

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - “Tackling Illegal Content Online - towards an enhanced responsibility of online platforms”

Submitted by the Department for Digital, Culture, Media and Sport on 2 November 2017.

SUBJECT MATTER

1. On 28 September 2017, the European Commission published a Communication entitled ‘Tackling Illegal Content Online - towards an enhanced responsibility of online platforms’.
2. This Communication provides voluntary guidance for online platforms and other online services that host content, such as cloud storage businesses, social media companies and video sharing sites, on the notification and removal of online illegal content and the avoidance of over-removal where content is legal. This initiative is linked to the Electronic Commerce Directive¹ (ECD), the key EU legal framework for the removal of illegal content, part of which provides liability protection for online services if they are inadvertently hosting illegal content.
3. This workstream is part of the Commission’s Digital Single Market strategy.
4. The Communication has six sections, which are:
 - a. introduction;
 - b. context;
 - c. detecting and notifying of illegal content;
 - d. removing illegal content;
 - e. preventing the re-appearance of Illegal content; and
 - f. conclusions.
5. Below are the main points of each section:

Section 1 and 2 - Introduction and Context

- i. The first two sections outline why the Commission has published this guidance. The main points include:
 - ii. this voluntary guidance was produced in response to EU Commission and European Council concerns including on the

¹ The Electronic Commerce Directive - EM No 5123/99 - 2000/31/EC

- the proliferation of online terrorist propaganda;
- iii. the European Parliament has also made calls for industry including platforms to take further action to tackle illegal content;
- iv. one of the key aims of this Communication is to provide clarification to online platforms and other online services that they can adopt pro-active measures to detect and remove illegal content. In doing so, they would not automatically lose the benefit of the liability provisions contained within the ECD; and,
- v. it notes that this Communication does not harmonise what constitutes illegal content across the European Union. That remains the competency of each Member State.

Section 3 - Detecting and Notifying Illegal Content

- vi. Section three sets out the roles and procedures that online platforms, competent authorities and users could follow to improve the detection of illegal content. The main points include:
 - vii. platforms should cooperate with law enforcement to alert them to any to illegal activity on their networks;
 - viii. platforms should work together to develop technical solutions that deal with illegal content; and,
 - ix. platforms should give priority to removal of illegal content that is notified by “Trusted Flaggers”. Trusted flaggers are specialised entities who have specific expertise in identifying illegal content and thus can be trusted by platforms that what they are notifying is illegal. UK examples of trusted flaggers include the Internet Watch Foundation (IWF), and the UK police’s Counter Terrorism Internet Research Unit (CTIRU).

Section 4 - Removing Illegal Content

- x. The objective of this section is to provide guidance to platforms about how they should remove illegal content as quickly as possible and that the removal of such content should not impede the work of law enforcement. The main points include:
 - xi. businesses should follow the rules outlined in the ECD’s liability provisions;
 - xii. the removal of different types of illegal content requires different strategies depending on the nature of the content; and,
 - xiii. some illegal content that could cause serious harm should be removed more quickly than other types of illegal content e.g. incitement to terrorism material.

Section 5 - Preventing the Re-appearance of Illegal Content

- xiv. This section offers guidance to platforms and other online services on the measures they could take to ensure that once they have detected and removed illegal material, it does not then re-appear online. The main points include:
 - xv. encouraging the further use and development of automatic technologies by platforms to prevent the re-appearance of illegal material; and,
 - xvi. access to databases that are used to automatically match and identify reappearing illegal content should be available to all

online platforms.

Section 6 - Conclusions

- xvii. The Commission expects platforms to use this voluntary guidance to take further proactive measures against illegal material, especially terrorism and illegal hate speech.
- xviii. The Commission will now further consult with Member States, businesses and civil society to ascertain whether there should be fixed timeframes for the removal of specific types of illegal content and the potential of standardising the notification procedure and transparency reporting.
- xix. The Commission will continue to assess whether additional measures, including possible legislation, are needed to ensure the swift removal of illegal content. This work is due to be completed by May 2018.

SCRUTINY HISTORY

- 6. Explanatory Memorandum 5123/99 on the Commission's draft Directive on certain legal aspects of Electronic Commerce in the internal market. Department for Trade and Industry - EM dated 8 February 1999 European Standing Committee: Reported twice in reports 9 & 28, 98/99 as legal and politically important and recommended for debate. Debate was held in European Standing Cttee C on 27 October 1999. EUC: sifted to sub-committee E (sift 984) where it was cleared on 11 June 1999.
- 7. The Department for Business, Innovation and Skills submitted EM 8672/15, regarding a communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Single Market Strategy for Europe, on 15 June 2015. The House of Commons European Scrutiny Committee considered the EM and cleared it. The House of Lords European Union Committee also considered the EM and cleared it.

MINISTERIAL RESPONSIBILITY

- 8. The Secretary of State for Digital, Culture, Media and Sport has primary responsibility as the Department is responsible for the ecommerce directive. Other Ministers from other government departments also have an interest and they include: the Home Office and the Ministry of Justice, who have an interest in the removal of illegal content online; the Department for Business, Energy and Industrial Strategy, who have an economic interest; and the Intellectual Property Office who have an interest on the removal of online infringing of intellectual property material. These Departments have all been consulted in preparing this document.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

- 9. This issue is a reserved matter. However, Scottish Government Ministers, Welsh Government Ministers, and Northern Ireland Executive Ministers have

an interest in tackling online illegal content and in the electronic commerce directive. The devolved administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

10. There are no legal or procedural issues. This is not a proposal for legislation.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

11. The Communication does not specify whether this will apply to the EEA.

SUBSIDIARITY

12. As this Communication relates in part to the cross-border removal of illegal content, as well as having the aim of preventing fragmentation of the Digital Single Market, it seems appropriate that this issue should be dealt with at the EU level.

POLICY IMPLICATIONS

13. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

14. Tackling the proliferation of online illegal content on platforms and other online services is a key priority for the UK Government, especially fighting against incitement to terrorism material and online indecent images of children. For instance, the UK police Counter Terrorism Internet Referral Unit (CTIRU) refers terrorist content that it has identified for removal to social media companies, if it breaches their terms and conditions. The public can also refer terrorist content for removal directly to the CTIRU through an online reporting tool. The Internet Watch Foundation (IWF) is an independent organisation which receives, assesses and traces public complaints about indecent imagery of children on the internet. With the agreement of the UK government, the IWF is permitted to proactively search for illegal content online.

15. HMG welcomes reform in this space and we will continue to work closely with the EU Commission to support their work. This voluntary guidance could usefully provide online services including platforms and notifiers with a clearer understanding of what to do if they are informed that they are hosting illegal content. HMG welcomes in particular the clarification in the Communication to online platforms and other service that they can adopt pro-active measures to detect and remove illegal content, and that this will not possibly lead to the platform losing the benefit of the liability provisions contained within the ECD.

16. Information Society Services, including the creative industries for which my Department is responsible, could benefit from the guidance contained in this Communication. The UK's Intellectual property office have indicated that takedown notices are an important tool in protecting the creative industries' copyrighted material. In particular, they note that the creative industries would like to see a focus on the prevention of the re-appearance of copyright infringing material, once it has been removed. Therefore, the guidance contained in section 5 of this Communication could go some way to prevent the re-appearance of copyright infringing material on the internet, thereby reducing the economic harm done to UK-based creative industries.
17. This voluntary guidance therefore could provide further impetus to both platforms and other online services to help meet these objectives.
18. The Government takes online safety very seriously. A Digital Charter, setting out a framework for how businesses, individuals and wider society should act online, was announced in the Queen's speech. As part of the work on the Digital Charter, DCMS is considering a range of options to counter internet harms. This will include making clear the responsibility of platforms to enable the reporting of inappropriate, bullying, harmful or illegal content, with take-down on a comply-or-explain basis. Therefore, the guidance in section 3 of this Communication on reporting of illegal content is in line with the Digital Charter, where it is illegal.
19. This also includes a DCMS led Internet Safety Strategy, which was published on 11th October. The strategy considers the responsibilities of companies to their users, the use of technical solutions to prevent online harms and government's role in supporting users. The Strategy includes a public consultation on the proposed measures. This voluntary guidance, including particularly its emphasis that technical solutions can tackle illegal content is in line with HMG policy to try and ensure that Britain is the safest place in the world to be online.

CONSULTATION

20. We have carried out some initial engagement with industry and understand that business is broadly supportive of the EU Commission's voluntary guidance.
21. The Commission has also actively engaged with relevant businesses and other stakeholders to help them develop this voluntary guidance, including with Google and the UK's Internet Watch Foundation.

IMPACT ASSESSMENT

22. This Communication does not at this stage involve changes to legislation and will not impose burdens on business. An Impact Assessment is therefore not required. Specific proposals being put forward will be looked at separately if they arise.

FINANCIAL IMPLICATIONS

23. The Communication does not at this stage involve changes to legislation and will not impose burdens on business as a business does not have to adopt it. However, if an online business chose to use this guidance to remove illegal content from its platform, it is possible that it could incur costs, if it did not have the relevant processes in place already.

TIMETABLE

24. The Commission will now monitor the progress of adoption of this guidance and assess whether additional measures are needed to ensure the swift and proactive detection and removal of illegal content online. These additional measures could include legislative changes such as mandatory guidance. The Commission will complete this work by May 2018.

EU EXIT

25. This is routine EU business on which we will seek to get the best outcome for the UK. We will also play a full and active part in shaping the ongoing Commission work that follows the publication of the voluntary guidance, which may in turn influence our negotiating objectives - especially if the EU considers legislation.

OTHER OBSERVATIONS

A handwritten signature in blue ink, appearing to read 'Matthew Hancock', with a long horizontal flourish extending to the right.

**Rt Hon Matthew Hancock MP
Minister of State for Digital**