# Public Bill Committee submissions from the Wikimedia Foundation regarding the Online Safety Bill - December 2022

*Impact of the Bill on Wikipedia and its sister projects*

## General comments

The Wikimedia Foundation is the non-profit that hosts and supports Wikipedia and other volunteer-maintained free knowledge projects. The Foundation strives to empower everyone, including a significant fraction of the UK population, to help build, self-administer and participate in learning, culture and science. We support efforts to make the internet safer. When people are harassed or feel otherwise unsafe communicating online, their ability to access, create or share knowledge is diminished. Online safety is essential to the right to participate in culture and science, and for decentralised decision-making by communities who collaborate to further the public interest. Online safety can only be achieved when adequate safeguards for privacy and freedom of expression are in place.

While we understand that the Online Safety Bill was not specifically drafted with Wikipedia in mind, we are concerned that it not only threatens freedom of expression and privacy for Wikipedia readers and volunteers alike, but also threatens Wikipedia's volunteer-driven content governance model. In order to "make the UK the safest place to go online," the legislation seeks to impose numerous duties on platforms hosting user-generated content, including requirements to implement processes to limit or prevent access to illegal or harmful content. Such duties as currently drafted will interfere with the ways that Wikipedia works.

We appeal to the Committee to consider important issues of regulatory context and scope. The Online Safety Bill's requirements will not exist in a global vacuum. By virtue of the now-in-force EU Digital Services Act (DSA), internet platforms - including Wikipedia - are already legally

locked into programmes of child protection, all-age risk assessment and mitigation, and transparency (along similar but regrettably different lines to the Bill).

The Online Safety Bill has laudable objectives, namely to force internet companies to do some of the things that the community-governed Wikimedia projects have already been doing, including keeping people safe from harmful disinformation. The communities who build Wikipedia, for instance, collaborate to effectively and swiftly remove content that runs counter to the purpose of writing a fact-based, well-sourced encyclopaedia article, or does not otherwise meet high quality standards. The challenge ahead, for the Bill, is to pursue its objectives without forcing websites like Wikipedia to collect more data about their users and readers, or locking in top-down, centralised content moderation models and threatening the diversity of internet platforms and websites that rely on alternative approaches to maintaining civilised discourse and quality content.

While the latest revisions to the Bill have gone some way towards addressing serious concerns about "lawful but harmful" content affecting adults, many aspects of the Bill remain highly problematic. The Bill has now moved very far past its early-day promise of a general duty of care for platforms, e.g. to not algorithmically push harmful content on users for the sake of advertising revenues.

We understand that the scope of this Committee's review of the Bill does not extend to all clauses, so our comments and suggested changes focus on those that affect Wikipedia's model of content curation and privacy rights. Specifically, we ask that the Committee consider how the Bill as currently written and amended would 1) create heightened privacy risks for Wikipedia users globally through obligations on platform hosts to collect more data, 2) threaten the very functioning of Wikipedia by forcing the Foundation to intervene in community decisions about content.

1. **We are deeply concerned about the privacy implications of collecting user data for mandatory age verification.**

Requirements to prevent children from accessing certain content would constitute a mandate to collect user information. In the context of Wikimedia projects such as Wikipedia, such requirements would be counterproductive to the goal of keeping children safe online. While this may seem counterintuitive, this is the reality for our readers and editors. Currently, in order to safeguard the privacy and personal safety of readers and of volunteer contributors to Wikimedia projects, the Foundation collects very little personal information about people who visit our websites, and retains that information for only a short time. Our strict adherence to data minimisation principles is critical for many people who face threats of political surveillance and retribution — including, for instance, those sharing or accessing information on

Wikipedia about the invasion of Ukraine from Belarus. Our firm commitment to protect the privacy of our large international user base is necessary so that volunteers and readers alike can trust that they will not be tracked in their activities on Wikimedia platforms. This is further supported by international human rights standards, which stipulate that states have a duty to protect children's right to form and express their opinions without interference from automated processes of information filtering and profiling.

We ask the Committee to consider the consequences of a Bill that would require age-gating of all Wikipedia pages and links. In implementing this Bill, should we decide it is still worth offering Wikipedia and its sister projects in the UK, our Foundation faces a choice:

- We could focus just on the UK , e.g. age-gating only UK users. This is something the Wikipedia community would likely resist, as it requires reliably geolocating all users, at the cost of their privacy and personal security worldwide. It also likely means the loss of some of Wikipedia's most important and active contributors, editors and admins: those from the UK who cannot see the sense of proving their age and putting up with Foundation-imposed measures, just to carry on doing what they have successfully done - as volunteers, and through no duty to anyone - for over two decades.

- Alternatively, we could impose the Bill's requirements on our worldwide user base. However, this is an implausible outcome in reality: age-gating means even more processing of the sorts of personal data that would present an unacceptable privacy risk for people in occupied Ukraine, Iran, and other parts of the world that *truly* need Wikipedia and rely on safe and secure ways to access it.

Every way to implement age-verification on Wikipedia would come with large privacy risks and constitutes a great threat to people's trust in the Wikimedia Foundation as neutral steward of the free digital encyclopaedia. However, there are also practical considerations of placing Wikipedia behind an age-gate - that is to say, of requiring everyone who wants to merely read Wikipedia to login to an age-verified account, or to verify their age, each time they check a Wikipedia page: there are many services that rely on knowledge from Wikipedia to serve verifiable information to users. Should Alexa and Siri stop providing reliable answers from Wikipedia, in case the person asking is days away from their 18th birthday?

**We can reasonably expect that most people as well as information aggregation services will instead turn to other sources of information that aren't age-gated.** Their information diet will be - for instance - a tabloid website, or a free (and likely tampered-with, or advertising-laden)

Wikipedia clone hosted by an unknown entity. (A website that re-publishes Wikipedia content - and worse still, tampers with it - but cannot be edited by users, falls outside the scope of this Bill.)

**2. The Online Safety Bill is a threat to Wikipedia's model.**

Wikipedia's successful model of community collaboration and deliberation empowers volunteers to consider the context and sourcing of every sentence, data point, or image. This allows them to make nuanced and thoughtful decisions, and to avoid the mistakes and over-censorship common to the automated flagging and removal processes used for content moderation by many commercial platforms. New obligations to monitor, automatically remove, block or filter certain content, or to respond to complaints within timeframes so short that they prevent meaningful community decision-making are not compatible with community governance models like Wikipedia's. A duty to shield users (adults or children) from accessing certain content is essentially a duty to monitor every piece of information that is uploaded to a platform and review it with regard to its potentially illegal nature or harmful effects. As such it is detrimental to the way that volunteers on Wikipedia can make responsible decisions together without the Foundation interfering in those established processes.

Therefore, the Bill's obligations placed on nonprofit, public interest platforms with decentralised, volunteer-run content moderation models like Wikipedia should be different from those required of for-profit platforms that have top-down, centrally-directed content moderation systems that support advertising-driven business models. The Bill should be aligned with the European Union's Digital Services Act (DSA), which leaves room for community-governed content moderation systems and explicitly prohibits general monitoring obligations — i.e., rules that would require platforms to screen and monitor all activity and content. Like the DSA, the Bill should not impose a new duty to limit or "prevent" access to harmful content in relation to people of any age, even if only through mandatory enforcement of a platform's Terms of Service. Such a duty poses an impossible challenge for volunteer-driven systems due to almost infinite potential interpretations of what does and does not constitute "harm."

Digital spaces like online encyclopaedias and libraries should, furthermore, be exempt from such duties because they provide the public with access to diverse and reliable sources of educational content and information. Wikipedia and other Wikimedia projects are designed to make information easily accessible and freely available. Unlike profit-oriented platforms, Wikimedia projects provide information to individuals

without exploiting their data, attention, or targeting them with ads. The result of forcing them to monitor information and preventing access to certain content proactively will be **far-reaching cultural and economic harm - certainly to the UK, and possibly the wider world.**

In conclusion, the Bill as is stands before this Committee instead risks turning Wikipedia, and other wonderful projects like it, into either awkward, at-risk scofflaws (simply unable to comply with the current Bill's unfeasible requirements), or, *in extremis*, a "banned book" that UK users can only access through covert means. We therefore have hope for strengthened assurances that this Bill's dragnet may change its design to avoid the unintended consequence of snaring dolphins, and to let smaller fish through unharmed. Those chances would doubtless be magnified through immediate support from this Committee and the House of Commons more widely. We call for that support.

Yet we also appreciate that this Committee is not scheduled to look this week at the definition of services to be covered by the Bill. Accordingly, we limit our detailed comments below to just the provisions presently being scrutinised. Our hope is that our suggestions might help the Committee shape this Bill into a more proportionate, efficient and effective remedy for the modern ills that face UK digital society.

**With the shared goal of making the internet better and safer for all while also protecting Wikipedia and other Wikimedia projects, we offer our recommendations for revisions of the Bill.**

## Specific comments on the clauses under scrutiny

| Clause | Comment | Suggested drafting |
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| 11 *Safety duties protecting children* | The Wikimedia Foundation is already undertaking a Children's Rights Impact Assessment, building on earlier recommendations from our Human Rights Impact Assessment for our projects. The wellbeing of children is paramount. Yet we cannot achieve this by neglecting their right to receive information. In addition, we believe that: | (2) A duty, in relation to a service, to take or use proportionate measures relating to the design or operation of the service to effectively—<br>(a) mitigate and manage the risks of harm to children in different age groups, as identified in the most recent children's risk assessment of the |

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| | **1. Age-based discrimination between classes of internet users is inadequate, compared to concentrating on vulnerability more specifically and holistically**<br><br>- The emphasis of our work should be on protecting vulnerable individuals, regardless of what basic label can be attached to them. Age is an inadequate, blunt and unfair way to approach the problem.<br><br>- There are important practical and human-rights problems with an age-based approach. To focus on age means having to know or confidently guess the age of a user - i.e. either we, or one of the companies behind the AVPA, would have to collect more personal data, and make more profiling-based decisions, about people on the Internet. This discourages reading and contribution to Wikipedia, *particularly* for persons in warzones or authoritarian countries. Privacy and practical concerns rarely align - usually one is gained at the expense of the other; but an age-based approach to this Bill sacrifices *both*.<br><br>**2. The Bill, if it maintains its age-based approach, should be more flexible in how harms to underaged users are mitigated; imposing section 11(3) (age gating) as a risk prevention measure regardless of proportionality *guarantees* it will be** | service (see section 10(6)(g)), and<br>(b) mitigate the impact of harm to children in different age groups presented by content that is harmful to children present on the service.<br><br>(3) **The duty in subsection (2) may, where proportionate, include** ~~A duty to operate a service using~~ proportionate systems and processes designed to—<br>(a) prevent children of any age from encountering, by means of the service, primary priority content that is harmful to children (for example, by using age verification, or another means of age assurance);<br>(b) protect children in age groups judged to be at risk of harm from other content that is harmful to children (or from a particular kind of such content) from encountering it by means of the service (for example, by using age assurance).<br><br>(...)<br><br>~~(5) A duty to include provisions in the terms of service specifying—~~<br>~~(a) how children of any age are to be prevented from encountering primary priority content that is harmful to children (with each kind of primary priority content separately covered);~~ |

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| | **imposed in disproportionate situations.**<br>- It would logically be sufficient to impose section 11(2) - a duty of care to look after children using measures proportional to the actual risk. Where the situation calls for it, this would include age-gating.<br>- But section 11(2) is currently "topped up" by section 11(3) - a specific duty of care to **age-gate all U2U services**. This means that it extends age-gating beyond the situations in section 11(2) for which it is proportionate - to services where it is not, like Wikipedia, or even Wikivoyage.<br>- Instead, **section 11(3) should be redrafted as an example of a section 11(2) child safeguarding measure that *could* be appropriate**.<br><br>**3. By focusing on *prevention* of access to certain types of content by the service provider, section 11(3), and any other provision of this Bill or future OFCOM Codes that do the same, would disempower the members of society that make the content decisions on Wikipedia and all other user-run projects. Empowering "Big Tech" at the expense of society is surely the *opposite* of what most of us want from the Bill.**<br>- Section 11(3) is particularly pernicious, because of the words "prevent (...) from encountering".<br>- To comply with section 11(3), the law forces the service provider to be completely aware - even, paranoid and over-conservative - about *everything* that is uploaded to it; | ~~(b) how children in age groups judged to be at risk of harm from priority content that is harmful to children (or from a particular kind of such content) are to be protected from encountering it, where they are not prevented from doing so (with each kind of priority content separately covered);~~<br>~~(c) how children in age groups judged to be at risk of harm from non-designated content that is harmful to children (or from a particular kind of such content) are to be protected from encountering it, where they are not prevented from doing so.~~<br>~~(6) A duty to apply the provisions of the terms of service referred to in subsection (5) consistently.~~<br><br>(...)<br><br>~~(14) For the purposes of subsection (13), a provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if there are systems or processes in place (for example, age verification, or another means of age assurance) that achieve the result that children are not normally able to access the service or that part of it.~~<br><br>*(NB: consequential amendments to then be made to other provisions referring to the removed "duty" in section 11(3)).* |

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| | this an impossible task for the Wikimedia Foundation. Wikipedia, alone, is available in 300 languages (it briefly even existed in Klingon). It has content that is constantly changing and being reworded, from all over the world. For over twenty years this wonderful, self-building ecosystem has rested on the empowerment of *users* to monitor and decide what to do with its content (leaving the platform to deal with the residual or systemic problems that are notified to it). Let us even fantasise that this would be possible, particularly with our limited means. The Bill would completely up-end and shatter that positive, genuinely user-empowering dynamic, by forcing the Foundation to supervise and make "UK harmfulness" judgments about each and every edit – e.g. to decide whether something that was just edited now needs to be screened off from 17 year olds.<br>- Instead, the Wikimedia Foundation and its wider community should be able to explore other risk mitigations, than top-down surveillance and age-discriminatory denial of access. We are very happy to do this in consultation with all interested parties. **For example, the Foundation and the extremely diverse userbase we support should have the lawful freedom to consider and decide: should a 17.5 year old always be prohibited from visiting the Wikipedia article about suicide (in case a spontaneous edit - whether well-intentioned or trolling - adds a description of** | |

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| | **suicide methods)? Or would it be better to *not* force them over to other much darker websites (those not subject to, or not complying with, the Bill's safeguarding requirements), and instead offer them a helpline to get the help they (or indeed persons of any age) might need?**<br><br>**4. Section 11(5)'s requirement to lengthen Terms of Service ("ToS") with new and likely frequently-evolving legalese - just one of many such ToS requirements scattered across the Bill - is such a high-friction imposition (with no benefit of equal magnitude) that it would discourage platforms doing anything that would trigger future ToS modifications. Though innocuous in appearance, ToS requirements quite avoidably impose costs and complexity to the very people who should be able and keen to make things better for vulnerable users.**<br><br>- Section 11(5)'s duty to include things in Terms of Service is impractical. The Foundation's terms of service have to cover a wide variety of services, from Wikipedia to Wikiversity, for which the risks and mitigations and controls would vary widely.<br>- We would like our Terms to be compliant with laws (e.g. contract, consumer protection, privacy and now online safety laws) in the *hundreds* of jurisdictions in which we have users.<br>- And because we want to work *with and for* society, such | |

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| | an important document has to be consulted on, in many languages, with *tens of thousands* of members of the public.<br>- Once final, our Terms are translated - at high cost and effort - into *dozens* of languages.<br>- We are about to embark on a modernisation of our Terms; this will be a 6-12-month project, and very costly (financially and otherwise). It is the first time we have made major modifications in a *decade*. **The Bill would require it *every time our "children's risk assessments" or risk mitigation features change.***<br>- At the same time, we are also desperate for our Terms to remain readable, digestible and offering legal certainty.<br>- Other jurisdictions are already requiring their own ToS additions, through similarly questionable logic (transparency and user empowerment can be achieved without reliance on legalese in terms of service).<br>- In short: ToS should not be required to be any longer or more confusing than they are already. This does not meaningfully protect vulnerable people, and instead makes the ToS much more complicated and resource-intensive to maintain, discouraging corresponding (and helpful) service changes**. Instead, the Bill should require transparency in other ways - e.g. easy FAQs about how to use the child protection features, topped by a summary of the risks that have been assessed - and not in the ToS.** | |

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| | **“Consistent application of Terms of Service” provisions, while well-intentioned, are counterproductive**<br>- We understand the spirit of section 11(6), and amendment NC4, but these undermine our mission to empower society to self-govern projects like Wikipedia. Success of such projects requires a certain amount of discretion and “soft power” from the Foundation; every action we take usurps power from the wider community to govern itself, *especially* if we are doing it under statutory compulsion, not in response to a cry for help from the community itself. | |
| 12 *Adults’ risk assessment duties* | We agree with the government’s proposed removal of this clause, as it risks causing major issues for our projects. | Remove section 12 |
| 13 *Safety duties protecting adults* | We agree with the government’s proposed removal of this clause, as it risks causing major issues for our projects. | Remove section 13. |
| 14 *User empowerment duties* | **Despite this section aiming for user empowerment, this proposal for section 14 - and the most recent proposals to strengthen it - risk a 180 degree reversal from the user-empowering model that has enabled Wikipedia to flourish.** Section 14’s duty to give tools letting people control | (2) A duty to include in a service, to the extent that it is proportionate to do so, features which adult users may use or apply if they wish to **reduce their likelihood of encountering** ~~increase their control over~~ harmful content. |

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| | what they might be exposed to only makes sense when the service provider's algorithms are choosing what to put in front of a user's eyes - but that is not the Wikipedia model.<br><br>**A duty to allow users to filter out or be warned about harmful content means that the platform operator may be pressured to actively monitor *everything* that a user might encounter, in advance, so it can apply those filters. This cannot be achieved without general monitoring by the provider, and requiring the provider (rather than the user, or the Wikipedia community) to decide whether to classify content as meeting the harm categories that the Bill would prescribe. It means the *disempowerment* of Wikipedia users, both individually, and collectively.**<br><br>Instead, if this proposal is not rejected out of hand, it should be refocused primarily as a duty to allow users to disable the *algorithmic recommendation* of potentially harmful content. This is not too dissimilar, albeit slightly more powerful, than what platforms are already required to implement under Article 27(3) of the DSA.<br><br>As for subsection (4), this is not practical. A user who has been suspended from editing Wikipedia, but still allowed to read it, may not have access to exactly the same features as "all" other users. Similarly, some features might only be possible to deliver if a user logs in (or accepts cookies), but this subsection suggests | (3) The features referred to in subsection (2) **may include** ~~are~~ those which, if used or applied by a user, result in the use by the service of systems or processes designed to—<br>(a) reduce the likelihood of the user **being recommended to view, by the provider,** ~~encountering~~ priority content that is harmful to adults, or particular kinds of such content, by means of the service, or<br>(b) alert the user to the harmful nature of priority content that is harmful to adults that the user may encounter by means of the service.<br><br>(4) A duty to ensure that all features included in a service in compliance with the duty set out in subsection (2) are made available to ~~all~~ adult users **without requiring supplemental payment**.<br><br>(5) A duty to **provide** ~~include~~ clear and accessible **instructions** ~~provisions in the terms of service~~ specifying which features are offered in compliance with the duty set out in 15 subsection (2), and how users may take advantage of them.<br><br>~~(6) A duty to include in a service features which adult users may use or apply if they wish to filter out non-verified users.~~<br><br>~~(7) The features referred to in subsection (6) are those~~ |

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| | that would no longer be a lawful distinction to make; perhaps Wikipedia would then have to force everyone to log in just to read a Wikipedia article, an outcome that runs counter to our global mission and purpose. We do not know what the intention of this provision was, but *if* it was to ensure that helpful filtering is not made a premium (paid) feature, we suggest making that more explicit. The Committee should however consider striking outright this provision that, no matter how it is edited, could give rise to unforeseen difficulty, legal uncertainty and disputes.<br><br>As for subsection (5), our standard ToS requirement-related comments apply here. As the Committee will appreciate by now, the Bill is at this point requiring *pages* of new legalese to be added to a basic legal document, and also expects its prompt revision, re-consultation, multi-jurisdictional legal review, and re-translation into dozens of languages every time new protective features are rolled out; this would just discourage their roll-out and improvement, while infuriating users that will be swamped with "Our Terms of Service are changing!" notifications. If transparency is required, it should be provided elsewhere, e.g. an FAQ.<br><br>As for subsections (6), (7) and (9), they make no sense at all for something like Wikipedia. **Being able to post content anonymously from occupied Ukraine about the Russian invasion is *critical* to Wikipedia's societal value. There is no** | ~~which, if used or applied by a user, result in the use by the service of systems or processes designed to—~~<br>~~(a) prevent non-verified users from interacting with content which that user generates, uploads or shares on the service, and~~<br>~~(b) reduce the likelihood of that user encountering content which non verified users generate, upload or share on the service.~~<br><br>(…)<br><br>~~(9) In this section "non verified user" means a user who has not verified their identity to the provider of a service (see section 58(1)).~~ |

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| | **conceivable way to design Wikipedia articles in such a way that those edits would be invisible to certain other users, but not others; and it is not something users are asking for. Likewise, to say that only validated users can "interact" with your content is to make your contributions to a Wikipedia article - even basic vandalism - immune from community fixing.**<br><br>Instead, subsections (6) and (7) should simply be deleted; a broader duty of care *may*, for other types of platforms, lead to the implementation of a verified user feature there; it makes no sense to impose it universally, at least so long as Wikipedia can be included in the Bill's dragnet. | |
| 18 *Duty about content reporting* | It has always been easy for users to report problematic content on our projects, so we have no fundamental problem with this provision. | |
| 21 *Record-keeping and review duties* | **When one considers how many different "assessments" are required, how many "measures"/"systems"/"processes" may be deployed in response, how these may evolve, and how many services are in scope (our nonprofit, alone, hosts *dozens*, serving people everywhere in the world), then a duty to document it all, to a legal standard, is excruciatingly onerous - the cost and friction of it would seriously disincentivise the cataloguing of new risks, the rollout of new measures, and transparency with the public and OFCOM about them (since** | Delete section 21. |

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| | **that would expose inadvertent gaps in the records, and thus is a legal liability).**<br><br>Thus we believe this section should be removed from the final Act. **Instead, OFCOM should just use its extensive new powers to ask the questions that really matter, directly to the platforms.**<br><br>It is also important to note that those same platforms will be intimately scrutinised by independent researchers, as a result of the DSA (which is piloting this novel approach to transparency). That process will make available (including to OFCOM, and the UK Parliament) independent information about platforms' approaches to harm reduction - without a need for the Bill to add a new layer of burdensome and - for Wikimedia's projects - counterproductive requirements. | |
| 30 *Duties about freedom of expression and privacy* | Regarding subsection (2): the Wikimedia projects put users at their heart - almost everything is done to support and protect constructive users, and free them to do great things. Wikimedia projects are designed around the idea that a community can be trusted to make decisions about vandalism or suspected disinformation agents. Users are the site's own immune system.<br><br>**We therefore caution against well-intentioned provisions, like these, that hand those same disruptive agents and vandals a legal tool to cause problems for the community - to evade and bog down their processes or even to force us, the host, to** | (2) When deciding on, and implementing, safety measures and policies, a duty to have regard to the importance of protecting the rights of users and interested persons to freedom of expression within the law.<br><br>~~(3) When deciding on, and implementing, safety measures and policies, a duty to have regard to the importance of protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use~~ |

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| | **remove moderation authority from the community in order to avoid it fostering unchecked legal liability.**<br><br>More fundamentally, there are many places online in which people can express their individual, controversial or fringe views, e.g. about COVID-19 or religion; this is a good thing. But giving them an enforceable right against, say, a communally-written, consensus-driven nonprofit encyclopaedia is something that merits far greater societal debate than it is receiving (at least, outside the USA) at the moment.<br><br>For privacy reasons, we collect limited data. So sometimes, we have to ban apparent networks of disinformation agents based on a suspicion of coordinated conduct; individually, their contributions may not be terrible, but the collective impact is to skew Wikipedia content for all other users. If each could threaten to sue us - put us to a balance of probability standard that a court would insist on - we may over time decide it is safer not to act.<br><br>So Parliament, at least in Hansard or the Bill's explanatory notes, should openly acknowledge that some behaviour (e.g. harmful edits to Wikipedia articles, wrongful banning of fellow users, etc), can themselves infringe on the freedom of other users' expression (and their freedom of association, communal autonomy, etc), and that in those cases the platform has discretion to protect the project when balancing these opposing | ~~or operation of a search service (including, but not limited to, any such provision or rule concerning the processing of personal data).~~ |

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| | interests.<br><br>**Parliament must also ensure that the drafting as it stands does not go further in the wrong direction.**<br><br>Subsection (3), meanwhile, seems entirely redundant - it amounts to saying that laws must be complied with. This sort of drafting makes the law unduly long and reduces its credibility as solid, smart regulation. | |
| 46 *Relationship between duties and codes of practice* | Subsection (8): good privacy goes beyond strict adherence to statute, so a provider should be entitled to set a higher standard for themselves, and choose acceptable alternative measures (than those in a code of practice) accordingly - **as it now stands, the Bill could be read as suggesting that when a provider is considering a departure from a Code of Practice measure (for example age verification), it can *only* invoke privacy justifications for that departure *if* it is concerned about directly violating the GDPR or other privacy statutes**. A wider concern to (for instance) protect the anonymity of Wikipedia contributors posting from warzones should obviously also be a legitimate reason for seeking alternatives to a Code of Practice recommendation. | (8) In this section—<br>(a) references to protecting the privacy of users **include** ~~are to~~ protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a user-to-user service or search service (including, but not limited to, any such provision or rule concerning the processing of personal data);<br>(b) references to a search service include references to a combined service |
| 55 *"Content that is harmful to adults" etc* | We agree with a move away from allowing future governments to dictate what content is lawful but harmful. | Remove this section. |

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| 56<br>*Regulations under sections 54 and 55* | The power to decide what is regulated speech - in this case, what is "primary priority content that is harmful to children" - should **never** be devolved by elected representatives of the people, to the executive branch. The ongoing surge in the power of populists across this continent - and indeed British and wider European history itself - offer a clear warning of what happens when it is too easy for moral panics to dictate the content of the law.<br><br>In the late 1980s, the government considered it unacceptable to "*promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship*".<br><br>In short, large institutions, and the executive branch of the day, have a tendency to overreact, and to treat what they consider upsetting, or immoral, as a **harm** to children (or indeed adults), when later experience may often show that to be an incorrect reflex.<br><br>All speech and access to information online that Parliament has decided should be submitted to regulation, should appear in the primary Act. Parliament is free to amend it at any time. This should **not** be an ace card that is handed to the executive branch, not least because experience has shown that the executive branch can sometimes have a particularly weak democratic mandate. | Delete sections 54 and 56 (and other consequential provisions).<br><br>Section 57 can then be repurposed into a duty for OFCOM to advise on the evolution of online harms, thus helping Parliament consider whether to update the Online Safety Act. |

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| | This is somewhere where rulemaking friction is important - it will never prevent justified regulation, but it is more likely to prevent *over*-regulation.<br><br>**As for the first wave of content to be declared harmful to children, the public, and Parliament, must have *and fully conclude* that debate *now* - only then can this Bill's true impact and social desirability be assessed.**<br><br>It should not be seen as acceptable to invoke the nearing end of the legislative session - still five months away - as a (self-inflicted!) reason to leave that debate open, on something as fundamentally important as this. | |
| 65 *Transparency reports about certain Part 3 services* | Our comments about a new layer of burdensome requirements that are unlikely to make a material difference for real people apply here, too. The Wikimedia Foundation has for many years had extensive transparency reporting practices, and new ones are coming in under an ever-diversifying range of laws around the world. The EU DSA, in particular, requires extensive report-drafting already; we simply do not have the resources to do something different just for individual countries.<br><br>**We implore Parliament to find more pragmatic solutions to section 65's objective - the outcome would likely be the same, or even better transparency, because resources can be focused with efficiency, not squandered in chaotic efforts to meet reporting requirements all around the world, at various** | 65 Transparency reports about certain Part 3 services<br>(1) **No more than** once a year, OFCOM **may** ~~must~~ give every provider of a relevant service a notice which requires the provider to produce a report about the service (a "transparency report").<br>(2) If a person is the provider of more than one relevant service, a notice **may** ~~must~~ be given to the provider in respect of **any or** each such service.<br>**(3) The notice referred to in subsection (1) may specify the types of information that OFCOM requires in such a report, having regard to the time and resources that will be available to the provider in question. In determining the timing and content of such notices, OFCOM must also have regard to any emerging international norms or** |

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| | **times of the year, etc.**<br><br>**Specifically, we suggest removing, or creating timing flexibility for, the reporting obligation. The UK regime can instead rely on OFCOM's ability to direct questions at service providers to ensure that *if* there are any gaps in the reports that will in any case exist, those can be explored appropriately.** | **consensus as to the useful content, timing and/or format of reports of this nature.**<br>~~(3) In response to a notice relating to a relevant service, the provider of the service must produce a transparency report which must—~~<br>~~(a) contain information of a kind specified or described in the notice, (b) be in the format specified in the notice,~~<br>~~(c) be submitted to OFCOM by the date specified in the notice, and~~<br>~~(d) be published in the manner and by the date specified in the notice.~~<br>~~(4) A provider must ensure that the information provided in a transparency report is—~~<br>~~(a) complete, and~~<br>~~(b) accurate in all material respects.~~<br>~~(5) A "relevant service" means—~~<br>~~(a) a Category 1 service (see section 83(10)(a));~~<br>~~(b) a Category 2A service (see section 83(10)(b));~~<br>~~(c) a Category 2B service (see section 83(10)(c)).~~<br>~~(6) In a notice which relates to a Category 1 service or a Category 2B service, OFCOM may only specify or describe user-to-user information.~~<br>~~But in the case of a service described in subsection (9), that subsection applies instead.~~<br>~~(7) In a notice which relates to a regulated search service that is a Category 2A service, OFCOM may only specify or describe search engine information.~~ |

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| | | ~~(8) In a notice which relates to a combined service that is a Category 2A service, and is not also a Category 1 service or a Category 2B service, OFCOM may only specify or describe search engine information.~~<br>~~(9) In a notice which relates to a combined service that is a Category 2A service, as well as being a Category 1 service or a Category 2B service, OFCOM may specify or describe user-to-user information or search engine information, or both those kinds of information.~~<br>~~(10) In subsections (6) to (9)—~~<br>~~(a) "user-to-user information" means information which—~~<br>~~(i) is about the matters listed in Part 1 of Schedule 8, and~~<br>~~(ii) relates to the user-to-user part of a service;~~<br>~~(b) "search engine information" means information which—~~<br>~~(i) is about the matters listed in Part 2 of Schedule 8, and~~<br>~~(ii) relates to the search engine of a service.~~<br><br>(…) |
| Schedule 8 *Transparency reports by providers of Category 1 services, Category 2A services and* | Consequential on the pragmatic changes we have suggested above, Schedule 8 can be deleted, shaving substantial length and complexity off this Bill, and thereby enabling not just better allocation of resources to those that will be tasked with applying it in future, but also more sensible allocation of the limited Parliamentary time left in this legislative session. | Delete Schedule 8. |

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| *Category 2B services* | | |
| 79 *General duties of OFCOM under section 3 of the Communications Act* | It is essential that OFCOM exercise its new and very heavy responsibilities with due regard for all interests of the public, including the individuals who use and run Wikipedia and its sister projects.<br><br>It is unclear to us why this section is so verbose, and seemingly designed to require OFCOM to promote technologies like those that will be marketed (quite lucratively) by AVPA members; nor why OFCOM's obligation to be alert to disproportionate regulatory burdens will *exclude* the burdens arising under this Bill.<br><br>In any case, this section currently misses a critical objective for OFCOM, if it is going to take a steering hand in what people can now do and see online: respect of those wider interests, including models that empower the public itself to control what is on a platform and that support the public interest.<br><br>Regarding subsection (4), we maintain that some adults need more protection than some children, and that it is not appropriate to categorically force OFCOM (nor online providers) to systematically adopt a contrary stance in the performance of its duties. OFCOM already has a general duty, under the Communications Act provisions being amended here, to have regard to "the vulnerability of children and of others whose | 79 General duties of OFCOM under section 3 of the Communications Act<br>(1) Section 3 of the Communications Act (general duties of OFCOM) is amended in accordance with subsections (2) to (8).<br>(2) In subsection (2), after paragraph (f) insert—<br>"(g) the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm**, having regard to Convention rights and to the desirability of the promotion and preservation of existing means in use to effectively reduce such harms; and to the empowering, where appropriate, of citizens to determine individually and collectively how such content and related harms are addressed on those services."**<br>~~(3) In subsection (4)(e), at the beginning insert "(subject to subsection (5A))".~~<br><br>~~(4) After subsection (4) insert—~~<br>~~"(4A) In performing their duties under subsection (1) in relation to matters to which subsection (2)(g) is relevant, OFCOM must have regard to such of the following as appear to them to be relevant in the~~ |

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| | circumstances appear to OFCOM to put them in need of special protection". This is better, and it does not need supplementing or changing. The rest is all largely impactless wording that makes section 3 of the Communications Act even longer, and dilutes the likely importance of everything already catalogued therein. "*the desirability of promoting the use by providers of regulated services of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services*" seems particularly likely to have been authored by the companies that will profit from the imposition of those technologies, by law, on services such as our own.<br><br>Regarding subsection (5), the desirability of effective forms of self-regulation is not limited to certain things but not others; if it is effective, it is desirable compared to what would be (in that hypothetical scenario) unnecessary exercises of power by the state. Carving out the online safety regime from the "desirability" of self regulation is senseless. If self regulation would not be effective, this provision would be irrelevant, and thus should be of no concern to whoever proposed its setting aside in respect of this Bill's objectives. | ~~circumstances— (a) the risk of harm to citizens presented by content on regulated services;~~<br>~~(b) the need for a higher level of protection for children than for adults;~~<br>~~(c) the need for it to be clear to providers of regulated services how they may comply with their duties set out in Chapter 2, 3, 4 or 5 of Part 3, Chapter 1 of Part 4, or Part 5 of the Online Safety Act 2023;~~<br>~~(d) the need to exercise their functions so as to secure that providers of regulated services may comply with such duties by taking measures, or using measures, systems or processes, which are (where relevant) proportionate to—~~<br>~~(i) the size or capacity of the provider in question, and~~<br>~~(ii) the level of risk of harm presented by the service in question, and the severity of the potential harm~~<br>~~(e) the desirability of promoting the use by providers of regulated services of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated service~~<br>~~(f) the extent to which providers of regulated services demonstrate, in a way that is transparent and accountable, that they are complying with their~~ |

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| | | ~~duties set out in Chapter 2, 3, 4 or 5 of Part 3, Chapter 1 of Part 4, or Part 5 of the Online Safety Act 2023."~~<br><br>~~(5) After subsection (5) insert –~~<br>~~"(5A) Subsection (4)(c) does not apply in relation to the carrying out of any of OFCOM's online safety functions."~~<br><br>(…)<br><br>~~(9) In section 6 of the Communications Act (duties to review regulatory burdens) –~~<br><br>~~(a) in subsection (2), after "this section" insert "(except their online safety functions)", and~~<br><br>~~b) after subsection (10) insert –~~<br>~~"(11) In this section "online safety functions" has the same meaning as in section 3."~~ |
| 82 *Meaning of threshold conditions etc* | If some services have many users but do NOT present the same risk to individuals as, say, TikTok or Twitter, then the Bill should allow those to be *downgraded* from Category 1. Otherwise the Bill will only ratchet in a single direction (low-usage high risk services being upgraded to Category 1). | The Bill's drafters should be asked to mirror the present provisions so as to allow downgrading of some high-usage but low-risk services from Category 1. For efficiency, we will not propose that drafting ourselves; time has not allowed us to produce it. |

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| 87 *Power to require information* | No comment | |
| 90 *Reports by skilled persons* | No comment | |
| 115 *Requirements enforceable by OFCOM against providers of regulated services* | No comment | |
| Schedule 11 | We do not count how many users there are of our services.<br><br>Doing so requires us to be able to recognise returning users individually, and to decide whether they are real humans, or bots just copying our content (e.g. a university that automatically collects data for its own research purposes). This means a major intrusion into their privacy, if they are not logged in. Instead, we attempt to count how many *devices* have recently accessed our service (and try to exclude bots).<br><br>**We implore Parliament to use more flexible wording than** | "the number of users of the user-to-user part of the service **(actual, or reasonably estimated)**,"<br><br>*(All instances of that expression in Schedule 11 should be amended)* |

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| | **"number of users", allowing the categorisation and regulation of platforms based on size *without* requiring them to specifically count individual users (at high cost to privacy).** | |
| 155 *Review* | No comment | |
| 169 *Individuals providing regulated services: liability* | No comment | |
| 203 *Interpretation: general* | Regarding the definition of "**child**": To define someone on the cusp of turning 18 as a "child", for the purposes of this law, ignores the reality that such persons are often as capable, if not moreso, of facing up to online challenges as many adults today. We advocate for the same definition of "child" as is used in the UK GDPR; this also allows consistency of compliance across these two interlocking and burdensome laws.<br><br>Regarding the definition of "**encounter**": Parliament and the public are motivated by awful cases such as Molly Russell, and the power of recommendation algorithms to repetitively hook people into viewing and rebroadcasting harmful content. This is entirely different to users deciding to voluntarily learn about, for example, their own genitalia, or ISIS, by looking up a well-sourced, factual entry in Wikipedia. | "child" means a person under the age of **14** ~~18~~;<br><br>"encounter", in relation to content, means read, view, hear or otherwise experience content **recommended by a regulated service provider**;<br><br>"taking down" (content): any reference to taking down content is to any action that results in content being removed from a user-to-user service or being ~~permanently~~ hidden so users of the service cannot encounter it **except for a legitimate purposes, such as auditing whether it was appropriately treated and, where that was not appropriate, restoring it, and/or for training or testing systems and processes to identify such content in future** (and related expressions are to be read accordingly); |

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| | Regarding the definition of "**Taking down**":<br>• On Wikipedia, the "history" of an article - including what past mistakes or vandalism it contained - can usually be reviewed, at least by trusted users. This is a crucial check and balance against manipulation by everyday users, or against overreach by administrators or even the service provider (ourselves). On a service such as our own, it should be considered a critical and very desirable safeguard, and protected accordingly. **If "take down" has too narrow a meaning, this risks us deciding that it is too risky to leave that history open to public scrutiny (as it may contain "harmful" vandalism).**<br>• Removed content is also available to Wikipedia users so they can learn to identify and moderate harmful content, vandalism, etc. They have built "bots" that look for such content, so they can then remove it. **Here again, the edit history of such content is critical to community empowerment, and with a narrow definition, the Bill would actively *harm* a major safeguard for an important service.** | |
| 206 *Extent* | No comment | |
| 207 *Commencement and transitional provision* | The short time available between this revised, consolidated Bill's publication and the deadline for input to the present Committee has deprived us of an opportunity to step back and consider the impact and functioning of provisions such as this one (which defers in time the entry into force of some of the Bill's | |

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| | provisions). Accordingly, we have no comment on this section. | |
| 183 | No comment | |
| Schedule 17 | No comment | |