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Which? response to Ofcom's call for evidence on Video-Sharing Platform (VSP) regulation

Summary

- Which?'s response is largely focused on informing Ofcom's broader approach to harms on online platforms, video-sharing or otherwise, based on our research on consumer harms in the context of the Online Harms Bill, which is intended to incorporate provisions of the VSP regulation.
- Which? is supportive of the initiatives that address consumer harms on online platforms, but believes that there should be a holistic approach in doing so. We are concerned that proposed measures, both in the Online Harms White Paper and regulation of VSPs, don't go far enough to protect consumers on online platforms.
- To tackle harms comprehensively, online platforms need to be required to introduce proactive measures that prevent dissemination of harmful content and reactive measures to address harmful content once it appears.
- The combination of reactive and proactive measures has the potential to deliver the expected outcomes if online platforms are required to continuously demonstrate that these implemented processes actually deliver a reduction in harms.
- In the context of the broader Online Harms regulatory framework, Which? is of the view that consumers should have equal protection from commercial and non-commercial illegal and harmful content. If measures don't consistently apply to both user-generated and commercial content, that could create regulatory gaps that could be exploited by bad actors.

Introduction

Which? is supportive of measures to protect consumers from harm online, including illegal content and activities. Consumers value being online but they expect to have a safe experience no matter the platform they use. Although two-thirds of adults believe that the benefits of going online outweigh the risks, approximately four out of five would like websites and social media to do more to keep them and others safe.¹

Alongside the proposals in the Online Harms White Paper, the Video Sharing Platform (VSP) regulation is a step in the right direction. However, we are concerned that both of these initiatives do not go far enough to protect consumers from harm experienced on online platforms. Platforms must have a responsibility to implement a combination of proactive and reactive measures to address harms and demonstrate that these measures deliver the expected outcomes in reducing harm.

¹ Internet users' concerns about and experience of potential online harms, Jigsaw Research, Commissioned by Ofcom and ICO, May 2019, pp. 108, Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0024/196413/concerns-and-experiences-online-harms-2020-chart-pack.pdf, Last accessed: 15.09.2020.

Platforms should also be required to tackle all forms of illegal or harmful content, including both user-generated content and commercial content (advertising), as both of these can expose consumers to harm online.

The interaction between VSP regulation and Online Harms Bill

The regulation of VSPs is intended to be superseded by the future Online Harms Bill, so the measures introduced now will influence the regulation of broader online harms. It is right that Ofcom, should it be appointed as the online harms regulator, uses the regulation of VSPs as the basis for the development of measures that will address a wider range of harms across a broader range of platforms.

Taking that into consideration, Which?'s response aims to inform Ofcom's approach to addressing the harms from a broader perspective, based on our research on illegal online activity and content, such as scams and fraud, fake reviews and the sale of unsafe products, that cause harm to consumers on online platforms. We are of the view that there should be a holistic approach to addressing harms and that the measures that online platforms, video-sharing or otherwise, should introduce to reduce harms should be led by similar and complementary principles.

Which? also supports the intention of the government that the future Online Harms Bill introduces duties on companies that service UK consumers (as proposed in the Online Harms White Paper), instead of the adoption of the country of origin principle which follows from the Audiovisual Media Services Directive (AVMSD), and which will temporarily be applied in the regulation of VSPs.

The need for a combination of proactive and reactive measures

The rapid change in the way people now interact with digital products and services has been accompanied by an increase in the range of different harms that consumers face online. However, online platforms have failed to keep pace with this change and protect consumers from these harms. This is supported by the evidence that shows that three in five adults and four in five 12-15-year-olds have had potentially harmful experiences online in the past year.²

To date, the measures that platforms have voluntarily implemented to tackle harms are largely reactive and insufficient.³ They rely, at least in part, on content reporting by users and post-publication removal by the platform, by which time the harmful content has already reached large audiences. Many online platforms also use automated systems (frequently based on artificial intelligence) to detect and block certain types of content, but the accuracy and effectiveness of these systems is unclear. While some online platforms publish transparency reports in which they show how much content is removed using automated systems/human reviewers, these reports are not sufficient to evaluate the effectiveness of these processes. This approach has failed to prevent both the harmful content reappearing and bad actors from using the same routes to disseminate it. Therefore, regulatory intervention to address these issues is much needed.

² Internet users' concerns about and experience of potential online harms, Jigsaw Research, Commissioned by Ofcom and ICO, May 2019, pp.33, Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0028/149068/online-harms-chart-pack.pdf, Last accessed: 24.08.2020.

³ Submission to the home affairs select committee call for evidence on online harms, Carnegie UK Trust, pp.3, Available at: https://d1ssu070pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2020/08/05135711/HOME-AFFAIRS-SELECT-COMMITTEE-CALL-FOR-EVIDENCE-ON-ONLINE-HARMS.pdf, Last accessed: 20.08.2020.

Tackling online harms should be done coherently through the implementation of stronger proactive and reactive measures. As Ofcom states, proactive measures should include, as a minimum, having clear rules for using platforms in the form of terms and conditions (or community standards). However, Which? believes that this could also include measures such as automated systems for content monitoring and mechanisms to prevent harmful content and advertisements appearing in the first place. We are also supportive of the measures that aim to protect minors online, such as parental controls and age assurance mechanisms, and we believe that the measures for tackling these specific enablers of harm should be evaluated by organisations that focus on harms to minors online.

Reactive measures are important, but they cannot ensure a safe online experience in isolation, as they only deliver temporary improvements and require harm to have already occurred and then assessed in order to take appropriate action. Proactive measures, on the other hand, could help to ensure that platforms provide services in a way that aims to protect consumers 'by design' and prevent illegal content from being posted before it reaches large audiences. Platforms should also be required to evidence how these proactive and reactive measures are reducing harms on their sites.

Proactive measures

Proactive measures should include mandatory actions that prevent content appearing rather than just respond to it after it has appeared. There are many measures platforms could implement to prevent harmful content. As a minimum online platforms need to:

- Have clear rules about what is and isn't acceptable on their sites, and to effectively enforce these rules, and
- Have effective automated systems for monitoring content pre-publication and preventing publication of harmful or illegal content, taking into account how harms can evolve online.

Which? is supportive of a requirement on online platforms to have clear terms and conditions or community standards, as a prevention mechanism, but also encourages a requirement to clearly communicate these to improve and demonstrate user understanding. This will enable consumers to understand what is and is not allowed on the platform and how to recognise illegal activities. These should be adapted and amended if and when the evidence suggests they are not having the desired effect in reducing harm, and frequently communicated to consumers.

While Which? supports the need for clear community standards, we are concerned that some platforms use these as evidence that they are protecting consumers, when we know that community standards alone are not sufficient. With millions of consumers using these platforms around the world, there will always be bad actors that see opportunities through the reach they can have over these platforms. These bad actors will continue to search for and find ways to get around the community standards, so it is vital that they go hand-in-hand with other measures to protect users. Therefore, the system design of these platforms must include continuous monitoring through automated systems to identify and prevent the dissemination of harmful content and activities. Some platforms have already implemented automated systems, but it is possible that harmful and illegal content will continue to slip through, so simply having the process in place doesn't ensure that it will be effective. Therefore, there should be a requirement for platforms to demonstrate how these measures contribute to a reduction in harm and transparency about the automated processes they use so that regulators can monitor the impact.

Reactive measures

As previously mentioned, platforms should have effective reactive measures in place to address harmful and illegal online content that slips through the net and reaches consumers on their platform. The proposed measures have the potential to deliver more protection to consumers than they currently have. But, to provide the widest possible consumer benefits, online platforms need to be required not only to have in place these processes to tackle harmful content reactively, but also to demonstrate that these processes actually deliver the expected outcomes - a reduction in consumer exposure to harmful content.

Which? supports the requirement for platforms to have reporting tools and complaint reporting mechanisms and quickly allow users to explain the issue in their own words. By enabling consumers to explain the issue (if they wish to), platforms could better understand the harms and the context in which they occur, which could eventually lead to developing better proactive solutions.

Although content-reporting tools are already a common practice, the evidence on the user engagement with these tools shows that only a fifth of adult internet users (19%) and a third of 12-15-year-olds (29%) have taken action to report potentially harmful content online in the past⁴. Although there are very different reasons why internet users choose not to report the content⁵, more research is needed to understand barriers to content reporting and how these tools could be improved to empower consumers to take action. The effectiveness of these content reporting tools will largely depend on the way they are implemented, so platforms need to be required to continuously measure how users engage with them. For example, platforms should ensure that reporting buttons, blocking tools and complaints sections are visible and user-friendly. In addition, when the evidence of systemic issues arising from complaints emerges, platforms should be required to take action and improve their processes as a result. However, there are limitations to the effectiveness of reporting tools, especially when misleading content is very convincing, and therefore should not be considered a solution in isolation.

Which? encourages introducing the requirement for online platforms to have a responsibility to remove the illegal content within a short time frame when it is detected. Illegal content should be tackled as soon as possible, and a 24-hour deadline seems to be sensible for some consumer harms. However, we recognise that short deadlines could have unintended consequences, such as overblocking.⁶ Potentially, different time frames could apply to different types of harms based on the immediate risk and its potential impact. Therefore, although we endorse setting clear expectations on the timing, we advise the evidence-based approach and learning from international practices (for example, lessons from the enforcement of Germany's Network Enforcement Act on when introduced time frames worked well, when they didn't and why⁷) to inform the approach.

Furthermore, we encourage the regulator to introduce provisions for platforms to explain their actions to users who reported content, even when they don't take action. Given that more than a third of adults and minors (12-15s) who reported content say that they did not know what happened to it

⁴ Internet users' concerns about and experience of potential online harms, Jigsaw Research, Commissioned by Ofcom and ICO, May 2019, pp.91, Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0024/196413/concerns-and-experiences-online-harms-2020-chart-pack.pdf, Last accessed: 24.08.2020.

⁵ Ibid, pp.92, Last accessed: 24.08.2020.

⁶ The new German social media law: a risk worth taking? An 'extended look', Stefan Theil, Available at: <https://inforrm.org/2018/02/20/the-new-german-social-media-law-a-risk-worth-taking-an-extended-look-stefan-theil/> and Removals of online hate speech in numbers - The evidence from Germany, Available at: <https://blogs.lse.ac.uk/medialse/2018/08/16/removals-of-online-hate-speech-in-numbers/>, Last accessed: 20.08.2020.

⁷ In Germany, there is a deadline of 24 hours for platforms to detect and remove "evidently illegal content" and up to 7 days for other types of illegal content. However, there have been some concerns about overblocking of legitimate content, as companies are eager to comply within the timeframes to avoid being fined. There may be lessons here for the UK government on possible approaches by looking at when these time frames worked well and when they didn't.

afterwards⁸, it is clear that the follow-up process needs to be more structured and the outcome of the complaint communicated.

When the content has been removed, it could be suitable to have alert systems for certain types of harms. For example, consumers could value being alerted when they have bought a product or a service that was later removed because it was harmful, illegal or unsafe. While we recognise that this may not be possible for all types of content and suitable on all platforms, we encourage the discussion on how, on which online platforms and under which conditions this could be introduced. It is essential that these alerts, where introduced, are effective, and that usability is validated through user testing. Finally, we believe that there should be a legal responsibility to report suspected illegal activities to law enforcement within a defined time frame.

Advertising

In addition to these proactive and reactive measures that should be taken by all platforms, including VSPs, it is essential that the requirement for these measures applies to all types of harmful and illegal content, both user-generated and commercial. Which? is concerned that by not addressing the whole spectrum of content (from user-generated to promoted posts to commercial advertising) holistically, there will be regulatory gaps that can be exploited by bad actors.

Which? is of the view that consumers should have equal protection from commercial and non-commercial activities that cause harm on online platforms. However, Ofcom's VSP proposal appears to focus largely on user-generated content on VSPs and address advertising harms minimally. The proposed minimal requirements for advertisers that result from the AVMSD are intended to remain in force in the long term, but entirely outside of the online harms regulatory framework. This approach aligns with the Government's intention to exclude commercial communications from the future Online Harms Bill, but Which? feels strongly that these are missed opportunities to address harms that result from harmful and illegal advertised content.

The lines are often blurred between user-generated content and paid-for and promoted content, particularly as users can pay to promote many forms of user-generated content, and increase reach or target audiences through other means such as the use of hashtags. Harm can be perpetrated via both types of content; for example, scams can manifest through user-generated content or they can be promoted for a fee, and very frequently they can appear through both channels. A recent high profile scam on YouTube demonstrates this. Fraudsters used videos of Steve Wozniak and other famous entrepreneurs to persuade platform users to send bitcoin and other cryptocurrencies to receive twice as much back. According to the lawsuit filed by celebrities, fraudulent videos were shown, promoted, and advertised to users, which resulted in individuals worldwide being defrauded of millions of dollars.⁹

We are concerned that measures that focus solely on user-generated content assume that paid-for content is covered elsewhere; for example, that illegal paid-for ads will be addressed via new online advertising regulations. It is unclear how the VSP regulation and the future Online Harms legislation will protect consumers from paid-for and promoted content. Therefore it is critical that the

⁸ Ofcom, Online Nation Summary 2020, pp. 14, Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0028/196408/online-nation-2020-summary.pdf, Last accessed: 20.08.2020.

⁹ The lawsuit filed by Steve Wozniak and other entrepreneurs to the Superior Court of the state of California, Available at: <https://www.documentcloud.org/documents/7000973-Wozniak-et-al-v-YouTube-et-al-Complaint-20200721.html>, Last accessed: 18.09.2020.

Government sets out where these issues will be addressed in other regulatory frameworks if they are left out of scope of the Online Harms regulatory framework.

About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that influences politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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