**NUJ briefing - Online Safety Bill**

**March 2023**

The Online Safety Bill (clause 15) outlines duties technology platforms must adhere to when protecting journalistic content. Definitions include news publisher content in relation to the service, and content generated for purposes of journalism that is UK-linked.

The NUJ supports an amendment tabled by Lord Stevenson expanding the definition of ‘journalistic content’ in the bill to include content companies have reasonable grounds to believe will be in the public interest.

**Protection of sources**

A journalists’ right to protect sources is a key principle and important in shaping the creation of news stories particularly when sensitive in nature. The Bill puts a duty on technology platforms to monitor user-user direct messaging for some content through section 110 notices. This means encrypted messages will need to be monitored, but at present there are no enhanced safeguards to protect sources.

There is a duty to respect privacy in the bill, but the NUJ is concerned about how this can be adhered to if messages between journalists and sources, including about their location or confidential material can be accessed. Without amendments to the bill, it risks placing journalists, sources and whistle-blowers in danger, creating a chilling effect that prevents individuals providing information that could help inform public interest journalism, and hold the powerful to account.

Although clause 110 does not explicitly reference the use of Client Side Scanning as a method of analysing user messages, experts consider it increasingly likely that Ofcom will require technology companies to use some form of CSS to moderate content – breaking end-to-end encryption to avoid huge fines.

Should the UK government proceed with plans, it risks sending a message to authoritarian states that failing to protect sources is acceptable and poses no threat to journalism.

In January 2023, Meta’s head of WhatsApp confirmed the company would not comply[[1]](#footnote-1) with the Online Safety Bill’s need to break encryption, by lowering security provided. In February, messaging app Signal used by journalists and their sources globally because of its end-to-end encryption, indicated it would not continue to offer the service in the UK.[[2]](#footnote-2)

Breaking encryption threatens the privacy of all users and government must provide an alternative approach to achieve its aims without removing the protections for journalists.

**Journalists’ safety**

The NUJ has long campaigned for the safety of journalists, condemning the online abuse encountered by many through their their work online. Although technology platforms use a combination of algorithms and humans to moderate content, there are several examples where offensive/racist/misogynistic harmful material is not removed. The Bill through the duties it imposes on platforms to protect users, could be a significant step in increased protection of journalists abused online.

In several instances, online abuse has escalated into physical violence and one way to help address this would be to include comment sections on news sites within scope of the Online Safety Bill and regulation.

The NUJ agrees illegal content should always be removed from sites to protect users. Government’s reversal on platforms removing legal but harmful content published online, now means journalists no longer risk lengthy appeal processes to ensure their content flagged as such remains accessible. Under proposals, platforms will need to remove material that breaches their own terms of service while providing a filtering mechanism allowing individuals greater choice over content they engage with.

A balance must be achieved by platforms, in ensuring they protect journalists from the abuse encountered on sites without expanding filters beyond users’ requests to filter information.

**Role of Ofcom**

The NUJ supports the duty in the Bill for Ofcom to improve promote media literacy of members of the public. As part of her review, Cairncross recommended a News Quality Obligation where online platforms would be under an obligation or “regulatory supervision” requiring them to improve how users understand the origin of a news article and the trustworthiness of its source.

In its role as regulator, Ofcom will have considerable power in determining whether content has breached legislation. We recognise the impact significant fines being imposed on companies will have in encouraging compliance with the law and accept this is important regarding wider impacts on journalists’ safety. There must be an appropriate balance however, in the power given to Ofcom to ensure its role does not lead to censorship of freedom of expression in the UK.

The union is concerned that the Online Safety Bill gives the Secretary of State too many powers and breaches the independence of Ofcom. Ofcom’s position as regulator should allow the body to make independent decisions without interference from government.

We welcome government’s new clause requiring Ofcom to produce a report within two years of the Bill commencing, assessing its impact on the availability and treatment of news publisher content and journalistic content on Category 1 services. In preparing its report, Ofcom must engage with “persons who appear to OFCOM to represent creators of journalistic content.” The NUJ would welcome engagement with the regulator to relay member concerns, including those of freelance journalists.

The union will closely monitor the Bill as it progresses through the parliamentary process and welcomes engagement from government on ways to ensure sufficient journalistic protections are established.

The Bill is expected at committee stage on 25 April.

1. <https://www.theguardian.com/technology/2023/mar/09/whatsapp-end-to-end-encryption-online-safety-bill> [↑](#footnote-ref-1)
2. <https://www.bbc.co.uk/news/technology-64584001> [↑](#footnote-ref-2)