



BCS, The Chartered Institute for IT

The purpose of the BCS is to promote and advance the education and practice of computing for the benefit of society. We bring together industry, academics, practitioners, and Government to share knowledge, promote new thinking, inform the design of new curricula, shape public policy and inform the public. As the professional membership and accreditation body for IT, we serve around 60,000 members, in the UK and internationally. We also accredit the computing degree courses in universities across the UK and offer a range of widely recognised professional and end-user qualifications.

BCS welcomes the opportunity to submit evidence to the All-Party Parliamentary Group (APPG) Parliamentary Internet, Communications and Technology Forum (PICTFOR) call for evidence regarding Online Harms.

Duty of Care

BCS welcomes and urges the need for effective and reasonable social media regulation, however it is important users and organisations are aware of their respective responsibilities in the use of social media platforms. The term 'duty of care' that is aimed at the technology industry requires significant clarification.

The proposals that the Online Harms White Paper (OHWP) suggest leave room for debate about who is regulated and consequently who withholds the duty of care – the platform or the regulator. To enforce the legalities that lie with a duty of care, there needs to be clarity around whether this equates to the tort of negligence in civil law, or whether the term 'duty of care' is being used with less legal precision, without sufficient consideration to its consequences or meaning. If this does not gain clarity it will lead to regulatory uncertainty and the potential for online harms to continue without anyone being held accountable or for those who are taking their responsibilities seriously taking steps that do not align with unclear expectations.

Definition

What does 'online harms' mean? Online harms can mean numerous things to a number of different people, dependant on the type of online activity, what a victim might be experiencing and what a platform might be permitting in terms of content. For legislation to provide suitable punishment for those causing harm to others online, the law needs to identify specific forms of harm to tackle specific cases which requires significant debate.

For example, the Law Commission is currently doing a good job reviewing image-based abuse to improve the legislation, but they are specifically saying that they will not look at minors. Consequently under 18's are still being criminalised for sending explicit images based upon outdated legislation and the harm they might be subjected to as a result in the non-consensual sharing of an intimate image might be exacerbated by a fear of non-disclosure due to fears of criminalisation. This is a critical issue and requires immediate work to ensure we are using the law in the correct way to safeguard children and prevent them from being subject to a loophole in the law.

Safeguarding and digital skills

To navigate the online world safely, people need Digital literacy combined with critical thinking However 11.9 million people do not possess essential digital skills that are vital to protecting themselves properly online. Over half of the 4.1 million adults who are offline in the UK are from a low-income household¹, and supporting these adults to gain their digital skills is essential for their children's online safety – as they also need to understand what dangers their children face.

¹ <https://www.goodthingsfoundation.org/news-and-blogs/blog/do-you-know-trusted-source>

Providing children with digital literacy and critical thinking from a young age is required to provide them with the knowledge to live in the online world safely. If a child is from a lower income family they are more likely to be targeted online as are likely to have fewer digital skills and will therefore be more vulnerable to online harms in their many forms.

Safeguarding the whole of society from online harms is the way we are able to make the internet a wholly safer environment and requires buy-in by all stakeholders. That means the whole of society requires basic digital skills focussed on helping them understand how to be safe online.

Online regulation and Brexit

Online platforms have traditionally been exempt from content liability under EU law. Section 15 of the e-Commerce Directive 2000 stipulates that member states cannot impose liability on platforms for the behaviour and speech of their users, under the principle of 'platform not publisher'. The legal separation of platforms from content has formed the bedrock of internet conduct and commerce, but in recent years has faced challenges from civil rights campaigners, interest groups, and now the UK government in the form of the OHWP, published April 2019.

Ultimately, the OHWP seeks to address problems that will only become more salient as technologies become more advanced, and more generations grow up in the internet world. Groups and stakeholders will not cease lobbying for change in this area. The OHWP generally speaks to a noble cause. The growing problems faced by children are invidious and difficult to prevent, given the centrality of social media and personal computer use to vast swathes of society.

The OHWP has some weaknesses and has received criticism. In terms of those relevant to Brexit, one prominent criticism has been to point out that the scope of regulation is unclear and likely to be too broad. The OHWP's scope is named as companies which provide platforms for users to share user-generated content or interact with other users, including but not limited to social media platforms, discussion forums, search engines and messaging services. This ambitious attempt to regulate online speech in a very general sense seems bound to fail.

By specifying the remit of Ofcom for legal content suppression, the government has demonstrated some commitment to free speech and free flow of information, which the e-Commerce Directive has staunchly protected. A focus on systemic change rather than mandating takedown of individual pieces of content has clarified the government's position on online harms.

The OHWP has stipulated that new regulation would be compatible with the e-Commerce Directive. Heather Burns, a tech policy consultant, has stated that the e-Commerce Directive and its replacement is the most important Brexit issue for digital professionals. Navigating this intersection will be crucial for the future of tech innovation in the UK given the vast numbers of platforms that could be subject to new forms of regulation.