

Written Statement for the Record

Hearing: *Europe's Threat to American Speech and Innovation*

Committee: House Judiciary Committee, U.S. House of Representatives

Witness: Nigel Farage, MP

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Executive Summary

Europe's regulatory model for online speech, exemplified by the United Kingdom's Online Safety Act 2023 enacted by the Conservative Party while in government ("OSA")¹, risks exporting restrictive standards to the United States that will violate the constitutional rights of American citizens.

The OSA integrates the United Kingdom's broad, speech-related criminal offences with sweeping duties imposed on online platforms that are enforceable by the UK regulator, Ofcom. Ofcom is empowered to remove speech that constitutes a criminal offence in the United Kingdom. Much of this speech is constitutionally protected expression in the United States.

Ofcom can impose financial penalties on platforms for not complying with content moderation duties, including fines up to 10% of qualifying worldwide revenue and the ability to seek service blocking in serious cases.² Ofcom also purports to have the authority to demand that American citizens who operate web platforms provide Ofcom with incriminating information about themselves and their services. Failure to respond to these demands, or any evasion in a response to these demands, is a criminal offence in the United Kingdom, punishable by arrest, fines, and a term of imprisonment of up to two years' duration.

Ofcom has already threatened four American companies with exactly these penalties. I repeat: regulatory bodies in the United Kingdom are actively threatening to imprison American citizens for exercising their protected Constitutional rights. Just last week, two of those American companies brought a federal lawsuit in the District of Columbia, seeking protection from Ofcom's attempt to impose UK speech laws on US soil.

¹ **UK Government**—*Online Safety Act (collection page)*: scope, timelines, and enforcement powers (including fines up to 10% of qualifying worldwide revenue and potential blocking). Updated July 24, 2025. <https://www.gov.uk/government/collections/online-safety-act>

² **Ofcom**—*Statement on Online Safety fees and penalties* (maximum penalties, approach, and fee regime), June 26, 2025. <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-online-safety---fees-and-penalties/main-documents/statement-on-online-safety-fees-and-penalties.pdf>

Ofcom’s assertion of duties for services with “links to the UK” – which Ofcom defines as UK users, not a UK nexus or presence – creates powerful, and unconstitutional, extraterritorial pressures that can chill protected American speech, burden U.S. startups, and complicate end-to-end encryption (E2EE). Recent UK prosecutions for online expression—most prominently the Lucy Connolly case³—underscore how Europe’s legal thresholds for criminalizing speech diverge sharply from U.S. First Amendment doctrine.⁴ Claiming that American companies using American servers must follow UK content moderation law is like claiming that UK law applies to Americans who receive a telephone call from the UK.

Congress should reaffirm that foreign speech restrictions have no force against Americans on U.S. soil or U.S.-hosted services, support strong encryption without scanning mandates, seek startup safe-harbors in transatlantic engagements, and insist on due-process safeguards before any foreign order impacts American speakers or services.

I. Europe’s Model in Brief

A. Statutory scope and penalties.

The OSA imposes duties on online services with “links to the UK”—including those with significant UK users or targeting the UK market.

“Links to the UK” is defined as services which present a “risk of harm” to the UK. Ofcom’s first American targets were, almost uniformly, controversial American and international forums which adopt free speech content moderation rules, with Ofcom’s first four social media targets being American social media platforms. We may infer from this that Ofcom believes that free speech, particularly when it emanates from the United States, is coextensive with Ofcom’s understanding of the meaning of the phrase “risk of harm.” Ofcom can investigate, fine up to the greater of £18 million or 10% of qualifying worldwide revenue, and in serious cases seek court orders to block access in the UK. UK government guidance confirms these powers and their staged implementation (illegal-content duties effective March 17, 2025; child-safety duties effective July 25, 2025).

B. New criminal “communications” offences.

Part 10 of the OSA created several new offences effective January 31, 2024, including the false communications offence (s.179), which criminalizes sending a message known to be false with intent to cause non-trivial psychological or physical harm to a likely audience (with exemptions for

³ **The Independent / PA**—Why was Lucy Connolly jailed and why was her appeal dismissed? (case explainer and appeal outcome), May 20, 2025. <https://www.independent.co.uk/news/uk/crime/lucy-connolly-court-jail-appeal-b2754556.html>

⁴ **The Independent / PA**—Why did Lucy Connolly receive a 31-month sentence for Southport tweet? (release coverage and sentencing context), Aug. 21, 2025. <https://www.independent.co.uk/news/uk/home-news/southport-sentencing-council-kemi-badenoch-keir-starmer-richard-tice-b2811687.html>

recognized news publishers and certain broadcasters).⁵ The Crown Prosecution Service has incorporated these offences into its communications guidance alongside older provisions (e.g., Communications Act 2003 s.127).⁶

C. Active enforcement posture.

Ofcom has already opened enforcement programs and its first investigation under the new regime, targeting an online suicide forum's compliance with illegal-content duties.⁷ Clearly encouragement to commit suicide is entirely unsavory content, and it may be that vulnerable people, and young people need protection from exposure to this kind of content. Ofcom's published correspondence and notices to non-UK services emphasize that duties attach whenever a service has "links to the UK," even if operated abroad—requiring action to protect UK users.⁸

II. The Lucy Connolly Case: A Window into UK Speech Enforcement

On July 29, 2024, amid public fury after the Southport killings, Lucy Connolly posted on X: "*Mass deportation now, set fire to all the f hotels full of the b** for all I care... if that makes me racist so be it.*"

⁹ The post reportedly drew ~310,000 views in 3.5 hours before deletion. Connolly was arrested August 6, 2024 and subsequently pleaded guilty to stirring up racial hatred under Public Order Act 1986 s.19(1). On October 17, 2024, she received a 31-month sentence, categorized by the court at the highest culpability and harm levels. Her appeal was dismissed in May 2025. She was released on August 21, 2025, with time on remand contributing to the custodial portion served.¹⁰

⁵ **UK Legislation**—*Online Safety Act 2023*, Part 10 (s.179–182) including the **false communications offence** and exemptions (s.180). In force for Part 10 as of Jan. 31, 2024. <https://www.legislation.gov.uk/ukpga/2023/50/part/10>

⁶ **Crown Prosecution Service**—*Communications Offences* (guidance updated Mar. 24, 2025; notes OSA Part 10 offences and interaction with legacy provisions). <https://www.cps.gov.uk/legal-guidance/communications-offences>

⁷ **Ofcom** (News)—Ofcom investigates online suicide forum (first investigation under the OSA), Apr. 9, 2025. <https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/ofcom-investigates-online-suicide-forum>

⁸ **Ofcom** (Correspondence/Notice)—Risk Assessment Enforcement Programme; Section 100 information notice addressed to Gab AI Inc., Apr. 14, 2025 (published via Politico). <https://www.politico.com/f/?id=00000198-573c-d5ca-af99-773c9e750000>

⁹ **Sky News**—Wife of Tory councillor jailed for 31 months over social media post stirring up racial hatred (sentencing report), Oct. 2024. <https://news.sky.com/story/wife-of-tory-councillor-jailed-for-31-months-over-social-media-post-stirring-up-racial-hatred-13234756>

¹⁰ **ITV News Anglia**—Why has Lucy Connolly been released now? Timeline of hate-tweet sentence (remand credit; 40% release point), Aug. 21, 2025. <https://www.itv.com/news/anglia/2025-08-21/why-has-lucy-connolly-been-released-from-prison-now>

The Connolly case—though not an OSA prosecution—captures the UK’s readiness to criminalize merely unpleasant, challenging, or incendiary online speech under a legal threshold markedly different from U.S. law (e.g., *Brandenburg v. Ohio*’s¹¹ “imminent lawless action” standard for direct incitement). While Connolly’s case involved inflammatory speech, there is a long line of English caselaw showing that even benign speech – including completely passive speech such as displaying a poster from the window of one’s home, or praying silently on a sidewalk – may result in criminal sanction.

UK sentencing triggered intense domestic debate on proportionality and consistency with punishments for violent disorder, illustrating a speech-restrictive baseline that, when combined with the OSA’s regulatory machinery, can shape content moderation and platform design far beyond Britain’s borders.¹² What Lucy Connolly said in her X message, which was only visible for 3.5 hours may have been expressed inelegantly, but it was a sentiment that was being felt by a lot of the public at that moment, and it should not have been criminalized.. When the government starts regulating speech in this way, it is rarely those that agree with the government who find themselves in court.

III. Extraterritorial Pressures on U.S. Platforms and Users

The OSA’s architecture incentivizes global services to adopt UK-compatible rules: ignoring Ofcom can mean blocking or penalties keyed to worldwide revenue. Ofcom’s notices to non-UK services (e.g., Gab AI Inc., April 2025) explain that compliance is expected where “links to the UK” exist—even if operations and hosting are abroad. UK government materials likewise emphasize Ofcom’s enforcement toolkit and the live status of duties. The practical effect is to pressure American platforms to adjust U.S. speech experiences to the strictest jurisdiction’s standard, chilling lawful speech and raising compliance costs that hit startups hardest.

IV. Encryption and Privacy

Critics warn that, in practice, the OSA may compel client-side scanning or similar measures incompatible with robust end-to-end encryption. Industry analyses point out that no “accredited technology” currently exists that can both scan at scale and preserve genuine E2EE, creating a risk

¹¹ *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

¹² **Telegraph View (via Yahoo News)**—What the Lucy Connolly case tells us about British justice (context and proportionality debate), Aug. 21, 2025. <https://uk.news.yahoo.com/case-lucy-connolly-tells-us-182253189.html>

of surveillance creep and weakened cybersecurity if such mandates are pursued.¹³ The uncertainty around potential obligations already complicates product roadmaps for secure messaging, cloud storage, and developer platforms serving American users.¹⁴

V. Implications for American Innovation

1. *Compliance drag and barriers to entry.* Age-assurance, risk assessments, new reporting and record-keeping requirements, and rapid-takedown expectations become fixed costs, deterring U.S. early-stage ventures or pushing them to geoblock the UK, and both occurrences are harmful to innovation and transatlantic exchange. In any event, geoblocking the UK is ineffective given the wide use of VPN providers. If the UK forces American companies to block VPN access, that would prevent legitimate American users of those VPN services from accessing content that is lawful in the USA.
2. *Fragmentation (“Splinternet”) risk.* If firms resist, Ofcom can seek blocking; if they comply, they may shift global product design to UK standards. Either path fragments markets and constrains iteration cycles.
3. *First Amendment tension.* Ofcom’s ambitions are to ensure that every Internet platform in the world, if it is accessible by UK nationals, must implement the Online Safety Act’s “illegal content” rules. This effectively means that American platforms must choose between surrendering their First Amendment rights or complying with the Online Safety Act. These two legal regimes governing speech are irreconcilable, and it is simply not possible to fully exercise the former without fully violating the latter.

How the UK manages its own affairs is, of course, a matter for the UK Parliament to decide. The Reform Party, in its last electoral manifesto, proposed enacting a UK Free Speech Act which would create similar protections for the British people as the First Amendment creates for the American people.

In the meantime, ensuring that the UK respects America’s speech rules is in the interests of the United Kingdom. When a foreign regulator’s leverage induces moderation choices that narrow U.S. discourse, this offends the UK’s most important foreign ally, poisons the UK’s reputation among American citizens, leads to mockery online as the Labour government’s initiatives are openly flouted by offshore companies who are beyond any reasonable jurisdictional reach, and threatens to drive

¹³ **Proton (Andy Yen)**—*The Online Safety Act doesn’t protect encryption, but Ofcom can* (industry analysis of encryption risk), Oct. 27, 2023. <https://proton.me/blog/online-safety-act>

¹⁴ **ITPro**—*Explainer on the Online Safety Bill and end-to-end encryption (“spy clause” debate), 2023–2024 coverage.* <https://www.itpro.com/security/privacy/explained-the-state-of-end-to-end-encryption-in-the-uk-now-the-online-safety-bill-saga-is-over>

away technology investment and development that the UK desperately needs to stay relevant in a fast-accelerating technological environment.

VI. Recommendations for Congress

1. Affirm that the First Amendment is the rule that governs the behavior of American companies with no UK nexus. Declare as U.S. policy that foreign speech restrictions have no effect on Americans acting in the United States and on U.S.-hosted services even if accessed abroad, and instruct the Executive to defend this position in diplomacy and trade fora.
 2. Back strong encryption. Reaffirm support for E2EE without scanning mandates; make clear that U.S. policy will not endorse measures that undermine encryption or require pre-emptive scanning of private communications.
 3. Create startup safe-harbors. Pursue bilateral understandings (or trade-related MOUs) that shield non-established U.S. startups with no UK presence from onerous OSA enforcement while Ofcom's codes mature.
 4. Due-process and transparency. Seek reciprocal commitments ensuring notice, contestability, and appeal before any foreign order affects American speakers, data, or services.
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Conclusion

Americans share the UK's goals of combating illegal content and protecting children online. But those objectives must not become a back door for importing foreign speech standards that erode First Amendment values, weaken encryption, and stifle U.S. innovation.

There are, of course, many horrific things available on the internet, from which young and vulnerable people must be protected. However, the OSA is completely ineffective at accomplishing this goal, as this content is still available with the use of VPN, and this ineffectiveness comes at the price of chilling genuine free speech and penalizing good actors in the marketplace. The OSA is overbroad and counterproductive.

Free speech is a fundamentally British value. We would do well to remember that every signatory of the American Declaration of Independence was, after all, a British subject. On the question of civil liberties, Britain has, unfortunately, now lost her way. I will do my part, as a participant in UK democracy, to help our country find its way back to the traditional freedoms which have long bound together our two countries in friendship.

In the meantime, Congress should draw bright lines: British free speech rules, applicable to Britons, are made in Britain, and American speech rules, applicable to Americans, are made in America.

Somewhere on this planet of ours, innovators must remain free to build the next generation of platforms without being hamstrung by illiberal and authoritarian censorship regimes that are alien to both American and traditionally British values. Right now, that place is America. Those of us in the UK will do what we can to make Britain such a place as well.