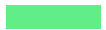




Public Affairs Update

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LINX116





Online Safety Bill

Introduction

TOUGH new internet laws to protect young people, uphold free speech and make sure there are no safe spaces for criminals online return to Parliament for their second reading this week.

- Government Website

- Comes as new plans to support vulnerable people and fight falsities online are launched

- Government website

“ Our groundbreaking Online Safety Bill will make the UK the safest place to surf the web. It has been significantly strengthened following a lengthy period of engagement with people in politics, wider society and industry.

- Nadine Dorries, Digital Secretary

194 Clauses
14 Schedules
225 Pages



Online Safety Bill

Scope



Scope

- Targeted at online services such as web sites, not at infrastructure such as network operators.
- User-to-user services: any service that enables users to ‘share’ “user generated content”
- Search services: search engines and services that allow search of multiple websites or databases (e.g. aggregation engines)
- Also, special provisions for pornographic websites (even if no UGC)
- Plus additional duties for “Category 1” and “Category 2B” user-to-user services and “Category 2A” search services





Territorial Effect

- Purports to regulate services anywhere in the world, so long as
 - Has a significant number of UK users; or
 - United Kingdom is one of the target markets for the service; or
 - Both
 - Capable of being used in the UK by individuals; and
 - There are reasonable grounds to believe there is a “material risk of significant harm” to UK users





A note on children

- The Bill breaks the previous categories further broken down by whether the service “is likely to be accessed by children”
- The standard to be applied is
 - Is it possible for children to access the service; and
 - Either
 - A “significant number” of children use the service; or
 - It is “of a kind likely to attract” a significant number of children
- All services must conduct a “children’s access assessment”, or else be assumed to be likely to be accessed by children.
 - This must be done
 - At least every year; and
 - Before making any significant change to the service relevant to the assessment





Online Harms Bill

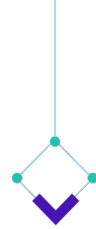
Brief overview of duties for online services containing UGC



Illegal content risk assessments

- Conduct a “suitable and sufficient illegal content risk assessment”
- Must cover
 - Each kind of “Priority illegal content”, each separately assessed; and
 - Other illegal content
- Repeat this “before making any significant change to any aspect of the service’s design or operation”, scoped around the aspect to be changed.
- Keep it up to date, including to in relation to Ofcom’s changing view of risk
- Keep written records of these assessments





Illegal content “safety duty”

- Take “proportionate measures to effectively mitigate and manage the risk of harm to individuals”, as identified in the risk assessment
- Systems and processes designed to
 - Prevent individuals encountering “priority illegal content”
 - Minimise time priority illegal content is present
 - Swiftly take down any illegal content, once notified
- Intended to apply across all aspects of the service
 - From policies and terms of use, through content moderation and user support, to algorithm design and user functionality





Children's risk assessment duties

- Similar to the illegal content risk assessment, but applied to legal content likely to be harmful to (some) children
- Regulations will designate “priority content harmful to children”
- Must assess each kind of such content separately(!)
- Must give separate consideration to children in different age groups
 - Also differentially for children “with a certain characteristic” or “of a certain group”
- And other matters





Children's “safety duties”

- Systems and processes to protect
 - All children from encountering “primary priority content” harmful to children
 - Children of certain ages from other content (e.g. by age verification)
- Duties to set out how this is done in terms and conditions, clearly
 - Including in relation to “proactive technology”
 - And duty to comply with these once issued





Some of the additional duties for Category 1 services

- Duty to set out in terms of service how content that is legal but harmful to adults will be treated.
 - Duty to conform to own terms of service in this regard
- Duty (where proportionate) to have functionality so adults can limit their access to legal but harmful content
- Duties to minimise fraudulent advertising on the service
- Duty to offer all adult users the opportunity to verify their identity
- Duty to report Child Sexual Exploitation and Abuse content to NCA





Codes of Practice

- Ofcom will be issuing Codes of Practice in relation to all of the preceding duties.
 - Secretary of State can direct Ofcom to modify a Code of Practice “for reasons of public policy”
- Compliance with the Code is not precisely a legal requirement, but
 - Compliance with Code guarantees compliance with the duty
 - Ofcom and Court must take Code into account when assessing whether alternative measures taken achieve compliance with duties





Fees

- Regulated providers must notify Ofcom, declaring
 - all regulated services
 - Their qualifying worldwide income
 - Supporting evidence, as set out in future regulations
- Regulated providers must pay Ofcom an annual fee, similar to “Administrative Charging” under the Communications Act
- Ofcom will set out a Threshold Figure for turnover, below which notification and fees are not required, and other exemptions

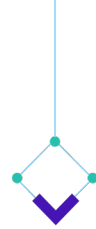




Enforcement Provisions

- Ofcom is given powers to
 - Demand information from regulated providers.
 - Require a regulated provider to name a senior manager as responsible.
 - Impose “skill persons reports” in assessing compliance
 - Conduct investigations and audits itself
- Ofcom can direct providers how to deal with terrorism and child sexual abuse content
- Ofcom powers to enforce compliance
 - “Confirmation notices” for both risk assessment and safety duties order direct providers on steps they must take
 - Mandates for use of proactive technology
 - Fines for non-compliance (up to £18m, or 10% of worldwide income if greater)
 - Service interruption (and disruption) orders for non-compliant (foreign) entities
- Senior managers are criminally liable for non-compliance with information notices.





Impact and First steps for Businesses

- Any business providing an Internet-based service containing user-generated content needs to assess whether they are within scope of this legislation
 - Generally, any web or app based service with UGC will be, unless exempt
 - Internal business services are exempt
 - Exemption for services where UGC is just user comments or reviews on provider content
 - Note that this is crucial to avoid massive overreach...
 - ...but may not be as protective as it appears (legal advice may be warranted)
 - Other limited exemptions apply
- Also,
 - any provider of an Internet search service
 - any provider of pornographic content
- Expect to need professional legal advice on compliance
- Expect to need to establish a dedicated compliance team

Many business customers of UK hosting and transit providers will be impacted





Online Safety Bill

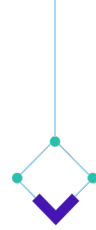
Main changes since the Draft Bill



New criminal offences proposed by the Law Commission

- Harmful communications offence:
 - Sending a message where there was a “real and substantial risk that it would cause harm to a likely audience without reasonable excuse”
 - Sender must have intended to cause harm
 - But see Law Commission discussion of “indirect intent” and “natural and probable consequences”
 - “Harm means psychological harm amounting to at least serious distress”
 - Doesn’t need to actually affect anyone
 - If it’s a matter of public interest that’s relevant, but not determinative
 - What constitutes a “reasonable excuse” will be a matter for the courts
 - Debate on meaning of Human Rights Act will likely feature prominently
 - Both as to free expression, and as to protecting rights of others
 - Recognised news publishers, broadcasters and on-demand services are exempt





New criminal offences proposed by the Law Commission

- False communications offence
 - Sending a message known to be false that without reasonable excuse
 - With the intention of causing non-trivial psychological harm or physical harm to a likely audience
 - Note that intent is required, reckless is not enough
 - But see discussion on “indirect intent” by Law Commission
 - Note distinction between “non-trivial” here and “serious distress” in harmful communications offence.
 - Recognised news publishers, broadcasters and on-demand services are exempt, as are films in cinemas
 - Prosecutions must be brought within 6 months of coming to light, or 3 years of offence





New criminal offences proposed by the Law Commission

- Threatening communications offence
 - Sending a message conveying a threat of death or serious harm
 - Must have intention or be reckless as to whether recipient would fear threat would be carried out
 - Serious harm means GBH, rape/assault by penetration, or serious financial loss





New criminal offences proposed by the Law Commission

- Sending photographs or film of genitals
 - Must be sent to another person
 - Includes showing it to another person and leaving it for them to find
 - Must have intention of causing alarm, distress or humiliation; or
 - Be reckless as to same (but only if done for the purpose of sexual gratification)





New criminal offences proposed by the Law Commission

- s. 127 of the Communications Act 2003 “Improper use of public electronic communications network” is (partially) repealed
 - Removing offence of sending a message that is grossly offensive, or of an indecent, obscene or menacing character”
 - Removing offence of sending a message sender knows to be false
- But retaining offence of “persistently makes use” of network, used to deal with silent callers, heavy breathers and the like





Provider Pornographic content (1)

- Regulation for providers of pornographic content
- Specifically, for services where the content was placed there by or on behalf of the service provider
- Specifically excludes UGC
- Exclusions for internal business resources, public services, education, on-demand programme services (regulated elsewhere)
- Exemptions for the services exempt from the other safety duties (e.g. E-mail, SMS & MMS, one-to-one audio telephony etc).
- Extra-territorial cover to those targeting UK or with significant number of UK users





Provider Pornographic Content (2)

- Provider will have a duty “to ensure that children are not normally able to encounter” provider pornographic content “e.g. by using age verification”.
- Also a duty to keep a written record of measures taken
- Ofcom to produce guidance on “measures and policies that *may* be appropriate” for compliance
- Note that there is no requirement for guidance to be followed, or for court to have regard to the guidance, nor does following guidance guarantee compliance. (c.f. Safety and Children’s Safety duties)





Priority Illegal Content defined (1)

- Alongside “Priority illegal content” offences are listed:
 - Schedule 5: Various terrorism related offences – including membership, organisation, fund-raising and money-laundering, as well as encouragement of terrorism, terrorist publications, preparing and training offences.
 - Schedule 6: Various Child Sexual Exploitation and Abuse offences, including possession of indecent image of a child, travelling to meet with a child following sexual grooming, sexual communication with a child, and offences relating to children engaging in sexual activity





Priority Illegal Content defined (2)

- Assisting suicide
- Threats to kill
- Drugs offences
 - e.g. offer to supply
- Firearms offences
 - Mostly re: sales and marketing etc
 - Including knives, crossbows etc
- Assisting illegal immigration
- Controlling prostitution
- Possession of extreme pornography
- Disclosing private sexual photographs without consent
- Proceeds of Crime offences
- Various forms of Fraud
- Misleading statements and impression under Financial Services Act
- False claims to be regulated or exempt, or carrying on while prohibited under the Financial Services Act





Priority Illegal Content defined (3)

• Public Order Act 1986

- Fear or provocation of violence
- Harassment alarm or distress
- Publications etc. causing racial hatred, or hatred on grounds of religion or sexual orientation

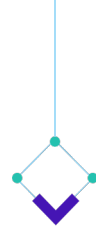
• Protection from Harassment Act 1997

- Harassment
- Stalking
- Putting people in fear of violence

• Crime and Disorder Act 1998

- Racially or religiously aggravated public order offences
- Racially or religiously aggravated harassment etc.






Protections for certain content (Category 1 only)

- Duties to protect “content of democratic importance”
 - This means news content from an approved news publisher or UGC that “appears to be specifically intended to contribute to democratic debate in the UK”
 - “Proportionate” systems and processes to “take into account” the importance of free expression
 - A duty to ensure systems and processes apply in the same way to “a wide diversity of political opinion”
- Duties to protect “journalistic content”
 - To use “proportionate systems and processes” when deciding how to treat such content “especially decisions about whether to take it down or limit users’ access to it”
 - Expedited appeals process
 - Swift reinstatement/reversal of decision if appeal is upheld



A large, white-outlined geometric shape, resembling a square rotated 45 degrees with its corners clipped, is centered on the slide. It has four white circular nodes at its vertices. The text 'Thank you. Any questions that I can answer?' is centered within this shape in a white, sans-serif font.

Thank you.
Any questions that
I can answer?