

Submission to Joint Select Committee on Social Media and Australian Society

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Summary of Recommendations

- Government should incorporate an overarching 'duty of care' into the Online Safety Act to put digital platforms on notice to manage all safety risks across their services.
- Government should regulate to protect traditional media in the online environment with strong and enforceable copyright, defamation and competition laws.
- Government should focus on strong data protection and privacy laws and a broader human rights framework to address the systemic risks of recommender algorithms and other features of online content delivery.
- Government should identify existing laws that may apply to unlawful content and activities online and ensure there is capacity for robust enforcement by relevant bodies.
- Government should take a future proof approach to social media platforms taking account of the impact of AI on all issues relating to social media.

Introduction

1. A barrister and expert in public international law, in particular human rights law, I have advised civil society, international organisations, parliaments and UK advisory and regulatory bodies including the Equality and Human Rights Commission and the Centre for Data Ethics and Innovation on the implications of international human rights law for tech regulation and accountability. I have provided expert input on legislative and regulatory form related to tech and human rights in the UK and internationally. As a Senior Fellow at the Centre for International Governance Innovation, I lead an interdisciplinary [project on the right to freedom of thought in the online environment](#).
2. The author of two books on human rights and technology, "[Freedom to Think: Protecting a Fundamental Human Right in the Digital Age](#)" was a Financial Times Technology Book of the Year 2022 and focused on the ways technology, including social media, undermine our rights to freedom of thought and opinion. My latest book "[Human Rights, Robot Wrongs: Being Human in the Age of AI](#)" studies the implications of AI for a broad range of human rights including implications for media and creative industries.
3. I believe that a systemic approach is crucial to addressing the risks posed to Australian society by online harms, but a systemic approach to the online environment should include legal and regulatory responses from a wide range of legal angles including privacy, data protection, media regulation, criminal law, competition and human rights law. Social media is a part of everyday life, it is not exempted from existing legal frameworks though it may require legislative responses to address some of the challenges. It is also important for the Committee to learn from the past while looking to the future risks likely to arise with the rapid evolution of AI in social media.

4. I make this submission to the Joint Select Committee on Social Media and Australian Society on the influence and impacts of social media on Australian society from the perspective of international human rights law and its relevance to social media and related technology. Taking account of the Terms of Reference of the Inquiry, my submission will primarily focus on the points which best reflect my areas of expertise, drawing attention to examples and themes of relevance outside Australia.

Response to Specific Terms of Reference

A - Child Online Safety and Age Assurance

5. The potential risks to children from social media are multi-dimensional and cannot be addressed with a technical fix like age assurance. While such solutions may prevent access to restricted access services like online pornography or online alcohol or gambling sales, they do not make online services safe when children access them. Structural problems with safety on social media platforms require systemic approaches. And the harms caused by social media to children may also stem from the impact social media has [on their families promoting potentially harmful activities like gambling and alcohol consumption](#).
6. In Europe, the [European commission recently opened formal proceedings against Meta under the Digital Services Act](#) (DSA) due to concerns that the “systems of both Facebook and Instagram, including their algorithms, may stimulate behavioural addictions in children, as well as create so-called ‘rabbit-hole effects’.” The Commission is also looking into the age assurance and verification methods put in place by Meta, questioning their reasonableness, proportionality and effectiveness and studying Meta’s compliance with its obligations under the DSA to put in place high standards of privacy, safety and security protections for children. The DSA provides a comprehensive approach to accountability for children’s rights including provisions on risk assessment, risk mitigation, transparency, accountability and enforcement. Without these five key elements, a policy focusing on age verification will only be a band aid on the gaping wound of child online harms.

B/C - Information Integrity and Journalism

7. Information integrity relies on professional journalism and quality media to provide a reliable source of news and information. The population of traditional social media platforms with AI generated content, prone to ‘hallucinations’ could serve either to exacerbate the disintegration of information integrity, or lead to an exodus from those platforms. The hallucinatory capacity of generative AI may well require careful consideration of the application of defamation laws to AI tools as both search engines like [Google](#) and platforms like [Meta](#) are increasingly producing their own content with AI as opposed to just [sharing content posted by third parties](#). As people rely on these tools for access to information, it will be vital to provide a level playing field in terms of legal liability for defamatory and other unlawful content produced by AI. It is clear that voluntary codes and self-regulation will not be sufficient to constrain big tech platforms, as the EU discovered when [Twitter withdrew from the voluntary code on disinformation](#) last year. Later last year, however, the platform, now X, became [the first to be targeted by the EU under the DSA](#), a strong legal framework with teeth.

8. Social media as we have known it may not have the same power in coming years but traditional media are faced with new threats from the encroachment of generative AI. In the absence of clear and effective regulation to address this issue, publishers in other jurisdictions have taken different approaches to this threat. Some, like the [New York Times](#), have launched law suits alleging mass copyright infringements against AI companies like OpenAI and Microsoft. Others, like the [Financial Times](#) and the Atlantic, have chosen to enter into deals with AI companies, licensing them to train their models on the publishers' archives. Jurisdictions that protect the media with enforceable copyright and competition law and regulations while levelling the playing field between social media platforms and traditional publishers on liability around publication will be best placed to ensure a healthy and pluralistic online information environment for the future.

D - Recommender Algorithms and Systems

9. A key challenge with the online information environment is the systems that organise the information that individuals actually get to see. Social media uses personalised algorithms to decide what anyone sees at any time and the manipulative power of personally curated feeds is increasingly recognised at the international level. In 2019, the [Council of Europe's Committee of Ministers issued a Declaration on the Manipulative Capabilities of Algorithmic Processes](#) which recognised that "[f]ine grained, sub-conscious and personalised levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions." While arguments about content focus on the right to freedom of expression, the systemic risks of social media come from the ways content is curated through recommender algorithms which affects individual's freedom of thought and opinion with consequent threats to society.
10. The reason that individuals see different content when they go online is intimately linked to the collection of their personal data for profiling, targeting and curation of content. Personal data allows people to be categorised in terms of their interests, but also their vulnerabilities. In a [report last year for Reset Australia](#), I highlighted the ways that vulnerable consumers in Australia are targeted with harmful advertising based on their personal data. Similarly, in a [report for Global Action Plan](#) in 2022, I flagged the ways recommender algorithms, driven by targeted advertising business models sow division and spread climate disinformation.
11. Mental health impacts of the online environment are similarly exacerbated by the use of inferences about mental health and the collection of sensitive health and mental health data to target individuals at times when they may be vulnerable. The coroner looking into the death by suicide of the British teenager, Molly Russell, [highlighted the effect of recommender algorithms](#) pushing binge periods of toxic content without her seeking it out and said that social media use "contributed to her death in a more than minimal way." Privacy International has also published an extensive report ["Your Mental Health for Sale"](#) flagging the widespread problem of personal data from mental health websites being sold to third parties for targeting in several European countries.

E - Harmful or Illegal Content

12. Systemic approaches to harmful or illegal content online are vital and should be seen in the broader context of relevant laws including criminal laws, laws relating to privacy, human

rights laws, consumer protection laws and others. One key point in relation to tackling harmful or illegal content online is real world liability and enforcement mechanisms. In the UK this month, [the Financial Conduct Authority pressed criminal charges against nine “finfluencers”](#) including reality TV stars, for promoting an unauthorised foreign exchange trading scheme through their social media channels. In many cases, this type of action does not require new legislation, it just needs existing legislation to be enforced, or occasionally tweaked, to provide effective accountability and enforcement for violations in the online environment.

F - Related Matters - The Rise of AI in Social Media

13. It is important to note that social media is currently in a state of flux, particularly given the recent emergence of widely accessible generative AI. This means that any consideration of social media today should take account of the current and future impact and influence of AI on the information environment, including traditional media. The UK’s Competitions and Markets Authority has [raised concerns about the preponderance of big tech platforms](#) in the burgeoning AI industry, the Chief Executive pointing out that: "The essential challenge we face is how to harness this immensely exciting technology for the benefit of all, while safeguarding against potential exploitation of market power and unintended consequences." The developers and deployers of AI are many of the same platforms that dominate social media.
14. Social media trends change over time with different platforms becoming popular with different demographics and changes to social media platform policies having an impact on user engagement. The recent launch (by one of the founders of Snap) of [“Butterflies”](#), a social media platform that offers users the chance to create AI avatars to go out and engage on their behalf in its virtual space is an example of AI innovation in social media which may, or may not, catch on. But the manipulative impact of synthetic characters that interact with people including children and vulnerable adults adds a worrying layer to the problems already seen on traditional social media platforms. There are already [examples](#) of the [ways](#) that engagement with personal chatbots can have a devastating impact on people, even when people know that they are engaging with AI rather than a real person. Laws and regulations governing the use of AI that is designed to present as human, particularly conversational chatbots, are a gap in current frameworks that should be considered as a matter of urgency.
15. Strong regulatory frameworks with effective enforcement mechanisms are key to facing the new challenges of the emerging AI aspects of social media. Meta announced that it would start to train its own AI model on users’ content and activities on its platforms from 26 June 2024 globally but initially provided an opt out for users in the EU/EEA and the UK due to the compliance requirements of the EU’s General Data Protection Regulation (GDPR) and related data protection legislation in the UK. Following compliance concerns raised and engagement by the Data Protection Commissioner in Ireland and the Information Commissioner’s Office in the UK, [Meta announced a pause on this plan in the region](#), just ten days before the roll out. Australians, currently, will not even have the power to opt out. Legislators should give urgent consideration to strong regulation around privacy and the protection of personal data to ensure that Australians are equally protected from this kind of development.

Recommendations

Recommendation 1: Government should incorporate an overarching ‘duty of care’ into the Online Safety Act to put digital platforms on notice to manage all safety risks across their services.

A comprehensive and enforceable approach to systemic risks to children and adults on social media platforms is needed taking lessons from the European Union DSA. The risks of harm to children in the online environment go far beyond the specific risk of access to harmful content which age verification seeks to address. A systemic approach to safety online with robust enforcement mechanisms is needed to protect children.

Recommendation 2: Government should regulate to protect traditional media in the online environment with strong and enforceable copyright, defamation and competition laws.

A free and independent media is the bedrock of a healthy information environment. Societies need freedom of information, specifically reliable information, to underpin freedom of opinion. Self-regulation of social media platforms in relation to media content will not be sufficient to protect information integrity, legal frameworks are needed to protect independent media and prevent abuses by dominant platforms.

Recommendation 3: Government should focus on strong data protection and privacy laws and a broader human rights framework to address the systemic risks of recommender algorithms and other features of online content delivery.

The systemic problems of online content stem from the ways platforms harvest personal data for profiling and targeting of individuals. Strong and enforceable privacy and data protection laws are vital to address this issue. A human rights law that embeds human rights in the application and interpretation of other laws and the decisions of public bodies, like the UK’s Human Rights Act 1998, would ensure a more holistic approach through a range of legal routes to prevent human rights harms.

Recommendation 4: Government should identify existing laws that may apply to unlawful content and activities online and ensure there is capacity for robust enforcement by relevant bodies.

Social media may be relatively new, but many of the online harms, such as fraud and scam advertising, are just new iterations of old problems that already have legal solutions. Mapping of relevant laws and strengthening bodies responsible for enforcement will often be more efficient than creating new legislation to address these issues.

Recommendation 5: Government should take a future proof approach to social media platforms taking account of the impact of AI on all issues relating to social media.

AI is already changing the face of social media and many of the platforms are the big players in AI development, Government action in this field needs to learn from the past but look to the future in designing effective regulation and preventing predictable harms.

Susie Alegre

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