



Public Affairs Update

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Agenda

Telecoms Security Bill

Digital Services
Regulation

Draft Online Harms Bill

NIS2

Ofcom Network Neutrality
consultation

IWF

Telecoms Security Bill

- Contains two main sections
 - New security requirements for public electronics communications networks
 - Designated vendor directions (a.k.a. bans on “High Risk Vendors”)
- Both sections are designed to empower regulation by Ministers – little by way of substantive requirements on the face of the Bill
- As a result, little amendment activity despite this being quite a politically hot topic.

Telecoms Security Bill

- The substance of new requirements will be contained in a Code of Practice.
 - This was previously consulted on at length, in a form known as the “Telecoms Security Requirements”
 - However since early this year the government stopped sharing updates to the Code with industry
- We are told the new date for Commencement of the Code of Practice will be 1st October 2022
 - When last seen, the TSRs had a five year plan with annual deadlines
 - We don't actually know if this still remains, although we assume it does

Telecoms Security Bill

- Legislation is almost complete
- Has completed Third Reading in both the Lords and Commons
- Just needs to complete “ping pong” (reconciliation of Lords’ amendments)
- Three amendments made
 - The Codes of Practice (a.k.a. Telecoms Security Requirements) to be laid in Parliament – (government accepted)
 - An annual report and Commons debate on Supply Chain diversification
 - Secretary of State required to consider issuing a designated vendor direction if a Five Eyes country bans that vendor.
- The government is likely to oppose both the latter in the Commons

Draft Online Harms Bill

- A “prototype” for legislation – in Parliament but not actually on a legislative track
 - Instead, before a Joint Committee to scrutinise the Draft Bill
 - After the Joint Committee reports, government is expected to bring forward actual legislation
 - Same process used for the Draft Communications Data Bill / Investigatory Powers Act.

Draft Online Harms Bill

- Contents covered fairly extensively at LINX 113, but in summary:
 - Appoints Ofcom as a content regulator for Internet content
 - Places entities that support user-to-user communications under duties to protect (a) children (b) other vulnerable persons and (c) adults from “harm” online.
 - Very wide scope of covered entities, including all online forums.
 - Broad but vague definition of harm, raising concerns about censorship, heckler’s veto, etc.
 - Ofcom will regulate through Codes of Practice – not technically mandatory, but disregard them at your peril.
 - Potential for technology mandates
 - Fearsome enforcement regime, with massive fines and criminal penalties.

Draft Online Harms Bill

- Tenor of the Joint Committee appears unconcerned about censorship, government overreach, or even disregard for Parliament in giving Ofcom the power effectively to legislate
- Instead, focus is on whether powers for Ofcom are *broad enough*
- Essentially, driven by MPs' huge distrust and dislike of Facebook, Twitter, and by extension the rest of the Internet industry
- Impact of the murder of David Amess MP

Ofcom Network Neutrality consultation

- Ofcom ran a “call for evidence” on the network neutrality rules in September – October.
- Post-Brexit, there is the possibility of deviating from the “Open Internet Regulation”
- Accordingly, comments on all aspects were invited
- Ofcom particularly pointed to:
 - Whether “specialised services” needs clarification?
 - Should there be exemptions for some forms of traffic management, e.g. to prioritise emergency services?
 - Are rules needed for zero rating?
 - Should rules guaranteeing a right for end users to use “terminal equipment” of their choice be watered down?

Internet Watch Foundation

- The industry has the right to appoint 3 (out of 12) Trustees to the Board
- Currently four matters are subject to a special vote in the Board:
 - Changes to the IWF's Role and Remit
 - Changes to the constitution
 - Major policy changes
 - The organisation's budget
- A special vote requires both:
 - 75% of the Trustees to vote in favour; and
 - At least one Industry-appointed Trustee to vote in favour
 - Colloquially known as the "industry veto"
- Everything else is by a simple majority

Internet Watch Foundation

- The executive and the Chair of the IWF have said the IWF “needs to be able to demonstrate its independence of industry” and that it is “repeatedly challenged” about the influence of industry as a “conflict of interest”.
- They have asked industry to agree to give up the “industry veto” for all matters other than:
 - The Role and Remit; and
 - Membership fees

Digital Services Regulation

- Substantial progress in passage through European Parliament
- Core objectives for our industry secured on intermediary liability
 - Liability protections from the E-Commerce Directive preserved in new instrument, considered foundational
 - No attempt to qualify “mere conduit” or to create blocking orders
 - New “Notice and Action” regime meets industry standards
- Outstanding issues being debated include
 - Recommender systems and advertising platforms
 - Trusted flaggers
 - SME exemptions

NIS2

- New European Directive in the legislative process
- Would replace the Networks and Information Systems Directive (NIS)
- Would not apply in UK

- More detailed specification of security duties for covered entities

- Extends scope to cover datacentres, and providers of services in software design, development and “ICT operations” etc.

- Cloud providers to have full range of duties. “Cloud” to include Network-, Platform-, Infrastructure and Software “-as-a-Service”.



Thank you



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