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United States

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Chairs, Retained EU Law (Revocation and Reform) Bill Committee
House of Commons
London SW1A 0AA

Dear Sir George and Sir Gary,

Thank you for the opportunity to provide written evidence to your Committee about the impact of the revocation of retained EU law on the tech industry in the UK.

Meta has been a leading part of the tech industry in the UK for over a decade and this includes over 4,000 full-time employees in London. This contributes to helping offer our services including Facebook, Instagram, WhatsApp, and Workplace to billions of people around the world.

This has been possible because the legal landscape in the UK has allowed a thriving and diverse technology sector to flourish. It is imperative that legislative certainty is retained as the tech industry continues its transition to the computing platforms of the future. To take one example, immersive computing, a study by Immerse UK found that Virtual Reality and Augmented Reality will add £63 billion to the UK economy by 2030. Over 1,000 UK companies are now part of the UK VR market, worth £1.2 billion and growing fast and we are proud to be developing a lot of this technology in the UK.

To that end, we would like to take this opportunity to draw the Committee's attention to one key area of retained EU legislation that we believe may be affected by the Bill your committee is considering.

We have provided further details below. I hope this submission is helpful to the Committee's consideration.

Kind regards,

Richard Earley
UK Public Policy Manager, Meta

Intermediary Liability:

1. The Electronic Commerce (EC Directive) Regulations 2002 (the "E-Commerce Regs") derive from an EU directive and therefore are in scope of the review under the Revocation Bill.

2. The E-Commerce Regs provide a framework to protect information society services from certain types of liability when acting as an intermediary. The framework ensures that online services that act as a mere conduit, cache and/or host (i.e., transmit, store and/or make available) information (including content) provided by users, are not liable for such information. This is subject to certain requirements depending on the activity undertaken (e.g., the service not initiating the transmission, not modifying the information and/or not having actual knowledge of the information).

3. This framework, commonly referred to as 'intermediary liability', is critical to maintaining an online environment that enables a thriving and diverse technology sector to flourish in the UK while respecting the principles of respect for freedom of expression and ensuring illegal content is swiftly addressed. The Government has consistently stated that it intends to preserve the intermediary liability regime. For example, Brexit guidance titled '*The eCommerce Directive and the UK*' states:

"The eCommerce Directive also contains provisions relating to intermediary liability and prohibitions against imposing general monitoring obligations. The government is committed to upholding the liability protections now that the transition period has ended. For companies that host user-generated content on their online services, there will continue to be a 'notice and take down' regime where the platform must remove illegal content that they become aware of or risk incurring liability."

(available here: <https://www.gov.uk/guidance/the-e-commerce-directive-and-the-uk>)

4. The intermediary liability regime has underpinned the operation of many online services in the UK since 2002 and the essential nature of the intermediary liability regime is reflected internationally. In particular, most recently, the intermediary liability regime has been preserved in the EU's own online safety legislation, the Digital Services Act.

5. From a practical perspective, the framework ensures that online platforms are not principally liable for unlawful content, information and/or activities of third parties carried out on the platform of which they are unaware. This has led to the creation of a well-established 'notice and takedown' regime, which strikes an effective balance between the rights of affected parties while upholding freedom of expression; a concept that is now reflected in many other jurisdictions around the world.

6. Unless a fair and effective intermediary liability regime is maintained, the inclusion of the E-Commerce Regs within the scope of the Revocation Bill will cause serious concerns about whether information society services can rely on these protections going forward in the UK. This would raise the possibility of a significant increase in legal liability for information society services, as it will be unclear who is responsible for information transmitted, stored and made available by information society services. The ultimate effect of which is that platforms and websites are less likely to want to operate in the UK and may pull back from making the UK a hub for innovative new products and services in the way the government envisages.

7. We therefore consider that the intermediary liability regime, which has underpinned the operation of many online services in the UK since 2002, is either explicitly maintained elsewhere or recommend that the E-Commerce Regs are removed from scope of the Revocation Bill.