ONLINE SAFETY BILL

Second Reading briefing

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SUMMARY

The Online Safety Bill fixes important problems, but puts free speech in jeopardy. Yes, Big Tech companies must take more responsibility for the content on their platforms. But the Government's approach is incredibly dangerous. It will hand weapons to Government ministers to silence views they disagree with and apply strong commercial pressure to Big Tech executives to do the same. It risks the most draconian censorship of ideas on the internet in the Western world. The Bill needs much stronger protections for free speech, with fewer powers handed over to the Secretary of State and Ofcom.

KEY DANGERS

Sweeping powers given to the Secretary of State

The concept of 'legal but harmful' to adults gives extraordinary power to the Secretary of State to decide which opinions are acceptable online. Regardless of what Nadine Dorries decides to include in this category, any subsequent Secretary of State will be able to change it with only minimal scrutiny. This creates a ready-made tool for state censorship in the future, and there will be constant pressure from activists for restrictions on free speech. *(See section 4)*

Penumbra effect: tech companies will go well beyond what's required

Silicon Valley billionaires have already shown themselves very willing to take down views they personally disagree with. Ministers have identified an existing problem with arbitrary take-down decisions. But in this respect the Bill is a hindrance, not a help. It will put companies' repressive tendencies on steroids. They will steer well clear of the very heavy fines that could be imposed and censor far more than they need to. Their terms and conditions will be able to be as restrictive as they like, as long as they're applied consistently. *(See section 5)*

Weak free speech protections

The Government has made great claims about the Bill's protections for free speech but the reality doesn't live up to the hype. The free speech duties are weak compared to the pro-censorship pressure that companies will be under. And they already need no external pressure to censor views they don't agree with. The free speech duty must be drastically strengthened to create a presumption of free speech. *(See section 6)*

Too much power to Ofcom

The Bill turns Ofcom into the most powerful internet regulator in the West. The Government sees this as a good thing. Ofcom's codes and guidance will determine how providers implement the duties, and it can impose fines of up to ten per cent of qualifying worldwide revenue for breaches. The track record of Ofcom and its predecessors shows that free speech will be the loser. *(See section 7)*

Tougher rules online than offline

What is legal to say in the street must not be restricted online. Of course, the Bill must ensure that the criminal law applies on the internet. It must require internet companies to prevent

illegal content appearing on their platforms. But the Bill goes beyond the criminal law by regulating what is legal yet deemed harmful. There will be less freedom of speech online than offline. *(See section 8)*

OTHER CONCERNS

A 'harmful communications' offence (Clause 150) covering messages that risk causing serious distress could be a threat to free speech. Some in our culture easily take offence and claim to be harmed by opinions they disagree with. *(See section 3.1)*

GOOD ASPECTS

The Bill includes some welcome proposals:

- Duties on internet giants to take proactive steps to prevent access to illegal content via their platforms, and also duties to protect children. *(See sections 1.1.1 and 1.1.2)*
- In particular, the stand-alone duty on age verification for pornography is long overdue. *(See section 2)*
- Duties to allow users to verify their accounts and filter out non-verified user content will be important steps in tackling the scourge of anonymous online abuse. *(See section 1.3)*
- We also support the new cyberflashing offence.

WHAT THE BILL INCLUDES

1. DUTIES ON SOCIAL MEDIA AND SEARCH ENGINES

The Bill creates new duties of care on social media and search engine companies to protect people from illegal or harmful online content. It empowers Ofcom to police these companies. Ofcom's key role will be to regulate the systems which companies have in place, with the ability to fine companies up to ten per cent of their global revenue.

The Government could have focused directly on criminalising or censoring specific content. Instead it has chosen very broad-brush regulation, which inevitably reduces internet freedom.

1.1. Services and content covered

The service providers regulated by the Bill are divided into user-to-user services (social media and video sharing platforms like Facebook, YouTube, Instagram, TikTok, Snapchat and Twitter) and search engine services (like Google). User-to-user services are further divided into **Category 1** (the largest platforms) and **Category 2B** (other platforms). Search services are **Category 2A**.

Three categories of content are covered by the Bill: illegal content, content that is harmful to children, and content that is harmful to adults. ("Harm" means physical or psychological harm (Clause 187)). Within each of these categories, *priority* content for regulation can be specified by the Secretary of State. The Secretary of State can also specify *primary priority* content that is harmful to children.

The Bill places duties on internet companies regarding this content, depending on the category of content and the category of service.

1.1.1. Illegal content (Clauses 9, 24 and 52)

All service providers are required to tackle illegal content. Illegal content includes specified *priority* illegal content and any other offence with an individual victim.

Social media companies must proactively minimise the presence and dissemination of *priority* illegal content on their platforms. The Bill especially emphasises terrorism and child sexual exploitation and abuse ("CSEA") content as *priority* illegal content, and also lists the following in Schedule 7:

- Assisting suicide;
- Threats to kill;
- Public order offences, harassment, stalking and fear or provocation of violence;
- Drug-related offences;
- Weapons/firearms offences;
- Assisting illegal immigration;
- Sexual exploitation offences (controlling, causing or inciting prostitution for gain);
- Offences relating to sexual images (i.e. revenge and extreme pornography);
- Proceeds of crime offences;
- Fraud;

- Financial services offences;
- Inchoate offences (attempts, conspiracy, encouraging or assisting offences, etc).

Specifying these categories as *priority* illegal content will mean that social media companies are required to handle them *proactively*. They will have to do what they can to ensure the content doesn't appear on their platforms, rather than only having to respond when they are made aware of it. Other illegal content must be taken down once they know about it.

Search engine companies must minimise the risk of users encountering, through search results, *priority* illegal content and any other illegal content they know about.

Companies must carry out risk assessments and state in their terms of service how individuals will be protected from illegal content. These terms of service must be clear, accessible and consistently applied.

This aspect of the Bill is the least controversial. It rightly focuses on serious breaches of the criminal law on the internet. The Government has resisted calls to broaden this category to include aspects of the civil law. However, concerns do arise where social media companies will be expected to apply thresholds that cut across freedom of expression. Free speech is a case apart. Hard-won freedoms must not be lost on the internet (see section 5.1).

1.1.2. Content that is harmful to children (Clauses 11, 26 and 53)

Services likely to be accessed by children are required to tackle legal content that is harmful to children.

Content is harmful to children if it is:

- specified as *primary priority* or *priority* content by the Secretary of State, or
- other "content… of a kind which presents a material risk of significant harm to an appreciable number of children in the United Kingdom".

A service is 'likely to be accessed by children' if it is possible for children to access it and a significant number of children are already users or are likely to be attracted to it. Service providers must assess this themselves. (Clause 31)

Social media companies likely to be accessed by children must prevent all children encountering *primary priority* content that is harmful to children. For other content that is harmful to children, they must protect those in age groups judged to be at risk of harm from encountering the content on the service.

Search engine companies must minimise the risk of any children encountering *primary priority* content, and of children in age groups judged to be at risk of harm from encountering other content harmful to children.

Companies must carry out risk assessments and state in their terms of service how they will comply with their safety duties. These terms of service must be clear, accessible and consistently applied.

1.1.3. Content that is harmful to adults (Clauses 13 and 54)

Category 1 services also have to tackle legal content that is harmful to adults. ***The 'legal but harmful' concept is at the heart of many concerns about the Bill (see section 4.1).***

Content is harmful to adults if it is:

- specified as *priority* content by the Secretary of State, or
- Other "content… of a kind which presents a material risk of significant harm to an appreciable number of adults in the United Kingdom".

Companies must specify in their terms of service how *priority* content that is harmful to adults will be dealt with. This can range from taking down the content all the way to the opposite: recommending or promoting it. The terms of service must be clear, accessible and consistently applied.

A provider that becomes aware of other content harmful to adults on its service must notify Ofcom about it. (Clause 13(7))

1.2. Freedom of expression (Clauses 15, 16, 19 and 29)

Service providers must have regard to the importance of protecting users' right to freedom of expression within the law when deciding and implementing policies and procedures to comply with the duties.

Category 1 services also have additional duties to protect content of democratic importance and journalistic content. ***The inadequate free speech protection is another key concern about the Bill (see section 6).***

1.3. User verification[1] (Clause 14 and 57)

The Bill includes a duty on Category 1 companies to give all users optional ways to verify their identities and stop non-verified users interacting with them. This is to help in tackling anonymous abuse online, which many – including MPs across the political spectrum – routinely suffer.

There have been calls for an end to anonymity on social media. However, the Government has said that a blanket ban on anonymous users would have negative effects. The ability to be anonymous online can sometimes be highly beneficial for people, e.g. whistle-blowers, victims of domestic abuse, or those living under authoritarian or religiously repressive regimes. Dissidents or Christians in such states sometimes need to remain anonymous for fear of persecution.

Government ministers believe the new duty "will provide a better balance between empowering and protecting adults… while safeguarding freedom of expression online". It will give users "more control over their online experience".

One potential method of user verification would be to require users to provide a passport or other ID document when an account is created. Platforms could increase users' control over their interactions by including tick boxes in their settings to allow only verified accounts to contact them. The Bill leaves it up to social media companies to decide which methods to use. Ofcom codes of practice and guidance will include more information about possible options.

Bill summary tables

Simple

	ILLEGAL	HARMFUL TO CHILDREN	HARMFUL TO ADULTS
Largest social media (Category 1)	●	●	●
Search engines (Category 2A)	●	●	—
Smaller social media (Category 2B)	●	●	—

● = duties apply

— = no duties

A closer look

	ILLEGAL		HARMFUL TO CHILDREN			HARMFUL TO ADULTS	
	Priority	*Other*	*Primary priority*	*Priority*	*Other*	*Priority*	*Other*
Largest social media (Category 1)	🛡	⚙	☑	⊘	⊘	✓	🔔
Search engines (Category 2A)	✔	✔	✔	✔*	✔*	—	—
Smaller social media (Category 2B)	🛡	⚙	☑	⊘	⊘	—	—

🛡 = minimise presence and remove proactively

⚙ = remove when made aware of

☑ = prevent all children from encountering

⊘ = protect age groups at risk of harm from encountering

✔ = minimise risk of encountering (✔* = only applies to age groups at risk of harm)

✓ = specify how will be dealt with

🔔 = notify Ofcom

— = no duties

1.4. Opt out from seeing 'legal but harmful' content[2] (Clause 14)

The Bill also places a duty on Category 1 companies to allow users to opt out voluntarily from receiving content that is deemed 'legal but harmful'. This would be content that is still accessible to adults on the platform under its terms and conditions, but which is deemed harmful. Adults would be able to choose whether or not they want to be exposed to such content. The Government says "tools could include new settings and functions which prevent users receiving recommendations about certain topics or place sensitivity screens over that content".

It is still unclear how this would work in practice. Would a person opt out of all 'legal but harmful' content, or would there be subcategories? This is likely to vary by provider. There is the danger that unfashionable views on issues like sex and gender could be branded 'harmful' and so filtered out for those who opt out of receiving 'legal but harmful' content.

2. AGE VERIFICATION FOR PORNOGRAPHY[3] (Clauses 66-69)

A stand-alone duty in the Bill requires all providers that publish or display pornography themselves (as distinct from user-generated content) to ensure children "are not normally able to encounter" it. (Clause 68)

Failing in this duty will be punishable by the same Ofcom fines as other breaches of the legislation. The Bill does not prescribe *how* companies should comply with the duty, leaving it up to them to decide.

Previous age-verification plans under the Digital Economy Act 2017, which the Government abandoned in 2019, did not apply to social media. The draft Online Safety Bill covered social media, but did not apply to pornography sites unless they included user-to-user content. If it works as intended, the new stand-alone duty should plug that gap.

This is good news. Shops have age restrictions on buying alcohol, medicines, knives, cigarettes and adult magazines, for example. Although the porn industry vigorously objects, robust age-verification measures or similar tools are the obvious means of enforcing such restrictions for pornography online. There is clear precedent for it: gambling sites already have to ensure customers are over 18.

It is also a necessary step. In 2020, research published by the British Board of Film Classification found that 51% of 11 to 13-year-olds had viewed pornography online (this figure is conservative).[4] Porn is addictive and damaging. It shapes young people's views of sex, including leading them to imitate extreme or coercive behaviour.[5]

Seeing pornography can also make children more vulnerable to being abused.[6] Dangerous themes such as incest or 'barely legal'[7] are endemic on the most popular pornography sites. One study analysed the titles and descriptions of 131,738 videos on the three most popular porn websites over a six-month period.[8] The word 'teen' was the most frequently appearing word in the data. Around four per cent of the titles described sexual activity between family members. All this content was visible to first-time visitors to the sites, for free and with little or no age-verification process. If these things are normalised in children's minds, it can serve to groom them for familial abuse or underage sex.

Robust age-verification will restrict accidental access to pornography, which evidence suggests is a major problem. One survey found that 62% of 11 to 13-year-olds who had seen pornography said they stumbled across it unintentionally.[9]

3. CRIMINAL OFFENCES

The Bill includes several new criminal offences that apply to individuals, including adopting Law Commission recommendations to replace provisions of the Malicious Communications Act 1988 and the Communications Act 2003. Some of the proposals do not appear to be problematic, such as on threatening communications (Clause 152) or knowingly sending false communications (Clause 151). We welcome the new cyberflashing offence in the Bill (Clause 156), which applies to England and Wales.

But there are concerns about the new harmful communications offence in Clause 150.

3.1. Harmful communications offence[10] (Clause 150)

This remarkably broad and subjective offence will catch sending a message with "a real and substantial risk that it would cause harm to a likely audience", with the intention of causing such harm and without reasonable excuse. It carries a potential two-year prison term.

"Likely audience" includes those whom it is reasonably foreseeable would encounter the message through sharing or forwarding. For the purposes of this offence, "harm" is defined as psychological harm, amounting to at least serious distress.

Distress is a subjective term, and even "serious distress" could be a dangerously low threshold. Under the offence, no distress will actually need to be caused.

We have seen many examples in the current culture of people taking offence easily and claiming to be harmed by opinions they disagree with. For example, students at Exeter University sought to have the pro-life society banned because of its "harmful point of view".[11] J K Rowling's defence of the reality and importance of biological sex has been labelled "harmful"[12].

There are some who are very eager to attribute psychological harm to Christianity, particularly with regard to children. Richard Dawkins has said that bringing a child up in a religion is psychological abuse.[13] He attacked Roman Catholicism in particular, saying the damage of sexual abuse was "arguably less than the long-term psychological damage inflicted by bringing [a] child up Catholic".

An offence targeting psychological harm risks putting a weapon in the hands of those who claim they are harmed by another's speech. They are entitled to contact the police and claim harm, because it is effectively in the eye of the beholder.

The danger of relying on the perception of the victim has been exposed by the growth of non-crime hate incidents, and the Government is taking steps to crack down on this waste of police resources. Yet creating a new offence based on subjective standards of harm will only encourage more complaints about trivial online speech. The police cannot afford to get dragged into Twitter spats about contentious issues.

KEY DANGERS

4. SWEEPING POWERS GIVEN TO THE SECRETARY OF STATE

4.1. 'Legal but harmful'

The detail of what is 'legal but harmful' will be left to secondary legislation. This is unacceptable. Parliament is being asked to vote through legislation without knowing what one of the key concepts will render subject to censorship. There seem to be no clear boundaries on what could in future be banned under the Bill. The Secretary of State should publish a draft of the proposed secondary legislation at an early stage during the passage of the Bill so that MPs can see the full extent of what they are considering. But there is little to limit the scope of further secondary legislation other than the views of the Secretary of State.

Clause 55 says that content can be listed as a priority legal harm if the Secretary of State considers it to present "a material risk of significant harm to an appreciable number of adults".

- 'Risk of significant harm' is a threshold that has operated in child protection for decades. It reflects the particular vulnerability of children. It is inappropriate to apply it to adults. The Director of Defend Digital Me, Jen Persson, has raised the concern that by considering all adults to be at risk of harm "the bill infantilises us all".[14]
- There is obvious ambiguity in "an appreciable number". The Explanatory Notes to the Bill appear to define it as between very few and not very large: "content need not affect very large numbers of people to be considered harmful, but kinds of content which affect only one person or very few people are not in scope". It is far from clear how large a group is in view.
- The Bill has no requirement that the adults at risk are, for example, reasonable or of ordinary sensibilities. This runs the risk of content being specified as priority legal harm on the basis of an abnormally sensitive group of people.

So far, the suggestion has been that the priority legal harms will include matters like self-harm, harassment, eating disorders and racist hate.[15] (There must be questions as to whether, for example, promoting self-harm, should be a criminal offence in itself, rather than something that a social media company could choose to recommend.)

However, whatever the *initial* scope of priority legal harms, any subsequent Secretary of State would be able to amend it by regulations. The affirmative procedure would be used, usually meaning in the Commons a 90-minute debate in a delegated legislation committee with any vote on a take-it-or-leave-it basis – no amendments are possible. Considering the potential of such regulations to restrict free speech, this would be completely inadequate scrutiny. The boundaries of online debate must not be determined by Government decree. Previous laws with implications for free speech have rightly been in primary legislation, sometimes with years of scrutiny. For example, the religious hatred offence took five years across three different Bills before Parliament was willing to pass it.[16] Instead of years, it will be minutes of scrutiny under the powers created by this Bill.

At the very least, the super-affirmative procedure should be used, to give opportunity for feedback and amendment to a draft before the measure is formally laid. It would be far better to require the Secretary of State to consult the public on the draft.

4.2. Rewriting the regulatory framework

Defining legal but harmful is just one of the regulation-making powers in the Bill that hand unacceptable control to the Secretary of State. The delegated powers memorandum admits that there are 19 delegated powers to amend primary legislation (so-called "Henry VIII powers").

The Secretary of State's powers include:

- changing the overarching online safety objectives set out in the legislation (Schedule 4);
- specifying priority content to be targeted – of which 'legal but harmful' is just one part (Clauses 53-55 and 176);
- giving directions and guidance to Ofcom (Clauses 40 and 147);
- altering content and services that are exempt from regulation (Clause 174); and
- deciding who can complain to Ofcom (Clause 140).

Virtually all the substantive parts of the regime could be changed by regulations. Even the emphasis and strategic objectives of the law could be amended. This is extraordinary. Parliament must not pass legislation which could be wholly revised by statutory instrument.

Joint Committee had the wrong solution to 'legal but harmful' danger

The Joint Committee called for the scrapping of the clause on content harmful to adults. But its suggested replacement included covering "abuse, harassment or stirring up of violence or hatred" based on protected characteristics in the Equality Act or hate crime legislation.[17] This risks putting much tighter restrictions on online speech than exist offline, where there are significant freedom of expression protections. It could give all those with a protected characteristic a legal right not to be offended.

Under the Joint Committee's proposals the Secretary of State would be given power to 'future-proof' the legislation by adding new protected groups at any time by using regulations.[18]

The Petitions Committee also recommended specifically requiring social media companies to take action to address abuse based on protected characteristics under the Equality Act and hate crime laws.[19]

This would be to re-purpose discrimination law so that it governs acceptable speech on the internet – a massive change. It would side-line Supreme Court, Appeal Court and High Court rulings which have protected free speech. It creates a world where there is much less freedom online than there is in the public square. It creates a right not to be offended.

It would make binding across the internet arguments which have comprehensively failed in the civil courts.

Discrimination law was intended as a shield to help victims, not a sword to attack opponents. In the *Ashers Baking Company* case, the taxpayer-funded Equality Commission for Northern Ireland argued that a bakery had breached discrimination law by refusing to bake a cake supporting the introduction of same-sex marriage to the Province. The Supreme Court said 'No'. It backed the bakery and said it was a case about compelled speech. But it took several years and £250,000 in legal costs to be able to defend its owners' freedoms. It is beyond the ordinary person's budget to defend themselves against such attacks by quangos.

Whether it is icing on a cake or a post on the internet, the same level of free speech should apply. Lawful opinion should be protected, not censored.

Discrimination or equality arguments are often deployed to shut down unfashionable opinions. In *Adrian Smith*[20] and *Maya Forstater*[21], employers used them in an attempt to silence an employee. A university did the same thing to a student in *Felix Ngole*.[22]

5. PENUMBRA EFFECT: TECH COMPANIES WILL GO WELL BEYOND WHAT'S REQUIRED

The Government is seriously underestimating the chilling effect of this legislation on free speech. Given the culture into which it is being introduced, its reach will extend far beyond what it formally covers. This will be the case both for the illegal content category, as well as the legal but harmful content.

5.1. Special nature of free speech

Our protections for freedom of speech have been hard-won down the centuries. Sometimes this has meant a lone individual having to take a courageous stand, before eventually being vindicated by the courts or the authorities. We now recognise that the freedom of 'the little guy' to express dissent is essential to a democracy.

Famously, John Bunyan spent twelve years in prison for conducting non-conformist religious meetings. As the historian Richard Greaves expressed it, Bunyan's actions were an assault on the limitations placed on religious freedom at the time, including "the state's right to stipulate who could meet and for what purposes".[23] His contribution was recognised by the Foreign Office's creation of the 'John Bunyan Fund for Freedom of Religion or Belief'.[24]

Over many years the courts have enshrined the principle of freedom of expression in our law, often in extraordinary circumstances. In 1882, when thugs caused a riot in response to Salvation Army preaching in Weston-super-Mare, it was the Salvation Army that was convicted of unlawful assembly. But on appeal this was overturned, as the court ruled that it was the job of the police to protect the lawful activities of the Salvation Army.[25]

More recently, the oft-cited free speech precedent of *Redmond-Bate* was similar. Three Christian women preaching outside Wakefield Cathedral were unlawfully arrested because of the hostile reaction of their hearers. It resulted in the 1999 judgment stating an important principle: "Freedom only to speak inoffensively is not worth having."[26]

Social media companies often seem to lack this robust understanding of free speech, which makes the prospect of them applying speech offence thresholds very alarming.

5.1.1. The lower level speech offences

The priority illegal content set out in Schedule 7 includes public order offences like sections 4A and 5 of the Public Order Act 1986. Although they mostly get it right, the police sometimes overstep the mark in enforcing these laws, unjustifiably arresting street preachers, protestors and others. The Christian Institute's Legal Defence Fund has won every street preaching case it has ever taken against the police. As a result, tens of thousands of pounds in damages have been paid out of the public purse, because police officers misapplied the law and trampled on free speech. But at least the police have to operate according to rules of evidence and the burden of proof set by the criminal law. They can be sued if they get it wrong and the courts can put matters right. Requiring social media companies to adjudicate on what constitutes a breach of public order is inevitably going to result in an exponentially greater number of cases of free speech being denied. They will go beyond what the law says and cannot be held accountable for doing so. Social media companies' decisions are not subject to judicial review, unless a court made a radical decision that they are exercising a public function.

5.1.2. The most serious speech offences

Schedule 7 also mentions sections 29B, 29C and 29E of the Public Order Act, which deal with stirring up hatred on the grounds of religion and sexual orientation. These are criminal offences covering speech, with a seven-year maximum custodial penalty. Uniquely in English law, they are offences so serious and potentially restrictive of free speech that only the Attorney General can authorise a prosecution. There are weighty matters of law that need to be considered. The offences also contain several other free speech safeguards. Yet under the Bill, Nick Clegg and social media companies can simply cite this law to block content that they say breach these laws. Unlike the police, even with near-monopoly market share, Big Tech companies cannot be held to account.

The Bill in Schedule 7 does not even cite the strong free speech protections in Sections 29J and 29JA of the Public Order Act, which clarify the scope of the stirring up offences. Companies must be directed to these free speech safeguards by the Bill. But this serves to highlight the difficulty in expecting social media companies to apply criminal law thresholds to content on their platforms.

5.2. Fear of Ofcom fines

A key problem will be the fear of Ofcom. There could be punitive fines if companies fail in their duties. So companies will err on the side of caution. Their terms and conditions will be unnecessarily censorious. Unfashionable or controversial views – like Christian teaching on sexual ethics or feminist views on gender – will be censored because some people don't like them. This could profoundly limit religious freedom and debate.

5.3. Big tech bias

Another problem is the liberal bias that pervades Big Tech. They need no encouragement to censor views that aren't 'woke'.

Roman Catholic billionaire and technology entrepreneur Peter Rex argues that US firms such as Google and Meta – which owns Facebook and Instagram – are antagonistic to Christians. He believes that "social-media platforms increasingly censor religious believers who oppose abortion, assisted suicide and transgender ideology".[27]

There is plenty of evidence for Rex's claims. Social media companies wield huge power, and have shown themselves all too willing to take down material they disagree with on issues of public debate, most obviously on transgenderism:

- Dr Peter Saunders, the former CEO of the Christian Medical Fellowship, had a video on transgenderism removed from YouTube for an alleged violation of YouTube's terms of service.[28]
- Meghan Murphy, a feminist, was permanently suspended from Twitter after she referred to a 'trans woman' online as "him".[29]
- A publication of US Christian organisation Focus on the Family was blocked from Twitter because a tweet described a 'transgender woman' as "a man who believes he is a woman".[30]
- Transsexual writer Miranda Yardley said he was banned from Twitter for stating that a trans activist who identifies as a 'trans woman' is a man.[31]
- The Father Ted creator Graham Linehan was permanently suspended from Twitter after he tweeted "men aren't women tho" in response to a post by the Women's Institute wishing their transgender members a happy Pride.[32]
- An interview with feminist Posie Parker was taken down by YouTube because it constituted 'hate speech'. Parker said that men who transition to female are still men.[33]
- A YouTube livestream of Christian academic Dr Carl Trueman's analysis of American cultural attitudes toward sex was blocked for "content violation".[34]
- David Davis MP was censored by YouTube after giving a speech against Covid passports during the Conservative Party Conference. The video was uploaded by civil liberties group Big Brother Watch.[35]
- Reports on questionable business deals by Hunter Biden were suppressed by Facebook and Twitter just prior to the 2020 US election as 'disinformation'. The claims have now been verified by media outlets like the New York Times that once dismissed them.[36]

These existing censorious tendencies will be enshrined in the Bill.

5.4. Over-reliance on companies' terms of service

The Government is seeking to prevent content being arbitrarily restricted by insisting that companies consistently act in line with their terms of service. However, relying on internet companies' terms of service will not prevent arbitrary decisions.

This was illustrated recently when Meta changed its policy on whether posts within Ukraine calling for the death of Russian soldiers should be removed. First, one change was made to allow such posts. Then came a further clarification that the new policy did not extend to calling for the death of the Russian President.[37]

These particular changes were understandable. They just illustrate the point that terms and conditions can say several different things in the space of a few days. There is nothing to prevent a company changing them in order to shut down a new viewpoint they don't like.

Companies' terms of service cannot bear the weight the Bill places on them if they can be amended at the behest of executives like Nick Clegg. They are not stable ground. Facebook changes its content moderation rules so frequently that its own Oversight Board has deemed them inconsistent.[38]

A key problem is that the Bill contains no requirement for terms of service to be fair and balanced, only consistently applied. The Lords' Communications and Digital Committee identified the danger that the Bill "does not appear to prevent platforms from having terms and conditions which prohibit particular views providing their systems and processes apply those terms and conditions consistently".[39]

Clause 15(3) says that systems and processes protecting content of democratic importance must apply in the same way to a wide diversity of political opinion. Clause 13 needs a broader requirement that companies' terms of service must treat a wide diversity of political, social and religious opinion even-handedly.

5.5. Right to appeal?

The Secretary of State has emphasised a right to appeal under the Bill. She wrote on Conservative Home: "Right now, there is no official right to appeal when a post is taken down. Under this Bill, there will be."[40]

The Bill does not live up to this claim.

Under Clause 18 social media companies must operate – and specify in their terms of service – "policies and procedures that govern the handling and resolution of complaints". This includes complaints about the removal of content. But the companies themselves will be reviewing the complaints against their decisions. This is the 'marking their own homework' that the Government has said will be stopped under the Bill. There is no requirement for complaints to be heard by an independent body and therefore limited prospects of overturning a decision.

A complaint to Ofcom about infringement of free speech will only be possible if it is a "super complaint" by an "eligible entity". The criteria for eligible entities will be set by the Secretary of State.

5.6. Enshrining opinion monopolies

Social media companies seek an effective monopoly or at least a dominant position. The business model relies on it. Their takeover record shows it. The value of a social media platform derives from the number of users of compatible products. Therefore, the bigger the

platform the more likely people are to gravitate to it, in order to increase reach, contact more friends and so on, meaning it continues to expand towards monopoly.[41]

Facebook's social media market share in the UK is around 60% (with Instagram, which Meta also owns, another twelve per cent).[42] Google's search engine market share in the UK is over 90%.[43] YouTube has 53 million users in the UK.[44] Facebook, Google and YouTube are the three most visited websites in the UK.[45]

Facebook has preserved its market position by buying emerging rivals such as Instagram and WhatsApp. A US Congressional committee said in 2020 that the company wields monopoly powers in social networking and has maintained this by acquiring, copying or killing its competitors.[46] It currently stands accused of colluding with Google over advertising to create a duopoly.[47] Google also owns YouTube.

Clearly, given their dominance, what these companies' policies allow and how their algorithms operate has a huge impact on online speech. The Government's defence that the 'legal but harmful to adults' duty only applies to 'Category 1' services is therefore no comfort, because these are the very services that dominate the market. If Big Tech sets the parameters of what is and is not acceptable to say online then there is a risk of just one 'permitted' view on a range of topics.

Without commenting on the issue itself, one example of this in action was the Wuhan lab leak theory. For months, Facebook took down any posts that claimed Covid-19 was man-made or manufactured. In May 2021, it announced that it would stop doing so, amid new debate about where the virus originated.[48] Facebook only changed its policy once President Biden thought the theory worth investigating.

There are numerous examples down through history of social change coming about only because a small minority were willing to challenge the received opinion of their day. Many were dismissed as dangerous and were so out of kilter with the thinking of their time that they would no doubt have been considered 'harmful'. But their ideas have greatly blessed our country, and others.

Most will agree that our society hasn't reached some golden age which is incapable of further improvement. In order for there to be social change in a particular area, the social consensus has to be broken. Having a social media cartel determining which opinions are to be tolerated and which are not is immensely dangerous. Democracy needs dissent, and silencing it undermines its very foundations. As a society, we understand this, and strongly defend free speech in the public square. We must strongly defend it in the digital public square too.

6. WEAK FREE SPEECH PROTECTIONS

The examples mentioned in section 5.3 show that free speech online is already under threat. The Government has made all the right noises to suggest it understands this. But the Bill shows it doesn't.

In a newspaper article on 11 May 2021, the then Secretary of State, Oliver Dowden, accepted that there were real concerns about Big Tech censoring free speech.

> "Finally, we need to defend one of the cornerstones of our democracy: freedom of expression. Right now, social media companies can turn off free speech at the flick of a switch. The last thing we want is for users or journalists to be silenced on the whims of a tech CEO or woke campaigners. So this legislation also includes strong safeguards for free speech – including a new general requirement for social media companies to protect freedom of expression when moderating content. If someone feels their content has been taken down unfairly, they'll have the right to appeal." [49]

As Nadine Dorries, the current Secretary of State, has written:

> "unelected Silicon Valley execs have become some of the most powerful people in the world. They decide who gets to speak online, and who is silenced or cancelled from public life."[50]

She promised the Bill would improve the situation with "considerably stronger protections for free speech".

Sadly, the Bill doesn't deliver on the 'strong safeguards' ministers promised.

There are three ways in which the Bill seeks to protect free speech:

- A general free speech duty applying to all services;
- Duties on Category 1 services (large social media companies) to protect "content of democratic importance";
- Duties on Category 1 services to protect "journalistic content".

6.1. The general free speech duty

User-to-user services will be under "a duty to have regard to the importance of protecting users' right to freedom of expression within the law". (Clause 19(2))

Search services will be under "a duty to have regard to the importance of protecting the rights of users and interested persons to freedom of expression within the law". (Clause 29 (2))

But a company could 'have regard' to free speech without it having a significant impact on its actions. This duty has no real weight behind it. It just means the importance of free speech must be taken into account. Such a weak duty will not be strong enough to counterbalance the way other substantial duties restrict free speech. Dr Edina Harbinja, Senior Lecturer in Media and Privacy Law at Aston University, suggested that the free speech clause amounted to saying "please think of freedom of expression and privacy sometimes".[51]

The DCMS committee said that the protections for free speech should be strengthened to say that providers 'must balance' their freedom of expression obligations with their other duties. This would be an improvement on 'have regard', but still would not go far enough.

There should be a strong statutory presumption in favour of freedom of expression. Whatever you can say on the street you should be able to say online. Companies that remove or restrict access to 'harmful' content should have to justify overturning the presumption in favour of free speech in that case.

Free speech at universities is an interesting comparison. Universities are legally required to take reasonable steps "to ensure freedom of speech within the law is secured".[52] It is extraordinary that at the same time as free speech at universities is being bolstered, free speech online is being undermined.

Free speech online should be just as protected as free speech 'offline' – that is, on the street or in books or newspapers, for example. The universities free speech provision would be a good starting point for an online free speech duty applying to all services.

The Government has claimed that a stronger free speech duty is not possible because of the common law free speech rights that companies have, saying companies "are free to decide what content should and should not be on their website within the bounds of the law".[53] Yet the whole Bill is about putting additional duties on internet companies regarding what content they allow.

As already argued, the largest internet companies are competitor-swallowing cartels that have enormous influence in our culture, and this is why the Bill has been brought forward. The Government has concluded that they cannot be trusted with users' safety. Neither should they be trusted with free speech.

We would all recognise the remarkable danger our culture would be in if, for example, 80% of printing presses were owned by one firm. Yet this is the level of dominance some companies are reaching. The content they carry – and do not carry – can profoundly affect the terms of popular debate.

Given this near-monopoly power, such companies must be under corresponding responsibilities as to how that power is used. It is part of their social obligations. Requiring social media companies to ensure free speech is secured within the law is perfectly reasonable, and consistent with being the forums for the sharing of ideas and information they purport to be.

6.2. Content of democratic importance (Clause 15)

Duties to protect content of democratic importance apply to Category 1 services. Services must have systems and processes "designed to ensure" that the importance of the free expression of content of democratic importance is taken into account in decisions about censorship or action against a user (i.e. warning, suspending, or banning). "Content of democratic importance" refers to "content that is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom". The systems and processes must "apply in the same way to a diversity of political opinion".

A requirement on Category 1 services to ensure that free speech is taken into account is stronger than the general free speech duty, but still falls short of the kind of presumption in favour of free speech that should exist in a democracy. The danger is that this provision only protects views that are deemed topics of democratic discussion. If content is based on a belief that is worthy of respect in a democratic society, it should not be less protected just because politically it is considered a settled question. Something can be opposed by the general public even if all the main political parties agree. Some environmental concerns were accepted amongst the public long before the main political parties made it part of their

policy platforms. The same goes for Brexit. And conservative moral views should not be at greater risk of restriction just because they are unfashionable with political parties.

6.3. Journalistic content (Clause 16)

Category 1 services must have systems and processes "designed to ensure" that the importance of the free expression of journalistic content is taken into account in decisions about censorship. Dedicated and expedited complaints procedures must be made available.

Again, this duty could be much stronger, and in fact Government amendments have been promised.[54] But it is also limited to content generated for the purposes of journalism, and so would not protect most people's free speech.

7. TOO MUCH POWER TO OFCOM

Under the Bill, Ofcom is given enormous power to regulate service providers. Ofcom's codes and guidance will heavily influence how providers implement the duties. Ofcom can investigate providers (Clause 89), including requiring interviews (Clause 90) and powers of entry and inspection (Clause 91, Schedule 11). It can impose fines of up to £18m or ten per cent of qualifying worldwide revenue, whichever is greater, if duties are breached (Clause 122, Schedule 12). There will be criminal sanctions of up to two years in prison for senior managers of large online platforms that do not comply with Ofcom's information requests (Clauses 87, 93 and 96).

New regulatory regimes like this are not necessarily good news for free speech. HMRC never goes out of its way to tell people how they can pay less tax. In the same way, judged on its past performance, Ofcom will be hard-wired to restrict content and not to protect it.

Ofcom should be put under a proactive duty of its own, to take all reasonable steps to uphold the principle that what is legal to say offline is also allowed online.

7.1. How regulators have acted in the past

We have previously seen in broadcasting the censorship that can result from placing too much power in the hands of regulators. Changes in the broadcasting code in the early 1990s were interpreted by Ofcom's forerunner, the Independent Television Commission (ITC), in such a restrictive way that even prominent evangelist Billy Graham's call to faith could not be broadcast.[55]

Banning Billy Graham was never Parliament's intention. In a House of Commons debate in 1990, David Mellor, then Minister of State for the Home Office, said: *"At a time when there is an unprecedented expansion in broadcasting opportunities, nobody wants to preclude decent sensible, mainstream religious organisations from playing a part. But we do not want to open a door through which cults will come which are ever eager and have plenty of resources…"* He went on to say: *"Certainly people such as Billy Graham are responsible… We are striking a balance which will permit the former, responsible people while keeping out the latter".*[56]

Nonetheless, despite Parliament's express intention, Billy Graham broadcasts were ended.

The rules Ofcom uses today to regulate TV and radio programmes are contained in the Broadcasting Code. This retains much of the wording used by Ofcom's predecessor bodies, the ITC and the Radio Authority (RA), which operated until 2003. Ofcom has slavishly followed their approach.

Religious broadcasters should not be sanctioned simply for presenting their own religious convictions or criticising other beliefs. If a sermon is broadcast from an Anglican church which teaches that Jesus Christ is the only way to heaven, why should broadcasting rules force the Vicar to present the opposite point of view? Yet for decades this seems to be what regulators wanted. There have been alarming decisions reached by broadcasting regulators:

- In December 1999 the Christian Channel was fined £20,000 by the ITC (following one viewer's complaint) for several breaches of the Advertising Code, including relating to denigration of other beliefs.[57] The advertisement for a religious rally featuring the American evangelist Morris Cerrulo included comments about the weakness of some spiritual leaders and several critical references to "alternative religious practices" and to rationalist, atheist and humanist beliefs and philosophies. The ITC judged this to be in breach of a rule for religious advertising that it should not denigrate other faiths or philosophies.
- In 2001 the Mysticism and Occult Federation managed to get Premier Christian Radio censured for criticising the occult and other beliefs.[58] There were a dozen complaints to the RA. In response to one, it ruled that a Christian pastor "praised the Bible uncontentiously" but said that the texts of other religions were "full of superstition and absurdities". Another quoted a speaker saying it is a "crazy idea" that someone can be a Christian and a practising homosexual – a viewpoint which many would hold is still the official doctrine of the Church of England. Both of these programmes were found to breach Rule 7.7 of the RA's Programme Code, which prohibits the religious beliefs of others being 'denigrated' or 'abused'. Similar language is used by Ofcom today in its Broadcasting Code.
- In 2007 Ofcom censured Christian broadcaster Revelation TV.[59] It ruled that a discussion relating to the Equality Act and the Sexual Orientation Regulations was in breach of its Broadcasting Code (Rule 5.5) because it "did not include any representation at all of alternative views". But why should Revelation TV, and others like it, be required to air alternative views? It is to be expected that specialist religious channels, likely to be broadcasting only to Christians and funded by Christians, will give a Christian outlook. It is absurd to expect them to give air time to opinions which contradict their strongly held beliefs.

This censorship of broadcasting must not be extended to the internet. Christians and others should be free to discuss religion without fearing content being taken down. This should include even controversial topics, like discussing whether or not Islam or Hinduism are violent religions, as media commentators frequently do in newspapers and magazines.[60]

7.2. Ofcom's track record

There would be concerns about any regulator being given the kind of power the Bill gives to Ofcom. But there are particular reasons for believing that Ofcom's hands are not safe.

It will be crucial that the regulator has a robust understanding of free speech, especially on contentious issues of public debate. It is obvious that at the moment one of those issues is transgenderism. Yet on this issue, Ofcom's Chief Executive Dame Melanie Dawes has said that broadcasters should "steer their way through these debates without causing offence and without bringing inappropriate voices to the table".[61] She seemed to accept that those who question radical gender ideology would be 'inappropriate voices' and likened them to racists. She described working with controversial LGBT rights group Stonewall on how balanced trans debate should be conducted.

Yet Stonewall has been widely accused of "misleading" statements by describing "the law as Stonewall would prefer it to be, rather than the law as it is" on transgender issues.[62] Even one of the group's founders has accused it of shutting down debate and disparaging as a bigot anyone who disagrees with its views.[63]

The Ofcom CEO's deference to Stonewall does not encourage confidence in its free speech credentials.

8. TOUGHER RULES ONLINE THAN OFFLINE

The Johnson and May Governments have consistently suggested that the approach to online content should match what happens offline. This can be summed up as "what is unlawful offline should be also unlawful online". This has been the repeated approach.

A press release issued by Theresa May's Government in February 2018 stated:

> "The Prime Minister has announced plans to review laws and make sure that what is illegal offline is illegal online as the Government marks Safer Internet Day."[64]

More recently, Baroness Williams of Trafford, Minister of State at the Home Office, said on 13 January 2022: "we are clear that what is unacceptable offline should be unacceptable online."[65]

The same theme of apparent equivalence between offline and online has been taken up by others. In 2021 the Joint Committee's report on the Draft Bill stated:

> "We have received a large amount of evidence in our inquiry but very little of it takes issue with the regulation of illegal content. This seems to us to point to a self-evident truth, that regulation of illegal content online is relatively uncontroversial and should be the starting point of the Bill."[66]

In the Commons debate on the Joint Committee's report, Damian Collins, its Chairman, said:

> "The Committee recommended a structural change to the Bill to make it absolutely clear that what is illegal offline should be regulated online. Existing offences in law should be written into the Bill and it should be demonstrated how the regulator will set the thresholds for enforcement of those measures online."[67]

Of course, subject to the obvious differences in the medium, the Bill must ensure that the criminal law applies on the internet. It must require internet companies to prevent illegal content appearing on their platforms. Very few would argue with this, as the Joint Committee's report indicated.

8.1. Smoke and mirrors

Yet the Bill provides no equivalence at all. Free speech will be far more restricted on the internet than offline. The legislation goes beyond the criminal law by regulating the category of what is legal yet deemed harmful. It reaches well past the point where there would be equivalence and goes further by imposing restrictions online that *do not apply offline*. The Joint Committee's language of regulating illegal content being "the starting point of the Bill" is very dangerous. Illegal content should be the central focus of the Bill, not its starting point.

To say "what is unlawful offline is also unlawful online" could be complied with in every respect and yet still mean you can say much more on the street than you can online.

The Government's mantra is dangerous. In the interests of freedom, it should be restated in a common sense way to say that **what is legal offline must be allowed online**.

8.2. What users can do without the Bill

Social media users are already able to take some steps to protect themselves from unwanted content. This is not to deny that more user control is needed, but some of the debates around the Bill have made it easy to forget existing tools.

Damian Collins MP, Chairman of the Joint Committee, has said:

> "People cannot just put their device down—it is a tool that they use for work and to stay in communication with their family and friends—so they cannot walk away from the abuse. If someone is abused in a room, they can leave the room, but they cannot walk away from a device that may be the first thing that they see in the morning and one of the last things that they see at night."[68]

He has also said:

> "People cannot just log out of their accounts. We cannot just say, 'Well, the easiest way to avoid online abuse is not to be online.' Many people are required to be online due to the nature of their work… We do not create spaces for abuse in the physical world; we should not create such spaces in the online world either."[69]

This attitude sees the social media environment as more akin to a working environment than a public environment. Whereas on the street you can easily walk away, it's not so easy to walk away from your job. So there are more protections for people in the workplace – and more restrictions on free speech.

However, this comparison is flawed. Social media users can already mute conversations, block people and so on, none of which can be done 'on the street' without legal action. Measures like user verification will strengthen these tools. But exaggerating how inescapable social media is will inevitably result in disproportionate legislation.

8.3. Like offline, there are different online contexts

Offline, we have excellent free speech laws. What restrictions we have are necessary to protect the rights and freedoms of others.

There is a great tradition of public places where people can preach or give speeches. Not only Hyde Park corner, but also in towns and cities throughout the UK. In these places there is a particularly heightened respect for free speech. But not all public spaces are the same, and not all occasions are the same. What is lawful in the middle of the day on the high street may be unlawful in the middle of the night on a residential street.

There are analogous differences in online contexts. A public post is different to a direct message. A social media forum as a platform is different to someone's own feed, which can be personalised to some degree. In fact, the Bill's provisions on user verification and blocking harmful content are about increasing the extent to which a user can tailor their online experience. They will not see certain content on the platform. But that does not mean the content cannot be on the platform at all.

Free speech in the market square means that one person is free to say what they want within the law and another person is equally free to put headphones on and walk past ignoring the speaker. Free speech does not mean forcing another person to listen.

In many ways, social media platforms are the internet equivalent of the market square, and so free speech must be equally protected. At the same time, more tools can be given to users so that they can choose to put on the equivalent of their headphones.

Clearly, there is a core of things against which action needs to be taken. Terrorists or child murderers have been able to livestream their atrocities. On this point, the Government has a strong case. Crack down on criminal activity by all means, but not lawful free speech.

The right approach is not to create a massive regulator issuing directives on harm. Rather it should be to criminalise behaviour that would be unlawful if committed offline. Any proven gaps should be plugged, but the case needs to be made for any new laws. There are questions around enforcement and differences in medium, but the general aim should be to have the same free speech online as offline. If the Government genuinely does not want to restrict free speech, then it should not permit social media companies and Ofcom to do so either.

[1] 'New plans to protect people from anonymous trolls online', *UK Government*, 25 February 2022, see https://www.gov.uk/government/news/new-plans-to-protect-people-from-anonymous-trolls-online as at 12 April 2022
[2] *Loc cit*
[3] 'World-leading measures to protect children from accessing pornography online', *UK Government*, 8 February 2022, see https://www.gov.uk/government/news/world-leading-measures-to-protect-children-from-accessing-pornography-online as at 12 April 2022
[4] *Loc cit*
[5] 'Porn is harmless? Think again', L David Perry, *Mercatornet*, 28 October 2015, see https://mercatornet.com/porn-is-harmless-think-again/19696/ as at 12 April 2022
[6] *The Guardian online*, 16 December 2020, see https://www.theguardian.com/global-development/2020/dec/16/online-incest-porn-is-normalising-child-abuse-say-charities as at 12 April 2022
[7] Young people who are, or appear to be, only just 18.
[8] *BBC News online,* 5 April 2021, see https://www.bbc.co.uk/news/technology-56640178 as at 12 April 2022
[9] 'Children see pornography as young as seven, new report finds', *BBFC*, 26 September 2019, see https://www.bbfc.co.uk/about-us/news/children-see-pornography-as-young-as-seven-new-report-finds as at 12 April 2022
[10] 'Online safety law to be strengthened to stamp out illegal content', *UK Government*, 4 February 2022, see https://www.gov.uk/government/news/online-safety-law-to-be-strengthened-to-stamp-out-illegal-content as at 12 April 2022
[11] 'Guild Funding Hate Speech: Strike Down Exeter "Pro-Life" Society & Stand up for Women', *Change.org*, see https://www.change.org/p/exeter-university-students-and-staff-guild-funding-hate-speech-strike-down-exeter-pro-life-society-stand-up-for-women as at 12 April 2022
[12] *Metro online*, 10 June 2020, see https://metro.co.uk/2020/06/10/why-jk-rowlings-controversial-comments-are-heartbreaking-transgender-people-12833752/ as at 12 April 2022
[13] *Mail Online,* 22 April 2013, see https://www.dailymail.co.uk/news/article-2312813/Richard-Dawkins-Forcing-religion-children-child-abuse-claims-atheist-professor.html as at 12 April 2022
[14] 'The online safety bill will do little to protect children', Jen Persson, *Schools Week,* 28 March 2022, see https://schoolsweek.co.uk/the-online-safety-bill-will-do-little-to-protect-children/ as at 12 April 2022
[15] 'World-first online safety laws introduced in Parliament', *UK Government*, 17 March 2022, see https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament as at 12 April 2022; 'New plans to protect people from anonymous trolls online', *UK Government,* 25 February 2022, see https://www.gov.uk/government/news/new-plans-to-protect-people-from-anonymous-trolls-online as at 12 April 2022
[16] 2001-2006: Anti-terrorism, Crime and Security Bill 2001; Serious Organised Crime and Police Bill 2004-5; Racial and Religious Hatred Act 2006
[17] *Draft Online Safety Bill*, Joint Committee on the Draft Online Safety Bill, Report of Session 2021-22, HL 129, HC 609, 14 December 2021, page 55, para. 176
[18] *Ibid*, para. 179
[19] *Tackling Online Abuse*, House of Commons Petitions Committee, Second Report of Session 2021-22, HC 766, 1 February 2022, pages 23-24, paras 44-47
[20] *Smith v Trafford Housing Trust* [2012] EWHC 3221 (Ch)
[21] *Forstater v CGD Europe* (2021) UKEAT/0105/20/JOJ; *Independent online*, 10 March 2022, see https://www.independent.co.uk/news/uk/maya-forstater-high-court-washington-laws-b2033218.html as at 13 April 2022
[22] *R (Ngole) v University of Sheffield* [2019] EWCA Civ 1127
[23] Greaves, R, '"Let Truth Be Free": John Bunyan and the Restoration Crisis of 1667-1673', *Albion,* 28(4), Winter 1996, page 590
[24] 'John Bunyan Fund for Freedom of Religion and Belief: call for bids', *UK Government,* 22 August 2019, see https://www.gov.uk/government/publications/john-bunyan-fund-for-freedom-of-religion-and-belief-call-for-bids#:~:text=Form-,John%20Bunyan%20Fund%20for%20Freedom%20of%20Religion%20and%20Belief%3A%20call,of%20their%20religion%20or%20belief as at 12 April 2022

[25] *Beatty v Gillbanks* [1892] 9 QBD 308
[26] *Redmond-Bate v Director of Public Prosecutions* [1999] EWHC Admin 733 at para. 20
[27] 'Silicon Valley's Secret Christians', *The Wall Street Journal online,* 10 February 2022, see https://www.wsj.com/articles/silicon-valleys-closet-christians-religious-diversity-startup-culture-tech-faith-google-church-secular-beliefs-atheist-catholic-culture-war-11644510973?mod=Searchresults_pos1&page=1 as at 12 April 2022
[28] Dr Peter Saunders speaking on 'The Transgender Agenda'. See 'Transsexuality', *Christian Medical Fellowship,* see https://www.cmf.org.uk/advocacy/sex-and-relationships/transsexuality/ as at 12 April 2022
[29] *The Telegraph online,* 22 May 2019, see https://www.telegraph.co.uk/women/life/meet-meghan-murphy-transphobic-feminist-booted-twitter-wont/ as at 12 April 2022
[30] *'Twitter Censors Focus on the Family's The Daily Citizen',* Daly Focus: Focus on the Family, see https://jimdaly.focusonthefamily.com/twitter-censors-focus-on-the-familys-the-daily-citizen/ as at 12 April 2022
[31] 'Why I Am Permanently Banned From Twitter And Why This Should Make You Worry', *Miranda Yardley blog,* 24 May 2018, see https://mirandayardley.com/en/i-permanently-banned-twitter-make-worry/ as at 12 April 2022
[32] *The Guardian online,* 27 June 2020, see https://www.theguardian.com/culture/2020/jun/27/twitter-closes-graham-linehan-account-after-trans-comment as at 12 April 2022
[33] *Spiked online,* 19 November 2019, see https://www.spiked-online.com/2019/11/19/telling-the-truth-about-trans-is-not-hate-speech/ as at 12 April 2022
[34] 'Social Media's Threat to Religious Freedom', *The Wall Street Journal online,* 12 August 2021, see https://www.wsj.com/articles/social-media-religious-freedom-youtube-first-amendment-section-230-carl-trueman-sacramento-gospel-conference-11628802706?mod=searchresults_pos1&page=1 as at 12 April 2022
[35] 'YouTube censors David Davis MP's speech against vaccine passports', *Big Brother Watch,* 14 October 2021, see https://bigbrotherwatch.org.uk/2021/10/youtube-censors-david-davis-mps-speech-against-vaccine-passports/ as at 12 April 2022
[36] *Washington Examiner online,* 31 March 2022, see https://www.washingtonexaminer.com/policy/big-tech-faces-renewed-scrutiny-for-hunter-biden-laptop-censorship?msclkid=560fe072b59311eca75977667262266c as at 12 April 2022; *New York Times online,* 16 March 2022, see https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html as at 12 April 2022
[37] *The Guardian online,* 11 March 2022, see https://www.theguardian.com/technology/2022/mar/11/facebook-and-instagram-let-users-call-for-death-to-russian-soldiers-over-ukraine as at 12 April 2022; *The Guardian online,* 14 March 2022, see https://www.theguardian.com/technology/2022/mar/14/facebook-instagram-death-putin-meta as at 12 April 2022
[38] *Mail Online,* 10 May 2021, see https://www.dailymail.co.uk/news/article-9559265/Facebook-Oversight-chair-slams-sites-rules-not-transparent-inconsistent-SHAMBLES.html as at 12 April 2022
[39] *Free for all? Freedom of expression in the digital age,* House of Lords Communications and Digital Committee, 1st Report of Session 2021-22, HL Paper 54, 22 July 2021, para. 77
[40] 'Nadine Dorries: How we will narrow the ground for barring harmful posts in the Online Safety Bill', *Conservative Home,* 15 March 2022, see https://www.conservativehome.com/platform/2022/03/nadine-dorries-how-we-will-narrow-the-ground-for-barring-harmful-posts-in-the-online-safety-bill.html as at 12 April 2022
[41] *Free for all? Freedom of expression in the digital age,* House of Lords Communications and Digital Committee, 1st Report of Session 2021-22, HL Paper 54, 22 July 2021, paras 320-333
[42] 'Social Media Stats in United Kingdom – March 2022', *Statcounter: Global Stats,* March 2022, see https://gs.statcounter.com/social-media-stats/all/united-kingdom as at 12 April 2022
[43] 'Search Engine Market Share in United Kingdom – March 2022', *Statcounter: Global stats,* March 2022, see https://gs.statcounter.com/search-engine-market-share/all/united-kingdom as at 12 April 2022
[44] 'Leading countries based on YouTube audience size as of January 2022', *Statista,* 8 March 2022, see https://www.statista.com/statistics/280685/number-of-monthly-unique-youtube-users/ as at 12 April 2022
[45] 'Top Websites Ranking: Top Websites Ranking for all categories in the United Kingdom', *Similarweb,* March 2022, see https://www.similarweb.com/top-websites/united-kingdom/ as at 12 April 2022

[46] *CNBC news,* 6 October 2020, see https://www.cnbc.com/2020/10/06/house-antitrust-committee-facebook-monopoly-buys-kills-competitors.html as at 12 April 2022
[47] '"Jedi Blue" ad deal between Google and Facebook sparks new antitrust probes in EU and UK', *Tech Crunch,* 11 March 2022, see https://techcrunch.com/2022/03/11/google-meta-jedi-blue-eu-uk-antitrust-probes/ as at 12 April 2022
[48] *Politico,* 27 May 2021, see https://www.politico.com/news/2021/05/26/facebook-ban-covid-man-made-491053 as at 12 April 2022
[49] *The Telegraph online,* 11 May 2021, see https://www.telegraph.co.uk/news/2021/05/11/social-media-firms-fail-protect-children-barred/ as at 12 April 2022
[50] 'Nadine Dorries: How we will narrow the ground for barring harmful posts in the Online Safety Bill', *Conservative Home,* 15 March 2022, see https://www.conservativehome.com/platform/2022/03/nadine-dorries-how-we-will-narrow-the-ground-for-barring-harmful-posts-in-the-online-safety-bill.html as at 12 April 2022
[51] Dr Edina Harbinja tweet, 12 May 2021, see https://twitter.com/edinarl/status/1392478172550246409?s=21 as at 12 April 2022
[52] Education (No. 2) Act 1986, Section 43
[53] Written evidence submitted by Chris Philp MP, Minister for Technology and the Digital Economy, 13 October 2021, OSB0248
[54] 'Nadine Dorries: How we will narrow the ground for barring harmful posts in the Online Safety Bill', *Conservative Home,* 15 March 2022, see https://www.conservativehome.com/platform/2022/03/nadine-dorries-how-we-will-narrow-the-ground-for-barring-harmful-posts-in-the-online-safety-bill.html as at 12 April 2022
[55] Quicke, A and Quicke, J, *Hidden Agendas: The Politics of Religious Broadcasting in Britain 1987-1991*, Dominion Kings Grant Publications Inc., 1992, page 212
[56] House of Commons, Hansard, 10 May 1990, col. 416
[57] Independent Television Commission, Press Release, *ITC imposes fine on the Christian Channel for advertising code breaches*, 22 December 1999
[58] *Quarterly Programming Bulletin – All Complaints – Quarter 43,* Radio Authority, P054/43*; Quarterly Programming Bulletin – All Complaints – Quarter 43,* Radio Authority, P038/43
[59] *Ofcom Broadcast Bulletin,* 21 May 2007, Ofcom
[60] See, for example, *The Spectator,* 28 December 2015, see https://www.spectator.co.uk/article/-religion-of-peace-is-not-a-harmless-platitude-28-december-2015 as at 12 April 2022; *The Guardian online*, 19 October 2008, see https://www.theguardian.com/world/2008/oct/19/orissa-violence-india-christianity-hinduism as at 12 April 2022; *The Guardian online*, 20 February 2020, see https://www.theguardian.com/world/2020/feb/20/hindu-supremacists-nationalism-tearing-india-apart-modi-bjp-rss-jnu-attacks as at 12 April 2022; *The New Yorker*, 5 March 2019, see https://www.newyorker.com/news/on-religion/the-violent-toll-of-hindu-nationalism-in-india as at 12 April 2022
[61] Oral evidence: The future of Public Service Broadcasting, Digital, Culture, Media and Sport Committee, 15 December 2020, HC 156, Q667
[62] *The Times online,* 20 May 2021, see https://www.thetimes.co.uk/article/stonewall-gave-bad-advice-to-university-in-free-speech-row-z6b27jdkh as at 12 April 2022
[63] Simon Fanshawe speaking on BBC Radio 4, *Today*, 8 June 2021, see https://www.youtube.com/watch?v=I-QgoODTsQY as at 12 April 2022
[64] Department for Digital, Culture, Media and Sport Press Release, *Government outlines next steps to make the UK the safest place to be online,* 6 February 2018
[65] House of Lords Written Answers, 4 February 2022, HL5389
[66] *Draft Online Safety Bill,* Joint Committee on the Online Safety Bill, Report of Session 2021-22, HL 129, HC 609, 14 December 2021, Conclusions and Recommendations para. 21
[67] House of Commons, Hansard, 13 January 2022, col. 725
[68] House of Commons, Hansard, 13 January 2022, cols 723-724
[69] House of Commons, Hansard, 28 February 2022, col. 255 WH