

# Regulatory Reset in a Technological Age

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# The wait is over and now is the right time!

There is a growing global consensus that Digital Platform Providers must be subject to the sovereign laws, ethics, values and morals of the countries in which they provide services and not simply impose those of their countries of origin and that they must contribute fairly and on equal terms.

There have been significant developments around the world over the last 12 months in regulating the Digital Economy and 2020 will prove to be a landmark year.

These existing initiatives and trends provide useful guidance relevant to societies and countries within Caricom can be readily adapted to protect the societies, citizens and economies of Caricom countries.

## Challenge

**Failure of OTT's to address problems they are keenly aware of on their own accord**



# The Internet needs new rules

“Technology is a major part of our lives, and companies such as Facebook have immense responsibilities. I believe we need a more active role for governments and regulators.

By updating the rules for the Internet, we can preserve what’s best about it - the freedom for people to express themselves and for entrepreneurs to build new things - while also protecting society from broader harms.

*From what I’ve learned, I believe **we need new regulation in four areas: harmful content, election integrity, privacy and data portability**”.*

*Mark Zuckerberg, Founder and CEO, Facebook*

# External regulation is required

Big Tech knew about problems since 2011 but failed to act as their systems are designed to promote divisive content - this drives engagement and increases their revenues.

The commercial priority for these platforms is to protect their revenues rather than their users – they have every incentive to delay action and minimise rules.

Only external regulation will compel change and protect society.

**Challenge**

**Online harms caused  
directly by OTT's**

# Online harms are damaging social morals

International research consistently demonstrates the direct correlation between hate speech spread via social media platforms and physical acts of violence.

Facebook challenged over the spread of anti-vaccine content in measles-stricken Samoa: 5,697 cases of measles and 83 people died, mostly children.

TIME Magazine: “YouTube has been ‘actively promoting’ videos spreading climate denialism, according to new report”.

“We cannot simply sit back and accept that these platforms just exist and what is said is not the responsibility of the place where they are published. They are the publisher, not just the postman. There cannot be a case of all profit no responsibility”.

*New Zealand Prime Minister Jacinda Ardern*



# Examples of initiatives developed to address online harms

## United Kingdom



### *Initiatives under consideration:*

- Establishment of Online Regulator to enforce new Code of Conduct, allowing more data accessibility for consumers.
- Introduction of statutory Duty of Care standard for digital platforms.

## Germany



### *New legislation introduced:*

- Network Enforcement Law to tackle online hate speech and fake news.
- Obliges large social media companies to remove illegal content within given timeframes, with fines up to €50m.

## Ireland



### *Legislation under consideration:*

- Harmful Communications & Digital Safety Law.
- Establishment of a Digital Safety Commissioner to promote internet safety and take down procedures.

## France



### *Legislation under consideration:*

- Draft Hate Speech Law requiring companies to remove manifestly illegal content within 24 hours of notification.
- EU Regulator for Digital Platforms also proposed, creating special status for digital platforms, deeming companies like Google as “systemic” and regulating them as such.

## Australia



### *New legislation introduced:*

- Sharing of Abhorrent Violent Material Act, forcing the removal of abhorrent violent material, with penalties of up to \$10.5m or 10% of annual turnover.
- Empowers the Australian eSafety Commissioner to notify social media companies, triggering obligation to take down material.

## United States of America



### *Legislation under consideration:*

- SMART (Social Media Addiction Reduction Technology) Act, designed to address social media addiction.
- Introduction of time limits on apps of 30 mins/day, with frequent reminders of length of time spent browsing certain platforms, prohibiting infinite scrolling and autoplay of videos.

**Clean Up The Internet:** campaign group established in 2019 proposing a shift away from the current lack of restrictions of anonymous, pseudonymous and unverified use where a site or network is akin to a public space. *“We would not as a rule, in our physical public spaces, encourage individuals to don masks and then harangue each other. It is therefore appropriate to consider what limitations should be placed on the ability of anonymous users to intervene and influence these online public spaces”.*



# Ways of addressing online harms in Caricom Countries

Include a definition of Digital Platform Providers in legislation and empower Regulators as the regulatory authority for them. These could include:

- Requirement to establish a physical presence or appoint a local agent and an obligation to provide certain information to Caricom countries and law enforcement.
- Platforms responsible to remove illegal content and are subject to 'take down' obligations. Restrict anonymous abuse and inexpensive application to the courts for an order identifying anonymous posters of harmful or illegal content. Liability for defamatory and illegal content for Platforms.
- Confirm that local consumer protection laws apply to the usage of such Platforms and that local users have a right of action before the local courts.
- Require codes of conduct to govern their commercial arrangements with local news publishers.
- Commercial arrangements with network providers permitted with Regulators oversight.
- Penalties for non-compliance.

A black and white photograph of a satellite in space. The satellite is on the right side of the frame, with its solar panels extended. The Earth is visible on the left side of the frame, showing a curved horizon and a textured surface. The background is a dark, starry space.

**Challenge**

# Anti-competitive behaviour by the Tech Giants

# Competition law is emerging as a key tool

- In the US the DOJ, FTC, a Senate Committee and 48 States have commenced anti-trust investigations and the EU has fined both Google and Facebook billions of euros for breaches of competition law.
- UK Furman & CMA Reports in 2019 found that Google has over 90% of all search advertising revenues, Facebook almost half of all display advertising revenues. This undermined local and national newspapers' ability to produce valuable content – they made recommendations to enhance information gathering and proposed interim measures to be implemented in the short-term.
- Australia ACCC in 2019 found that Google and Facebook have substantial market power in search advertising services, display advertising services and dealing with news media businesses.
- Germany is proposing legislation enabling its Authority to find that a Digital Platform Provider is of “paramount significance for competition across markets” by reference to dominant position, financial strength, etc., and to apply controls based on that designation.

## **Proposals for Caricom countries consideration:**

- Apply competition provisions in legislation to all Digital Platform Providers.
- Create ability to declare Platforms to be dominant suppliers and standards and apply regulatory obligations.
- Give affected persons the right to bring private competition actions before the courts.





Challenge

# OTT's abuse of personal data



# Data protection for users

- GDPR type rules are an important limitation on the ability of Digital Platform Providers to misuse personal data.
- Confirm that Data Protection rules apply to service providers regardless of where they are located and that it is not possible to contract out of the application of the rules. This approach has been adopted in the Cayman Islands and Bermuda and is proposed in Jamaica.
- Provide direct rights for individuals to bring actions or class actions before the courts to seek compensation for an interference with their privacy under the data protection law.
- Empower Caricom countries to require Digital Platform Providers to provide 'bubble free' versions of newsfeeds or information results to consumers.

# Abusing consumer privacy and confidential information

On 12<sup>th</sup> December 2019, Facebook admitted to the US Senate Judiciary Committee's Tech Task Force that Facebook continues to track users' location data even when users' opt out and turn their Location Services off.

Facebook stated that it is required to use this information to determine a location in support of its ads business – despite the users' predetermined actions to prevent such tracking.

***“The current practices by Facebook are insufficient and dishonest. Facebook claims that users are in control of their own privacy, but in reality, users aren't even given an option to stop Facebook from collecting and monetizing their location information. There is no opting out. No control over your personal information. That's Big Tech. And that's why Congress needs to take action.”***  
*Senators Christopher Coons and Josh Hawley*



Challenge

OTT's failure to abide by  
local laws and norms

# OTTs: undermining the democratic process

WhatsApp skewed the October 2018 Brazilian election, showing social media's danger to democracy.

Misinformation via social media played a disturbing role in boosting far-right Congressman Jair Bolsonaro into the Brazilian presidency. Using WhatsApp messaging service, Bolsonaro supporters delivered an onslaught of daily misinformation straight to millions of Brazilians' phones. They included doctored photos portraying senior Workers Party members celebrating with Communist Fidel Castro after the Cuban Revolution, audio clips manipulated to misrepresent Haddad's policies and fake "fact-checks" discrediting authentic news stories.

Following the controversy, WhatsApp announced that it would purge thousands of spam accounts in Brazil, which were created on the platform without proper oversight from WhatsApp.





# Areas for consideration for Caricom countries

# The era of exemption is over

- Infrastructure: 5G investment is a challenge, unless all businesses that benefit from network investments also contribute.

The UN Broadband Commission is currently examining new financial models:

- *“Digital services are increasingly provided by non-network operators and as the infrastructure gap is caused by a funding gap, innovations to finance models may of necessity require obtaining contributions from non-network operators on a direct or indirect basis”.*
- *“Governments should review the sources of USAF funds and develop innovative models to ensure the contribution base is broadened to encompass all those who derive economic benefit from the investment”.*

# A call to action

Requesting the CTU take significant action on **Regulating the Digital Economy** by introducing a new working group with clear actions/deliverables on:

- Online harms legislation
- Definition of Digital Platform Providers in legislation
- Competition law
- Data protection rules
- Election interference: prohibit micro-targeting of election advertising and spread of false information
- Child online safety: all stakeholders should adopt the UN Broadband Commission Declaration.

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