

Policy primer: momentum across Europe for wide-ranging Internet regulation

Background:

- **Governments around the world are grappling with Internet Regulation** – a topic which touches industrial policy, taxation, innovation, digitalization and artificial intelligence, consumer protection and fundamental rights.
- **The new European Commission will review rules about corporate liability for online activities** – as well as seeking to regulate artificial intelligence, so updating Europe's approach to issues like terrorist content, hate speech, cyberbullying and fake news by 2025.
- **The UK Government hopes to bring forward legislation in 2020** – so establishing a new regulatory framework by 2022. But its White Paper gives a mixed message to companies, proposing both a flexible “duty of care” and prescriptive codes of practice.

Key take-aways:

- **Transparency is no silver bullet for restoring trust** – intentionally or otherwise it can produce a flood of unsorted and confusing information, adding only to uncertainty rather than to trust¹.
- **‘Procedural accountability’ is a more helpful concept** – requiring that companies demonstrate accountability for the role of their internal processes in either improving or degrading online experiences.
- **Purpose, culture and business models drive corporate behaviour** – they must be better aligned with the interests of society in order to ensure that big technology companies become part of the solution rather than the problem.
- **The Internet Commission** offers a global, independent evaluation process for companies to demonstrate digital responsibility.

Duty of care

Carnegie UK Trust have been promoting the proposals for a statutory duty of care, based on 18 months of detailed work by Professor Lorna Woods and William Perrin². The approach was adopted in recent UK Government proposals³, but Woods and Perrin are concerned that proposed, detailed codes of practice sit awkwardly with their idea of a responsive, risk-based regime. Consumer group Which? says the scope of application is too narrow, missing the opportunity to address harms like online sales of unsafe products and fake reviews⁴.

By contrast the Global Network Initiative (GNI), an industry group, says the proposal is “both too broad and unnecessarily vague”⁵. They say steps should be taken to narrow and clarify the scope in order to protect freedom of expression online, promote innovation and competition, and provide coherence and certainty for business.

Vast scale and scope

The vast scale of the online environment is challenging. Internet services are pervasive and so are the associated problems. A recent report for the French Secretary of State for Digital Affairs proposes a European vision *focused on active supervision of the companies whose services have the greatest reach and impact*⁶. Smaller companies could be allowed an initial presumption of

compliance in order to better focus harm reduction efforts and avoid entrenching market dominance or stifling innovation⁷.

Doteveryone, a think tank, advocates a similar idea: “The regulator should designate some ‘systemically important’ online services... [who will] have stronger obligations under the duty of care. This will ensure the regulator acts proportionately...”⁸.

Procedural accountability

Communications Chambers⁹ identified the need for new institutional arrangements to accommodate platforms’ role in governing online markets. Their proposal: ‘procedural accountability’, distinguishing these systemic obligations from editorial obligations typically ascribed to broadcasters and publishers. Platforms would be held to account for the ways in which decisions are taken about which content is promoted to whom, which is investigated, and which is removed.

Procedural accountability gives companies freedom to develop systems that are appropriate for their environment, scale and risk of harm. Systems could be iterated rapidly in response to changing circumstances and evidence. A regulator would validate the effectiveness of platforms’ policies and procedures rather than prescribing particular solutions.

¹ O’Neill (2002) A Question of Trust p72-73

² Carnegie UK Trust: Harm Reduction in Social Media <http://bit.ly/305f2YW>

³ Online Harms White Paper: <http://bit.ly/2WoxSrH>

⁴ Which? Response to the Online Harms White Paper <http://bit.ly/2xu5ome>

⁵ GNI: <http://bit.ly/328UBMv> p1

⁶ numerique.gouv.fr: <http://bit.ly/2wFbKig> p20

⁷ “Six months in, Europe’s privacy revolution favors Google, Facebook”, Politico, 23rd November 2018: <https://politi.co/2J9ot2B>

⁸ Doteveryone, <http://bit.ly/2G304uN>

⁹ Mark Bunting, Communications Chambers: <http://bit.ly/2XI2mLs>

Regulation and self-regulation

Detailed draft codes and the suggestion that the Government would have direct control over them raise doubts about the independence of the regulator. The Government could appoint a (shadow) regulator to take the work forward from here, working in consultation with relevant parties.

Both the children's charities¹⁰ and Mobile UK¹¹ highlight the ongoing role of self-regulation. Existing and effective self-regulation such as the Code of Practice for the self-regulation of content on mobile¹² and the Internet Watch Foundation¹³ should be recognised and respected, not collapsed into or taken over by a new or expanded regulator.

Ethics and purpose

Prof. Christopher Hodges of the University of Oxford's Centre for Socio-Legal Studies¹⁴ highlights growing evidence that the behaviour of commercial entities is affected by (a) their internal cultures¹⁵ and (b) their business models.¹⁶ This being the case, he argues, the UK Government's stated strategy of creating a culture of transparency, trust and accountability could be better served by supporting and requiring ethical business cultures (through the Ethical Business Regulation model) and requiring appropriate business models (that emphasise the social purpose of an organisation).

It is in the interests of businesses, their owners, and society for progressive companies to act now to anticipate and shape wide-ranging Internet regulation, and to advance digital responsibility.

Our view: Better, not less, self-regulation is needed so industry adopts best practice rapidly as services and products develop. See our full submission to UK Government here: <http://bit.ly/2RMpRMf>.

Navigating vast scale and scope

New incentives for a culture of transparency, trust and accountability: governments should consider targeted digital tax discounts and further changes to corporate governance rules to promote ethical business models and cultures.

Indicators of digital responsibility for companies to benchmark best practices: they should focus on the effectiveness of systems, processes and procedures and must become internationally recognised.

Tackling knowledge asymmetry

Independent evaluation is vital for objectively relevant evaluation of content moderation processes and procedures. Trust and accountability will not be achieved by companies publishing comprehensive and unverified answers to the wrong questions.

The Internet Commission process is designed to enable leading companies to demonstrate progress and help to shape smart, targeted and proportionate regulation.

Stakeholders engaged since 2018 include: Arm • ARTICLE 19 • BBC • Brunswick Group • Carnegie UK Trust • CIPL • CHIS (Action for Children, Barnado's, The Children's Society, NSPCC and others) • Coalition for Reform in Political Advertising • CAN • Datum Future • Deloitte • LSE • Diplo Foundation • European Commission • European Parliament • EY • FIPRA • Global Partnership for Sustainable Development Data • Google • Index on Censorship • ICO • IMPRESS • Kings College London • Match Group • Microsoft • Mozilla • Oracle • Oxford Internet Institute • University of Oxford Centre for Socio-Legal Studies • PWC • Siemens • Telefónica • Tony Blair Institute for Global Change • Trust Elevate • Truth Media • DCMS • UNICEF • UCL • UN University • Vodafone

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The Internet Commission seeks to advance digital responsibility through independent evaluation. It is a start-up non-profit, supported by visionary private and public institutions including Arm, LSE, and Wayra. It has engaged widely with Internet companies, content moderation practitioners, academic experts, NGOs and regulators since early 2018. It has developed and refined a process for Internet companies to independently benchmark their processes and show progress in tackling online harms such as illegal content, hate speech, cyberbullying and fake news.

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¹⁰ Children's Charities' Coalition on Internet Safety: <http://bit.ly/2Jm82Qg> p7

¹¹ Mobile UK: <http://bit.ly/2JzoH0>

¹² Mobile UK: <http://bit.ly/2YAlu8R>

¹³ <https://www.iwf.org.uk/>

¹⁴ <https://www.law.ox.ac.uk/people/christopher-hodges>

¹⁵ C Hodges and R Steinholtz, Ethical Business Practice and Regulation: A Behavioural and Values-Based Approach to Compliance and Enforcement (Hart, 2017).

¹⁶ C Mayer, Prosperity (Oxford University Press, 2018).