

## **Ofcom – Call for evidence: Video-sharing platform regulation**

### **IMPRESS submission**

**4 September 2020**

#### **About IMPRESS**

1. IMPRESS is a self-regulatory body for news publishers in the United Kingdom. IMPRESS is the only press regulator in the UK to be independently approved by the Press Recognition Panel as meeting the requirements of independence and effectiveness set out in the Royal Charter on Self-Regulation of the Press. This means that IMPRESS is certified as being independent of political, government and industry influence and can effectively hold news publishers to account according to the most robust ethical standards of public interest journalism in the UK.
2. As of 28 August 2020, IMPRESS regulates 91 publishers, which are collectively responsible for 157 news brands. These include international, national, local, and hyperlocal news publications, specialist publications and investigative journalism sites, all of which have voluntarily subscribed to independent and effective oversight. All UK news publishers are welcome to join IMPRESS on a fair and non-discriminatory basis and, by doing so, subscribe to a system of approved regulatory oversight.
3. Our submission broadly goes to the issues of the indirect impacts of the regulation of video sharing platforms (VSPs) on news and journalism and better regulation principles on complaints and appeals.

#### **Key Recommendations and Conclusions**

1. Digital technologies have changed the way that news is produced, distributed, and consumed; journalists now publish news directly to the public through online platforms, such as VSPs. Therefore, journalism is much more likely to be impacted by the statutory regulation of VSPs, given that VSPs determine which 'content' pays.
2. There are few external regulatory measures in place to ensure that VSP systems for evaluating journalism are fair, ethical, and safe by design. Regulatory reform, therefore, should not become a conduit for suppression of legitimate journalism.
3. News publishers and the public have a higher stake in the outcomes of VSP decisions to promote or remove journalism than other content creators, because of the public interest function news serves for citizens and communities.
4. IMPRESS considers that there needs to be a mechanism which anticipates and addresses decisions to promote, demote or remove journalism on VSPs. The mechanism should allow journalists, as a special interest party, to fast-track

complaints and appeals where they think that their content has been unfairly managed by a systemic design or moderation.

5. IMPRESS also considers that any guidance on providing an external independent appeals process should meet certain minimum requirements in order to necessarily protect the public and journalists; we also consider these requirements would support the policy goals of the Audiovisual Media Services Directive (AVMSD) and VSPs regulation.

### **Background: online news and the intersection with video sharing platforms**

6. Digital technologies have changed the way that news is produced, distributed, and consumed. Journalism pre-internet was a linear process delivered to audiences and readers by three main means: broadcast, print and radio. Online, those distinctions matter little to audiences, who consume news in a non-linear fashion from a variety of sources (both nationally and internationally), in whatever mode is most convenient: written, video, graphical or audio, live or pre-recorded, on news websites and social media channels.
7. The shift to news online and the collapse of the news hegemony (once dominated by large commercially driven companies), has not corresponded with the collapse of news content. On the contrary, what we will see increasingly is a shift from an institutional model of journalism where journalists work for large news organisations to a functional model of journalism where journalists work on a part-time and self-employed or freelance basis.
8. Non-professional and citizen journalists, activists, and influencers have entered the digital news market to publish news across a wide spectrum of topics such as community news, religion, ethnicity and culture, politics, activism, campaigning and investigative journalism. Journalists are more likely to own and run their own digital newspapers and to publish news directly to the public through online platforms such as VSPs.
9. While print journalism was very profitable in the past, commercial news organisations are no longer able to compete as lucratively with platforms, who now have a market monopoly on advertising – the primary funder of journalism. Another by-product of the shift to functional journalism is that, dispersed as they are, journalists are no longer able to leverage the weight and backing of their news organisations to promote their journalism. Now it is platforms, not news organisations, that determine what content pays.
10. Platforms use unsophisticated methods to determine what amounts to “high-quality” journalism, by verifying or highlighting certain content over other, which inevitably receives preferential treatment and other system rewards (such as funding). Public interest journalism, such as reporting on justice and government administration, public health, national security, local news and public misconduct, often fails to “engage” – by VSPs standards – the online public as keenly as other forms of content such as entertainment and debate. Therefore, when the only quality indicators used by platforms are brand legacy, audience

reach and levels of engagement, the system inevitably rewards large well established news organisations, and celebrity gossip, polarising and provocative takes, and fake news and mis/disinformation, over public interest journalism.

11. There are few external regulatory measures in place to ensure that systems for evaluating journalism are fair, ethical, and safe by design. Solutions proposed in Europe and beyond, are not being designed with public interest journalism in mind. Rather the protections once afforded to traditional journalism are being flattened by online regulation, which lumps journalism in with other forms of content, further disincentivising the production of public interest journalism. For example, at 2.12 of the OFCOM Call for Evidence consultation it states: "In line with the Directive, when considering which measures are needed to adequately protect users, VSPs should take into account the nature of the content in question, the harm it may cause, the characteristics of persons to be protected as well as the rights and legitimate interests of users (such as privacy rights and freedom of expression) and the general public." The special interests of journalists are not carved out from these general legitimate interests, and platforms are unlikely to regard them, particularly journalism, unless compelled to do so by OFCOM guidance.

### **VSPs regulation and the status of news content**

12. The effect of the revised European legislation, AVMSD, should be a systemic reform in the design of Video-Sharing Platforms Services (VSPs). However, one possible perverse consequence of this reform is the potential negative impact on the reach of journalism and journalists' Article 10 right to freedom of expression. The over-cautious direct subjects of this regulation, VSPs, keen to comply and avoid penalties, may impose restrictive design features that prevent controversial, provocative, or highly politicised subjects from circulating on their platforms. While genuine bad actors producing hate speech, violent/terrorist content, misinformation and disinformation may be disincentivised and penalised by such design choices, journalists who also report on these issues, inform citizens on public interests matters, and hold powerful interests to account, may also get caught up in grey areas of these detection and enforcement design sweeps.
13. Further, while platforms may do this for bona fide or negligent reasons (for example, if a news story features terrorist material or, as has been noted recently, the removal of stories that describe or discuss COVID-19) they may also do this for malicious reasons, such as anti-competitive practice (for example, content pertaining to an investigation into or criticism of the platform itself or third party interests connected to the platform). Opaque as these systems and decision-making are, journalists and regulators currently have no means of addressing these decisions or the reasons for them in any meaningful way.
14. Below we outline three examples that show how the indirect effects of statutory regulation of VSPs service design will impact on journalists as end users of these platforms and their products, which a particular focus on content system rewards, moderation and freedom of expression.

15. All news brands rely on platforms to promote their posts and field followers to their own sites. Some news brands deliver content exclusively within the format and framework provided by the platform; VSPs are no exception and many news brands have turned to VSPs to deliver aspects of their journalism. Therefore, all decisions made by platforms about content delivery and system rewards impact on the public's access to news content.
16. IMPRESS publishers have shared with us experiences of having sharp swells and declines in audience engagement based on opaque algorithmic decision-making which they are not notified about, nor do they control. There is no mechanism by which they can engage with or appeal such decisions, which often take place in real time and without any specific human intervention or decision-making. Some news brands struggle to build partnerships with platforms, as they are often too small to be regarded as high-priority stakeholders. In practical terms this means they cannot plan strategically or editorially to conform with changes far removed from their control to boost engagement of their stories or to connect directly with their news communities. And the fact that because of their smaller structures they don't usually have large dedicated social media content teams, if teams, puts them at an even bigger disadvantage.
17. IMPRESS publishers have also alerted us to the fact that they have had content flagged or removed for violating community standards. However, the appeals processes, where they are even used by platforms, are highly standardised, and do not allow for meaningful opportunity to respond to these content moderation decisions. That the content is journalistic is not a qualitative metric which factors into the content moderation policy. These same publishers have found the communication attempts futile; platform communication is one-way, automated, and non-responsive; boilerplate explanations mean they have no way of understanding what aspect of the content evaluation leads to take down.
18. Finally, we have observed and are becoming increasingly concerned about the potential for system hijacks, where those opposed to a particular style of journalism engage in coordinated campaign-style behaviour to discredit outlets, scare off advertisers and ultimately overload complaint processes to have particular accounts flagged and/or banned or, perversely, shadow-banned. Again, as the system design of VSPs is about reducing the need for human intervention and decision-making, the system itself is not alert nor is it interested in the nuance of these types of campaigns, or its victims – legitimate journalism.
19. We foresee that if these issues are not addressed, VSPs, in trying to comply with forthcoming regulation, may demote or remove legitimate journalism on their platforms. News publishers and the public have a higher stake in the outcomes of decisions to promote or remove journalism than other content creators for two reasons:
  - i. Journalism plays a public interest function in communities, delivering vital information and analysis, particularly in times of crisis.
  - ii. Journalism is wholly dependent on platforms to deliver content and engage audiences. VSPs have significant influence and negotiating power with respect to the reach of journalism.

20. Regulatory reform should resist becoming a conduit for the suppression of legitimate journalism. Regulation of VSPs, even systemic regulation, should not result in statutory restrictions (even indirectly) on the freedom of the press, particularly those already well-regulated by independent self-regulatory bodies, such as IMPRESS.

### **Better regulation: complaints and appeals**

21. Regarding the measures VSPs should take to protect their users (including journalists), OFCOM has set out in its Call for Evidence at 2.32 that it will seek views from industry and stakeholders on what form its complaints systems and an external independent appeals process should take. OFCOM as a content regulator itself, understands the better regulation principles involved in developing and overseeing internal complaints handling procedures within organisations, and we will not rehearse those here. Rather, we aim to provide solutions to the unique position of journalists as complainants and the principles that should guide an external independent appeal process.

#### Journalism complaints

22. In order to preserve Article 10 of the rights of journalists and to affirm protections afforded to journalists and the public interest function they serve, IMPRESS considers that there needs to be a mechanism which anticipates and addresses decisions to promote, demote or remove journalism on VSPs. The mechanism should allow journalists, as a special interest party, to fast-track complaints and appeals where they think that their content has been unfairly handled by systemic design or moderation.
23. Identifying those who fall into the special interest category is challenging, as journalism is a self-regulated activity and many journalists, especially those publishing online, do not publish through a traditional news organisation, or may not be members of an independent self-regulatory body. Therefore, IMPRESS proposes that journalists should be able to apply for “special interest status” with the VSPs themselves. This is a matter for technological design, which OFCOM could seek to provide guidance on: many platforms have already have mechanisms for authenticating users, for example through tick systems, which could be easily adapted to suit the status of journalists.
24. We do think it is important that those applying for special interest status meet certain requirements to demonstrate they are journalists or are engaged in legitimate journalistic activity. We think the core requirements are:
  - User/Account is primarily for the purpose of journalism.
  - User/Account has adopted an ethical code of practice and complaints policy (individually or through an affiliated body).
25. Once the special interest status system is rolled out, it would be imperative that VSPs are wholly transparent with special interest parties about both the human and algorithmic decision-making criteria that drive the removal of content and other adverse impacts, as that evidence will form the basis of any complaint

brought by the journalist. This is not the same as requiring VSPs to hand over business-sensitive intellectual property, however they must provide enough descriptive information so that an adequate complaint can be brought forward.

### External independent appeals

26. IMPRESS is also particularly interested in the formulation of a complaints appeals process that is truly independent and effective. Based on our experience, independent and effective regulation requires membership of a self-regulatory body or equivalent service that is demonstrably independent of the regulatory subject; that body should also have the following powers or provisions:
- Enforcement of terms and conditions, and statutory guidance which incorporates relevant online harms standards/provisions;
  - A requirement to put in place prominently displayed systems for making complaints and appeals to independent service provider;
  - Acceptance of complaints from both directly affected parties and those acting with agency, or representative groups acting on behalf of minority and vulnerable groups;
  - Escalated complaints to be administered by a secretariat that is not under the direct employment or contractual control of the platform;
  - Escalated complaints are ultimately decided by an independently appointed person or panel;
  - Parties are notified immediately of decision and decisions of the self-regulatory body or equivalent service are published without delay following their conclusion;
  - Powers to direct and enforce effective remedies such as take down, re-publication and apology;
  - Cooperation with OFCOM on investigations and matters of systemic failure.
27. We see these requirements as the minimum necessary for an external independent appeal process to protect the public and journalists; we also consider that these requirements support the policy goals of the AVMS Directive and VSPs regulation. We are happy to engage further with OFCOM and the industry on this matter and best practice approach, as the guidance is developed in due course.
28. For the reasons set out above, IMPRESS considers that there are mechanisms available to ensure the Article 10 rights of journalists are protected and affirmed in the forthcoming VSP regulation. The mechanisms will have to be carefully considered and constructed, and we hope our response has helped to identify how this might be achieved in any guidance issued by OFCOM.