

The Government will soon be introducing an Online Safety Bill to bolster regulation of the internet. There are good reasons for this. Social media companies have been shockingly slow to remove terrorist content.<sup>1</sup> Algorithms drive young people towards pro-suicide material.<sup>2</sup>

We strongly support the Bill's aim to get Silicon Valley to tackle terrorism, child abuse, drug and weapons dealing, promoting suicide

and so on. Most of this material is illegal already and there should be stronger obligations on companies to prevent it appearing on their platforms. The extensive new enforcement powers against illegal content are welcome.

But the proposed Bill doesn't stop there. It also includes a category of legal but "harmful" content that social media companies will be expected to police. Ofcom will be the regulator, with power to issue punitive fines

if "harmful" material is not dealt with. So companies will err on the side of caution. They will restrict content just because they disagree with it or receive complaints about it. Unfashionable views – like biblical teaching on sexual ethics – will be censored because some people don't like them. This could profoundly limit religious freedom and debate.

If something is legal to say offline, it should be allowed online.



## GAPING-WIDE 'HARMFUL' TEST IN HANDS OF BIG TECH FIRMS

A draft Online Safety Bill was published in May 2021. It puts duties on social media companies like Facebook and search engine companies like Google to protect children and adults from illegal or "harmful" content. Targeting illegal content is understandable and clear. But restricting harmful material is far more problematic, especially content that is legal but deemed harmful to adults.

Some such content will be identified by the Secretary of State.<sup>3</sup> Otherwise the companies will have to assess whether they think it risks having "a significant adverse



physical or psychological impact" on someone "of ordinary sensibilities".<sup>4</sup> This is a highly subjective test. People's definitions of harmful differ, and can often be matters of belief, taste and culture.

The vague definition of

"harmful" is compounded by the fact that it will be applied by private companies not subject to human rights laws on free speech. Restrictions placed on freedom of expression by the State are open to challenge in the courts, under Article 10 of the European Convention on Human Rights. But the Convention does not apply directly to private companies. They will be making commercial decisions about what is allowed in crucial areas of debate, without due process and with little chance for users to appeal against their decisions.

## SOCIAL MEDIA COMPANIES ALREADY RESTRICT FREE SPEECH

Social media companies wield huge power, and have been all too willing to take down material they disagree with on controversial issues like transgenderism. The Bill will lead to more examples like these:



**Meaghan Murphy**, a feminist, was permanently suspended from Twitter after she referred to a 'trans woman' online, as "him".<sup>5</sup>

**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.<sup>6</sup>



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.<sup>7</sup>

A publication of US Christian organisation **Focus on the Family** was blocked from Twitter because it described a 'transgender woman' as "a man who believes he is a woman".<sup>8</sup>



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.<sup>9</sup>



## BILL'S FREE SPEECH PROTECTIONS ARE FLIMSY

A proposed free speech duty in the draft Bill is not robust enough. There should be a strong statutory presumption in favour of freedom of expression. But instead it is weakly phrased as a “duty to have regard to the importance of” protecting free speech. This will not counteract the way other duties will restrict content,

especially with companies operating in fear of huge Ofcom fines if they do not police harmful content firmly enough.

Universities are legally required to take ‘reasonable steps to ensure freedom of speech within the law is secured’<sup>10</sup> and the Government is currently legislating to strengthen this. It is extraordinary

that at the same time free speech in universities is being bolstered, free speech online is being undermined.

The Government must place a stronger free speech duty on service providers. Companies that remove or restrict access to ‘harmful’ content must justify overturning the presumption in favour of free speech in that case.

## OFCOM CANNOT BE RELIED ON TO DEFEND FREE SPEECH

Ofcom will be the regulator. It could take enforcement action if a company fails in its duties, ultimately including penalties of up to £18 million or 10% of global revenue, whichever is greater. The draft Bill would require Ofcom to produce codes of practice that set out “recommended steps” to help platforms comply with their new duties. In theory, this includes the free speech duty.

But on trans issues, for example, Ofcom’s Chief Executive, Dame Melanie Dawes, has said that broadcasters should “steer their way through these



Dame Melanie Dawes

debates without causing offence and without bringing inappropriate voices to the table”.<sup>11</sup> 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 debate should be conducted.

Yet Stonewall has been 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.<sup>12</sup> 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.<sup>13</sup>

The Ofcom CEO’s deference to Stonewall doesn’t encourage confidence in its free speech credentials.

## CALLS FOR THE BILL TO BE BASED ON IDENTITY POLITICS

A Joint Committee of MPs and Peers called for the new rules on content that is 'legal but harmful' to adults to be scrapped. But it proposed specifying the harms in more detail, including "abuse, harassment or stirring up of violence or hatred" based on protected characteristics in the Equality Act or hate crime



legislation.<sup>14</sup> 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. To

'future-proof' the legislation, the Secretary of State would have power to add new protected groups.<sup>15</sup> A separate committee of MPs also recommended prioritising abuse based on protected characteristics.<sup>16</sup> An approach based on protected characteristics undermines the principle of equality before the law.

## CRIMINALISING 'PSYCHOLOGICAL HARM'

In addition to the regulation of companies, the Government has pledged that the Bill will include several new criminal offences that apply to individuals. One of these will catch sending a communication likely to cause "psychological harm" – defined as "serious distress"



– to "a likely audience", with the intention of causing such harm.<sup>17</sup> It would replace well-established laws on grossly offensive or indecent communications. Distress is a subjective term, and even "serious distress" could be a dangerous threshold. We have seen many examples in the current culture of

people taking offence easily and claiming to be harmed by opinions they disagree with. Under the offence, no distress will actually need to be caused.

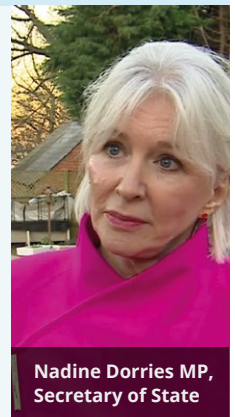
It will be said that someone must have intended to cause serious distress, otherwise why did they send the communication? "Intention" could be inferred, regardless of someone's true intention.

## SECRETARY OF STATE HANDED HUGE POWERS

The Bill gives sweeping powers to the Secretary of State to change the regulatory framework, using secondary legislation that would have minimal scrutiny in Parliament.

These powers include:

- changing the overarching objectives set out in the legislation;
- prioritising certain types of content to be targeted;
- giving directions and guidance to Ofcom;
- altering which providers are exempt from regulation; and
- deciding who can complain to Ofcom.



Nadine Dorries MP,  
Secretary of State

# Warnings about the Bill

“Such a vague duty will no doubt lead to sites doubling down on controversial or offensive views, which have always been protected as an inherent part of freedom of speech. With a threat of penalties for a failure to remove posts of this nature, online platforms will be forced to snoop on users more and will be quicker to take content down.”<sup>18</sup>

## BIG BROTHER WATCH

“The Government is clamping down on vague categories of lawful speech. This could easily result in the silencing of marginalised voices and unpopular views. Parliament should remove lawful content from the scope of this Bill altogether and refocus on real policing rather than speech-policing.”<sup>19</sup>

“...as it stands, the draft Online Safety Bill is too broad, too sweeping and will harm freedom of speech that we have fought so hard as a society to protect.”<sup>20</sup>



“...it is for Parliament to determine what is sufficiently harmful that it should not be allowed, not for Ofcom or individual platforms to guess. If something is legal to say, it should be legal to type.”<sup>21</sup>



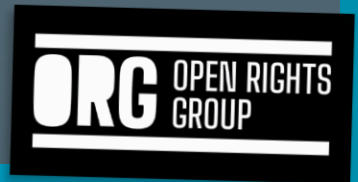
“Lobby groups will be able to push social networks to take down content they view as not politically correct, even though the content is legal.”<sup>22</sup>

David Davis MP

“...‘cleaning up’ the internet without encroaching on users’ freedom of expression is a difficult balancing act and, as things stand, the Online Safety Bill is a censors’ charter.”<sup>23</sup>



“When everything falls into a legally ambiguous middle ground, but the law says that legally ambiguous content must be dealt with, then service providers... take down vast swathes of user-generated content, the majority of which is perfectly legal and perhaps subjectively harmful, rather than run the risk of getting it wrong.”<sup>24</sup>



# Focus should be on crime and protecting kids

## CRIMINAL LAW MUST DEFINE TRULY 'HARMFUL'

There is a genuine need for a properly targeted Bill to regulate online content. Big Tech must be forced to take more responsibility for the material on the platforms they provide. Some well-publicised cases include:

- In 2017, a 21-year-old father in Thailand murdered his 11-month-old daughter live on Facebook. It was available for 24 hours before being taken down.<sup>25</sup>
- Also in 2017, 14-year-old Molly Russell killed herself after viewing graphic images of self-harm and suicide on Instagram.<sup>26</sup>
- In 2019, a terrorist went into a mosque and murdered 51 people in Christchurch, New Zealand. The terrorist livestreamed the atrocity. It took Facebook 17 minutes to close down the feed, and only because the police acted quickly to contact them. Clips were still on YouTube hours later.<sup>27</sup>

Content genuinely harmful to adults should be illegal, and the companies should be expected to stop it and face serious sanctions if they do not. But if it is legal, it must be allowed, provided there is appropriate age-verification protection for children. For adults, social media companies should not be required to police a category of 'legal but harmful' content.



## AGE-VERIFICATION IS NECESSARY

The revised Bill is expected to require all pornography sites to prevent under-18s accessing them. 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 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. Porn is addictive and damaging. It shapes young people's views of sex, including leading them to imitate extreme or coercive behaviour, and can also make them more vulnerable to being abused.<sup>28</sup> Age-verification would restrict accidental access to pornography, which evidence suggests is a major problem.<sup>29</sup>

It is unlawful to sell videos with extreme violent or graphic content, including self-harm, to children. It should also be unlawful for them to be allowed to see it online.

References available at [christian.org.uk/onlinesafety-ref](https://christian.org.uk/onlinesafety-ref)

THE LATEST NEWS AND RESOURCES: **CHRISTIAN.ORG.UK**

