



The UK Government publishes the Online Safety Bill

The UK is set to enact landmark legislation establishing a duty of care on companies to improve the safety of their users online.

Regulator: Ofcom

RISK BAROMETER:



JURISDICTION RELEVANCE:

UK

TIMELINE:

Published 12 May 2021 - the timeline to becoming a statute is unclear.

WHAT YOU SHOULD KNOW:

- Following lengthy delays, the long-awaited [Online Safety Bill](#) has been published by the UK government, replete with [explanatory notes](#). The Bill targets “user to user services,” meaning above all, online platforms.
- Under a new duty of care obligation, platforms are required to have effective and accessible mechanisms to report concerns about user-generated content, and challenge the infringement of rights (such as wrongful takedown).
- Ofcom (the UK’s communications regulator) is empowered to force the removal of “harmful” content and, in the event of non-compliance, fines of up to £18m or 10% of global annual turnover. The regulator will also have the power to block access to sites.
- The government is taking a “categorised approach” whereby responsibility is graduated. Tech giants such as Facebook and Instagram will fall into the strictest tier (Category 1). Mobile games will likely be subject to the lesser Category 2B definition (yet to be defined), requiring “proportionate steps to address relevant illegal content and activity, and to protect children.”
- However, games are not explicitly mentioned in

the statute, explanatory notes, or any ministerial statements. Furthermore, loot boxes and in-game mechanics have not, as feared, been drawn into the legislative remit.

MOST TELLING:

Clause 26 (4) The “child user condition” is met in relation to a service, or a part of a service, if— (a) there are a significant number of children (9) For the purposes of subsection (4)— (a) the reference to a “significant” number includes a reference to a number which is significant in proportion to the total number of United Kingdom users of a service or (as the case may be) a part of a service (Draft Online Safety Bill, 2021)

DELANY & CO HOT TAKE:

Whilst mobile games are not directly in focus, there is an interesting point of regulatory cross-fertilisation that may prove relevant. Akin to the [ICO's age-appropriate design code](#) a markedly higher duty of care applies to services “likely to be accessed by children.” However, for the first time, this Bill establishes a test, termed the “child-user condition.” It is focused on the actual, rather than the intended audience and sets a “significant number” threshold (see quote above).