ELECTORAL MATTERS COMMITTEE

Inquiry into the Impact of Social Media on Elections and Electoral Administration

Melbourne—Thursday, 19 November 2020

(via videoconference)

MEMBERS

Mr Lee Tarlamis—Chair
Mrs Bev McArthur—Deputy Chair
Ms Lizzie Blandthorn
Mr Matthew Guy
Ms Katie Hall
Ms Wendy Lovell
Mr Andy Meddick
Mr Cesar Melhem
Mr Tim Quilty
Dr Tim Read

WITNESSES

Professor Lorna Woods, Professor of Internet Law, Essex University, and

Mr William Perrin, Trustee, Carnegie UK Trust.

The CHAIR: I declare open the public hearing for the Electoral Matters Committee Inquiry into the Impact of Social Media on Elections and Electoral Administration. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on today, and paying my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I would like to welcome Professor Lorna Woods, Professor of Internet Law, Essex University, and William Perrin, Trustee, Carnegie UK Trust. I am Lee Tarlamis, the Chair of the committee and a Member for South Eastern Metropolitan Region. The other members of the committee here today are Bev McArthur, Deputy Chair and a Member for Western Victoria; the Honourable Wendy Lovell, a Member for Northern Victoria; Andy Meddick, a member for Western Victoria; and Dr Tim Read, the Member for Brunswick.

All evidence taken by this committee is protected by parliamentary privilege, therefore you are protected against any action in Australia for what you say here today. However, if you repeat the same things outside of this hearing, including on social media, those comments may not be protected by this privilege. While you are covered in Australia under parliamentary privilege for any comments you make today, you should note that Australian law cannot give you the same protection with respect to the publication of your evidence in the jurisdiction you are giving evidence from. All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible. I now invite you to proceed with a brief opening statement, following which questions will be asked by the committee.

Prof. WOODS: Thank you. I would like to start off by thanking you all for the opportunity to give evidence today. As you said, I am Professor of Internet Law at the University of Essex, and I have been working for some three or four years with William Perrin at Carnegie UK Trust on how you might regulate social media while balancing its good points and reducing its bad points. We started from the recognition that platform design and business choices have an effect on content and behaviours online, and that is where we wanted to focus our attention. So the proposal does not focus on regulating content directly, and it does not focus on just particular types of harm; it might be said to be a cross-harm proposal. That is obviously because platform design has an impact across all types of speech and behaviour, and this would include electoral matters, amongst other concerns. So what we were thinking about in terms of design could be operating at a range of points in the communication process. It could be right at the beginning when someone posts or joins a platform, and that would be looking at the role of bots or connected accounts or whether there is a real-name policy. We would say that applies also in the distribution of content. The obvious example of that would be the values recognised in the systems for recommending content and groups to join, as well as the ease of forwarding and sharing content. The values have an impact in that the recommender algorithms seem from other research to have particularly rewarded or prioritised, I suppose, clickbait content or more extreme content, and so that is why we are suggesting it is a particular point to look at. Targeted advertising is also a factor here.

Those are different points at which you could look at the design features or the business choices and think, 'Are these safe?'. Our proposal was for regulation, so not self-regulation, and to look at the systems and to ask companies to check whether their platforms, their business choices, had unnecessary adverse consequences. So we have called this a systemic approach, partly because we are talking about the systems—that is, the platforms and the business systems behind a social media service. But it is also about the systems that we would expect a business to have in place—that is, systems to identify, assess and mitigate any risk that they see as likely to arise from those business and design choices. I would like to conclude by saying that this approach does not come up with one right answer but that it is a question for each platform, taking into account the nature of the service it provides, the nature of its user base and also the size of its user base, so this may vary depending on that.

The CHAIR: Thank you. Mr Perrin, did you want to add anything?

Mr PERRIN: I would just draw out that our approach proposes the establishment of a statutory duty of care, set out in law, that would require regulated platform operators to take reasonable steps to identify reasonably foreseeable harms and to plan through risk assessment to mitigate or eliminate those harms, supervised by an independent external regulator—and we nominate, in the UK, Ofcom, the media regulator which I had a role in setting up a long time ago when I was a civil servant in the British government—and that our approach has been broadly though not entirely adopted by the British government in its proposals for online harms regulation, and we expect to see the next iteration of those in the next few weeks if we are lucky.

The CHAIR: Mrs McArthur, Deputy Chair, would you like to take the first question?

Mrs McARTHUR: Thank you, Chair, and thank you to our presenters. Some people seem to think that being anonymous is fair game on social media. Surely if everybody had to provide a name and address to the platform providers, even if it is not used but it was accessible, and if everything had to be authorised if it is an advertisement from any source, we would overcome half of these problems. What do you think?

Prof. WOODS: Thank you. I think there is a point of distinction that we might want to distinguish between the approach for advertisements themselves and for, say, organic content posted by users. I think that platforms should do a whole lot more in terms of KYC—knowing their clients—for advertisements and particularly political advertisements. In my view targeted advertising undercuts the possibility of the marketplace of ideas. If you are segmenting a population, it is much, much harder to engage in debate between different groups and to therefore find the truth through discussion. So in terms of advertisements, I would say that transparency around who is paying for adverts and how they are seeking to target those adverts as well as there being a sort of advertisement library would be a helpful way forward. I think with organic content it is perhaps a little bit more complex. Within our framework we have said that allowing completely anonymous users or allowing users to be pseudonymous is a risk factor and is something that the platform would have to take into account when assessing the likelihood of adverse consequences coming from that. So it depends—it is something to think about, but I think there are possibly good points about anonymity, and I think certainly using a real-name policy where people only have one identity is problematic even for something as simple as wanting to keep your work life and your home life separate. So it is a risk factor.

The CHAIR: Dr Read.

Dr READ: Yes, thank you very much for coming along this morning. Can I just ask: with this idea of a statutory duty of care, I can see how that could be applied to protect users from personal or individual harm, but do you see it also as perhaps being used to prevent misinformation that might influence election results, that kind of thing?

Mr PERRIN: We set out working with a legislator in the UK, Lord McNally, on a private peers' bill in which we sought to define a range of societal harms or to sketch them out. We delved into UK election law, which is a messy area—like in many countries, it is not very clear cut—and we suggested that one way of defining issues that harm elections would be matters that impede or prejudice the integrity and probity of the electoral process. That gives you something, quite a serious backstop, against which to regulate—that one cannot see social media regulation as independent from any jurisdiction's approach to electoral registration, and Julian Knight was talking about that in his previous address. We have seen in the USA American platforms taking quite opaque and arbitrary decisions about approaches to advertising—when advertising can be run around an election and the labelling of politicians' speech. Similarly in Canada we have seen the Canadian government lay down criteria for advertising catalogues. I think one of the companies walked away in a bit of a huff because they said they were not going to cooperate with it. So the challenge is for any jurisdiction to lay down appropriate rules that cross over between electoral registration—electoral legislation—and social media regulation to ensure that the two work in lock step. It is not inconceivable that one could look at an approach where the electoral regulator works with an online harms regulator and works with all of the parties, political actors and the news media to set out some form of code of practice for behaviours on social media around elections, given the extraordinary significance of their role in transmission of an enabling voice to allow people to make informed decisions.

Dr READ: Thank you. That is great.

Prof. WOODS: If I could just add something about misinformation—the duty-of-care approach, the systemic approach, is not just about take down; it is about information flows and information priority. In terms of organic content and the prioritising of, say, anti-vax content or misinformation that quite clearly could have real-world consequences, there is a concern around saying, 'Let's take down speech that is legal', but the systemic approach does not require take down. It could be about whether that content is prioritised or recommended. So you could envisage a system where tools for recommending content take into account reliability and authority in terms of what is pushed. This would still leave people free to go and search out content if they wanted to.

Dr READ: Okay, thanks.

The CHAIR: Ms Lovell.

Ms LOVELL: Thank you very much, and thank you for both your presentations. If you have been watching, you will probably know what my question is going to be about. It is easy enough for us to regulate in our own jurisdictions for our newspapers about the advertising rules, about their need to be impartial and fair in election campaigns. It is easy enough for us to regulate around donations et cetera. But with the social media platforms, they are multijurisdictional, international. They are based in California; they are not based here. So it makes it very difficult to actually put some regulations around how they behave and what they do. So there are two things that I am actually concerned about. I have been asking most people about the fact that social media platforms in the absence of any regulation have appointed themselves as the self-appointed censors, which they operated very much as in the US election—where they decided to comment on whether things were factual or not factual, in their opinion. But they also have the ability to only show content that they want to show. How do we overcome both of these things? Is it healthy for them to be the censors or should there be some regulation around them? And how do we overcome the fact that they can actually show more of one side's arguments than the other side's arguments to the majority of people?

Prof. WOODS: Go on, Will.

Mr PERRIN: My background is I worked for 15 years in central government, and I worked on regulating a very wide range of sectors as part of that career—everything from the energy sector; pubs, bars and clubs; gambling; and all sorts of sectors, including communications. My general approach is an optimistic one, which is that most multinational companies want to comply with the laws in the territories in which they operate—overall. And to be honest, I do not see from the larger social media companies an unwillingness to comply. It simply is that they have not been presented with a logical, coherent set of laws to constrain in some way their actions. There are of course issues about the global nature of these companies and the nature of the internet. It is not like regulating an oil refinery, where it has to physically set up in your territory and then be governed by local, physical laws, but there are devices that can be employed to bring companies to the table that go beyond their willingness to cooperate in the first place.

One approach of course is a set of sanctions that make them sit up and pay attention, though in Europe it is debatable as to whether even very large fines are having an impact. These companies have billions of dollars. I believe Facebook has about $50 billion or $60 billion of cash in the bank. Alphabet group has I think double that in cash. So it is very hard to influence a company's operations by fining when it has that much cash to hand.

One of the measures that has been put into law in the UK in the past but has never been enacted is an ability to instruct internet service providers to block traffic at the border, which is quite an extreme measure. It is a very extreme measure, but it is not dissimilar to types of licensing of operations that we have been used to in the telecoms and broadcasting sphere for many years, where the state grants a licence to operate and can in theory—but in practice never does—take it away, and then this gives you a regulatory fulcrum that you can then lever a discussion around compliance with. They are a set of tricky issues there, but they do lead to some results. Lorna, did you want to comment on the censorship issues? That is more your field.

Prof. WOODS: Thank you. I think a lot of this comes down to the factors that go into the weighting of the various algorithms that drive the various tools for recommending content. At the moment my suspicion is that these are designed to look at, I guess, popularity but with the objective of getting data and therefore supporting

the bottom line. I would suspect that a way forward that encourages platforms to look at qualitative characteristics of content, such as accuracy or authority of speaker, would help mitigate against this.

But the real problem we have got I think is a lack of information. We do not know whether companies are biased or not biased. We are not aware of whether the existing algorithms are having unintended consequences. So a key part of the regime that we have envisaged has been about getting more data from the companies about how these systems operate, and we were suggesting that this would come to the regulator to set a field within which the company has to report. Part of this would be then enabling us to assess whether things were having these unintended consequences of bias or whatever, with the idea then that the company should go back and work within its systems to try and correct that. We have also thought that within the operation of the take-down procedures there should be statistics about whose complaints are being taken seriously and how fast those complaints are being dealt with. Again the point is to enable us to judge and to ask for improvement if bias is then found, so it is a process of trying to identify the existence, scope and nature of the problem so then we can measure improvements.

The final point is that we have generally taken the view that to get these services to develop we have left them very much to do their own thing in terms of community standards and that sort of thing. In context when these businesses were very young and nobody knew what was going to happen that was fair enough, but ultimately I think it has to be for society, for the legislatures, to give companies some sort of sense of what is acceptable within a given jurisdiction or not. It is not right for populations to be solely subject to the good wishes of private actors, but it is equally unfair on those private actors, especially if they are operating in a range of jurisdictions. I hope that answers your questions.

The CHAIR: Thank you. Mr Meddick? No? I might ask a question. Mr Perrin, you said that you had been listening in to some of the earlier presentations. I might ask of you: are there any observations that you have from the various presentations that you might like to comment on for us or add some insights to?

Mr PERRIN: I was quite struck by a very good presentation from the University of Queensland—or from Queensland; I am not sure which institution it was from—where they spoke about making best-endeavour efforts to track bad things that were happening on platforms. That is a phenomenal example of academic work, but frankly it is crazy that that is what we are having to rely on in the face of some of the biggest companies the world has ever known causing harms in territories across the world—as well as a whole range of brilliant things. At the heart of the debate, as Professor Woods was just saying, is understanding better what is actually going on within these platforms. Mrs McArthur's point earlier about anonymity—it would only take a matter of maybe a day's analysis if you were inside the company to have a good look at the books and say, 'Well, lots of hatred and abuse is in fact being reported from anonymous accounts. Goodness me, we need to address that in risk management'. So this is a very straightforward thing that simply requires basic regulatory behaviours.

One has heard a sense as well in some of the other presentations that these are new, phenomenal, remarkable companies and that we must be cautious about regulating them. I suppose, yes, that is a reasonable viewpoint, but there is, as Professor Woods has just been saying, in different territories around the world—and it is very different in Australia to the UK—a form of regulation of broadcasting and there are forms of media ownership and control in other powerful media, and they are not regulated because of the nature that they are printed on newspaper or transmitted over the airwaves; they are regulated by legislators because they are powerful and they have a major impact on the balance of democracy and people's ability to express and receive ideas.

Regulation of social media at the larger, powerful companies should not be something one is afraid of. They are companies and systems that are very much made by man. They are not magical beings, and every single pixel that you see on screen when you use a social media service is there because the company that runs that service has permitted it. It has taken a range of decisions about what is allowed to happen on its platform and then let it run, and certainly any legislature anywhere in the world should be able to set rules about how those things happen in their territory within their local legal framework and the rule of law.

The CHAIR: Yes, and I guess it is interesting that these companies seem to be able to achieve amazing things when they are able to monetise them and target the smallest of things when there is a value put on them about maximising that extra dollar, but when it comes to how you can achieve some of these things it is all too hard.

Mr PERRIN: Well, there is an old saying in the UK—I do not know if it came down to Australia or not: 'They would say that, wouldn't they?'

The CHAIR: Yes, indeed.

Mr PERRIN: If these brilliant companies can analyse my data and auction the contents of a web page to advertisers based on my underlying data and the time it takes the page to load, then they can certainly deal with a wide range of online harms within a set of rules imposed by regulator. But I have huge respect for them as enormously successful, profit-maximising companies representing their shareholders' interests to the last—that is fantastic. But parliaments can and should take action to rebalance that so that democracies are not damaged as part of that natural approach to profit maximisation.

The CHAIR: Professor?

Prof. WOODS: I was just going to follow up on Mr Perrin's point that the platforms are not neutral as to content, and I think we need to recognise that. We need to recognise the extent to which they are complicit in creating the problem, or exacerbating the problem, and that some of the features that they have designed with an eye on the bottom line are a part of that and they have never really assessed the downside. It is like, 'Ooh, this is going to increase frictionless communication, this is going to increase user engagement' but not looking at the down side, and they should do that.

The CHAIR: Are there any other questions from members of the committee?

Mrs McARTHUR: Chair, I would just like to make a final point that it is interesting that these extraordinary companies, who have created such empires and monetarised their output so successfully, have generated so many groups and organisations in academia and elsewhere that are setting out to monitor them or regulate them. So they have created another industry by their success, so to speak.

The CHAIR: If there are no other questions, I would thank you, Professor and Mr Perrin, for your submissions and for presenting to us today and for your insights. They have been valuable, and we appreciate them. There may be some follow-up questions as well. If we could call upon you at some point with those, that would be very helpful for the committee's deliberations as well.

Mr PERRIN: We would be delighted to help. Please don't hesitate to reach out.

The CHAIR: Thank you very much, and thank you again for attending today.

Committee adjourned.