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Regulation and Governance of the Digital Landscape – time for a new duty of care

We live in extraordinary times brought about by a world pandemic which has challenged the very idea of human interaction, the way we live, work, do business, and, interact with each other.

With social distancing becoming more of a permanent feature in our 'real' lives, the impact on our 'digital' lives should not be underestimated.

There has been an unprecedented increase in the harms we are exposed to online, from ransomware attacks, deepfakes, and DDoS, to the spread of disinformation and 'fake news', sometimes with devastating effects.

Most recently, President Donald Trump's tweet has brought into sharp focus the need for legislation and regulation of the digital landscape, with technology companies taking responsibility for the content posted on their social media platforms.

President Trump tweeted Thursday: *"These THUGS are dishonoring the memory of George Floyd, and I won't let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!"*

Twitter left the tweet on its platform but attached a public notice, requiring users to click "view" to see the post. It said: *"This Tweet*

violated the Twitter Rules about glorifying violence. However, Twitter has determined that it may be in the public's interest for the Tweet to remain accessible."

Twitter put out a statement stating that Trump's tweet on the situation in Minneapolis "*violates our policies regarding the glorification of violence based on the historical context of the last line, its connection to violence, and the risk it could inspire similar actions today.*"

The historical context was rooted in racism: the line was used by a Miami police chief amid racial violence in 1967.

Twitter signalled as early as June 2019 that it might take action, announcing it would flag tweets from leaders and politicians that might violate its rules.

The rule of law online has long been overdue. Regulatory innovation and adoption of safety technology is much needed, and, of course, it should not be at the expense of stifling creativity and freedom of expression.

It is time tech companies took responsibility for creating and preserving a safe online ecosystem for their users.

It is also time tech companies, worldwide, properly fulfilled their duty of care not to harm or expose users to harm online.

The UK's position on this is arguably ground breaking, and its Online Harms White Paper is the world's first attempt at legislating and regulating social media content and interaction.

It is ground breaking for two main reasons: it introduces for the first time a duty of care on the part of tech companies *to take reasonable and proportionate steps to tackle online harms* and to protect users, and, secondly it creates the role of an independent, *online harms regulator*.

The regulator will assess the action of companies according to their size and resources, and will assess the risk and the prevalence of harms on their services/social platforms. The regulator's approach is proportionate, risk-based, and systematic, whilst at all times safeguarding freedom of expression.

The response to President Trump's tweet deftly illustrates how the principle of the duty of care can work and how it can be adopted.

Take the response from Twitter. It did not ban the President's tweets, but rather took a courageous and responsible step toward a more proactive editorial stance by fact checking the President's tweets, to flagging his harmful tweet for violating Twitter's standards against glorifying violence.

Twitter's response is a very good illustration of the duty of care at work, and how tech giants can take responsibility for content posted on their platform in order to protect their users.

Applying the suggested UK duty of care, Twitter's response is a *reasonable and proportionate measure to tackle a risk of harm* and thus to protect users, even if the source of harm comes from the President of the United States of America.

On the other hand, the way Facebook reacted to the President Trump tweet, i.e. by not reacting at all, is another way of illustrating why a duty of care is needed and why it should be adopted.

There is no ambiguity in the harmful content of the Trump tweet: it qualifies as incitement to racial hatred and violence. The direct consequences of the tweet are still being experienced on the streets of America.

The UK duty of care is designed to ensure tech companies have appropriate systems and processes in place to improve the safety of their users, and to protect them from harm, and the sources of harm online, including a tweet from a President.

Online Harms is a key legislative priority for the UK government, and the White Paper is a bold and ambitious step in the right direction.

Across the pond this tweet has deepened the debate on the issue of tech companies' responsibility for content posted on their platform, and if the debate follows the UK vision and shares the recommendations in its White Paper, then an independent online harms regulator would have arguably reached the very decision reached by Twitter itself in its response to the president's 'looting and shooting' tweet.

It may be, after all, that the President has just shot himself in the foot when triggering this debate in the first place!

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