

Online Harms White Paper

Submission to the Consultation

30 June 2019

Introduction

1. The [Children's Media Foundation](#) is a not-for-profit organisation dedicated to ensuring children and young people in the UK 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 Executive Advisory Group who are industry leaders from the children's television and digital sectors. It is based on their 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.

Overview

3. In its manifesto, the government stated that it is “committed to making Britain the safest place in the world to be online” – a position expanded in the 2017 Green Paper into three key principles:¹
 - What is unacceptable offline should be unacceptable online
 - All users should be empowered to manage online risks and stay safe
 - Technology companies have a responsibility to their users.
4. We welcome the Government's continued work in this area, including the publication of the White Paper, and support many of the measures outlined in the White Paper. However, there are some areas of the proposals which we think need much more detail and consideration.
5. Many sections of the White Paper make reference simply to ‘children’. Children are not a homogeneous group, but represent a rich spectrum of needs, behaviours and expectations, particularly around their consumption of media and use of devices. This diversity must be reflected in any regulatory framework.

Walled Gardens and Safe Spaces

6. A common argument is that separate accounts² or ‘walled gardens’ provide safe spaces for children – an escape from the wild west of the web. This approach fails to consider that the use of digital media by children is very different to adults.

¹ DDCMS, Internet Safety Strategy - Green Paper p3

² Internet Harms White Paper p76

7. At pre-school age, initial access tends to be moderated by parents. However, even young children own devices: Ofcom reports that 52% of 3-4 year-olds go online for almost 9 hours a week and 19% have their own tablet.³ This continues to increase year on year. For a young child, YouTube and Amazon are much more effective search engines than Google.
8. Assumptions that younger age ranges are protected by parental controls should not be taken for granted. Independent access to devices and content, combined with an innate curiosity and a lack of discernment, leave even young children vulnerable to landing on inappropriate and disturbing content on the internet.
9. 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. the cost of mobile data) and to discover new content. This means that the safety paradigms that are proposed by adults, such as walled gardens, are rarely effective in creating safe spaces for children.
10. Children's continued usage of You Tube in preference to You Tube Kids is an illustration of common experience in the digital world: it is more effective to create universally safe spaces with specific areas that are restricted for more adult content, rather than the other way around. This is also the accepted societal norm in the offline world.
11. Our society expects that the offline world is essentially child-safe by default, with restricted areas available for adult behavior and experiences. For instance, betting shops and gambling machines are restricted, 18plus areas; no one suggests it would be appropriate to push children out of the public space into 'walled gardens' so that gambling could continue unrestricted.
12. The concept of online 'walled gardens' therefore contradicts the Government's stated principle that what is unacceptable offline should be unacceptable online.
13. The digital world offers vital opportunities for education, entertainment as well as social interaction. Children should not have constraints placed on their freedoms to use the internet - that would be an affront to the rights of young people in the online world.

Duty of Care

14. The concept that digital businesses have a Duty of Care for their users is to be welcomed, although what this will mean in the context of the White Paper is not entirely clear. Similarly, there is ambiguity around the scope and extent of harms that regulation will encompass.
15. We note that the Prime Minister considers "that applying 'publisher' levels of liability to companies would not be proportionate; such an approach would force companies to check every piece of content before upload to ensure it was legal, with implications for freedom of expression, and it would be difficult to reconcile with platforms hosting large amounts of user generated content."⁴

³ Ofcom, Children and Parents: Media Use and Attitudes Report 2018. p4

⁴ Internet Harms White Paper p62

16. Freedom of speech and freedom of expression are often used as arguments against digital regulation⁵ - an approach with which the Prime Minister appears to sympathise⁶. While we agree that freedom of speech and expression are important principles, these rights have to be compatible with the rights of all groups in our society.
17. The position also appears to contradict other sections of the White Paper which discuss technical solutions and guidelines to monitor content. Rather than dismissing the idea that digital platforms are publishers, the Government and new regulator should be working with audiences and users to better understand their needs and expectations and design standards and guidelines that will help digital business understand and develop their services accordingly.
18. As the White Paper acknowledges, content deemed to be illegal in the 'real' world is still illegal in the digital world – however without increased support and involvement from the platforms this cannot be successfully policed.
19. We welcome the intention to bring 'harmful' into the scope of the proposed new regulation. However, the implementation of the Duty of Care has to encompass inappropriate content and acknowledge the expectations, needs and behaviour of children of different ages, and reflect the age of users accessing content rather than intended audience.

Freedom of Speech and Freedom of Expression

20. Research consistently illustrates that children use the internet to a greater extent than adult users⁷, and the digital world offers vital opportunities for education, entertainment as well as social interaction. Children should not have constraints placed on their freedoms to use the internet. To reiterate the priority identified in the previous Green Paper, what is unacceptable offline should be unacceptable online. This priority is incompatible with any attempt to use adult's freedom of expression at the expense of the rights of children.
21. In practical terms, this position appears to contradict the Government's ambitions around Internet Safety. Hosting and distributing content comes with responsibility. While we acknowledge that handling large amounts of user generated content is challenging, it is also a problem that has been created by the platforms themselves – and they cannot simply be absolved of responsibilities because a problem is difficult to solve.
22. The White Paper does not consider content defined as 'inappropriate'. This is disappointing, and we hope the loophole will be closed in the final legislation. Inappropriate content is one of the most common causes of concern amongst parents and relates to the context in which content is accessed rather than just the subject matter. It can encompass safety and behaviour as well as taste and decency – and is a key standard within broadcasters' editorial codes and guidelines⁸.

⁵ https://www.openrightsgroup.org/assets/files/reports/report_pdfs/ORG_Policy_Lines_Online_Harms_WP.pdf

⁶ Internet Harms White Paper p62

⁷ Internet Harms White Paper p11

⁸ <https://www.bbc.co.uk/editorialguidelines/guidelines/harm-and-offence/imitative-behaviour>

Technology Landscape

23. It is commonly acknowledged – including by the industry⁹ - that the digital world needs regulation. However, for the regulation to be appropriate and fit for purpose, it needs to reflect the way that the industry itself works.
24. Digital businesses are inherently disruptive: seeking to understand the needs and desires of their audiences in detail in order to innovate, develop and refine new products and services. Success of features is measured by their contribution to the objectives of the overall product, and metrics of value are prioritised over cost. The funding and investment models mean that these businesses also move at speed and pace: they are inherently agile.
25. It also means that the regulatory issues identified in the White Paper may well be rapidly overtaken by new developments and innovation arriving in the market. For instance, the introduction of 5G will make the Internet of Things much more pervasive – and we have barely considered the potential risks and harms posed by these new areas of online interaction. This is a very different consumer landscape and business model from ‘old’ industries that the Government has historically regulated
26. Unless new legislation is framed around intended objectives and outcomes rather than specific details, the risk is that the regulation is devalued almost before it even comes into force. The proposed General Comment on the UNC’s Rights of Child might be a useful starting point¹⁰.

⁹ <https://www.japantimes.co.jp/news/2019/06/25/business/governments-must-regulate-social-networks-facebooks-nick-clegg/#.XRcMXdNKgnU>

¹⁰ <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Case-for-general-comment-on-digital-media.pdf>

Questions

Question 1: This government has committed to annual transparency reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?

27. The Government must do more to build a culture of trust and transparency not just for industry – but for users and citizens too.
28. At the moment, the speed of technical change means that risks are often not identified ahead of issues arising – and then the response is often perceived as slow and lethargic.
29. In order to develop a culture of Trust, the Government has to become much more responsive. Remove blame culture, and collaborate with industry to identify risks, and work with industry and users to mitigate them. This may mean in addition to a regulator, a new function needs to be introduced – such as an ombudsman or a digital commissioner.

Question 2: Should designated bodies be able to bring 'super complaints' to the regulator in specific and clearly evidenced circumstances?

30. No. The opportunity to bring specific, clearly evidence complaints should be available to everyone.
31. Without a clear definition or example of what could constitute a 'super complaint', we do not feel that it would be appropriate to constrain these to designated bodies.

Question 3: What, if any, other measures should the government consider for users who wish to raise concerns about specific pieces of harmful content or activity, and/or breaches of the duty of care?

32. We agree, in principle, to the measures outlined in the White Paper.
33. However, the criteria for raising concerns has to be broader than simply content that is illegal, and must extend to the appropriateness of the content in situ. Factors to consider would include the age of users accessing the content and the ease with which children can access inappropriate content that's in proximity to the content they are using (for instance, You Tube Poop¹¹). This would align with other regulatory frameworks including Ofcom's rules concerning age-appropriate content. When considering the age of users, we would expect the actual age of users to be assessed instead of the target age.
34. The failure of digital platforms to self-regulate has been widely acknowledged. We would therefore suggest that when dealing with concerns around inappropriate and harmful content, that the burden should be on the platforms to prove that they have done 'enough', rather than a complainant to prove that the platforms have done wrong.

¹¹ <https://www.theguardian.com/technology/2018/jun/17/peppa-pig-youtube-weird-algorithms-automated-content>

Question 4: What role should Parliament play in scrutinising the work of the regulator, including the development of codes of practice?

35. We agree that Parliament must be able to scrutinize the regulator's work. We would also expect that Parliament can challenge the regulator's codes of practice and guidelines to ensure they continue to be germane and appropriate in a rapidly developing commercial and technological landscape. This should be done in collaboration with other non-departmental public bodies such as the Children's Commissioner, Information Commissioner and UKCIS.

Question 5: Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?

36. The White Paper "recognises the importance of minimising undue burdens on organisations in scope and of avoiding uncertainty about how regulation will apply"¹²

37. We agree that it is important to avoid uncertainty about the application of new rules.

38. However, we do not consider that 'mimimising undue burdens on organisations' aligns to the Government's manifesto commitment to make Britain "the safest place in the world to be online", nor the three key principles outlined in the 2017 Green Paper¹³ - including the statement that technology companies should have a responsibility to their users.

39. 'Minimising undue burdens' is subject to broad interpretation, and is therefore an unsuitable metric for assessing the intent, effectiveness and proportionality of any regulatory approach.

Question 6 In developing a definition for private communications, what criteria should be considered?

40. We agree that there is a significant difference between the use and risks associated with essentially private communication channels (such as email or SMS) and channels which have been designed to drive social engagement. We therefore consider that 'privacy' should be considered at a platform level rather than an individual message or comment.

41. Children and young people tend to gravitate towards channels and platforms that are free at the point of use and enable the creation of 'groups' as well as personal communication.

42. Groups are intrinsically 'not private'. We therefore suggest that a definition for private communications could reference the ability to facilitate group communications.

¹² Online Harms White Paper, p52

¹³ DDCMS, Internet Safety Strategy - Green Paper 2017 p3

Question 7: Which channels or forums that can be considered private should be in scope of the regulatory framework?

Question 7a: What specific requirements might be appropriate to apply to private channels and forums in order to tackle online harms?

43. The risk of creating a list of specific channels and forums is that it can never be complete. In terms of Children's use, we would include Instagram, You Tube, Whatsapp and Snapchat as well as some online games and apps such as TicToc – but this is by no means an exhaustive list.
44. We would reiterate that the digital industry is continually evolving and inherently disruptive, and therefore specific requirements identified now could become outdated as technology evolves.
45. We suggest that the principles of safeguarding and criteria of safe social engagement should be identified in regulation rather than focusing on individual platforms. This is the only way to ensure the legislation remains fit for purpose and fit for the future.

Question 8: What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?

46. We note that the White Paper specifies that the regulator will take a risk-based approach to prioritise “regulatory action to tackle harms that have the greatest impact on individuals or wider society”. This expectation is somewhat diluted by repeatedly stating that regulation will be limited to what is reasonably practicable. This cannot be the basis for effective and unambiguous regulation.

Question 9: What, if any, advice or support could the regulator provide to businesses, particularly start-ups and SMEs, comply with the regulatory framework

47. The regulator should provide support to business to ensure compliance. This could include developing guidelines to help businesses understand the principles and objectives of the regulations, as well as facilitating certified training from a range of providers.
48. Training and guidance needs to be effectively maintained and updated to ensure up to date best practice is being shared.
49. We would recommend that a platform or business's compliance to the regulations should be visible and available to users. This could be achieved through the creation of an associated British Standard.

Question 10: Should an online harms regulator be: (i) a new public body, or (ii) an existing public body?

50. While a new regulator would be attractive proposition, it could also be slow to take effect. We would therefore suggest that it might be more appropriate to work with an existing public body.
51. While Ofcom has a useful operational blue print, we think adding digital matters to their responsibilities could dilute their focus.
52. We are enthusiastic about the Information Commissioner's approach to Age Appropriate Design¹⁴ – and would therefore suggest that they have the understanding and experience to regulate Internet harms.

Question 11: A new or existing regulator is intended to be cost neutral: on what basis should any funding contributions from industry be determined?

53. The solvency and profitability of digital business can vary tremendously and is influenced by their funding, revenue models, scale and maturity.
54. We think there is a key difference between pure start ups, who rely on external funding to innovate and grow their businesses, and more established business that may rely on subscription and/or advertising to generate revenue.
55. More mature businesses are where we would see an opportunity to generate sustainable funding for the regulator, and we would therefore advocate exploring a levy system based on gross revenue.
56. Whichever funding model is eventually used, it is vital that the regulator has the independence to set the levy at a level which allows it to operate sustainably – including being able to invest in research and blue-sky thinking around technology, standards and guidelines.

Question 12: Should the regulator be empowered to i) disrupt business activities, or ii) undertake ISP blocking, or iii) implement a regime for senior management liability? What, if any, further powers should be available to the regulator?

57. An effective regulator must have real 'teeth'. Therefore, we would expect that in extremis a regulator could disrupt business activities, including blocking ISPs and implementing management liability.

¹⁴ <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/age-appropriate-design-a-code-of-practice-for-online-services/>

58. However, this kind of action should be a last resort, and to be fully supportive we would want to understand how these measures might be implemented, and the thresholds for these kinds of actions.

Question 13: Should the regulator have the power to require a company based outside the UK and EEA to appoint a nominated representative in the UK or EEA in certain circumstances?

59. In short, yes.

Question 14: In addition to judicial review should there be a statutory mechanism for companies to appeal against a decision of the regulator, as exists in relation to Ofcom under sections 192-196 of the Communications Act 2003?

60. We would expect that there should be a statutory mechanism for appeal. We cannot comment on a proposed mechanism.

Question 15: What are the greatest opportunities and barriers for (i) innovation and (ii) adoption of safety technologies by UK organisations, and what role should government play in addressing these?

61. There are a number of areas that are perceived to conflict with digital business models. Digital businesses disrupt and innovate, and therefore regulation can be perceived as an obstacle to innovation.

62. We disagree with this perception: there are many areas where a greater focus on digital safety has increased audience engagement and ultimately revenues. Companies such as Superawesome and TwoHats are two examples of businesses working in this space with great success.

63. Unfortunately, the views on the digital space are often distorted by the industry's reliance on a handful of extremely powerful platforms – Facebook, Instagram, YouTube, Google etc. This dominance means that the barrier to enter the market with competing platforms is extremely high – almost unachievable for new players, especially start-ups.

64. One opportunity could be to create an innovation fund (perhaps paid for by the levy) to work with a partnership of UK-centric media companies to create a sandpit environment for experimenting and growing new technologies.

Question 16: What, if any, are the most significant areas in which organisations need practical guidance to build products that are safe by design?

65. There are many practical elements of 'safe by design' that can be readily taught. And many examples and tutorials are readily available online.

66. The challenge is two-fold: first, the location of these resources is dispersed, and there is no single set of accepted guidelines for product teams. This is a practical problem that can be easily addressed through collaboration and curation facilitated by the regulator.
67. The second challenge is harder to address but will have bigger benefits: these proposals are a significant cultural and behavioural change for the digital sector. To be effective, this new culture has to be embedded into the industry. TV producers 'expect' to follow editorial guidelines, and are trained to do so. Similarly journalists expect to adhere to IPSO.
68. New internet guidelines and standards need to have the same expectation. This could be achieved through certification and/or qualification.

Question 17: Should the government be doing more to help people manage their own and their children's online safety and, if so, what?

69. Concerns around online safety, including issues such as screen time, will only continue to proliferate in the years to come. These concerns are often fueled by conflicting and inaccurate advice and exacerbated by an absence of reliable research.
70. We consider that the Government should treat online safety as a public health issue in order to drive research in these areas, and to develop media literacy throughout the population.
71. However, while it is crucial that parents and children have a better understanding of their online safety, the industry must take some responsibility too.

Question 18: What, if any, role should the regulator have in relation to education and awareness activity?

72. The regulator should have a significant role. We suggest that specific contributions should be based on research and insight facilitated by the regulator both to identify new areas needing guidance, as well as developing robust guidelines.
73. Once again, the levy might be used to facilitate digital awareness and educational programmes at all ages, including for parents. It could be possible to consider these primary and secondary level curricula as the precursor to courses that qualify digital practitioners in the ethics and standards required to conduct their business in a regulated environment, with audience care at the heart of everything they develop and produce.