

***'Online Counter-Terrorism'***  
***Presentation to Commission for Countering Extremism, 25 May 2022***

## **Introduction**

1. You will possibly be familiar with the debates. Whether online activity is truly separate from an individual's offline interactions and personality traits. Whether online radicalisation to violence is a process of contagion or requires a targeted injection of already susceptible individuals. Whether mental health or neurodivergence play a material role.
2. That field is dominated by social scientists. As Reviewer, my interest is in the *laws* that *respond* to terrorism, hence the title of this talk, Online Counter-Terrorism.

## **Programme for 2022**

3. Online is my entire focus this year and it roughly divides into three. One part of the project we can put to one side for today's purposes: that concerns the investigation of terrorism and grapples with matters such as encryption, data volume and remotely stored data.
4. The other two parts relate firstly to the arrest cohort, which is directly traceable to internet use, and secondly to content.
5. By arrest cohort I refer to the well-testified increase in the number of children being arrested for terrorism offences, the incidence of neurodivergence, and the preponderance of lone actors or self-initiators or however you want to call them. This has consequences for management of counter-terrorism assets because these arrests can happen anywhere with an internet connection: hitherto counter-terrorism forces have been concentrated deliberately in the largest urban areas, but now smaller forces with limited CT experience or support may need to get involved.
6. The principal question I am looking on that topic is whether CT Police have sufficient legal mechanisms to disrupt and deter violence by children whose online behaviours they have been alerted to. There is a subsidiary issue, which I had not anticipated at all, of overlap between children who have been recruited online to terrorist groups, such as Sonnenkrieg, and the UK's laws against Modern Slavery which are, to put it mildly, clunky in this context.
7. Thirdly, there is content, and this is what I really want to talk to about today.

## **Terrorist Content**

8. From a terrorism perspective, content is important if, and only if, it is linked to real world violence. If you want to check the definition of terrorism you will find in section 1 Terrorism Act 2000 that terrorist acts also include serious disruption to electronic systems, but I will confine myself to physical violence against persons or property.

9. You will have juddered instinctively at the flabbiness in my use of the word 'linked' which glosses over causal or correlative, objective or subjective, substantial or theoretical. But let us take the concrete example of the Buffalo killer in New York State on 14 May 2020 and let us take him at his word, and not fall into the trap that, perhaps, the UK fell into with Islamist terrorists in the years before 7/7.
10. He said, in his diary, that he first began browsing the notice board 4chan in 2020 out of Covid boredom, where he encountered gifs of Christ Church killer Brenton Tarrant and became curious. Upon reading Tarrant's manifesto, Gendron claims he agreed with most of the content. These manifestos are content that plays a role in real world terrorist violence.
11. You can find any amount of this hateful claptrap on the internet, but what marks Tarrant's manifesto out is the resonant potency that was subsequently bestowed on it by his murderous violence. As has long been understood by terrorists, the "propaganda of the deed" can transform a humdrum ideological programme into an inspirational one.
12. That explains the authority of the texts handed down by killer to killer through the internet. Tarrant was inspired by the Norwegian terrorists Anders Breivik. Breivik copied heavily from Unabomber Ted Kaczynski's manifesto. There are numerous other examples.
13. The pseudo-Christian esteem for this cannon of texts sanctified by acts of extreme violence has a parallel in the iconography of individuals – trying googling Saint Tarrant or, in the incel universe, Saint Elliot Rodger, and then click images and you'll see what I mean.
14. In the Islamist terrorist world think of the use of Osama Bin Laden's image, or the execution videos of the ISIS Beatles. I cannot pretend to understand why these images of killers drenched in blood have the capacity to inspire further acts of violence. But as catalogued by researchers and bodies such as Tech Against Terrorism, this appears to be produced by AQ or IS for a reason.

### **Counter-terrorism tools**

15. Traditionally there have been a limited number of legislative tools available – section Terrorism Act 2006 is a notification power allowing a constable to warn an internet provider that they cannot plead ignorance about terrorist content on their platforms, but has never been used; section 3 Terrorism Act 2000 enables the Home Secretary to proscribe terrorist organisations which may result in takedowns of associated content, but this depends on the attitude of providers and has less bite in the world of lone actors.
16. In principle, this is all going to change with the Online Safety Bill which incorporates terrorism offences into its definition of illegal content. I've already published a critical

note (available on my website) as to why I don't think this works at a technical level as to the definition of 'illegal content'. But I want to discuss something deeper which is my analysis, still ongoing, of the values that ought to guide us in constructing counter-terrorism laws directed at online content

### **The difficulty with Fundamental Rights**

17. I say the values that ought to guide us because, as the lawyer and author Graham Smith has rightly pointed out, it is highly confusing to talk about fundamental rights. Why is this the case?
18. There are I think two key reasons which explain why it is difficult to talk about fundamental rights in this context. Firstly, fundamental rights are principally concerned with protecting individuals in their relations with identified states (detention, fair trial, policing of political protest and so on) whereas the key actors here are mighty private tech companies and user-generators operating globally. Secondly, our domestic understanding of fundamental rights is shaped by laws such as the Convention rights incorporated by the Human Rights Act 1998 that simply have no purchase on tech companies who, out of sincere commitment or opportunism, will cleave to a different constellation of rights generally focussed on the US constitution's First Amendment. You see this in the attitude of search engines, and in platforms such as archive.org which considers that all internet material should be available to everyone for ever.
19. There are I think two lesser-order reasons why the rights calculus is so difficult. As a lawyer, I have spent over 20 years thinking and arguing about the correctness of decisions and measures where fundamental rights come into conflict with other central values such as national security and the prevention of crime, or other fundamental rights. The outcome involves weighting, and you can argue about whether that weighting has been performed correctly in particular cases or generally (and that debate is bound to happen when the government's modern Bill of Rights comes before Parliament) but in the real world it is mostly a coherent exercise on which informed individuals can form useful opinions
20. But things get rather tricky online.
21. Firstly, it is interesting how many researchers and commentators on online terrorist come from an Arts background – and lack the technical expertise to understand the trade-offs. It may be suggested that content moderation would result in the end of the internet as we know it, because artificial intelligence would takedown vast swathes of non-terrorist content, or platforms would be required to hire so many content moderators that it would break the financial model on which technical innovation and free services depend.
22. And let's us be honest about this. We care very much about the functioning of the internet. There are some losses of functionality – such as teleconferencing or access to instantaneous news output - that our society could not tolerate. As more and more

national and local government services migrate online there is a plausible argument that access to broadband is itself a fundamental value. How do we make weighting decisions about national security and protecting the public from harmful online content when we don't fully understand what the consequences might be and where, whatever our views about the presence of certain content, we might care very much about the overall consequences to the internet as we know it?

23. Secondly, returning to my lazy word "link", we have little idea of the causal role played by a particular chunk of content – say a particular image – and terrorist violence.
24. I am not aware of any research on the eyeball to violence ratio: that is the ratio between the number of people who have seen terrorist images or manifestos, and the number of those individuals who have subsequently gone on to use terrorist violence. A few minutes ago I deliberately dropped in the suggestion that you google Saint Tarrant or Saint Elliot Rodger – I am confident that none of you will go on to kill as a result.

## Values

25. So my preliminary conclusion is that it is more coherent to talk about values of which, of course, the value of human life and the protection of what we call national security are the highest from a policy-making perspective.
26. Where bitter experience has taught us that a particular manifesto or live-streaming has repeatedly inspired terrorist violence either at home or abroad, or where we know that terrorist groups are deliberately producing branded terrorist propaganda aimed at encouraging immediate violence or travel to war zones because they believe it works (and who are we to doubt them), then for myself I have no difficulty in saying that the value of protecting human life and national security ought to dictate the outcome – which is in principle removal, subject to limited access archiving for research purposes, and full safe harbour protection for recognised news publishers.
27. But where the evidence for linking content and violence is tenuous, and it generally is, the principal value must be freedom of expression. We are talking about words, images and sounds.
28. I think Ukraine has given this analysis a boost. Being able to see and discuss images from the battlefield and information about weapons supplies from the UK and its allies allows us to participate in debates about world events of the highest importance. It serves two of the three interests that freedom of expression is said to serve: truth, and democratic participation.
29. The right to access this information is not diminished by the fact that some of the most lionised defenders of Mariopol steel plant are members of the Azov Battalion, strongly associated with neo-Nazism (look online for an image of their logo). We cannot say, or even hazard a guess, that taking down images of the Azov Battalion will lower the

risk of future terrorist violence, but it will certainly limit the freedom to impart and receive information.

30. Let me finish by identifying some tentative conclusions.
31. **Firstly**, wishing **general and permanent** restrictions on the internet freedoms of millions and billions of users, based on the violent actions of the spectacular few, seems a heavy price to pay, akin to banning knives or alcohol.
32. **Secondly**, the **strongest case** for general and permanent removal concerns material that has been identified as dangerous because it is repeatedly associated with subsequent violent acts (such as the Christ Church live-stream) or terrorist propaganda produced by identified terrorist organisations.
33. **Thirdly**, in the absence of a workable distinction between content associated with subsequent violent acts that is nonetheless worthy of protection, and content that is not, **decisions by democratic rights-based states** such as the UK are the least bad way of determining which dangerous material should be removed. In the UK there are various legislative tools which can be used or adapted for this purpose.
34. **Fourthly**, even where general and permanent removal is otherwise justified there should be **absolute protection for recognised news publishers** to use any content as determined by their own editorial judgment and an **infrangible record** of all content must be kept in the interests of truth and history to which access must be permitted to journalists, researchers and the like.
35. **Fifthly**, measures which **disrupt** patterns of terrorist behaviour are preferable to general and permanent removal. This is sometimes referred to as the process of adding friction by, for example, making it more difficult to re-post at scale or requiring age-verification for certain sites.
36. **Finally**, as we contemplate with horror the events in Buffalo and the undoubted role of the internet in the killer's decision-making, we should not forget the offline aspects which in the UK, at least, minimise the risk of similar incidents. I am referring of course to gun control.

Jonathan Hall QC  
Independent Reviewer of Terrorism Legislation