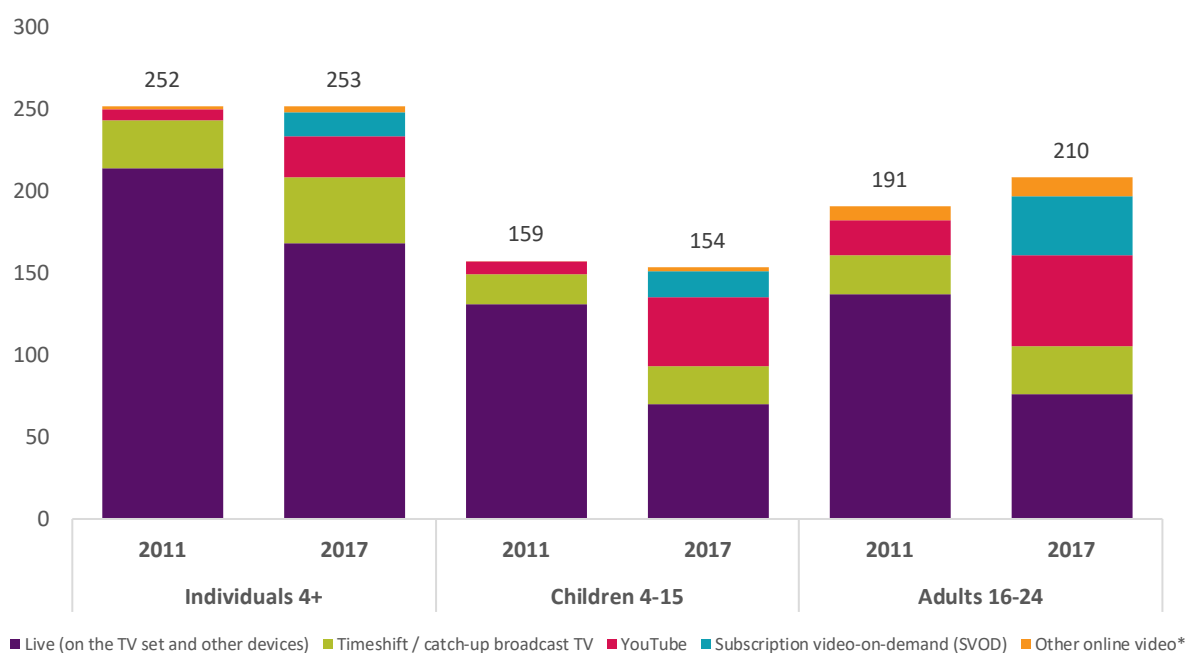


Source: TV data – BARB (reach rebased to whole population); Internet 2017 usage data – comScore MMX®, 2017, UK (desktop and mobile only, broadcaster catch-up and SVOD on a TV set have been estimated in Ofcom’s Media Nations report and added, use of games consoles on TV sets also added from BARB); Internet reach – based on ONS used internet in last 3 months.

These trends are particularly pronounced among children and young people. Short-form video – watched on video-sharing platforms such as YouTube, and on social media platforms such as Facebook – accounts for a growing proportion of their daily viewing. In 2017, children aged 4-15 watched an average of 42 minutes of YouTube content every day, up from 8 minutes in 2011.

²⁶ Enders Analysis, *Video Viewing forecasts to 2026*

Figure 2: Average video viewing across UK population, 2011 and 2017 (mins / day)



Source: Enders Analysis estimates based on BARB / AdvantEdge, ONS and industry. *Other online video is video watched on the open internet excluding adult content.

As media consumption shifts online, people face a range of potential harms from content and conduct. These include:

- **illegal content** – such as hate speech, child exploitation or incitement to terrorism. Among UK adult internet users, thirty-seven per cent are concerned about online promotion of terrorism;
- **age-inappropriate content** – such as adult sexual material, disturbing or violent content. Thirty-seven per cent of internet users are concerned about children seeing unsuitable content;
- **other potentially dangerous content** – which poses a significant risk of personal harm, such as videos or images promoting self-harm or violence. Twenty-seven per cent of adult internet users are concerned about dangerous or harmful content;
- **misleading content** – including ‘fake news’, the use of fake accounts and misleading political advertising, which may have undue influence on the democratic process. Twenty-nine per cent of adult internet users are concerned about disinformation; and
- **personal conduct that is illegal or harmful** – such as bullying, grooming and harassment. Thirty-nine per cent of adult internet users are concerned about online bullying.²⁷

Children are particularly vulnerable, often being exposed to harmful content or conduct. Research conducted for the NSPCC found that 30% of under-18s report recent exposure to violent or hateful contact or behaviour online. Around 20% report exposure to sexual content and bullying.²⁸ A quarter

²⁷ Ofcom/ICO *Internet users’ experience of harm online: summary of survey research*, 18 September 2018

²⁸ NSPCC, *Net Aware Report 2017: Freedom to express myself safely*, September 2017.

<https://www.nspcc.org.uk/globalassets/documents/research-reports/net-aware-freedom-to-express-myself-safely.pdf>.

of young people report having been contacted over social media by an adult they didn't know, a third of whom were children under 13.²⁹

Harmful online content may take many forms – from TV-like programmes, to short-form video, to images and written text. This content may originate from organisations or from individuals, and it may be intended for a large audience, a niche group, or a closed group of friends (e.g. when distributed through instant messaging services). Online platforms often provide their users with a mix of these content types, potentially on the same screen at the same time, and users may face different harms in relation to each.

²⁹ NSPCC / O2, *1 in 4 young people have been contacted over social media by an adult they don't know*, 2 May 2018. <https://www.nspcc.org.uk/what-we-do/news-opinion/children-under-13-targeted-by-adults-they-dont-know-on-social-media/>

4. Today's regulatory landscape

Regulation has responded to the need to protect people from harm – first in broadcast media, and now increasingly online. Today there is a range of regulatory approaches, with broadcast services subject to longstanding regulation and some newer online services and content subject to little or no regulation beyond the general law.

This is not by design, but the outcome of an evolving system. Nonetheless, as the boundaries between broadcasting and the online world are being redrawn, this has implications for whether the public understands what level of protection applies when they are online.

This section describes the regime that applies to broadcasting in the UK, which is designed to ensure that maximum audience protection is achieved while safeguarding freedom of expression. We also cover how regulatory and voluntary initiatives have developed various protections in certain parts of the online world.

In broadcasting there is comprehensive regulation of standards

TV and radio services based in the UK are regulated to a high standard. This is achieved through a two-part framework of legislation supported by detailed regulation:

- *Legislation:* Parliament sets out high level standards (formally '**statutory standards objectives**') that should apply to broadcasting in the UK. These objectives stipulate, for example, that
 - children under the age of 18 are protected;
 - material likely to encourage or to incite the commission of crime or to lead to disorder is not included;
 - audiences are appropriately protected from harmful and offensive material;
 - news is presented with due impartiality and reported with due accuracy;
 - people featuring in programmes are protected from unjust or unfair treatment and that their privacy is not unwarrantedly infringed;
 - commercial advertising which may be misleading, harmful or offensive is prevented;
 - political advertising is forbidden.

In addition, the Communications Act requires Ofcom to put in place – and enforce – rules to ensure that party political and referendum campaign broadcasts are included in every licensed public service channel and a selection of UK BBC public services.³⁰

- *Regulation:* Ofcom's **Broadcasting Code** is the practical application of the standards set by Parliament³¹ through a comprehensive set of rules. **Broadcasting is regulated under a licensing regime.** Ofcom licenses companies that broadcast to a UK audience and many UK-based satellite and cable channels that broadcast exclusively outside the UK. **The regulatory regime for broadcasting has a degree of built-in flexibility.** The standards set by Parliament are at a high-level, allowing detailed regulation to develop and respond over time. For instance, the public's

³⁰ Ofcom Rules on Party Political and Referendum Broadcasts, 22 March 2017.

https://www.ofcom.org.uk/data/assets/pdf_file/0035/99188/pprb-rules-march-2017.pdf

³¹ Ofcom Broadcasting Code. (<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>)

view as to what constitutes offensive language has evolved over time, and we have reflected this in our approach to regulation. Equally, in our decision making we are able to take account of contextual factors, such as the circumstances in which content is shown.

Broadcast regulation has evolved with the industry and the growth of online content

Broadcast regulation has evolved in line with significant changes to industry and technology. Our current system of broadcasting regulation began in the analogue era – an age of two or three channels. Following the introduction of multi-channel TV, the number of licensees grew to 2,000 broadcast services. Within this total, a growing proportion of channels now serve diverse, often niche, multi-lingual global audiences. The regime also extends to online platforms that broadcast live TV. This year, Ofcom granted the first licence to an online-only linear TV service (Amazon Prime for its coverage of live tennis tournaments).

Regulation has also been extended to provide a degree of protection for people watching on-demand services. In 2010, rules were introduced for catch-up services to protect children; prevent incitement to hatred; and limit product placement and sponsorship within programming.³² Around 300 on-demand services including the ITV Hub and Amazon Prime are subject to these rules. A number of elements of the broadcasting regime, such as the need for due impartiality and accuracy in news, do not apply.

External oversight has also been introduced recently for users of BBC online material. Since 2017 the BBC's website and articles have been subject to Ofcom oversight.³³ BBC content on third party websites and BBC social media accounts (e.g. journalists' tweets) remain outside the scope of this external oversight.

There has been a number of voluntary initiatives to address growing concerns about the protection of children online. For example:

- Since 2004, the UK's mobile operators have provided filters that restrict children's access to inappropriate content online. The BBFC provides a classification framework to define which content is unsuitable for under 18s, and this content cannot be accessed until the customer has demonstrated they are at least 18 years old.³⁴
- In 2013, BT, Sky, Talk Talk and Virgin Media agreed to offer 'family-friendly' filtering to screen out content unsuitable for children.³⁵ In 2015, Ofcom found that parents had growing awareness and use of such filters, and were increasingly likely to find them useful.

³² These rules are set at a European level. Ofcom has powers to regulate on-demand programme services under these rules as a result of implementing the AVMS Directive 2010.

³³ Ofcom *Bulletin for complaints about BBC online material*, 16 July 2018.

https://www.ofcom.org.uk/data/assets/pdf_file/0021/116049/issue-5-bbc-online-complaints-bulletin.pdf

³⁴ Mobile UK, *Partnership Working*. <http://www.mobileuk.org/partnership-working.html>

³⁵ Ofcom *Report on internet safety measures, Strategies of parental protection for children online*, 16 December 2015.

https://www.ofcom.org.uk/data/assets/pdf_file/0020/31754/Fourth-internet-safety-report.pdf

- In 2016, the UK Council for Child Internet Safety (UKCCIS) Working Group on Social Media issued new guidelines³⁶ for how social media platforms could use parental controls, reporting mechanisms and other devices to keep children safe.

We discuss a wider range of initiatives to protect users of online content in Annex A1.

While regulation has evolved, most online content is subject to little or no specific regulation

Many types of online service and content are not regulated beyond compliance with general legal requirements. Key areas that are not currently the subject of specific regulation are:

- platforms whose principal focus is video sharing, such as YouTube;³⁷
- platforms centred around social networks, such as Facebook and Twitter;³⁸
- search engines that direct internet users towards different types of information from many internet services, such as Google and Bing;
- nearly all other online services, including messaging services, with a few exceptions such as the BBC's online services (as discussed above), and certain news sites that are overseen by the press regulatory bodies IPSO and IMPRESS; and
- political advertising online.³⁹

The types of content available on or through these services vary, ranging from professional long-form video content, to commercial advertisements, to tweets or posts created by the public – much of which could be considered as 'conversation' as much as 'content'. The potential for these different types of content to cause harm may vary significantly. Where standards do apply to online content, they are generally more limited than those that apply to broadcasting – for example, as noted before, accuracy and impartiality requirements do not apply to on-demand services.

These inconsistencies are most apparent in relation to news content. For example, while broadcast news must be 'duly' accurate and impartial, the online output of newspapers that are members of IPSO and IMPRESS⁴⁰ are subject to accuracy requirements but are not required to be impartial. Other online news content – such as newspaper titles or online-only news sources outside of the IPSO and IMPRESS regimes – face no regulation.⁴¹

³⁶ UKCCIS, *Child Safety Online, A Practical Guide for Providers of Social Media and Interactive Services*, 1 March 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487973/ukccis_guide-final_3_.pdf

³⁷ Although this will soon be addressed to a degree by the revised AVMS Directive, including advertising, as we discuss below. Other online advertising is covered by the self-regulatory body, the ASA







³⁸ New provisions in the revised AVMS Directive will cover video content on social media services.

³⁹ With respect to the content of advertisements. The Electoral Commission has previously noted that the lack of regulation of online political advertising has implications for the transparency of digital campaigns.

⁴⁰ [IPSO regulates about 1,500 print editions and 2,500 online publications](#) including The Times and The Daily Mirror. [IMPRESS regulates about 110 publications](#), including The Canary and a number of local publications.

⁴¹ A number of press titles, including The Guardian and the FT, have not signed up to a scheme such as IPSO or IMPRESS.

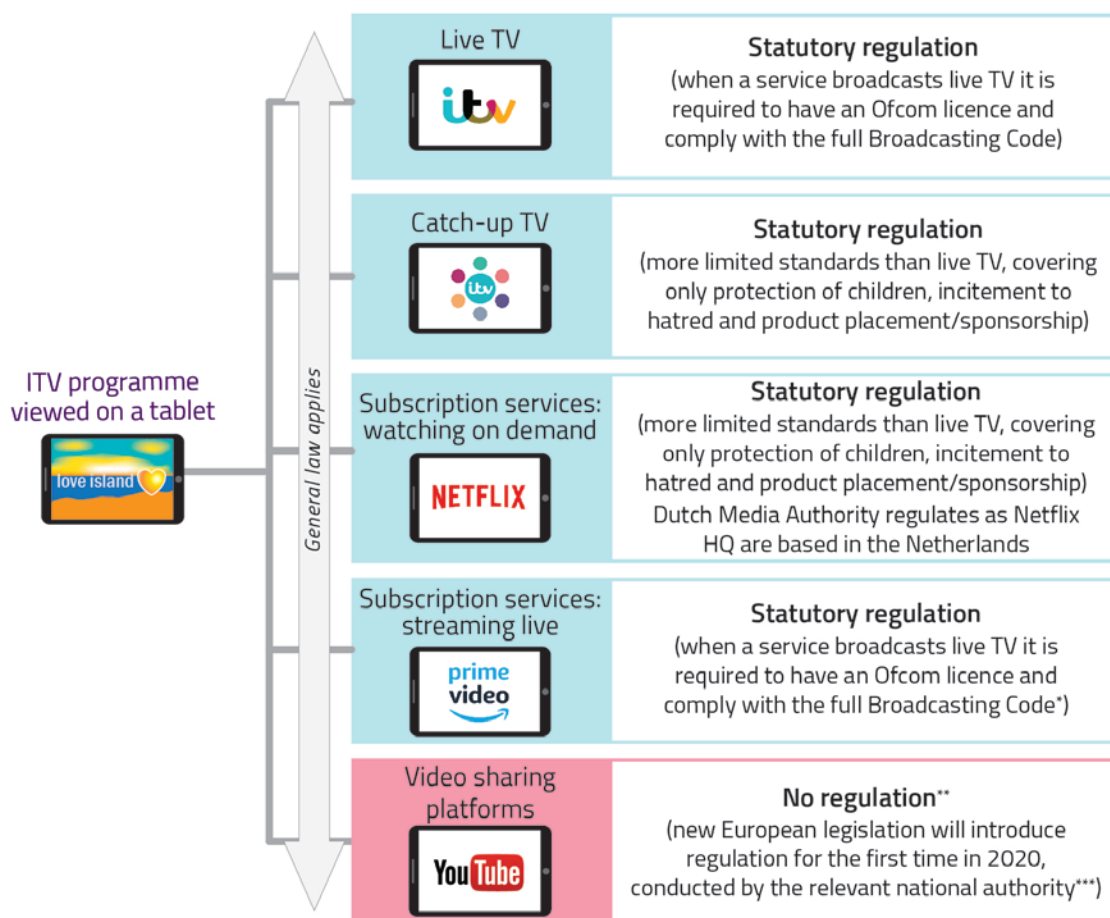
Figure 3: Different regulatory approaches applying to online news content in the UK

Online news content	Regulatory approach
BBC iPlayer 	Regulated by Ofcom including for accuracy and impartiality
BBC's online written output 	Ofcom publishes an opinion on whether BBC has complied with its own editorial guidelines
Other broadcasters' catch-up services 	Regulated by Ofcom but not for accuracy and impartiality
Video news content on video sharing platforms, including some social media 	New European legislation will introduce regulation for the first time in 2020, conducted by the relevant national authority*, but not for accuracy and impartiality
Online press output 	Regulated by IPSO / IMPRESS for accuracy but free to express views and opinions
Other online news content (e.g. non-video news content on social media; news sites outside of the IPSO and IMPRESS regimes) 	Not regulated

*UK Government will determine who the relevant UK national authority will be on implementing the provisions of new AVMS Directive

Even when the content is the same, it can be subject to different rules – or none at all – depending on the service through which it is consumed. As Figure 4 illustrates, the same programme broadcast on ITV's television channel might face different regulatory requirements when appearing on its on-demand platform ITV Hub, or on Netflix; and (at present) no regulation if accessed through YouTube, where only general law applies. This means that viewers might face less protection in some places and may not understand the levels of regulation on the content that they see, especially as different services can be accessed through the same device like a smartphone or laptop.

Figure 4: Different rules applying to the same programme viewed online



* Any on demand content available on the same service is subject to more limited standards than Live TV, covering only protection of children, incitement to hatred and product placement/sponsorship

** No regulation of the platform but some on demand services on the YouTube platform are regulated with more limited standards than live TV, covering only protection of children, incitement to hatred and product placement/sponsorship

***UK Government will determine who the relevant UK national authority will be on implementing the provisions of new AVMS Directive.

As people increasingly shift their viewing online, the differences in regulation appear increasingly arbitrary – and are less likely to mesh with their views about what is and what should be regulated. Many people are unaware that most forms of online content are largely unregulated. Thirty per cent of adult online users believe video-sharing platforms such as YouTube are regulated today. Of these, 31% think Ofcom is responsible for regulating the service, 13% believe their internet service provider (e.g. BT or Sky) is responsible and 9% believe that the Government is responsible.⁴²

⁴² Ofcom/ICO *Internet users' experience of harm online: summary of survey research*, 18 September 2018

Efforts are underway to increase regulatory oversight of some online content

New European legislation will increase the level of regulation of online video content. The revised Audio-visual Media Services (AVMS) Directive will bring a degree of oversight to video sharing platforms such as YouTube. YouTube and other video sharing platforms will be required at a minimum to tackle illegal content, hate speech, the protection of minors, and advertising but with some limitations. The Directive does not address other types of harmful content, such as bullying, harassment or disinformation, however it allows for national implementation to go further. Further detail is set out in Annex A1.

Regulatory challenges go further than services on video sharing platforms. Even on implementation of the revised AVMS Directive in the UK⁴³, a wide range of harmful online content and conduct will remain unregulated. This includes text and image-based content on social media platforms;⁴⁴ and content (whether video, text or images) located outside video-sharing platforms, on-demand services, or services subject to a regulatory regime such as those of IMPRESS or IPSO.⁴⁵ Also, services originating outside the EU may be outside the scope of any regulation flowing from the revised Directive.

In this context, there is a wide-ranging, global debate about whether and how online harms should be addressed through regulation. Some countries, including Germany and Australia, have already legislated to combat certain online harms. Many other jurisdictions, including the EU, are exploring new rules. And platforms themselves have developed various initiatives to address harmful content – including strengthening their community standards, hiring more content moderators, removing fake accounts, highlighting trusted sources and publishing transparency reports. Major policy, regulatory and voluntary initiatives – in the UK and internationally – are summarised in Annex A1.

Trade-offs between protection and freedom of expression considerations are a central feature of the debate. Some have put forward proposals that would entail platforms having a greater degree of legal liability for harmful content published on them.⁴⁶ Those arguing against such moves raise concerns that, noting the large volume of content published, platforms could ‘err on the side of caution’ and remove, or refuse to publish, content that complies with the relevant legal standards – thereby unduly limiting freedom of expression.⁴⁷

⁴³ See footnote 9 above

⁴⁴ In as much as a social media platform is deemed to also be a video sharing platform, its video content will be covered by the revised AVMS Directive.

⁴⁵ Non-broadcast online advertising which is covered by the Advertising Standards Authority, ASA, a self-regulatory industry body. Online advertising in on-demand services will be covered by the revised AVMS Directive.

⁴⁶ For example, the Committee on Standards in Public Life has suggested that “*the Government should bring forward legislation to shift the liability of illegal content online towards social media companies.*”

(<https://www.gov.uk/government/publications/intimidation-in-public-life-a-review-by-the-committee-on-standards-in-public-life>, p. 14)

⁴⁷ Such concerns have been raised in connection to Germany’s NetzDG law. For example, see Human Rights Watch, *Germany: Flawed Social Media Law*, 14 February 2018. <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>

In the UK, the Government has said it will legislate to protect safety online, while two Parliamentary committees are considering the case for internet regulation. Recently, the House of Commons' DCMS Committee suggested that the regime for regulating broadcast content standards could be used "*as a basis for setting standards for online content*".⁴⁸ We believe there are useful lessons that can be drawn from the experience of broadcast regulation, but there are reasons to be cautious over whether this regime could be exported wholesale to the internet. We turn to our experience on broadcast standards in Section 5, and to the potential challenges involved with applying broadcasting standards in Section 6.

⁴⁸ House of Commons, DCMS Committee, *Disinformation and 'fake news': Interim Report*, 29 July 2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>

5. Lessons from broadcasting regulation

In the previous section we outlined the current regime of broadcasting and content regulation in the UK. In this section we explain how Ofcom has undertaken broadcasting regulation, drawing on specific cases to illustrate the core principles that underpin our approach, and show how the regime has evolved to meet audiences' changing needs. We also provide observations on potential challenges to the wholesale export of the broadcasting regulation regime to the regulation of online content.

Broadcasting regulation is underpinned by core principles

Broadcasting regulation in the UK seeks to protect people from harm while safeguarding freedom of expression

Our regulation balances people's evolving needs and expectations of protection with their rights freely to share and receive ideas and information. Our duties require us to make finely balanced decisions, weighing up important factors, such as audiences' and broadcasters' rights to freedom of expression – set out in Article 10 of the European Convention on Human Rights – and protecting audiences from harm. In all our broadcasting decisions we consider the importance of freedom of expression in a democratic society, which encompasses the right to hold opinions, and to receive and impart information and ideas without undue interference by a public authority.

Case study 1 – balancing privacy protections with freedom of expression

Can't Pay We'll Take It Away (Channel 5, 20 April 2016).⁴⁹ This programme included footage of the complainant speaking to two High Court Enforcement Agents ("HCEAs") as the HCEAs enforced a High Court Writ for the repayment of personal debt. Most of the footage was recorded inside the complainant's family home. Footage and audio of the complainant discussing the matter with her uncle and father, both via phone and later in person, was also included. Ofcom found that the complainant, her uncle and father had a legitimate expectation of privacy in relation to the filming of the footage and that they all had a legitimate expectation of privacy in relation to the subsequent broadcast of the footage. In reaching this adjudication we considered that their legitimate expectation of privacy outweighed the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Their privacy was, therefore, unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

Ofcom carefully considers contextual factors when assessing content standards issues

Our rules reflect the need to take account of relevant contextual factors. These include the editorial *content* of the programme or series; the *service* on which the material is broadcast and the

⁴⁹ Ofcom *Broadcast and On Demand Bulletin 340*, 30 October 2017.

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf

likely *expectations* of the audience for that service; the *time* of broadcast and what *other programmes* came before and after; and the *degree of harm or offence* likely to be caused. The application of context is a dynamic and fluid concept, which will vary according to the nature of the programme and of the issue. Ofcom's decisions about what is a 'generally accepted standard' are always underpinned by research into audience attitudes and expectations, and our rules provide enough flexibility to reflect different audiences and changing circumstances over time.

Case study 2 - the importance of context

Programmes featuring Anjem Choudary following the Woolwich incident (Newsnight, BBC; Channel 4 News, Channel 4; Daybreak, ITV).⁵⁰ These programmes featured interviews with the radical Muslim cleric, Anjem Choudary, who failed to condemn or otherwise criticise the killing of Fusilier Lee Rigby in Woolwich in 2013. Ofcom investigated these programmes under Rule 1.3 (appropriate scheduling) and Rule 2.3 (potentially offensive content must be justified by the context). We concluded that it was legitimate for broadcasters to explore what role Anjem Choudary had in radicalising one of Lee Rigby's killers. We considered that the timely and comprehensive coverage of an on-going and high-profile news story meant it was justified for the broadcaster to give airtime to highly controversial individuals or organisations with challenging views. Further context was provided in each case by Anjem Choudary's views being robustly questioned by presenters and challenged by other interviewees. We found these programmes not in breach.

Ofcom is required to ensure that TV and radio news is presented with due impartiality and reported with due accuracy

The concept of 'due' is central to our application of impartiality in broadcast news and current affairs.⁵¹ Impartiality itself means not favouring one side over another. The concept of 'due' means adequate or appropriate to the subject matter and nature of the programme. So 'due impartiality' does not mean that an equal division of time has to be given to every view, or that every argument must be represented. The approach to due impartiality may vary according to the type of programme and channel, and the likely expectation of the audience for content on that channel. For example, audiences would not expect the same approach to due impartiality to be taken in a historical drama as in a serious documentary, even if both covered the same controversial or contemporary current affairs issue. Broadcasters must consider whether alternative viewpoints on a subject matter are required, and how these can be expressed in the programme.

UK audiences have higher expectations for accuracy and impartiality in broadcast news aimed primarily at a UK audience than for news aimed at a global audience. All Ofcom-licensed broadcasters must observe the Code's rules for due accuracy and due impartiality. However, we take into account differences in audience expectations for impartiality standards for different types of broadcasters. For example, the BBC, in its unique position in UK public service broadcasting and as

⁵⁰ Ofcom Broadcast Bulletin 246, 20 January 2014.

https://www.ofcom.org.uk/data/assets/pdf_file/0014/42332/obb246.pdf

⁵¹ 'Current affairs' is shorthand for "matters of political or industrial controversy and matters relating to current public policy".

the most used source of news and current affairs in the UK, is held to the highest editorial standards for duly accurate and impartial content. When considering the impartiality of programmes which are not primarily aimed at UK audiences, we consider what expectations UK audiences might have of an overseas channel directed at an overseas audience. In practice, this may result in overseas broadcasters being held to different standards of due accuracy and due impartiality under the rules of the Code. We also take account of the contextual factors noted above, as well as the importance of freedom of expression.

Broadcast news programmes are required to be duly accurate. Broadcasters can interpret news events as they see fit, in line with their right to freedom of expression, so long as they comply with the Code rules on accuracy. Accuracy entails getting the facts right. However, the concept of ‘due’ accuracy is an important qualification. It provides a degree of flexibility for the consideration of relevant contextual factors, which are important in all Ofcom’s decisions related to this area of the Code. For example, where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher, as illustrated in case study 3 below.

Audiences are also protected from being materially misled by factual programmes or matters. Ofcom is required to regulate against potential harm and/or offence that may be the result of misleading material from the representation of factual issues presented in non-news programmes. We, therefore, have rules designed to deal with factual content that materially misleads the audience so as to cause harm or offence.

Case study 3: Due accuracy in news

***Channel 4 News, Channel 4, 22 March 2017.*⁵²**

In September 2017 we found Channel 4 in breach of our rules for due accuracy rules after incorrectly identifying the person responsible for the Westminster terror attack in a live news programme.⁵³ We took into account the pressure caused by a breaking news story, but balanced this against the increased need for accuracy in a story of great public interest. Channel 4 had taken a number of steps to ensure that its audiences were aware of the error and to correct it, however given the serious breach in this case we considered a sanction was necessary. We directed Channel 4 to broadcast a statement of our findings.

Case study 4: Impartiality and material misleadingness in non-news programmes

***Sri Lanka’s Killing Fields: War Crimes Unpunished, Channel 4, 14 March 2012.*⁵⁴**

This programme highlighted information relating to four specific case studies which, the programme argued, amounted to ‘new evidence’ of alleged war crimes perpetrated by the Sri Lankan government in the final stage of the Sri Lankan civil war in 2009. Ofcom received 20 complaints which alerted us to two potential issues:

⁵² Ofcom *Broadcast Bulletin* 288, 21 September 2015.

https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50507/issue_288.pdf

⁵³ Ofcom *Broadcast and On Demand Bulletin* 336, 11 September 2017.

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/106232/issue-336-broadcast-on-demand-bulletin.pdf

⁵⁴ Ofcom *Broadcast Bulletin* 217, 5 November 2012.

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/46701/obb217.pdf

Impartiality: In Ofcom's view, Channel 4 had sought to include the viewpoints of the Sri Lankan Government; put all significant allegations to them for a response in advance of the programme; and included several official statements previously made by the Sri Lankan Government regarding events in the civil war. Ofcom therefore concluded that overall Channel 4 preserved due impartiality in its examination of the Sri Lankan Government's actions and policies during its offensive.

Misleading material: In Ofcom's view, Channel 4 took reasonable care, both before and during the programme, to ensure that the audience was not materially misled by the video and photographic evidence. The programme also included a near-verbatim on-screen presentation of the official statement from the Sri Lankan Government on the issues raised by Channel 4 in this programme. In the circumstances, we concluded that audiences were not materially misled.

Our regulation is underpinned by transparency and effective enforcement

Ofcom publishes its decisions which act as a public record of compliance. Our decisions set out whether or not a broadcaster has breached a broadcasting rule and whether any sanction has been applied. This is published fortnightly in the Ofcom Broadcast and On-demand Bulletin. The transparency that publication in the Bulletin entails is our main enforcement tool. Here, Ofcom records the outcome of all complaints received and provides information on all breaches of the Broadcasting Code, the Advertising Scheduling Code, and Licence Conditions.⁵⁵

The legal framework for broadcasting and on-demand provides us with a range of sanctions we can impose. We have powers to take action against any broadcaster or on-demand provider that seriously, recklessly, deliberately, or repeatedly breaches our rules. Sanctions are imposed proportionately, with an aim to secure future compliance and remedy the wrongdoing. The sanctions available to Ofcom include:

- issuing a direction not to repeat a programme of advertisement;
- issuing a direction to broadcast a correction or statement of Ofcom's findings;
- imposing a financial penalty;
- shortening or suspending a licence (where applicable); and/ or
- revoking a licence, which outlaws broadcast.

Case study 5: sanctions and enforcement

Radio Dawn, Karimia Ltd⁵⁶

In February 2018 we imposed a financial penalty of £2,000 on Karamia Ltd for the broadcast of a Nasheed (a piece of devotional vocal music), material which constituted hate speech, on the community radio station Radio Dawn in Nottingham. In determining an appropriate fine we had

⁵⁵ Ofcom's Broadcast and On Demand Bulletins are available at: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>

⁵⁶ Ofcom, *Decision – Karimia Limited*, 27 February 2018. <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/karimia-sanction-decision>

regard to the size and turnover of the licensee, the serious nature of the breach and the need to achieve an appropriate level of deterrence.

Investigations into premium rate services⁵⁷

In 2007 Ofcom investigated a number of broadcasters after industry-wide issues came to light with regard to the use of premium rate services (PRS) for competitions and voting. Ofcom imposed a total of 16 sanctions across a number of broadcasters for breaches of the Broadcasting Code concerning misconduct in viewer competitions and misleading viewers about competitions. The sanctions amounted to over £11m, including a financial penalty of over £5m for ITV.

Iman FM revocation of licence

In July 2017 Ofcom revoked the community radio licence held by Iman Media UK Limited following an investigation into extremely serious breaches of the Broadcasting Code. We carefully balanced the competing rights of the broadcaster and audience to freedom of expression against the duty to protect the public from material likely to encourage crime or disorder. Based on the facts of this case, Ofcom considered that the revocation of the broadcaster's licence was justified.⁵⁸

Regulating online services presents specific challenges

We recognise that the approaches applied to broadcast regulation cannot all be straightforwardly translated to the online context. The nature of the internet, and of online platforms in particular, present a number of challenges to developing a regulatory regime, which will need to be considered by policymakers. These include:

- **Scale:** The volume of text, audio and video that is generated or shared by online platforms far outstrips that of broadcasting, e.g. 400 hours of video are uploaded to YouTube every 60 seconds.⁵⁹ This high volume of content means that a regime similar to broadcast, including consideration of appeals by an external regulator, would not be practical. However, there may be a role for a regulator around ensuring that appeal processes are fair and effective.
- **Variety of content types, voices and opinions:** In many respects online content is more diverse than traditional broadcast content. It includes: video, images and text; professionally produced content, user-generated content and conversations between members of the public. Public expectations of protection or freedom of expression relating to conversations between individuals may be very different from those relating to content published by organisations. Careful consideration of the context is likely to be critical for an effective, proportionate online regulatory regime.
- **Role in content creation:** Many online platforms do not create or commission the content that is accessed by their users, although they often have a role in determining what users see (e.g.

⁵⁷ Ofcom *Broadcast Bulletin 108*, 8 May 2008. https://www.ofcom.org.uk/_data/assets/pdf_file/0021/41592/bb108.pdf

⁵⁸ Ofcom, *Decision and Revocation – Iman FM*, 27 July 2017. <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/decision-and-revocation-iman-fm>

⁵⁹ Business Insider, *Viewers find objectionable content on YouTube Kids*, 7 November 2017. <http://uk.businessinsider.com/viewers-find-objectionable-content-on-youtube-kids-2017-11>

through algorithms that manage the prominence of items in a news feed or in response to a search query). Typically, user-generated content is published as soon as it is submitted, which means it is often considered by the platform's moderators only if it is flagged as potentially harmful by other users or by the platforms' algorithms. The nature and functionality of many online platforms therefore raise questions about effective and proportionate regulation, as pre-moderation by platforms may not be practical given the large volume of content published online – or desirable, given the potential implications for freedom of expression. Given this, there may be merit in regulation that focuses on the effectiveness and timeliness with which platforms take action to address harmful content.

- **Service variety and innovation:** The nature and features of online services vary widely. These differences include platforms' relationship with users, the level of control they give to users over what content is seen, and how quickly they evolve their product. This requires regulation to be flexible both to the nature of individual services and to any changes to those services themselves.
- **Multinational nature of platform operators:** Many platform operators are not based in the UK. They may provide UK users with content uploaded by users based abroad, and they may use servers based abroad. This may present challenges in terms of effective enforcement, for example, if companies don't have a UK base. Compliance may also present challenges to companies if UK regulations require them to develop local solutions that are incompatible with those of other jurisdictions. This suggests that close collaboration with regulatory authorities in other countries would be required.

6. Insights for policymakers considering a regulatory approach to online content

The experience of regulating standards on broadcast and on-demand media could be relevant to policymakers as they look to introduce greater oversight of the internet. We first discuss some high-level principles that may apply to online regulation. In light of the DCMS Committee's recommendation that the standards objectives in broadcasting regulation could be used "*as a basis for setting standards for online content*", we also provide some insights, informed by our consumer research, on standards that might be set by Parliament for online harms.

High-level principles for online regulation

Drawing on the lessons from broadcast regulation, set out in section 5, we highlight some key principles that are most salient for online regulation. In light of current policy debates and public concerns, we pay particular consideration to social media services such as Facebook; video sharing services such as YouTube; and search engines such as Google and Bing.

Protection and assurance

A key principle of broadcasting regulation that could have wider application is the achievement of appropriate levels of protection and assurance against harmful content and conduct. Our experience indicates that protection and assurance can be effectively achieved where Parliament sets clear statutory objectives as to the kind of harms to be prevented. These objectives reflect societal norms and set clear standards covering the types of content and conduct that are likely to cause harm. Regulated parties are required to adopt practices or procedures designed to secure these objectives.

Upholding freedom of expression

Another relevant principle is the safeguarding of freedom of expression. This means that people are able to share and receive ideas and information without unnecessary interference, such as excessive regulations or restrictions. When the need to protect audiences from harm comes into tension with the need to preserve free expression, the weight that a regulator places on the two aims reflects the priorities set by Parliament, as well as audiences' evolving attitudes. Depending on the weight attributed in an online context, there is a risk that regulation might inadvertently incentivise the excessive or unnecessary removal of content that limits freedom of speech and audience choice. Such concerns have been raised in the context of the new German law.⁶⁰

Our experience in regulating broadcasting shows that while balancing audience protection and freedom of expression is not straightforward, it can be done in a way that is transparent, principles-based and fair. Applying this to an online world might translate into greater attention to the

⁶⁰ For example, see Human Rights Watch, *Germany: Flawed Social Media Law*, 14 February 2018. <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>

processes that platforms employ to identify, assess and address harmful content – as well as to how they handle subsequent appeals.

Adaptability over time

Another principle with broader application is adaptable and principles-based regulation.

Broadcasting rules have been designed to adapt to changing consumer behaviour, expectations and industry developments, and to support rather than impede innovation. This may be particularly relevant in the online context, where innovation is fast-paced and where any regulation would have to be durable in a rapidly changing market. What has worked in a broadcasting context is having a set of objectives laid down by Parliament in statute, underpinned by detailed regulatory guidance designed to evolve over time. Changes to the regulatory requirements are informed by public consultation.

Transparency

The broadcasting regime demonstrates the importance of transparency on the part of the services being regulated, and of the regulatory rules that are imposed on them. In broadcasting, transparency is greatly facilitated by the fact that, as a matter of law, broadcasters and on-demand providers must respond to requests for information from a regulator. Currently there is limited information in the public domain about platforms' approaches to dealing with harmful content, and the information that is available is inconsistent across platforms and often not detailed enough to enable conclusions to be drawn at a national level. The broadcasting regime shows that internet users would benefit from more information being available on a basis that allows them to compare services. Users would also benefit from greater information about how platforms decide what content is shown or made prominent and the provenance of specific pieces of content. Greater transparency would also help inform public debate and help to underpin trust in any new oversight arrangements.

Enforcement

The power to investigate, take enforcement action and impose sanctions is an essential element of the broadcasting regime (and indeed of our regulation of the communications sector more generally). Enforcement incentivises regulated parties to fulfil their obligations quickly and effectively. Effective enforcement could be achieved through meaningful financial penalties – for example the GDPR allows for penalties of up to 4% of global turnover (or €20m if greater) for the most serious breaches⁶¹ – or by directing a service to introduce new protections for users.

Independence

Independent governance and decision-making within the broadcasting regime has helped build credibility and public trust. European and UK media legislation recognises that independence is

⁶¹ See Article 83 GDPR on the general conditions for imposing administrative fines.

fundamental for regulators to be able to work in the best interest of the public and fulfil a role free from actual or perceived bias.

Online standards objectives

Alongside the question of *how* principles from broadcast regulation might translate into an online world, is the issue of *what* standards objectives Parliament should set for online. As noted above, the DCMS Committee has suggested that the standards objectives in broadcasting regulation could be used by the Government “*as a basis for setting standards for online content*”. Our research into the online issues of most concern to the public provides relevant insights.

People expect a certain level of protection from harms online

Our research suggests a number of priorities for online standards setting:

- **The protection of minors is the public’s greatest concern across all types of content.** Research consistently finds that the safety of children is a key concern for people across all types of content, including online. Our recent research found that 37% of internet users are concerned about children seeing unsuitable content online.⁶²
- **People want to be protected from illegal content.** People expect to be protected online from exposure to hate speech and other illegal material as they are through traditional content regulation. Among UK adult internet users, 37% are concerned about the promotion of terrorism online.
- **People want to be protected from serious harms that are not necessarily illegal.** Concerns centre around material that promotes risky behaviour such as self-harm or violence. More than one in four (27%) are concerned about violent content or harmful and dangerous content.
- **People are concerned about illegal or harmful interactions online, as well as harmful content.** Nearly two in five internet users (39%) are concerned about bullying, harassment or trolling online, while one in eight 12-to-15-year olds say they have been bullied on social media.⁶³

Standards in news is a particularly complex area

Our research also points to growing public concern about misleading content, including disinformation and ‘fake news’, and their negative consequences for public trust and democratic processes.⁶⁴

Concerns about ‘fake news’ raise a particularly complex set of questions for policymakers to consider around whether the requirements for duly impartial and accurate news and current affairs in broadcasting should also apply to online news. Impartiality requirements do not apply to newspapers, although both IPSO and IMPRESS’s codes include accuracy requirements.

⁶² Ofcom/ICO Internet users’ experience of harm online: summary of survey research, 18 September 2018

⁶³ Ofcom *Children and Parents: Media Use and Attitudes Report*, 29 November 2017, p. 177.

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/108182/children-parents-media-use-attitudes-2017.pdf

⁶⁴ Ofcom *Media Nations: UK 2018*, 18 July 2018, p. 52.

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/116006/media-nations-2018-uk.pdf

The regulatory framework for impartiality was created specifically for broadcast content. As we discuss above, our experience has been that audiences’ expectations around the degree to which impartiality is required vary depending on the content and provider. Expectations of the BBC are very different from those of a non-UK-facing channel. Our research also shows that people have lower expectations of impartiality for certain online content, where they actively seek and expect content that expresses opinion.⁶⁵

The broadcasting rules for duly accurate news place responsibilities on newsrooms and on broadcasters to ensure the facts are right. Such restrictions may be difficult – if not impossible – to apply to the vast amount and range of online content, which often takes the form of blogs, tweets, opinion pieces and conversation. It may also be impossible in many cases to define accuracy and to separate facts from opinion or interpretation.

However, users should be able to trust or, at least, critically assess the factual content they view online. People should be able to know who has created the content they see; and what choices online platforms make in how they prioritise, present or exclude different content, particularly where content is sensitive or influential. A more effective approach to tackling these issues in the online sphere might be ensuring the transparency of approaches adopted by the platforms, so users can better understand why certain content is made available and accessible to them. Proposals have been put forward suggesting greater transparency requirements around algorithms, including by the Commons Science and Technology Select Committee in May 2018.⁶⁶

Our research suggests that accuracy in news is viewed by the public as an extremely important area of protection regardless of how content is delivered.⁶⁷ There are areas where accuracy is critical online – for example, where inaccuracy is deliberately designed to mislead large numbers of users and sometimes to influence key events such as elections or referendums. Inaccuracy is likely to have greater potential to cause harm where it is malevolent, rather than inadvertent.

Media literacy will remain important to improving people’s experience of using online services. Improving people’s understanding and awareness of online issues can help them to protect themselves from harmful content. We are currently considering how we might develop our media literacy work, beyond our current research priorities.⁶⁸

⁶⁵ Ofcom, *Protecting audiences in an online world research*, 2014. <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/on-demand-research/protecting-audiences-online-world>

⁶⁶ House of Commons Science and Technology Committee, *Algorithms in decision-making*, Fourth Report of Session 2017-19, 15 May 2018, p 43.

https://publications.parliament.uk/pa/cm201719/cmselect/cmstech/351/35108.htm#_idTextAnchor087

⁶⁷ <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/on-demand-research/protecting-audiences-online-world>

⁶⁸ Researching people’s behaviour and attitudes can help regulators and policymakers understand people’s experiences. As explained in this document, Ofcom has a statutory duty to promote media literacy. We currently fulfil this through research – which, in turn, helps stakeholders target their resources and initiatives. In the UK, a wide range of media literacy initiatives are run by the BBC, BFI, Safer Internet Centre and We Are Digital, among many others. There may be a case for greater co-ordination between different bodies practising media literacy, to ensure that consumer messages are reflected consistently, and in a way that meets the needs of online audiences.

7. Next steps

This document draws on our experience of content regulation and considers potential lessons for policymakers as they consider issues around harmful online content. The scope and design of any new legislation is a matter for Government and Parliament. As a statutory regulator, we have no view about the institutional arrangements that might follow.

We plan a programme of engagement with fellow regulators to coordinate our work programmes as we fulfil our respective duties related to the internet, and will hold a conference for UK and international regulators who have remit and expertise in these issues in the first part of 2019.

We will work internationally – directly with other regulators, and through regulatory networks and other international initiatives – to understand common concerns in these areas and relevant developments in other countries, and to discuss potential multilateral ideas. Ofcom is already participating in exchanges about online content challenges; for example in the European regulatory networks EPRA and ERGA. Our experience so far of these debates suggests that cooperation and coordination between independent regulators could produce better results in tackling the behaviour of global players.

We will also conduct further research in these areas, in line with our statutory duties to promote media literacy.

A1. Annex: Policy and regulatory activity around harmful content and conduct

Harmful content and conduct are the focus of a number of policy and regulatory initiatives at national and international levels, including both voluntary and regulatory measures.

UK-level initiatives

- **UK Government:** The UK government has committed to publishing a White Paper on its Internet Safety Strategy, which will include proposals for legislation to protect consumers from online harms including abusive conduct.
- **UK Parliament:** The House of Commons Digital, Culture, Media and Sport Committee has published an interim report on disinformation and ‘fake news’ suggesting that broadcast content standards regulation be used the basis for developing an approach to online content standards. Meanwhile in the House of Lords the Communications Committee is carrying out an enquiry titled “The Internet: to regulate or not to regulate?”. Select committee inquiries have also considered the impact of online harms, particularly on children.⁶⁹ The Labour Party has also called for greater regulation of the internet.⁷⁰
- **Internet Watch Foundation (IWF):** The IWF is a not-for-profit organisation and self-regulatory body which is supported by the global internet industry and the European Commission.⁷¹ The IWF’s primary focus is the identification and removal of online child abuse images and videos. Each week they assess and remove more than 1,000 webpages. They work closely with industry to prevent previously identified content being uploaded again, and with law enforcement to prosecute offenders.⁷²
- **UK Council for Child Internet Safety (UKCCIS):** A group⁷³ of over 200 organisations drawn from across government, industry, law, academia and charity sectors that work in partnership to keep children safe online. The UKCCIS Board is chaired jointly by three government ministers and its secretariat sits within the Department for Digital, Culture, Media & Sport. Through its working groups, UKCCIS has produced a range of guidance materials relating to child online safety, including a good practice guide⁷⁴ for providers of social media and interactive services. In the

⁶⁹ For example , in 2017 the House of Lords Select Committee on Communications conducted an inquiry on children and the internet – see <https://publications.parliament.uk/pa/ld201617/ldselect/ldcomuni/130/13002.htm>. The House of Commons Science and Technology Committee is currently conducting an inquiry into the impact of social media and screen use on young people’s health – see <https://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/inquiries/parliament-2017/impact-of-social-media-young-people-17-19/>

⁷⁰ For example: FT, *Labour vows to tighten regulation of Facebook*, 24 August 2018.

<https://www.ft.com/content/b3e207ce-a7a2-11e8-926a-7342fe5e173f>

⁷¹ <https://www.iwf.org.uk/what-we-do/why-we-exist>

⁷² <https://www.iwf.org.uk/what-we-do/how-we-assess-and-remove-content/who-we-work>

⁷³ <https://www.gov.uk/government/groups/uk-council-for-child-internet-safety-ukccis>

⁷⁴ UKCCIS, *Child Safety Online*, 1 March 2016.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487973/ukccis_guide-final_3_.pdf

Autumn of 2018, UKCCIS will be relaunched as the UK Council for Internet Safety (UKCIS), with a specific focus on cyberbullying, online sexual exploitation, radicalisation, violence against women and girls, hate speech and discrimination.

- **UK law enforcement:** The National Crime Agency's Child Exploitation and Online Protection Command (CEOP)⁷⁵ works with child protection partners across the UK to combat online child sexual exploitation and the proliferation of indecent images of children. The Counter Terrorism Internet Referral Unit (CTIRU)⁷⁶ identifies online extremist content which breaches terrorism legislation and directs its removal.
- **British Board of Film Classification (BBFC) age verification:** In February 2018 the Government appointed the BBFC⁷⁷ as the regulatory body responsible for overseeing the implementation provisions in the 2017 Digital Economy Act which require pornographic websites to operate age-verified access controls.

Europe and beyond

- **Revised AVMS Directive:** The revised AVMS Directive will apply some regulatory standards to video content made available through video-sharing platforms (VSPs) such as YouTube and some other social media services.⁷⁸ The Directive sets a framework for regulators to oversee how VSPs address audience protection imperatives including child protection, terrorism and hate speech, and protection from harmful and misleading advertising. The Directive encourages co-regulatory arrangements and will only capture audio-visual content distributed by platforms which meet the definition of a VSP (that is, a service whose primary purpose or essential functionality is providing videos to the general public, where the content is organised in a way determined by the provider of the service).⁷⁹ The new rules focus on certain content harms, and it remains to be seen how Member State governments will transpose them into national law. In doing so, Member States may go beyond the minimum requirements of the directive. Separately, the revised Directive also levels the EU-wide standards for TV and on-demand services, acknowledging they are increasingly interchangeable for viewers (however, this does not mean that at a national level in the UK content standards will be levelled between TV and on-demand services, as UK law concerning broadcasting standards goes far beyond European requirements).
- **Other European Commission initiatives:** The European Commission has published a **Communication on tackling online disinformation**⁸⁰ setting out next steps in a number of areas, and has pledged to report on progress by December 2018. It has issued a **Recommendation on**

⁷⁵ www.nationalcrimeagency.gov.uk/about-us/what-we-do/child-exploitation-online-protection-ceop

⁷⁶ Metropolitan Police, *Public urged to report suspicious online content or activity*, 06 April 2018. <http://news.met.police.uk/news/public-urged-to-report-suspicious-online-content-or-activity-301401>

⁷⁷ DCMS, *Notice of Designation of Age-Verification Regulator*, 21 February 2018. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683354/BBFC_Designation_Notice.pdf

⁷⁸ Where their principal purpose or essential functionality is the provision of video content.

⁷⁹ European Commission, *Fact Sheet - Digital Single Market: updated audiovisual rules*, 7 June 2018. http://europa.eu/rapid/press-release_MEMO-18-4093_en.htm

⁸⁰ European Commission, *Communication - Tackling online disinformation: a European Approach*, 26 April 2018. <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-online-disinformation-european-approach>

measures to effectively tackle illegal content online⁸¹ setting out proactive measures online platforms should take, such as fast-tracked ‘notice and action’ processes for ‘trusted flaggers’ (entities who notify platforms about illegal content). The Commission has also recently announced its **intention to legislate on online platforms’ handling of terrorist material**, after reportedly failing to achieve satisfactory results through voluntary approaches.⁸²

- **National legislation:** Countries including Germany and Australia have enacted new legislation. In Germany the NetzDG law requires platforms to remove various types of illegal content within certain time periods after they are flagged by users, with sanctions for repeated failure. In Australia, the Office of the eSafety Commission has been established with a remit for online child protection and the Broadcasting Services Act enables an Online Content Scheme under which restricted types of content can be blocked or filtered. Other countries have seen legislative proposals directed at disinformation – for example France has introduced measures that would target ‘mass disinformation’ during election periods.⁸³ Others still have seen public debates and scrutiny by regulators and lawmakers, e.g. in the US, the Federal Communications Commission (FCC) Chair has commented on the responsibilities of internet platforms,⁸⁴ and various platforms have been subject to Congressional hearings.⁸⁵

Industry initiatives

Many social media providers have implemented community standards frameworks that mirror and often exceed, in some respects, the legal requirements of the countries in which they operate. Most major platforms have supplemented these rules with options for users to customise their experience (e.g. blocking or muting other users), alongside reporting facilities for users to flag content that breaches community standards. Earlier voluntary initiatives to address harmful content and behaviours include those focused on combating online child abuse⁸⁶ and the proliferation of extremist material.⁸⁷ The last two years have seen a further range of new initiatives relating to hate speech, disinformation, transparency reporting and expanded content moderation resources. Of note:

⁸¹ Illegal content in this context includes incitement to terrorism, illegal hate speech, or child sexual abuse material, as well as infringements of Intellectual Property rights and consumer protection online. See <https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms>

⁸² European Commission, *State of the Union 2018: Commission proposes new rules to get terrorist content off the web*, 12 September 2018. http://europa.eu/rapid/press-release_IP-18-5561_en.htm

⁸³ Politico, *French Parliament passes law against ‘fake news’*, 4 July 2018. <https://www.politico.eu/article/french-parliament-passes-law-against-fake-news/>

⁸⁴ Ajit Pai, *What I Hope to Learn from the Tech Giants*, 4 September 2018. <https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants>

⁸⁵ For example, Facebook and Twitter testified to the Senate Intelligence Committee in September 2018. See: <https://www.bbc.co.uk/news/technology-45420175>

⁸⁶ Most of the major platforms (Yahoo/Oath, Facebook, Google and Twitter) are financially contributing members of the Internet Watch Foundation (IWF) supporting its work combating online child abuse. See - <https://www.iwf.org.uk/what-we-do> Since 2015, all of the above are participants in the IWF’s #WeProtect initiative (<https://www.iwf.org.uk/news/iwf-hash-list-announcement-at-global-summit>) which uses a shared image hash database (based on Microsoft’s PhotoDNA) to identify and remove illegal child abuse images.

⁸⁷ In June 2017, Facebook, Microsoft, Twitter and YouTube formed the Global Internet Forum to Counter Terrorism (GIFCT, <https://gifct.org/about>), subsequently joined by Instagram, Oath and Snapchat, which uses the same image fingerprinting technology to track and remove violent/extremist content.

- In May 2016, Facebook, Microsoft, Twitter and YouTube, with the support of the European Commission, launched the European Code of Conduct on countering illegal hate speech online,⁸⁸ committing participating platforms to implementing clear and effective processes to review notifications of hate speech and remove or disable access to such content. During the last year, Instagram, Google+ and Snapchat have also signed up to this initiative.⁸⁹
- In the last 12 months, YouTube⁹⁰ and Facebook⁹¹ have published transparency reports detailing the volume of content they have removed due to breaches of community standards. In October 2017, Facebook confirmed its plans to hire an additional 10,000 content reviewers over the next year, bringing their total moderation workforce up to over 20,000.⁹² Later in December, Google announced that, alongside continued investment in automated content removal techniques, it would increase the number of YouTube moderators to over 10,000.⁹³
- Initiatives to combat disinformation include functionality to promote the most trusted sources of news and information, such as kitemarking schemes;⁹⁴ independent third-party fact checking⁹⁵ and analysis of user trust reporting;⁹⁶ and interventions to tackle manipulative or deceptive activity, such as clamping down on fake accounts⁹⁷ and networks of automated accounts⁹⁸, as well as placing highly visible (e.g. trending) content under greater scrutiny⁹⁹ to verify its authenticity.

However, these efforts are not consistent across all platforms, nor are they independently verified.

⁸⁸ European Commission, *Factsheet: Code of Conduct on countering illegal hate speech online: First results on implementation*, December 2016. https://ec.europa.eu/information_society/newsroom/image/document/2016-50/factsheet-code-conduct-8_40573.pdf

⁸⁹ EU Reporter, *#Snapchat joins EU Code of Conduct to fight illegal hate speech online*, 8 May 2018

<https://www.eureporter.co/frontpage/2018/05/08/snapchat-joins-eu-code-of-conduct-to-fight-illegal-hate-speech-online/>

⁹⁰ <https://transparencyreport.google.com/youtube-policy/overview?hl=en>

⁹¹ <https://transparency.facebook.com/community-standards-enforcement>

⁹² CNBC, *Facebook pledges to double its 10,000-person safety and security staff by end of 2018*, 1 November 2017

<https://www.cnbc.com/2017/10/31/facebook-senate-testimony-doubling-security-group-to-20000-in-2018.html>

⁹³ Guardian, *Google to hire thousands of moderators after outcry over YouTube abuse videos*, 5 December 2017.

<https://www.theguardian.com/technology/2017/dec/04/google-youtube-hire-moderators-child-abuse-videos>

⁹⁴ The Trust Project is a consortium of 75 news organisations including The Economist, The Washington Post, The Globe and Mail, and Trinity Mirror, which have been working with Google, Bing, Facebook and Twitter to develop mutually recognised 'Trust Indicators' (<https://thetrustproject.org/>)

⁹⁵ Facebook uses the International Fact-Checking Network, a division of the Poynter Institute

(<https://ifcncodeofprinciples.poynter.org/>); in August 2018 YouTube began adding fact check banners to misleading videos on global warming and child vaccinations (<https://www.buzzfeednews.com/article/zahrahirji/youtube-climate-change-denial>)

⁹⁶ Facebook maintains a user fact-checking score to monitor the credibility of users who falsely report items as being untrue (https://www.washingtonpost.com/technology/2018/08/21/facebook-is-rating-trustworthiness-its-users-scale-zero-one/?utm_term=.0b806ff6a674)

⁹⁷ In May and June 2018, Twitter suspended an estimated 70 million fake or suspicious accounts

(https://www.washingtonpost.com/technology/2018/07/06/twitter-is-sweeping-out-fake-accounts-like-never-before-putting-user-growth-risk/?noredirect=on&utm_term=.701ae8e62c0d)

⁹⁸ In February 2018, Twitter announced changes to its systems which would limit users from using bots to issue mass-tweets, or batch follow, like or retweet other users (<https://techcrunch.com/2018/02/22/twitter-is-finally-cracking-down-on-bots/>)

⁹⁹ In February 2018, YouTube deleted a conspiracy video which suggested that a survivor of the Parkland School shooting in Florida was a paid actor after it received over 200,000 views and briefly became the platform's number one trending video (<https://www.theverge.com/2018/2/21/17035872/youtube-trending-conspiracy-parkland-david-hogg>)