The Children's Media
FOUNDATION

House of Lords Select Committee on Communications

The Internet: To Regulate or Not To Regulate?

Inquiry Response

1. The Children's Media Foundation is a not-for-profit organisation dedicated to ensuring UK kids have the best possible media choices, on all platforms and at all ages. We bring together academic research institutions, the children's media industries, regulators, politicians and concerned individuals who recognise that media is not only a powerful force in children's lives, but a valuable one.

2. This submission has been drafted by our non-exec advisory team, which comprises industry leaders from the children's digital sector, researchers, and representatives from the tech-start up community. It is based on our knowledge of the children's media industry, including audience research, and experience of developing best-practice products and policies for organisations in the UK and overseas.

3. The internet and digital media offer fantastic opportunities for children with respect to learning, entertainment and developing creativity. As an organisation we advocate innovation and high quality digital experiences available to children in an environment that is designed to be safe-by-default. Experience repeatedly demonstrates that is more effective to create universally safe spaces with specific areas that are restricted for more adult content, rather than the other way around.

4. The use of media by children is very different from adults. For a young child, YouTube is the preferred search engine rather than Google. Older children are instinctively disruptive. In the media space this is rarely borne out of rebellion, but rather a desire to overcome practical constraints such as cost of use (e.g. mobile data) and to discover new content. This means that the safety paradigms, such as walled gardens, that are proposed by adults are rarely effective in creating safe spaces for children.

5. A common argument is that apps provide safe spaces children. In many respects this is true, however it fails to address the challenge of discovery. With a billion apps in the app stores, it is almost impossible for children to discover new content and for brands to attract new users. That need is still being met by the web – and it's the reason that all the major children's brands maintain rich websites alongside apps.

6. Many of the recent controversies around internet safety – including the appearance of inappropriate content in the YouTube Kids app – have highlighted how social media platforms rely on technological solutions to address behavioural challenges. This is an approach that can never be 100% reliable, and consequently creates a digital landscape that is much more hazardous than 'old' media or even the real world.

7. Since its inception, many web users and digital businesses have campaigned that the

internet be maintained as a haven for freedom of expression that should not be regulated[1]. However, with freedom comes responsibility. The CMF has long argued that many web companies have shown complacency towards children – an argument recently echoed by the Health Secretary. As self-regulation has repeatedly fallen short, regretfully, formal regulation seems the best option to keep children safe online.

8. In addition to the response to the individual questions below we argue that the UK needs

    a. A means to bench-mark and clearly flag age-appropriate content to help parents and children make informed decisions.

    b. Any public health recommendations about appropriate levels of screen-time must be based on evidence

    c. Clear rules about what age verification is required for non-children's content with an emphasis on the platforms to demonstrate that users are the age they say they are

    d. Definitions about what content and services are appropriate with the right parental permission with clear guidelines about how to collect and verify parental consent

    e. Clearer demarcation of ads in search results

    f. Much more effective child-specific search tools (not hidden at the bottom of a page)

    g. Tighter regulation on automated links that lead children out of these safe havens

    h. Commitment not to mine children's data or target or manipulate children based on their online activity - particularly regarding marketing and advertising

    i. Rules against behavioural mechanics that try to draw children into addictive behaviours or exhortation.

    j. Commitment to make UK specific children's content visible in the first page of search or app store results.

Questions

Is there a need to introduce specific regulation for the internet? Is it desirable or possible?

9. Many of the standards and expectations surrounding the internet are derived from a time when it was a minority medium enjoyed (predominantly) by young men in Silicon Valley. That time is long gone: digital platforms are mainstream and media is ubiquitous in our lives.

10. With so many storms engulfing digital media over the last year, especially the social media platforms, it's evident that self-regulation is failing, and that a more robust framework of governance is required.

11. It's easy to conflate those controversies into a single problem. In reality they cover a variety of issues including:
    - Inappropriate material amidst children's content [2]
    - Data capture and privacy [3]
    - Editorial integrity [4]
    - Editorial standards [5]

[1] https://en.wikipedia.org/wiki/Blue_Ribbon_Online_Free_Speech_Campaign
[2] https://www.polygon.com/2017/12/8/16737556/youtube-kids-video-inappropriate-superhero-disney
[3] http://www.bbc.co.uk/news/topics/c81zyn0888lt/facebook-cambridge-analytica-data-scandal
[4] https://news.sky.com/story/sky-views-democracy-burns-as-facebook-lets-fake-news-thrive-10652711

12. In 'old' media, these issues are addressed through a variety of regulations enabled by legislation, and also a series of social contracts that have evolved between audiences and providers.

13. The CMF is concerned that as younger children have increasingly autonomous access to platforms and content, we must ensure that education for children and their parents at primary or even infant stages reflects these cultural changes. Research consistently demonstrates that digital media literacy is poor in many audience groups – including children and parents – and needs to be improved. But this cannot be the only solution. Digital media businesses also need to take more responsibility for their platforms and the content they provide.

14. Rather than introduce new rules for new media, we would argue that the existing regulatory framework should be extended to include digital platforms available in the UK. However, the rules have to be enforced. The CMF considers that there are currently two main issues around regulation:
    a. Many major digital businesses popular with children fall outside UK jurisdiction.
    b. The wheels of technology move at a much faster rate than the cogs of the legal system. Legislation needs to be flexible to accommodate new challenges – and the industry needs to interpret the intention of guidance as well as the specifics.

15. Digital companies will often argue that regulation and control on the internet is too difficult. However, we would counter that if they can triangulate their user data to target content – and be confident enough to sell that as a service for advertisers – they should be able to understand if a user is a child. By contrast, the adult entertainment industry has been a strong advocate of age verification[6], and has developed and implanted technical solutions… Where there's a will there's a way!

What should the legal liability of online platforms be for the content that they host?

16. The liability of online platforms has often been a subject of debate in the courts and elsewhere. Google, for instance, has routinely argued that it is merely a facilitator allowing users to find[7] content. YouTube, Facebook and others have argued that they are merely platforms for distribution.

17. However, we consider that these arguments are no longer valid and must be reconsidered. Companies such as Facebook[8], Amazon[9] and YouTube[10] are commissioning original content for their platforms and using this content to drive revenue. Whether by accident or design, search engine algorithms are the de-facto curators for most people's access to content online. The platforms are using this curation to drive their revenues.

18. In many respects these business models are no different from those of old media - newspapers, film and TV. We therefore dispute that online platforms are merely distributors and contend that by default they should be considered as publishers.

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[5] https://www.huffingtonpost.co.uk/entry/logan-paul-youtube-blasted-video_us_5a4b3372e4b06d1621ba4eb3
[6] https://www.dpalliance.org.uk/groups/age-verification/
[7] e.g. https://www.lawgazette.co.uk/law/media-is-google-a-publisher-or-merely-a-facilitator/52408.article
[8] http://variety.com/2017/digital/news/facebook-last-state-standing-1202464126/
[9] https://en.wikipedia.org/wiki/List_of_original_programs_distributed_by_Amazon
[10] https://en.wikipedia.org/wiki/YouTube_Original_Channel_Initiative

What role should users play in establishing and maintaining online community standards for content and behaviour?

19. Users should take some responsibility for maintaining community standards. However, accountability needs to reside with the platforms themselves. This is particularly important for communities used by children.

20. The CMF considers that any platform widely used by children, whether intended for them or targeted at them or not, should have an accessible, clear children's policy.

21. Children's TV presenter Ed Petrie recently highlighted the gulf in editorial standards between a traditional channel such as CBBC (reach, approx. 1.5 million/week[11]) and YouTube's Logan Paul (15 million mostly young subscribers).

22. While Logan Paul is often portrayed as a free-thinking vlogger, he is an example of a YouTuber who has been supported and promoted by the platform itself. On that basis it is difficult to argue that the platform is not accountable for the challenging material he posts.

23. The CMF believes that platforms such as YouTube, that are based on user-generated content, should contribute to the training of their high-profile users and maintain clear editorial policies.

24. Repeated studies show that children are heavy users of social media[12], however the major social platforms consistently refuse to take responsibility for younger users. WhatsApp, for instance is about to change their terms and conditions to preclude under-16s – even though a third of 12-15 years olds in the UK are thought to have accounts. The likelihood is that few of these users will delete their accounts, so they will continue to use WhatsApp in breach of the T&Cs. While companies such as WhatsApp are operating perfectly legally, we do not feel it is right that the onus is placed entirely in the hands of children and parents. The platforms must assume some responsibility.

25. We advocate the development of a universal set of guidelines, derived from best practice, that is should be owned by a governance-body and adopted by the digital. This is a model that has worked well to safeguard the rights of children in other sectors - such as the watershed in broadcasting[13] and harassment by the press[14] and banning alcohol ads that could be appealing to children[15].

What measures should online platforms adopt to ensure online safety and protect the rights of freedom of expression and freedom of information?

26. Freedom of expression and freedom of information are obviously vital tenets of British society. While the CMF seeks to improve the safeguards and rights of children online, we would not advocate any form of outright censorship.

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[11] https://downloads.bbc.co.uk/aboutthebbc/reports/pdf/audience_0711.pdf
[12] e.g. https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-parents-2017
[13] https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code
[14] https://www.ipso.co.uk/editors-code-of-practice/
[15] https://www.asa.org.uk/codes-and-rulings/advertising-codes.html

27. The free, self-publishing nature of the internet means that it is often heralded as a bastion of free speech and expression. However, this is far from today's reality. While self-publishing is straightforward, making that content discoverable is much harder. This is achieved through search engines and algorithms developed for commercial purposes. As the US election has illustrated[16], this means that what constitutes freedom of speech is actually defined by a few large commercial organisations rather than the society in which they operate.

28. From a children's perspective, the recent problems concerning YouTube Kids highlight the concerns the CMF has about placing too much trust in algorithms. However, we do recognise the commercial need to keep the detail of algorithms confidential.

29. While we would not expect companies to reveal their algorithms, we would like to see some accountability via the publication of the editorial guidelines and values that underpin them.

What information should online platforms provide to users about the use of their personal data?

30. The collection and exploitation of user data is an ongoing concern. The implications for children are even more significant, as they may not understand the long-term implications of sharing data or have the capacity to make informed decisions. The GDPR will improve the visibility of data protection. However, in reality many of the principles of the GDPR are already reflected in the 1998 Data Protection Act - which means that data controllers should already tell their users about the data they hold.

31. The Internet of Things poses new risks. As more and more devices become 'connected', and more and more businesses collect data, there is the potential for data protection standards to degrade as a result of hacks, mishaps or simple complacency. If this were to happen, it could have important implications for children as well as adults.

32. Our concern is that the terms, conditions and instructions on accessing or providing data are often presented discretely, and in terms that are impenetrable for most people – especially children.

In what ways should online platforms be more transparent about their business practices—for example in their use of algorithms?

33. As outlined above, while we would not expect companies to reveal their algorithms, we would like to see some accountability via the publication of the editorial guidelines and the values that underpin them.

What is the impact of the dominance of a small number of online platforms in certain online markets?

34. From both an industry and audience perspective the dominance of a few platforms is distorting the entire media market.

35. The British children's media industry, including many supporters of the CMF, has an international reputation for high quality content. Historically this has been driven by a few UK

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[16] https://www.theguardian.com/uk-news/2018/mar/23/leaked-cambridge-analyticas-blueprint-for-trump-victory

broadcasters commissioning innovative and challenging programmes, some of which have achieved international success.

36. There is a common assumption that new media will offer new revenue models for content makers. However, producers tell us that the market is extremely unbalanced. While a handful of original digital commissions are extremely well funded, notably by Netflix or Amazon, few of these are currently commissioned in the UK. On platforms such as YouTube content generates revenue through advertising. But whereas a children's show on a TV channel might cost anything from £50,000 to £300,000 per hour, a video on YouTube will earn only around £1,000 for a million views. This is not an income that can fund the development and production of high quality content.

37. From a user perspective there are similar challenges. There can be no doubt that YouTube is a hugely popular platform, well used by audiences, including children, and carrying some outstanding content. However, the challenges of curation and discovery make it hard for children to find new, culturally relevant content by serendipity – as they did in the past on television channels. The most popular videos for children on YouTube are US originated animation, or low quality videos designed to provide 'playground currency' – e.g. "unboxing videos". In the case of YouTube, the dominance of the platform means there is no alternative.

38. We are also concerned that the dominance of these platforms is suppressing the development of innovative experiences online. On YouTube itself the choices are endless, but algorithmic recommendation refines this down to the more popular content and "more of the same". This compounds the common concern amongst parents that algorithmic curation is a poor moderator of content that is inappropriate for children.

What effect will the United Kingdom leaving the EU have on the regulation of the internet?

39. In the media industry, European legislation is recognised as being best-in-class in terms of respecting and safeguarding the rights of children. We welcome the government's commitment to GDPR post Brexit.

40. However, data and privacy are not the only issues. The CMF is also mindful of issues such as the commercialisation of content, and the need to reflect the lives and needs of British children in digital media.

41. While we may expect some European countries such as France to strictly legislate, the UK's tendency is to let the market self-regulate. So far this has not been successful. We are concerned that the government's stance on this may not substantially change.

42. We contend that UK regulators need to have 'teeth' to ensure that regulation can be enforced. As a smaller, autonomous market post-Brexit, the risk is that the UK's influence on the major digital businesses will wane.

43. The internet is designed to be distributed and not limited by national borders. Therefore, we need to ensure that regulation is developed collaboratively with other countries.

44. However, it is also important to ensure that the lives and culture of British children are reflected in the media they consume and, if that media is to be substantially on social media and video-on-demand platforms, then consideration needs to be given within regulatory

frameworks to content quotas or incentive schemes to encourage continued support for home-grown talent and creativity. Equally innovation and challenging, relevant content need to be stimulated. In that respect, we hope that the EU's policy[17] to require a percentage of streaming content to be produced locally, will be adopted by the UK post Brexit.

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[17] https://ec.europa.eu/digital-single-market/en/news/proposal-updated-audiovisual-media-services-directive

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