



Sky response to Online Safety Bill Committee

Sky welcomes the opportunity to respond to the Online Safety Bill Committee. As a family brand in 23 million homes across the UK and Europe, Sky places huge importance in keeping our customers safe in our roles as a leading retail ISP, broadcaster and content provider, and have made this a priority across our business. We have been a longstanding advocate for the creation of a new regulatory framework for online platforms in the UK. Given this, we remain strongly supportive of the objectives of the Online Safety Bill, which provides a real opportunity to realise the aim to make the UK “the safest place to be online” and welcome its introduction into Parliament.

Following the pre-legislative scrutiny of the Draft Online Safety Bill, we also welcome the inclusion of fraud and scam advertising to the scope of the regulatory regime given the impact that these harms can have on individuals’ lives. Nevertheless, we still maintain the view that clause 52(8) which states “an offence is not to be regarded as a relevant offence if the offence concerns – (i) the infringement of intellectual property rights, (ii) the safety or quality of goods (as opposed to what kind of goods they are), or (iii) the performance of a service by a person not qualified to perform it; or (b) it is an offence under the Consumer Protection from Unfair Trading Regulations 2008”¹ be removed from the final Bill. By precluding these harms from ever being regulated under this regime, as currently drafted this clause stands in contrast to the Government’s overall ambition of creating a “coherent, single regulatory regime” for in-scope platforms and raises questions about the extent to which the legislation is “future-proofed”.

Like fraudulent activity, other online consumer harms can have a devastating impact, both on their direct victims and via activities funded by their associated proceeds. Within the UK the scale of online consumer harms is significant. It not only includes scams, but also the sale of fake and dangerous goods and services, and the circulation of malware, often through pirated content. This issue has intensified in recent years, with the pandemic enabling bad actors to take advantage of internet users’ increased vulnerability. Figures from the UK Government outlined in the Intellectual Property Office’s IP Crime and Enforcement Report (2018-19), show that the annual loss to the UK economy through counterfeit and piracy is £9bn and 80,500 job losses². While the majority of these online consumer harms are illegal in the UK, they are not effectively managed by existing regulation and, although major online platforms claim to be tackling these harms and commonly have terms and conditions related to such harms, their increased prevalence indicates that platforms are failing to effectively enforce their own policies.

We appreciate that the immediate priority for the new online safety regulatory regime should be the most harmful and illegal content online and we fully support the tight focus on these issues within the final bill. However, as currently drafted, the Bill explicitly excludes economic harms like IP infringement, from ever being regulated under the regime. If the Government were to remove Clause 52(8) it does not mean that the regulatory regime must consider these issues from day one. However, it would enable the Government and Ofcom to include them in scope in future, if it was felt that these harms were not being adequately addressed elsewhere. It futureproofs the Bill rather than limiting its scope.

We understand that there are concerns that the Online Safety Bill already covers a broad range of harms and adding more would dilute its impact by spreading the regime too thinly. We noted that the Joint Committee on the Draft Online Safety Bill recommended that instead “*economic harms other than fraud, such as those impacting consumers, and infringement of intellectual property rights...should be addressed in*

¹ Online Safety Bill, 2022 Pg. 49 [Accessed May 2022] Accessible here: <https://publications.parliament.uk/pa/bills/cbill/58-03/0004/220004.pdf>

² IP Crime and Enforcement Report 2018-2019, Intellectual Property Office, Page 54, (Accessible here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842351/IP-Crime-Report-2019.pdf)

*the upcoming Digital Competition Bill.*³ However, we have had no real indication since this publication that the Government is committed to addressing these other online economic harms via legislation. The recent Government response to its consultation on a new pro-competition regime for digital markets explicitly stated that the new competition regime that will be put on a statutory footing will be “*clear and focused on promoting competition...in digital markets*”⁴ but did not mention how it could address online consumer harms as part of this. Although we are now expecting the Draft Digital Markets, Competition and Consumer Bill to be published in this session, it is still unclear whether online consumer harms will be included within this. This makes the need for flexibility in the online safety regime even more critical so that it can be used to tackle these harms if no other appropriate legislative or regulatory route is found.

We believe that this change to the Bill would be proportionate and effective, while allowing the regime to keep its tight focus in its initial stages. We hope that the Committee agrees with our assessment and looks to remove this clause during Committee Stage.

³ Government response to the Online Safety Bill, Pg.17 [Accessed May 2022] Accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061446/E02721600_Gov_Response_to_Online_Safety_Bill_Accessible_v1.0.pdf

⁴ Government response to the consultation on a new pro-competition regime for digital markets, 6 May 2022, pg.12