

Your response

As a UK-based video-sharing platform currently regulated under the VSP regime, but which will be regulated under the Online Safety Act after the expiration of the transition period, BitChute has been invited to comment on Ofcom's Consultation, "Protecting people from illegal harms online." The consultation is over 1,600 pages in total and we are a small team, working diligently to grow and improve our services so we may provide more value to our users. Nonetheless, we will make a few comments, in furtherance of our overall commitment to comply with the laws in the jurisdictions in which we operate, while also facilitating and advancing, to the maximum extent possible, our users' fundamental rights to free expression and privacy.

First some philosophical context. BitChute disagrees with the OSA's regulatory approach to dealing with "illegal harms online." The proper approach, we believe, would be one based in the common law which, ironically or coincidentally, originated in England. On this approach, if the government determined that certain types of online services were more likely to be used by criminals, government agents should simply monitor those more frequently, just as more police patrols should be assigned to crime-impacted areas of a city. If government agents witnessed evidence of criminal wrongdoing, they could investigate further and, as appropriate, obtain the legal process necessary to order the removal of the illegal content or obtain identifying information about the person who posted it. If there's evidence that a service knowingly or negligently facilitated criminal or tortious activity, that service would be subject to criminal prosecution or civil liability in a court of law.

An approach to addressing illegal harms online which is based in the common law would better account for a fact that is elided in much of the Consultation (and the OSA itself): the ultimate responsibility for the illegal harms typically lies, not with the service itself, but instead with a small minority of its users. This point is especially true of platforms like BitChute, which have chosen on principle not to employ engagement-enhancing algorithmic manipulation of their users' feeds, or who have chosen to join GIFCT as part of an ongoing commitment to prevent terrorists from using their services.

As a thought experiment we can ask, what would the cost of the above-described approach be, as compared to the vast regulatory apparatus and piles of paperwork required to carry out the duties described in this Consultation? Consider also that the costs of the latter approach will be incurred, not in dealing with actual harms, but hypothetical ones. What if Ofcom were to use the risk assessments it's spent three years performing to direct government resources in searching for *actual* harms, which could then be addressed using an approach rooted in the common law?

As regards the broader range of harms which don't involve illegality or rights violations—e.g., "hate speech" and "disinformation"—we agree with Nadine Strossen and other scholars who hold that the proper way to address and mitigate these harms, the only one which has proven throughout history to be both moral and practical, is to allow more speech, not censorship.

Unlike our larger competitors, BitChute encounters this Consultation from the uncomfortable position of not yet knowing which of the numerous duties described in it will be imposed on us. This is because under the OSA it is in Ofcom's discretion to impose the most "onerous duties"—yes, that's their term—on small platforms like BitChute, if they are deemed to be "multi-risk". Whether BitChute is ultimately deemed to be multi-risk and subject to a more onerous set of duties might depend on whether, at exactly the "right" time, an NGO succeeds in publicizing a "report" about alleged harms on our services in media outlets—media outlets which (1) see BitChute as an unwelcome competitor diminishing their ability to control prevailing narratives, and (2) whose content is to be given privileged protection in the OSA.

Ofcom is aware of the negative impact the imposition of these additional duties could have on a platform like BitChute:

"The cumulative impact of these measures could be very significant and there is a possibility some small and micro businesses may even struggle to resource the recommendations we propose for them. However, on balance, we consider the cumulative impact of our proposals is nonetheless proportionate given that we are targeting the costliest measures at high-risk services."

Does this signify Ofcom's willingness to drive small platforms like us out of business, if that's the cost of instituting a regulatory apparatus aimed at preventing illegal online harms—harms for which a small minority of individual users, not the platforms themselves, are ultimately responsible? Perhaps we shouldn't be surprised; after all, BitChute was completely debanked in the UK years ago. But proponents of Brexit might be interested to learn that, at least in this regard, the EU's Digital Services Act is more propitious for smaller platforms like BitChute.

And what about the larger companies which will remain, because only they can withstand the burdens imposed by the OSA? True, they probably can afford financially to implement the various "recommended" measures. But note that, at any scale, automated measures will always be more economical. This is especially true when a company must comply with enhanced duties to assess and mitigate risks with respect to 130 "priority offenses".

Most of our larger competitors have long ago abandoned the ideal of a free and open Internet. They are likely to adopt whatever automated scanning and actioning of content Ofcom recommends, simply to take advantage of "safe harbor" and avoid paying steep fines (in addition to the annual fees they will be paying). Before long, the entire Internet—or at least that part of it still made available to UK users—will be subject to automated moderation and surveillance. Combine this with broad information notices, and it won't be long before UK users will have lost what little privacy they still enjoyed, along with any remaining control they had over what they may see, hear, say—and, ultimately, think. BitChute hopes it is not the only service or stakeholder which sees the irony of this occurring in a country which roundly rejected the idea of prior restraint centuries ago.