

Online Harms, Regulation and Censorship

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In April 2019, the UK Government's Department of Culture, Media and Sport released its White Paper for 'Online Harms' which would establish in law a new duty of care towards users by platforms to be overseen by an independent regulator. The White Paper mirrors the output from the House of Lords' Communication Committee Report titled "Regulating in a Digital World", a timely reminder of what special interest groups believe is in the best interests of their constituents. Therefore, the Government and both Houses of Parliament agree that there needs to be extensive regulation of the Internet and, in particular, social media platforms. To justify the need for intervention, they cite everything from political advertising (in particular, the UK's referendum on the Continued Membership of the European Union (Brexit)), to fake news and online manipulation; data breaches by the tech giants; the lack of competition in the Internet's mainstream (social networking, search engines, advertising); child abuse and harms to children (including self-harm threats); terrorist and extremist content; and even knife crimes in the offline world. The Government expresses confidence that their proposal will address all of these issues, regardless of how different their causes and consequences. Our presentation outlines how we got to this point and sets out what the White Paper proposes; in particular, a new regulator and the imposition of a private 'duty of care' on platforms. While acknowledging that a 'duty of care' works well in some environments (e.g. landlord – tenant, employer – employee relationships etc.), we argue that is not appropriate for policing content and expression online. A statutory duty of care will be contrary to the main premises of the common law duty of care, and will result in the blocking of otherwise legal, but only subjectively harmful, content. We argue that, contrary to DCMS claims, the proposed regulator is not independent and could be subject to political interference. We provide a brief examination of the 'online harms' listed in the White Paper, as well as obligations to protect free expression and the legal framework that shields platforms from liability. We conclude that the imposition of a duty of care on platforms will result in an unacceptable chilling effects on free expression, resulting in a draconian regulatory environment for platforms, with user rights adversely affected.