

# **THE ONLINE SAFETY BILL: A BRIEFING**

This briefing provides a summary of the historical context and key debates concerning the government's Online Safety Bill ahead of its second reading in Spring 2022. The analysis draws on the UK Media Influence Matrix report, exploring the impact of shifts in policy, funding and contemporary journalism, that was published in December 2021[1].

In March 2022 the Online Safety Bill was introduced to Parliament. According to the press release from the Department for Digital, Culture, Media and Sport (DCMS), this 'world leading' measure:

- Marks a milestone in the fight for a new digital age which is safer for users and holds tech giants to account. It will protect children from harmful content such as pornography and limit people's exposure to illegal content, while protecting freedom of speech.
- It will require social media platforms, search engines and other apps and websites allowing people to post their own content to protect children, tackle illegal activity and uphold their stated terms and conditions.
- The regulator Ofcom will have the power to fine companies failing to comply with the laws up to ten per cent of their annual global turnover, force them to improve their practices and block non-compliant sites[2].

This marked the culmination of a process which had begun with the publication of the Online Harms White Paper[3] in April 2019, which was followed by a consultation[4] on its proposals. Next came a Draft Online Safety Bill in May 2021[5] and, after a process of pre-legislative

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[1] [https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/basicpage/1923/mimukfinalreport\\_0.pdf](https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/basicpage/1923/mimukfinalreport_0.pdf)

[2] <https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament>

[3] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/973939/Online\\_Harms\\_White\\_Paper\\_V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973939/Online_Harms_White_Paper_V2.pdf)

[4] <https://www.gov.uk/government/consultations/online-harms-white-paper>

[5] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/985033/Draft\\_Online\\_Safety\\_Bill\\_Book\\_marked.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Book_marked.pdf)

scrutiny<sup>[6]</sup> and reports by various parliamentary committees, including the Digital, Culture, Media and Sport Committee<sup>[7]</sup>, the Online Safety Bill was published on 17 March 2022.

## Historical precedents

This legislative process was, however, itself the culmination of a much longer train of events which dates back virtually to the moment that the Web became available to the public in August 1991. For example, in February 1994 the Home Affairs Committee published its first report on computer pornography, which opened with the words: “Computer pornography is a new horror”. Such fears were assiduously fanned by the right-wing national press, partly because in the Web it espied a potentially economically damaging competitor for both readers and advertising revenue, and partly because the default response of such newspapers to all new forms of communication is unhesitatingly to highlight their alleged dangers and to demand that they are censored. Thus as early as June 1996, John Naughton could write in the *Observer* that “to judge from British coverage of the subject, there are basically only three Internet stories: ‘Cyberporn invades Britain’, ‘Police crack Internet sex pervert ring’, and ‘Net addicts lead sad virtual lives’”. This has remained the case ever since, except with the addition of “Net is hive of hate” and “Terrorist plot hatched online”. And every British government since the 1990s has threatened at some point either to force internet companies to censor themselves or to introduce some form of state censorship if they refuse to do so, although nothing as elaborate and all-encompassing has been proposed as the arrangements envisaged by the Online Safety Bill.

However, it is also the case that the major online companies have brought the threat of censorship on themselves by refusing to self-regulate to any significant extent in ways which would be in the public interest. In particular, the growth of social media has seen a burgeoning concern with the bullying, trolling, harassment and other forms of anti-social and indeed illegal behaviour which now thrives online, to which can now be added the dangerous disinformation which spread online during the pandemic. Thus the Bill has come into being in the context of an increasing backlash against the apparent unwillingness of a handful of extremely rich and powerful US tech companies such as Google, Facebook and Twitter to do anything significant to protect their users, and particularly their female users, from online abuse and threats.

## Key features of the Online Safety Bill <sup>[8]</sup>

The Bill runs to 225 pages with a further 126 pages of explanatory notes<sup>[9]</sup>. It introduces new rules for internet companies which host user-generated content, that is, those which allow users

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[6] <https://committees.parliament.uk/publications/8206/documents/84092/default/>

[7] <https://committees.parliament.uk/publications/8609/documents/86961/default/>

[8] There is a helpful, if narrow, summary of the Bill's provisions at <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-factsheet>

[9] <https://publications.parliament.uk/pa/bills/cbill/58-02/0285/210285en.pdf>

to post their own content online or interact with each other, and also for search engines, which will be required to minimise the presentation of search results which are considered harmful in the Bill's terms. All internet sites which fall within the Bill's remit will be required to remove illegal material, particularly that relating to terrorism and child sexual exploitation and abuse.

Ofcom will help companies to comply with the Bill's requirements by publishing codes of practice, setting out the steps they should take to fulfil their new duties. It will ensure compliance by using proactive technologies to identify content that falls within the scope of the Bill. Section 184(1) of the Bill, which was added at the last minute, explains that such technologies include (a) content moderation technology, (b) user profiling technology, and (c) behaviour identification technology. Quite apart from raising very significant concerns about users' privacy, this threatens to create a serious clash with EU and US data rules, as will be explained below, and thus to make the UK a global outlier in terms of internet regulation. Those platforms which fail to protect people will be answerable to Ofcom, and could face fines of up to 10% of their revenues. In the most serious cases, they could be blocked, and the regulator will also be empowered to bring criminal sanctions against senior managers who fail to ensure that their company complies with Ofcom's information requests or who deliberately withhold or destroy information. Such behaviour could result in up to two years imprisonment.

Platforms likely to be accessed by children will also have a duty to protect young users from legal but harmful material, such as self-harm or eating disorder content. Additionally, providers who publish pornographic content on their services will be required to prevent children from accessing that content by using age-verification technology. The largest and most popular platforms, so-called Category 1 services, will have to address specific categories of legal but harmful material accessed by adults, which are likely to include issues such as abuse, harassment, or exposure to content encouraging self-harm or eating disorders. They will need to make clear in their terms and conditions what is and is not acceptable on their sites, so that adults can make informed decisions about whether to access any particular site based on the material that they are likely to see there.

At the heart of the threat that the Online Safety Bill poses to freedom of expression is the obligation it places on online platforms to tackle content that is deemed harmful, even though it is legal. Section 187(2) states that "'harm' means physical or psychological harm", and section 187(4) refers to harm arising in circumstances in which, as a result of encountering certain forms of online content, individuals "act in a way that results in harm to themselves or that increases the likelihood of harm to themselves" or "do or say something to another individual that results in harm to that other individual or that increases the likelihood of such harm". Sections 53-55 of the Bill give the Secretary of State executive powers to designate, in secondary legislation, specific categories of content that meet this broad definition of "harm", and platforms will need to moderate accordingly the content that they carry.

This is, in fact, a complete reversal of the dictum, much used by those who wish to censor the internet, that what is illegal offline should be illegal online. What the Bill does is to create a category of harmful and therefore censorable material which simply has no equivalent in the offline world. A second major problem here is the very considerable powers which the measure grants to the Secretary of State, which essentially entails that “harmful” will come to mean whatever the Secretary of State says it means. As the Open Rights Group point out: “The Minister is required to meet with OFCOM before making regulations, but there is no provision for wider consultation. Nor is there any requirement for an evidence base”<sup>[10]</sup>.

Sections 37-44 of the Bill also give the Secretary of State very considerable oversight of the codes of practice which Ofcom will be required to draw up for service providers. For example, under Section 40(1) the Secretary of State can direct Ofcom to modify a draft of such a code “for reasons of public policy” or, in the case of a code relating to terrorism or child sexual exploitation and abuse, “for reasons of national security or public safety”. Section 143 requires the Secretary of State to issue a statement of priorities for Ofcom once every five years and to secure a form of parliamentary approval. However, the statement can be amended within the five-year period if a General Election has taken place in the interim or if “there has been a significant change in the policy of Her Majesty’s government affecting online safety matters”. “Public policy”, “national security”, “public safety” – under such broad and portentous headings almost any form of government intervention in online regulation could be justified.

## The press exemption

It is important to note that news publishers’ websites will not fall within the Bill’s remit. The government claims that this provision is a clear indication of its desire to protect, and indeed boost, freedom of expression online. However, the reality is very different, and this is actually a particularly concerning aspect of the Bill, one which was the direct result of an absolutely ferocious lobbying campaign<sup>[11]</sup> by the self-same newspapers whose 40 years of pumping out stories about the alleged evils of the internet has done so much to lay the ground for this measure.

As defined by section 50(2), a news publisher

*(a) has as its principal purpose the publication of news-related material, and such material – (i) is created by different persons, and (ii) is subject to editorial control, (b) publishes such material in the course of a business (whether or not carried on with a view to profit), (c) is subject to a standards code, (d) has policies and procedures for handling and resolving complaints, (e) has a registered office or other business address in the United Kingdom, (f) is the person with legal responsibility for material published by it in the United Kingdom.*

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[10] <https://www.openrightsgroup.org/blog/whats-the-harm-in-the-online-safety-bill/>

[11] <https://hackinginquiry.org/julian-petley-a-thoroughly-unsafe-bill/>

'News-related' material is of course defined sufficiently broadly to encompass exactly the kind of opinion-mongering that passes for "journalism" in much of the national press, section 50(5) making it clear that it includes "(a) news or information about current affairs, (b) opinion about matters relating to the news or current affairs, or (c) gossip about celebrities, other public figures or other persons in the news". Meanwhile the requirements for a "standards code" and "policies and procedures for handling and resolving complaints" are obviously satisfied by the existence of the Independent Press Standards Organisation (IPSO), even though its record of upholding standards and dealing with complaints is absolutely lamentable[12].

Furthermore, section 49(2) specifically exempts what many would regard as the most poisonous and hate-filled sections of online national titles, namely "comments and reviews on provider content". Meanwhile Section 51(2) makes it abundantly clear that whilst search engines will have a duty to protect the public from exposure to allegedly harmful material, this duty does not extend to content present on the website of a "recognised news publisher", or content that reproduces or links to a full article that emanates from such a publisher. Thus, quite extraordinarily, the Bill requires that a search engine must take steps to address people's exposure to material which it deems harmful, unless that material first appeared on the website of a newspaper.

Thus, quite apart from all the other negative consequences of the Bill, we are faced with the prospect of a two-tier system of journalism[13] in which that most in need of regulation escapes it and citizen journalists, bloggers, activists – in short, independent journalists of all kinds, many of whom are engaged in critiquing precisely the kind of mainstream press journalism that the Bill so assiduously protects – will find themselves subject to its strictures. As Lexie Kirconnell-Kawana, the Head of Regulation at the Leveson-compliant regulator IMPRESS put it, this "introduces elements of state regulation of the press through the backdoor, by requiring the government to define who is or isn't a journalist, and what 'journalism' and 'journalist content' is for the purposes of legal benefits and sanctions"[14], a disturbing process that can also be seen at work in the manner in which the government is currently using the Freedom of Information Act in such a way as to block the inquiries of the kinds of journalists it clearly regards as, at best, a nuisance[15].

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[12] [https://westminsterresearch.westminster.ac.uk/download/764637e67136b7010ebb40252da2e8d83bc1e9923c906b2959cbc1f4698872e2/1185869/IPSO\\_CAMRL\\_Report\\_online\\_version.pdf](https://westminsterresearch.westminster.ac.uk/download/764637e67136b7010ebb40252da2e8d83bc1e9923c906b2959cbc1f4698872e2/1185869/IPSO_CAMRL_Report_online_version.pdf)

<http://mediastandardstrust.org/wp-content/uploads/2019/10/MST-IPSO-2019-Final-Version.pdf>

[13] <https://inform.org/2021/07/21/is-the-press-prepared-to-be-licensed-by-ofcom-julian-petley/>

[14] <https://blogs.lse.ac.uk/medialse/2021/06/03/online-safety-bill-five-thoughts-on-its-impact-on-journalism/>

[15] <https://www.opendemocracy.net/en/freedom-of-information/uk-government-running-orwellian-unit-to-block-release-of-sensitive-information/>

<https://www.opendemocracy.net/en/freedom-of-information/uk-government-running-orwellian-unit-to-block-release-of-sensitive-information/>

## Criticisms and concerns

Reaction to the Draft Bill and the Bill itself was extremely mixed. Certain organisations, for example Barnardo's[16] and the Samaritans[17], that were concerned with the kinds of online material that they felt harmed those they represented argued that the Draft Bill did not go far enough but were satisfied with amendments made to the final version. However others, such as 5Rights[18], felt that more needed to be done to protect children. On the other hand, groups concerned with freedom of expression and privacy were highly critical of both iterations of the Bill, in spite of assurances by the DCMS that "the Bill will strengthen people's rights to express themselves freely online and ensure social media companies are not removing legal free speech"[19]. These included Big Brother Watch, the Open Rights Group (ORG), Index on Censorship[20]. ORG described it as a bloated measure that "contains so many risks to free speech that it's hard to know where to start"[21], Big Brother Watch claimed that "no piece of legislation has posed a greater threat to freedom of expression in living memory than the Online Safety Bill. The Bill is nothing short of an assault on the rights to free speech and privacy and would fundamentally reconfigure how expression is policed in the UK"[22]. Article 19 declared the measure "startling in its complexity and deeply disquieting for what it represents, namely an attempt at regulating the totality of human communications and interactions online in or targeted at the UK" and expressed its concern that it gives "incredibly broad powers to the Secretary of State to control its implementation in ways previously unseen in modern Western democracies"[23].

Many concerns focus on the grip that government will be able to exert over the implementation of the Bill's provisions by Ofcom. And one of the many fears that this provokes is that, given successive governments' notorious propensity to knee-jerk reactions to overheated press stories about alleged online outrages, governments will not hesitate to deploy their considerable powers in such situations in order to pander to those who habitually demand that "something must be done".

However, even in the unlikely event that a Secretary of State chooses not to pull the political levers that the Bill puts at their disposal, the mere existence of these powers is bound to affect the way that social media companies operate. And this leads on to a further problem with the

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[16] <https://www.barnardos.org.uk/news/pornography-sites-required-law-verify-age-users-barnardos-statement>;  
<https://www.barnardos.org.uk/news/joint-committee-draft-online-safety-bill-barnardos-response>

[17] <https://www.samaritans.org/scotland/news/samaritans-responds-to-recommendations-from-joint-committee-on-the-draft-online-safety-bill/>; <https://www.samaritans.org/scotland/news/Samaritans-response-draft-Online-Safety-Bill/>

[18] [https://5rightsfoundation.com/uploads/5Rights-analysis-of-the-Online-Safety-Bill-\[March-2022\].pdf?\\_cchid=1d2f9aa625e82189dcecd6e92a93f52f](https://5rightsfoundation.com/uploads/5Rights-analysis-of-the-Online-Safety-Bill-[March-2022].pdf?_cchid=1d2f9aa625e82189dcecd6e92a93f52f)

[19] <https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament>

[20] <https://www.indexoncensorship.org/wp-content/uploads/2021/06/Index-on-Censorship-The-Problems-With-The-Duty-of-Care.pdf>

[21] <https://www.openrightsgroup.org/campaign/stop-state-censorship-of-online-speech/>

[22] [https://bigbrotherwatch.org.uk/2022/02/the-online-safety-bill-what-the-government-must-do-next/?utm\\_source=HOC+Library+-+Current+awareness+bulletins&utm\\_campaign=211d352944-Current+Awareness+11.02.2022.&utm\\_medium=email&utm\\_term=0\\_f325cdbfdc-211d352944-103728654&mc\\_cid=211d352944&mc\\_eid=e92d476cb6](https://bigbrotherwatch.org.uk/2022/02/the-online-safety-bill-what-the-government-must-do-next/?utm_source=HOC+Library+-+Current+awareness+bulletins&utm_campaign=211d352944-Current+Awareness+11.02.2022.&utm_medium=email&utm_term=0_f325cdbfdc-211d352944-103728654&mc_cid=211d352944&mc_eid=e92d476cb6)

[23] <https://www.article19.org/resources/uk-draft-online-safety-bill-poses-serious-risk-to-free-expression/>

Bill, namely the extent to which it will encourage over-caution and self-censorship by social media companies. As ORG argues:

*Ministerial influence will loom large in the minds of those running social media platforms. Policy within the tech companies will be driven by attempts to divine the whims and foibles of whoever happens to be Secretary of State, rather than by the strategic purpose. The effect will be an erratic and inconsistent approach to content moderation, with an associated chill on digital rights[24].*

At worst “harm” may come to be interpreted as meaning “harm to the most easily offended” and algorithmic take-downs will become the order of the day. And thus, paradoxically, a measure intended to reduce the power of the social media companies and to make them more publicly accountable will, as far as their power as censors is concerned, serve only to increase it and to obscure their operations.

## **At odds with other regulatory approaches**

The DCMS states that the Bill “aims to increase people’s trust in technology, which will in turn support our ambition for the UK to be the best place for tech firms to grow”[25]. However, the Bill’s last-minute insistence that internet companies will have proactively to monitor content on their sites is completely at odds with internet regulation in the US and EU and thus could put the UK’s burgeoning tech industry at very serious risk indeed. To explain briefly, under the EU’s e-Commerce Directive, online platforms are not legally liable for what appears on their sites but have a legal duty to take down illegal material once they have been notified of its existence. If they then fail to do so, they render themselves liable to prosecution. Similar arrangements obtain in most other democratic countries. However, now that the UK is no longer in the EU it is apparently determined not to replicate the e-Commerce Directive, whatever the cost to the tech industry, which now threatens to become a global outlier. Thus a report[26] from the Coalition for a Digital Economy (Coadec) states bluntly that:

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[16] <https://www.barnardos.org.uk/news/pornography-sites-required-law-verify-age-users-barnardos-statement>;

<https://www.barnardos.org.uk/news/joint-committee-draft-online-safety-bill-barnardos-response>

[17] <https://www.samaritans.org/scotland/news/samaritans-responds-to-recommendations-from-joint-committee-on-the-draft-online-safety-bill/>;

<https://www.samaritans.org/scotland/news/Samaritans-response-draft-Online-Safety-Bill/>

[18] [https://5Rightsfoundation.com/uploads/5Rights-analysis-of-the-Online-Safety-Bill-\[March-2022\].pdf?](https://5Rightsfoundation.com/uploads/5Rights-analysis-of-the-Online-Safety-Bill-[March-2022].pdf?_cchid=1d2f9aa625e82189dcecd6e92a93f52f)

[\\_cchid=1d2f9aa625e82189dcecd6e92a93f52f](https://5Rightsfoundation.com/uploads/5Rights-analysis-of-the-Online-Safety-Bill-[March-2022].pdf?_cchid=1d2f9aa625e82189dcecd6e92a93f52f)

[19] <https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament>

[20] <https://www.indexoncensorship.org/wp-content/uploads/2021/06/Index-on-Censorship-The-Problems-With-The-Duty-of-Care.pdf>

[21] <https://www.openrightsgroup.org/campaign/stop-state-censorship-of-online-speech/>

[22] [https://bigbrotherwatch.org.uk/2022/02/the-online-safety-bill-what-the-government-must-do-next/?utm\\_source=HOC+Library+-+Current+awareness+bulletins&utm\\_campaign=211d352944-Current+Awareness+11.02.2022.&utm\\_medium=email&utm\\_term=0\\_f325cdbfdc-211d352944-103728654&mc\\_cid=211d352944&mc\\_eid=e92d476cb6](https://bigbrotherwatch.org.uk/2022/02/the-online-safety-bill-what-the-government-must-do-next/?utm_source=HOC+Library+-+Current+awareness+bulletins&utm_campaign=211d352944-Current+Awareness+11.02.2022.&utm_medium=email&utm_term=0_f325cdbfdc-211d352944-103728654&mc_cid=211d352944&mc_eid=e92d476cb6)

[23] <https://www.article19.org/resources/uk-draft-online-safety-bill-poses-serious-risk-to-free-expression/>

[24] <https://www.openrightsgroup.org/blog/online-safety-bill-sweeping-ministerial-powers/>

[25] <https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament>

[26] <https://coadec.com/wp-content/uploads/2022/02/180222-Liability-Report-for-Release.pdf>

*The proposals put forward in the draft Online Safety Bill upend the legal and regulatory basis for the UK's tech success, creating instead an environment that is legally risky, costly and hugely burdensome for businesses. This will create substantially more barriers and red-tape than current rules. This threatens the UK's future economic growth and makes it a significantly less attractive place to start, grow and maintain a tech business. This is not building back better, but undermining the UK's potential.*

In the same vein, an article by Peter Foster in the *Financial Times*[27] quotes Anthony Walker, the deputy chief executive of TechUK, the main industry lobby group, as accusing the Bill of “undermining the perception of the UK as an open digital economy” and complaining that “none of these proposals have been consulted on with the industry.”

Indeed, an earlier article[28] in the same paper gives a disturbing insight into the possible origins of this measure, quoting a Conservative official to the effect that US tech companies are “a very attractive punchbag at the moment” for politicians hoping to curry favour with the public. The article also cites a Tory strategist commenting that “this stuff is hugely popular with the public and also with media executives”, presumably referring to those at the *Mail* and *Telegraph* in particular, since the article also notes that Conservative-supporting newspapers have campaigned for tougher policing of the internet.

## **Conclusion**

The online world, although a peerless information and communication resource, is also, rightly, the object of considerable concern. It is dominated by a handful of over-mighty companies which have shown themselves to be entirely unwilling to engage in effective self-regulation which would help to rid the internet of its most obnoxious and harmful contents. The presence of such contents, however, should not be used as a reason to impose a regulatory structure which is ill-thought out, gives the government of the day an unacceptable degree of power over the online world, is hugely bureaucratic and threatens to make the burgeoning UK tech industry a global outlier.

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[27] <https://www.ft.com/content/28c8a437-e100-4902-890f-43e72b7dd7f3>

[28] <https://www.ft.com/content/61b3372b-b164-4a16-b9c8-93b9ee626fee>



## Action points

- Abolish the "legal but harmful" category. If material is genuinely harmful – in terms which need to be very precisely defined in the Bill – it should be made illegal by primary (and not secondary) legislation.
- Insist that what is legal offline is also legal online.
- Remove the press exemption. All newspaper content should be treated in exactly the same way as other online content.
- Considerably reduce the powers that the Bill grants the Secretary of State.
- Ensure that nothing is included in the Bill which threatens online encryption or other aspects of users' information privacy.
- Ensure that any form of online regulation proposed is compatible with regulation in the US and EU.

*This briefing is provided as part of the UK component of the [Media Influence Matrix](#), set up to investigate the influence of shifts in policy, funding, and technology on contemporary journalism, funded by the Joseph Rowntree Charitable Trust. The final report was published in December 2021.*

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