

UK Government — Online Harms White Paper

Response from the British Copyright Council

Introduction

The British Copyright Council (BCC) represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members (see list at Annex 1) include professional associations, industry bodies and trade unions, which together represent hundreds of thousands of authors, creators, performers, publishers and producers. They also include collecting societies, which represent right holders and provide licensed access to works of creativity.

The BCC welcomes this opportunity to comment on the UK Government's Online Harms White Paper.

Response

1. We welcome Government measures to establish a regulatory framework for ensuring safety, tackling illegality and improving standards around online platforms. The BCC has long called for companies running unregulated online platforms to take greater responsibility for the content they promote. It is clear that such companies have a responsibility for material they make available through their services, and — given their ability to control this content — are best-placed within the digital environment to efficiently counteract harmful content that is made available on them. They are also in the best position to apply appropriate technological solutions (c.f. para 8.1. of the White Paper: *“Technology can play a crucial role in keeping users safe online. By designing safer and more secure online products and services, the tech sector can equip all companies and users with better tools to tackle online harm.”*). Responsible behaviour by online platforms is vital for protecting users and building the confidence of individuals and businesses to continue taking advantage of the opportunities of the digital world.

We support the efforts of the Online Harms White Paper in addressing serious illegal content and activity, which threatens national security and the physical safety of individuals, in particular children and other vulnerable people in society. Likewise, we welcome the fundamental principle of the proposed approach, i.e. to establish in law a new duty of care towards users, to be overseen by an independent regulator. Given recent examples involving individuals or wider social impacts resulting from the way in which services offered by online platforms have been used, it is paramount that online businesses respond to their social responsibilities.

2. The BCC notes the Government has indicated in the White Paper an “initial list” of the harms to be included or excluded from the new statutory duty of care for online platforms but is concerned that a fixed list of content categories may prove impractical both for business and regulatory purposes.

In its helpful summary response to the White Paper proposals, the Carnegie Trust¹ observes the potential difficulties with being too specific as to which types of content link to which code of practice, and with dividing harms into those that are defined and those that are less clearly defined. Provisions that allow for boundary areas to be assessed and potentially linked with the duty of care responsibilities may be the best route. We therefore endorse the Carnegie Trust’s view that “cross-cutting codes which focus on process and the routes to likely harm would be more appropriate”.

3. The BCC also underscores the care required to ensure that tough new action required to tackle safety around currently unregulated online spaces is sensitive to the balance with those functioning regulatory systems already in place and does not inadvertently erode essential freedoms. In this context, the regulatory framework that already applies for press, television and radio services must be recognised and respected. Further regulation, duplication or an unclear scope within the new proposals could threaten freedom of expression and impose additional and costly regulatory burdens on press publishers and broadcasters. The essential new regulations for online platforms should therefore complement and not impinge on established systems.
4. While harm caused by illegal economic activities (those that hurt individual consumers as well as businesses) is currently excluded from the scope of the proposals in the White Paper, the BCC’s members — individual creators and performers, as well as creative industries — have considerable experience with this type of harm caused by the way in which services are supplied using online platforms. We expect that certain concerns of the creative sector will be addressed in the context of the implementation of the Directive on Copyright in the Digital Single Market ([Directive](#) (EU) 2019/790). However, we are interested in discussing further the various options regarding the responsibility of online platforms for all forms of illegal content and hope that our experience in this area can be useful in the context of this Online Harms White Paper. (**Question 5**). In particular we welcome para 6.16 of the White Paper, which describes our concerns on the liability regime under the e-Commerce Directive (we expect that this will be addressed in a meaningful way during the implementation of the Directive on Copyright in the Digital Single Market):

¹ <https://www.carnegieuktrust.org.uk/blog/online-harms-response-cukt/>

“6.16. Our review found that, while it is important to ensure that companies have the right level of liability for illegal content, this is not the most effective mechanism for driving behavioural change by companies. The existing liability regime only forces companies to take action against illegal content once they have been notified of its existence. It therefore does not provide a mechanism to ensure proactive action to identify and remove content. In addition, even if reforms to the liability regime successfully addressed the problem of illegal content, they would not address the full range of harmful activity or harmful behaviour in scope. More fundamentally, the focus on liability for the presence of illegal content does not incentivise the systemic improvements in governance and risk management processes that we think are necessary. ... In particular, companies will be required to ensure that they have effective and proportionate processes and governance in place to reduce the risk of illegal and harmful activity on their platforms, as well as to take appropriate and proportionate action when issues arise. The new regulatory regime will also ensure effective oversight of the take-down of illegal content, and will introduce specific monitoring requirements for tightly defined categories of illegal content.”

5. We agree with the problems identified in the White Paper concerning private communications; private communications need to be outside the scope of supervision, in particular by commercial online platforms. However, technology might already be available to bring private (i.e. those not publicly accessible) online platforms into the scope of legislation (**Question 6**). We suggest exploring with online platforms the technologies already deployed for targeted advertising (**Question 7**).

6. Please find below responses based on our experiences in the area of economic harm which we hope will be transferable to the scope of the White Paper:

- **Codes of practice.** The option of agreeing such codes of practice between all stakeholders for specific areas provides flexibility to adapt according to mainly technological developments. (We have already advocated above for codes that deal with processes leading to harm rather than attaching to a specified type of content.)

Codes of practice have been very effective for instance as regards internet search algorithms where they link to infringing material online. Such a code of practice was adopted in February 2017 in cooperation with all stakeholders with the aim of limiting the availability of infringing material in online searches; as a non-legislative measure this code was quickly adopted and is flexible enough to cater for technological developments. However, we note the importance of such codes of practice being underpinned by backstop powers in legislation (and of the regulator). It is beneficial for all stakeholders to agree a way forward in dialogue but legal underpinning is required, as recognised throughout the White Paper.

- **Regulator.** The role of the regulator will be key not only for drafting the newly required codes of practice but also for supervising compliance with the them. As indicated at section 3 of our response above, this will require co-operation with existing regulators in the press, television and radio sectors. Accessibility of the regulator needs to be inexpensive and simple. We suggest that the costs of the regulator should be borne by online platforms as the main beneficiaries of a legal online environment (**Questions 10 and 11**). This suggests that an independent regulator should operate on similar lines to the Information Commissioner’s Office; specifically it should 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. (**Question 13**).

We note the absence of a specified regulator in the context of Article 17 of the Directive on Copyright in the Digital Single Market (see in particular paragraph 9 of Article 17 referring to efficient complaint and redress mechanisms); given the scale of economic online harms, such as copyright infringement, it might be appropriate for the same regulator to have the flexibility to pursue action across social and economic harms.

The activity of the regulator will also provide an incentive to agree newly required codes of practice and comply with them (they should have powers similar to the ICO). We agree with the often proactive powers bestowed upon the regulator in the White Paper (**Questions 8-12**); online platforms might even be incentivised to “*take action now to tackle harmful content or activity on their services*” (para 7.1 of the White Paper).

We recognise the highly complex task Government faces in addressing internet harms but we hope that our thoughts are useful and look forward to further discussing the development of the White Paper in due course.

1 July 2019
British Copyright Council

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Annex 1

British Copyright Council members — June 2019

Artists' Collecting Society (ACS)	DACS
Association of Authors' Agents	Directors UK
Association of Illustrators (AOI)	Educational Recording Agency Ltd (ERA)
Association of Learned and Professional Society Publishers (ALPSP)	Incorporated Society of Musicians (ISM)
Association of Photographers Ltd (AOP)	Ivors Academy
Authors' Licensing and Collecting Society (ALCS)	MPA Group of Companies
BECTU/Prospect	Musicians' Union
BPI (British Recorded Music Industry) Ltd	National Union of Journalists (NUJ)
British Association of Picture Libraries and Agencies (BAPLA)	PPL
British Equity Collecting Society Ltd (BECS)	Professional Publishers Association (PPA)
British Institute of Professional Photography (BIPP)	PRS for Music (PRS)
Chartered Institute of Journalists (CIOJ)	Publishers' Licensing Services (PLS)
	Royal Photographic Society (RPS)
	The Society of Authors
	The Writers' Guild of Great Britain