

Free Speech Union briefing

Safeguarding free speech in the Online Safety Bill

January 2022



- The [Online Safety Bill](#) will make Ofcom responsible for regulating social media platforms and search engines with the aim of making the U.K. the safest place in the world to go online. It began life as a White Paper under Theresa May's premiership which, in the words of then Home Secretary Sajid Javid, would mean Britain had "the toughest Internet laws in the world."
- The FSU accepts that companies like Google, Facebook and Twitter are **not doing enough to protect children from harmful** content or to stop their platforms being exploited by terrorists and criminals. But 'cleaning up' the internet without encroaching on users' freedom of expression is a difficult balancing act and, **as things stand, the Online Safety Bill is a censors' charter. We believe it is possible to protect vulnerable users from harm while safeguarding free speech.**
- **A major shortcoming of the Bill is that it creates a new legal duty to protect adult users from content which is lawful but which might cause 'harm'.** Social media companies would be obliged to remove content that is legal but, in some way, 'psychologically harmful' (to adults, not just children). That would mean speech that is lawful offline would become prohibited online, with social media companies facing heavy fines from Ofcom if they failed to remove it. This would inevitably lead to Google, Facebook and Twitter removing vast swathes of lawful content, either voluntarily or at the behest of politically motivated complainants claiming to speak on behalf of vulnerable groups.
- The [report of the parliamentary Joint Committee on the Online Safety Bill](#) recommended a solution to this problem: **include the [Law Commission's proposal](#) to replace various communications offences with a new harm-based offence, use that legal definition of 'harm' throughout the Bill** and ensure the duty of care extends no further than removing harmful content that is unlawful according to that definition. We endorse this proposal, but with two caveats: the Law Commission's **definition of 'harm' should be considerably narrower than it is at present** (see our briefing about the Commission's proposals [here](#)); and we reject the Joint Committee's recommendation that social media companies should be obliged to remove content that falls vaguely within 'areas of law recognised in the offline world' (including the Equality Act 2010) but doesn't meet the threshold for criminal prosecution. That would mean internet companies were still obliged to remove content that is legal but harmful. Our recommendation is that they should **only have to remove harmful content that is unlawful.**
- **We recommend instead that the Bill adopt a 'warnings and consent'**

model for adults, forcing providers to disclose to adult users the ‘harmful’ content likely to be found on the platform, and to give them meaningful choice and control over the content they consume.

- To ensure social media companies protect users’ free speech, the Bill proposes to impose a legal duty on them to ‘have regard to the importance of’ protecting freedom of expression within the law. That is helpful, but insufficient because it is a weak legal duty and will be trumped by other, stronger legal duties elsewhere in the Bill. We **recommend strengthening the legal duty to protect free speech in the Bill** so it has the same force as the other duties.
- We **welcome the Joint Committee’s recommendation** that protections for ‘content of democratic importance’ in the Bill should be extended **to protect all content that is in the public interest** so the protections do not just apply to journalists and politicians. We also welcome the Joint Committee’s recommendation that a **new ombudsman** be created to hear appeals from users who believe their content has been removed unfairly.
- We welcome the Joint Committee’s recognition that **anonymity is a critical protection** for some social media users – marginalised groups, victims of violence, whistle-blowers, children – and agree that it should not be banned in the Bill provided social media companies are aware of users’ real identities and hand it over to the police for criminal investigation purposes.
- **We do not believe the Bill should seek to protect users from ‘disinformation’ and ‘misinformation’ because it is impossible to define those terms precisely enough to prevent them being weaponised by political actors.** The risk that any such provisions will be used to censor lawful content for political or ideological reasons is too great. A good example is the way senior British scientists with links to China tried to suppress discussion of the lab leak hypothesis about the origins of COVID-19 on social media platforms in early 2020 by describing it as ‘misinformation’.
- We **reject** the Joint Committee’s recommendation that the Bill should incorporate the [Law Commission’s proposals to broaden the definition of ‘hate crime’](#) and make it easier to prosecute people for ‘stirring up’ offences, e.g. by **removing the need to show intent**. These proposals, which in their present form would have a chilling effect on free speech, should be considered separately.
- One way to safeguard freedom of expression on the internet is to

make it easier for new players to enter the marketplace, so if a social media company is too censorious people can switch to another. However, complying with the new regulatory regime created by the Bill will require considerable resources and if it applies to all social media companies, big and small, the risk is it will entrench the existing monopolies of Google, Facebook and Twitter because they are the only ones who will be able to afford it. This problem should be addressed in the Bill. For instance, start-up companies could have a grace period in which they are not expected to be fully compliant until they reach a certain size.

Further Reading:

[‘The Good and Bad News About the Online Safety Bill’](#) (Spectator, 14 December 2021), [‘Government’s Online Safety Bill “Poses Greatest Threat to Free Speech in Living Memory”, Say Campaigners’](#) (Big Brother Watch, 5 September 2021), [‘Members of the LGBT+ Community Sign Letter Calling For Reform to Online Safety Bill’](#) (Index on Censorship, 1 September 2021).

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