

Round Table #24 5 April 2022 Summary Report

Divergence or Alignment with EU in Tech? Online Safety Bill and Data Protection

Session Context

This session looks at changes in the area of technology policy that will have a significant effect on Britain's relationship with the EU, as well as potentially presenting direct risks to campaigning. The discussion examined possible areas of divergence from EU policy in relation to data protection and online content. It focused on the government's Online Safety Bill and the risks presented by the requirement for tech companies to monitor content.

Speaker: Jim Killock – Open Rights Group

Executive Director of the [Open Rights Group](#). Founded in 2005, the Open Rights Group (ORG) is a UK-based digital campaigning organisation working to protect our rights to privacy and free speech online.

Leaving the EU and turning towards the Pacific means that the UK's strategic choice in relation to digital policy is deregulation, easier data flows, lowering standards of rights. The Government has two big themes in the post-Brexit environment: to get rid of as many regulations and barriers to business as it can, particularly those which affect its friends; to lower protections for individuals and weaken our human rights. The Government and Big Business will be able to do as they choose (except, as a direct consequence, to trade with the EU as regulations diverge.).

The Online Safety Bill has potentially serious impacts on freedom of expression. At present, the current rights framework and GDPR may prevent the Government from including elements it wants in the Online Safety Bill. The Government will hand itself immense powers to restrict information – lawful or unlawful – at the behest of ministers. Powerful corporations will be accountable to Government rather than to The Courts.

The Online Safety Bill would bring a strategic break with the key EU legal principles of: no general monitoring; accountability and redress for takedowns; limits to action where content is lawful. Clearly, the EU would object to this breaking of its core legal principles, particularly in respect of its Human Rights framework. However, far more serious would be our Government's changes to GDPR, which would strike at the EU's strategic achievements with serious consequences for UK / EU relations for years to come.

Speaker: Dr Monica Horten – Iptegrity - Independent Tech Policy Analyst

Dr Horten is a published author and independent tech policy analyst. She specialises in online content, focusing on human rights issues. She is a member of the Open Rights Group Advisory Council. www.iptegrity.com

Session Context

The Online Safety Bill - what it means for campaigners and free speech

Governments around the world are considering how to deal with Big Tech Giants. The UK's Online Safety Bill, laid before Parliament on 17 March, will be debated in week beginning 19 April 2022. This Bill goes very much further than its original objective of child protection, which is now reduced to just one aspect of it. It could be said that the Online Safety Bill is driven by desire to block, restrict or take down content and does little if anything to protect the free speech of individuals.

The EU's proposed Digital Services Act (DSA) differs fundamentally from the Online Safety Bill. The Digital Services Act starts from the premise that around half of the 500m EU citizens using the Internet, use social media. The EU wants to: establish a fairer balance between global social media platforms and the rights of individual citizens; enshrine the Charter of Fundamental Rights, and the right to freedom of expression and privacy; protect and strengthen the existing EU rules that enable free speech whilst also affording the possibility of taking down illegal content. It has a horizontal approach establishing principles for all types of services and does not attempt to deal with different types of content.

On the other hand, the Online Safety Bill focusses on *illegal* content and *legal but harmful* content.

Illegal content comprises 28 different criminal offences, one of which is child sex abuse. However, the other 27 offences are not specific to protecting children. They include terrorism, harassment, financial fraud, guns, and immigration offences. The social media platforms and other websites will be told to monitor for this content and take it down when these parties **reasonably consider** it meets the criteria. Consider these dangers to our current and future (would-be EU) rights:

-Social media platforms can only comply with these demands if they **deploy intrusive technology**.

-The Bill gives them a positive obligation to **proactively monitor content** - that is, all of our posts, 24 hours a day, indefinitely.

-Those who fail to comply with this demand, can be forced to install Home Office approved systems, or they can be fined, or ultimately, they can be blocked from access in the UK.

-Social media companies will have the **discretion** to act when they '**reasonably consider**' the content meets the criteria. They can restrict it using a method of their own choice. They can take down and suspend someone's account or suppress their feed.

-The full definition of '*harmful*' content will be fleshed out by government Ministers after the Bill has been passed by Parliament, using Henry VIII powers. This means that we will not know what content the Government considers to be harmful until it is too late for Parliament to scrutinise it.

-Nadine Dorries and Priti Patel are the two Ministers who will define *what is harmful*.

-The Government would also like to snoop on encrypted services such as WhatsApp. This is a very important difference compared with the EU approach. The Online Safety Bill offers no proper safeguards for freedom of expression or the privacy rights of individual users. This, combined with the use of proactive monitoring technology, means that it cannot comply with the Charter of Fundamental Rights or with EU law which prohibits proactive monitoring 'monitoring all of the content, of all of the users, for all of the time, for an indefinite period'. (See European Court of Justice, *Scarlet Extended* 2012).

- The Online Safety Bill provides no appeal process and no possibility for a Court to hear cases where lawful content has been removed or restricted.