From Andrew Miller MP, Chair

Rt Hon Simon Hughes MP
Ministry of Justice
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9 July 2014

My Committee has recently held a number of evidence sessions on the topic of social media data and real-time analytics. Ed Vaizey, Minister from the Department of Culture, Media and Sport, gave evidence on behalf of the Government though the inquiry cut across several departmental remits. There were several questions in which he indicated that any response should come direct from the Ministry of Justice.

I am hoping that you would be able to respond to the following questions upon which Mr Vaizey felt the Ministry of Justice would be better placed to comment:

- Under the Data Protection Act a breach of section 55, which is unlawfully obtaining disclosure of personal information, is currently an offence but is backed up only by a fine. It is not a criminal offence and there is no prison sentence attached to that. Do you think it should be? (see Q213)
- The Information Commissioner has alerted this Committee to the fact that a credit reference agency has been buying social media sites. Are the Government concerned about that? Do they see a privacy issue there, or do they believe action should be taken when ownership changes so that the users of those sites know who the owner is and that it might be used for different purposes from those they originally envisaged? (see Q212)
- The Information Commissioner told us that once data has been anonymised, the data loses data protection rights. But there is the potential for data to be re-identified. Is the Government of the opinion that re-identified data should have the same rights as unanonymised data? (see Q215)
We would also appreciate your comments on the following points:

- The Government submission seemed to be unsupportive of the proposals for the EU data protection regulation. Could you explain what your submission to this inquiry meant by "the insistence [of the] proposals on 'explicit' consent is likely to lead to a "trivialisation" of the experience for data subjects"?
- Can you explain why the Government considers that explicit consent would not provide greater protection for individuals?
- Should the re-identification of anonymised data be made a criminal act? If so, what sanctions should be introduced?

I have attached a copy of the transcript of the evidence session held on 2 July 2014, highlighting the areas that you might find relevant.

I would appreciate a swift response as we hope to draft the report over the Summer Recess.

Yours sincerely,

Andrew Miller
Chair
Science and Technology Committee

Oral evidence: Social media data and real time analytics, HC 245

Wednesday 2 July 2014

Ordered by the House of Commons to be published on 2 July 2014.

Written evidence from witnesses:

- Government Departments

Watch the meeting

Members present: Mr Andrew Miller (Chair); Mr David Heath; Stephen Metcalfe; Stephen Mosley; Pamela Nash; Graham Stringer; David Tredinnick

Examination of Witness

Witness: Ed Vaizey MP, Parliamentary Under-Secretary of State for Culture, Communications and Creative Industries, Department for Culture, Media and Sport, gave evidence.

Q196 Chair: Minister, thank you very much for coming in. We know that in all of your responsibilities you take a keen interest both in the Internet Governance Forum and, specifically here, the social media space. In your role as the responsible Minister, how much of your work is to do with supporting UK-based companies versus managing issues around US companies operating in the UK?

Mr Vaizey: It would be hard to divide that up. As Minister for the creative industries, I am a big supporter of UK businesses, and we help them in terms of their export strategy. If you are talking about the internet, it is pretty clear that, in terms of some of the issues that cross my desk, companies like Google, Facebook and Twitter are relevant. On the other side, the main internet service providers—BT, a British company, Virgin Media, which is now effectively an American company, Sky and TalkTalk—would play a big role as well. We work with the main ISPs very much on issues to do with child protection and child abuse imagery, but we work on that as well with the big American companies Twitter, Facebook and Google.

Q197 Chair: But you have very little power to regulate the activities of those big American companies that have played a significant part in some of the evidence we have heard in this inquiry. How do you go about addressing that challenge?

Mr Vaizey: You have put your finger on this, Mr Miller, in one sense. In a very wide sense, that is the challenge for policymakers, not just in the UK but in almost any country, because a lot of the organisations one deals with now have a global reach but are based outside one’s jurisdiction. On almost any policy issue, because of technology, you face that challenge. Nuisance calls would be another example. Companies from abroad make nuisance calls. How do you deal with that?

Without wishing to put a hostage to fortune on the table, I have found dealing with them reasonably straightforward. It is a challenge for Government at what point it wants to lay down the law, if I can use the vernacular. For example, on the removal of child abuse images, the Prime Minister was very clear that it was his intention to do everything he could to eradicate those from the internet. In that respect Google came to the table and made some very far-reaching changes. That was because the Government were emphatic in their position. I am sure we will cover a range of matters in this evidence session, such
as issues to do with the right to be forgotten and data protection. These are issues where the UK Government have a say. Funnily enough, potentially, we have a stronger say because we can play our part in influencing European policy, which obviously has a big impact on companies outside Europe.

Q198 Chair: Within the UK data capability strategy, where does social media data fit into that discussion, rather than big data in its generality? Is there a specific piece of work going on in terms of how social media data is handled?

Mr Vaizey: I have read the evidence this Committee has received. I know that some of the people giving evidence indicated that social media should be a separate element of Government policy, if you like—that big data is one of the eight great technologies, and perhaps social media should be a ninth great technology. A wry smile crossed my face. If you are giving evidence and you come from the world of research where you are looking for grants to look at social media, it would be very useful if it was the ninth great technology. I think that for practical reasons social media fits within the Government’s approach to big data. It is obviously an important element of it.

Reading the evidence, I think we are justified in saying that we are at a very early stage both in how we use social media and understand it. The Government are certainly aware of its importance and keen to work with academics and researchers to explore the implications, but in my view clearly social media sits within big data.

Q199 Stephen Metcalfe: Some very large numbers are thrown around about the economic benefits of looking at this. Someone suggested £216 billion by 2017—whether that is per annum or cumulative I am not quite clear—supporting 58,000 jobs. Are those numbers ones you recognise? Have the Government made their own estimates of what this technology—this field—could be worth, in terms of both social media and just big data?

Mr Vaizey: I am not aware of any internal Government research on this. These are the CEBR figures, which is a respectable institute. We all know that estimates of this kind are estimates by definition. Whether it is £216 billion, £150 billion or £250 billion, I think we can all agree it is probably a big number and it will create potentially thousands of jobs. Big data is one of the eight great technologies. Some people describe data as the currency of the 21st century. It has been described as the oil of the 21st century. It is clearly going to be extremely important. It is important that Government are ahead of the game in terms of their research and engagement with industry and academia on it. It is important that we are seen as a country that is looking at big data and lead by example.

In terms of Government making data available, I think our open data policy is very important as well. When we came into office we made the very conscious decision that we would do our best to make Government data available, because that can drive business creation and innovation.

Q200 Stephen Metcalfe: You said we need to be ahead of the game. Do you believe we are and we are not playing catch-up with countries like the US or Japan?

Mr Vaizey: I think we are ahead of the game. There are some stats which are not estimates. One statistic I have seen is that we are the fourth largest country in terms of high-performance computing. If you look at the kind of investment we are making, whether it is the £40 million to the Alan Turing Institute—I gather that flesh has been put on the bones of that this month by the Engineering and Physical Sciences Research Council, which is responsible for it—the £189 million we have put into high-performance computing, or the £50 million we have put into the connected digital economy catapult, a lot of money is going into this. I have seen comparisons with other countries. The United States will clearly be a world leader; Japan is another one; and some people say India is good on this as well. I think we stand good comparison with other European countries, and certainly with others around the world.

Q201 Stephen Metcalfe: You talked about the great investment that has been put into areas that would support this field. It is good that the Government have invested, but how do you measure the return on
that investment? What are the tangible results from that? It is great that you have done the investment. What do we get back for it?

Mr Vaizey: That is a really good question. I don’t have an answer to it. As an MP who has a huge amount of science in his constituency, I am very happy to receive that investment. There was £500 million in the Large Hadron Collider. I have never asked for any return on that investment. It creates a base layer of both physical capital, in terms of kit that is being built and used; and also human capital. You attract from all over the world the brightest minds who want to work. I am sure there are statistics out there that we can read out to show the return on investment in scientific research in the widest sense that would give good, strong figures. David Willetts has been very successful in protecting the science budget. I think the reason he has been successful is that the Government recognise that effectively this is investing in the skills, businesses and applications of the future.

Q202 Stephen Metcalfe: What I am saying is that, if we are going to invest in big data and social media data, we need to know whether we are getting our fair share of the alleged £216 billion, and whether it is worth investing more. One of the economic challenges we face as a country is that we do not have a big enough medium-size business sector. Medium-size businesses normally start from small businesses. How are we going to make sure that small and really medium-size enterprises get access to this and are involved in what I think will be quite an innovative space so that they will be able to maximise the economic potential?

Mr Vaizey: We are doing quite a lot of work on that. David Willetts is leading a lot of this. He has set up a high-performance computing council, as it were. That is a way of taking the very big businesses and research institutes, which put a lot of investment into high-performance computing—it can include companies like Jaguar Land Rover, which put millions and millions of pounds into high-performance computing to do their very sophisticated design work—and looking at ways to make it available to small businesses. Clearly, that is incumbent on big scientific institutions. I mentioned the Large Hadron Collider because it happens to be in my constituency. They are very keen to make sure that small businesses have access. We have a lot of small high-tech companies, often spun out of universities, which are working on very high-end scientific research effectively but clearly do not have the resources to spend £50 million on the kind of kit they would need. They need access. That is the kind of work going on.

Q203 Chair: I think you have Diamond in your constituency; I don’t think you have the LHC. Your boundaries do not stretch to Geneva, do they, but we know what you mean?

Mr Vaizey: I am sorry—it is the Diamond synchrotron. I do not know why I talked about LHC. It was a senior moment. Perhaps I have a yearning to have the Large Hadron Collider in my constituency. Perhaps I can start my bid for the next Large Hadron Collider.

Q204 David Tredinnick: It is reported that there is a shortage of people who have the right combination of skills for media and real time analytics. Do you think that is right?

Mr Vaizey: I am sure there is a shortage. With any emerging field, particularly one where the skill set is particularly niche, there would be a skill shortage. That would apply to Government and business. We are looking at skills across the board, from schools through to colleges, universities and, indeed, apprenticeships. Skills also affect our approach to immigration, so we want to ensure that the highest quality graduates are able to come and work for companies where they are needed.

Q205 David Tredinnick: To what extent do you differentiate the skills required for social media analysis and those required for other types of data?

Mr Vaizey: To answer that question intelligently would be beyond my level of expertise. I can write you a fuller answer to it.
Q206 David Tredinnick: Do you take account of those differences—I assume you must do—and to what extent?

Mr Vaizey: The Government will have their own programmes on social media analytics in wanting to understand how to use social media, in particular, as Ms Nash referred earlier, in terms of disaster and crisis situations. A lot of what we will be doing at the moment is working with private business as well. A lot of the call-outs from Government will be to work with the private sector, simply because at this stage, without being pejorative, it would be difficult to find people who join the civil service with a specific career path to do data analytics and social media analytics. We are in the early stages. We will use public private partnerships, like the connected digital economy catapult, to look at opportunities to do more work in social media analytics, and we will use the research councils, the Alan Turing Institute and so on. Working with universities, academia and the private sector would be the main way forward.

Q207 David Tredinnick: You touched on immigration. How do the Government plan to make sure that immigration policies do not adversely affect the ability to attract talent in social media analysis from abroad?

Mr Vaizey: It is important that we have a strong immigration policy, in the sense of wanting to ensure that there is control of immigration. At the same time, we are keen to ensure that we get people with the right skills into the country. We have a points system to ensure that we can get people with skills. There are two routes. Tier 2 (general) is for skilled workers who have a job offer and a degree. There are inter-company transfers as well. We also have a shortage occupation list so we can recruit people where we think there is a shortage of skilled workers. We also have special visas for academics. We have a fairly open market for international students as well. There is a range of different ways that we can attract the right kind of people to come to the country to help, in terms of both pure research and growing businesses based in the UK.

Q208 David Tredinnick: That is very helpful. I think we accept that we have an engineering shortage in the UK. What are you doing to try to help produce home-grown talent in the engineering sector?

Mr Vaizey: The Government have, first, a strong focus on engineering in schools. With my Minister for Culture hat on, I am often criticised that the Government are perhaps focusing too much on STEM subjects—science, technology, engineering and mathematics—but I think that is because of the recognition of the shortage. I was delighted when the Secretary of State for Education said that computer science should be part of the national curriculum. For many years people have complained to me that kids at school were learning how to use applications but not how to write them. That is a very ambitious move and it puts us ahead of the game. The challenge will be in the implementation and making sure we can get the right teachers in to teach computer science, but it is a big signal that we take it seriously.

Apprenticeships also play a valuable role in this. As you know, the Government now have a big focus on apprenticeships. I am hoping to get certain things in my constituency correct this time. For example, in Harwell the UKAEA has a very good apprenticeship programme. I think there are now lots of people who can get the engineering skills they need through the apprenticeship programme as well as through straightforward university degrees. To get students studying these important subjects is a perennial problem, but the Government are very aware of it and are focused on providing solutions.

Q209 Graham Stringer: The terms and conditions of online companies are often pretty impenetrable. What are you doing to monitor that situation? Do you think Government have a role to make those terms and conditions more comprehensible?

Mr Vaizey: I think you heard evidence in another session from Nigel Shadbolt and another member of the Information Economy Council, which is chaired by David Willetts and which I attend. We had a meeting yesterday to talk about the approach to transparency on data that you discussed with them in your evidence session, and a first stab was put forward. That led to an interesting discussion about the
role of Government. Some people feel, funnily enough, that it is better—"wrong" is not the appropriate word—that the initiative comes from business and industry rather than Government. Being a politician, I find that quite hard to get my head round.

I think we have an opportunity; I want to move forward on this and I think we should move forward on this. My understanding is that the Information Commissioner’s Office is going to be the conduit for this kind of work, with the industry coming forward with proposals to simplify terms and conditions online.

I think—the Committee probably shares this view—that the idea that people read 150 pages of terms and conditions is simply laughable; it is a complete nonsense. We all know what lawyers are like—every t is crossed and every i is dotted. But the consumer needs something that is easy to understand and straightforward.

Q210 Graham Stringer: I certainly think we are all agreed on that. What I am trying to get at— I am not sure from what you have said—is whether you have asked the Information Commissioner to carry out that work or the Government themselves are monitoring the situation. I think the problem is universally recognised, and I want to find out where the Government are on it.

Mr Vaizey: My understanding is that the work of the Information Economy Council, at which the initial draft was discussed yesterday, is going to be taking it forward, with the Information Commissioner standing behind that work and engaging industry to come up with proposals for simplified terms and conditions and a kitemark, which I think industry wants as well.

Q211 Graham Stringer: Will part of that review, assessment, whatever you would call it, be questioning the justification online companies have for asking for the information they seek, or will that be a step too far?

Mr Vaizey: I would have to give you my personal view, in the sense that the relationship is between the company and consumer. For me, I think Government’s role is to ensure that the consumer understands that the company is asking permission, which is the right word to use, from the consumer to use their data in a certain way. We should not necessarily restrict what they want to ask the consumer about how they use their data. I think that ends up being too top down and potentially restricts innovation. Government’s role should be to ensure that the consumer understands what the company is asking for and gives consent to that.

Q212 Graham Stringer: The Information Commissioner has alerted this Committee—I guess he has alerted the Government as well—to the fact that a credit reference agency has been buying social media sites. Are the Government concerned about that? Do they see a privacy issue there, or do they believe action should be taken when ownership changes so that the users of those sites know who the owner is and that it might be used for different purposes from those they originally envisaged?

Mr Vaizey: I am not the Minister responsible for the Information Commissioner. The Information Commissioner sits within the Ministry of Justice. My instinct is that the Government would want advice from the Information Commissioner about whether this was an appropriate thing for credit agencies to be doing. There has been debate in the Committee and elsewhere about people posting online in a public forum like Twitter. I think that technically it is still their data, but they have made it public. My understanding—I will correct it if I have got it wrong—is that that is now public data and, therefore, it is not a breach of the Data Protection Act to use it. Clearly, there are big issues involved here. There is the issue of what one does with data that are public, as in you have stated something in public, and what one does with aggregated data, which I think it is important should be kept anonymous.

Q213 Stephen Mosley: You will be aware that under the Data Protection Act a breach of section 55, which is unlawfully obtaining disclosure of personal information, is currently an offence but is backed up only by a fine. It is not a criminal offence and there is no prison sentence attached to that. Do you think it should be?
Mr Vaizey: I don’t want to dodge your question, Mr Mosley, but I think that, emphatically, has to be a matter for the Ministry of Justice. If a Minister in the Department for Culture, Media and Sport decided to change the Data Protection Act—

Q214 Stephen Mosley: What would be your advice to the Ministry of Justice?

Mr Vaizey: It is not something I have turned my mind to.

Q215 Stephen Mosley: The Information Commissioner has told us that once data have been anonymised they lose protection rights, but there is a potential for those data to be reconstructed and re-identified. Should re-identified data have the same rights as unanonymised data?

Mr Vaizey: My understanding is that there is a difference between somebody in a position of public trust being able to take data that have been anonymised and reconstituted—that would be a breach of the Data Protection Act—and somebody sitting at home taking reams of data and trying to reconstitute it. My understanding is that that is not an offence. I can see the difference between that case and somebody in a position of trust who is using tools perhaps not available to the general public to try to identify an individual from anonymised data. I think that should be an offence, but going further than that would be to stretch beyond my own personal ministerial responsibilities.

Q216 Stephen Mosley: It is a very wide topic and we are aware that it covers a huge range of ministerial responsibilities, but I do want to press you on this a bit. Do you think that the re-identification of anonymised data by someone not connected to a public body should be a criminal act?

Mr Vaizey: I am not aware that the Government take that view, and it is not my view at present.

Q217 Mr Heath: Minister, do you deal with the European Union data protection regulations and the proposed new ones?

Mr Vaizey: Not at all, but I am happy to answer questions.

Q218 Mr Heath: You are familiar with the Government’s response.

Mr Vaizey: Yes. Funnily enough, I always bump into Chris Grayling at the airport when he has had a discussion with the commissioner in Brussels, Viviane Reding.

Q219 Mr Heath: On that basis, the Government’s position, as I understand it, is that they are not particularly keen on the proposals coming forward. One of the areas where they are not keen is the issue of explicit consent. We heard earlier that 80% of the British public are concerned about the way their data are potentially open to misuse. What is wrong with explicit consent in your view as a mechanism?

Mr Vaizey: The issue is this. What we want to achieve in Government is a balance with the rights of the consumer. Perhaps I should not say “a balance.” The rights of the consumer are paramount, but one has to be pragmatic as well and not inadvertently stifle innovation. One issue that I did work on very closely, because it fell within my remit, was the e-privacy directive, which was a similar piece of legislation coming from Europe. It was about how you inform users of websites that cookies can effectively track their browsing history. Some would say that can be of benefit to consumers because they are served up with adverts that are relevant to their interests.

We worked closely with business to ensure that its implementation did not introduce too heavy burdens. If you go on a website, you will now see in a pretty straightforward fashion a banner saying, “We use cookies. Click here to find out more about them.” Similarly, the advertising industry, of its own volition, has come up with AdSense. You can click on an advert and they will tell you why you are seeing it and show you some background as to how it works. I think it has been successful.
We also work very closely with the Information Commissioner. He made it very clear that he would not prosecute people in the first year. He would allow them to try things out and come to him and explain why they were doing it, and he would provide feedback to them and say, “Well, you’re doing it slightly wrong in our view.”

Explicit consent can lead to excessive bureaucracy. It can also damage the consumer’s experience, which was the debate we had about e-privacy, if they have to keep giving consent at every stage of their interaction with a business.

Our other concern about explicit consent is that it ends up trivialising consent. Explicit consent sounds and is a pretty important decision made by the consumer. If for every single transaction with a business that involves giving them data you have to give specific consent, in a sense, if everything is explicit consent, nothing is explicit consent. Consumers will then start giving explicit consent as a matter of course, because they want to get on with the transaction they want to have. That is why we are concerned.

Consent is important to the consumer. It is their data; they have the ultimate right, but it is also important to be pragmatic, funny enough, on behalf of the consumer, who also wants a relatively seamless transactional relationship with the business they are interacting with.

Q220 Mr Heath: I understand that, so what is the alternative? How do you give uninformed consent without being asked regularly to do so?

Mr Vaizey: You can provide informed consent by giving it, as it were, at the beginning of a transaction and your relationship with a business, whether it is a supermarket loyalty card or a website where you regularly shop. You can give specific or implied consent by getting a clear explanation, perhaps with reference to the discussion we had earlier, of the broad terms and conditions to which you are signing up, or the broad ways in which your data are going to be used, so that from then on your relationship can continue.

Q221 Mr Heath: You would favour a generic consent: for example, “I give my consent to this sort of use of my information.”

Mr Vaizey: Yes.

Q222 Mr Heath: How about Government use of that information? Should that be one of the boxes you tick or do not tick?

Mr Vaizey: I think Government have to be beyond reproach when it comes to their relationship with consumers. They have to ensure that, when you are transacting with Government, particularly as we are moving into a digital relationship with a lot of citizens, that is included. With reference to my earlier answer, if a company wants to say to you, “Mr Heath, please give us your consent, and we may give your data to the Government,” it is for the company to say that to the consumer, so long as the consumer knows—

Q223 Mr Heath: Would that include national security?

Mr Vaizey: Potentially. I am not an expert on national security, but clearly it could include a reference to the fact that the Government may be able to access your data for national security reasons.

Q224 Chair: You may have heard an earlier witness argue that there ought to be a process of, almost, applying for a warrant to access my data. Do you think there is merit in thinking about that more deeply?

Mr Vaizey: A warrant from Government?
Q225 Chair: In the same way that a police officer seeking to search your house would require a magistrate’s warrant. Do you think there is a parallel in the virtual world that could strengthen public confidence in relation to Government potentially abusing their datasets?

Mr Vaizey: The Government set out clear policies on how they will use their national security powers to access data. Those powers are subject to judicial oversight and are clear, but I would not wish to second-guess my colleagues in the Home Office about the right way to protect people.

Q226 Chair: I come back to your point about explicit consent being a difficulty because it is intrusive. If it is intrusive, you have to ask yourself why companies are asking for so much information. Shouldn’t companies be encouraged to seek less information? We had an example the other day where a colleague was downloading an app and the system wanted to know his location. It was totally irrelevant and it was an unnecessarily intrusive request for information. Shouldn’t that kind of thing be actively discouraged by Government?

Mr Vaizey: I do not know whether it should be actively discouraged by Government. I certainly think there should be a debate about the amount of information a company may wish to get from you. If it is asking for a location service for a music app, where you are listening to the music may well be irrelevant.

What I want to say, Mr Chair, is this. It is easy to forget, perhaps not for those of us who are approaching or are past middle age, like me, that this industry to a certain extent is in its infancy. It is a bizarre position to be in that the two largest companies in the world are effectively younger than all of us.

My hunch is that, in terms of the reams of terms and conditions that apply to a lot of these sites, that is the lawyers at work—presumably, they are getting hefty fees for covering every eventuality—plus the start-ups and innovators with their new applications, who are thinking, “We want lots of information because that might drive the next iteration of the business and the business model.” Presumably, your colleague who found the location data intrusive was given the option to provide it or not provide it. The people behind that app might think that in a year or two having that location data could take them to the next stage of how the app is used.

Q227 Chair: I return finally to Government, and I appreciate this is a question that goes well beyond your own remit. So just answer in terms of your own remit, which spills over. You have relationships in DCMS with health in relation to sport, for example, business, criminal justice and so on. A very complex crossover brief exists in your Department, so you must have some inkling as to whether or not the current approach to data sharing within Government remains—as one witness said—a challenge. Do you think we have cracked it yet?

Mr Vaizey: No, I don’t think we have cracked it; it is a challenge. Government need to do much more about data sharing. Across the piece in Government, single Departments make it very hard to do cross-departmental working. We have made great strides with the Government Digital Service. The work they have done has, in my view, been truly ground-breaking in crunching together thousands of websites into one site. What that is going to do in terms of data sharing is allow Government to have an overview of how the citizen transacts with Government. From that will emerge information that will help different Departments link up in terms of how they provide services for citizens, and hopefully we will see more sharing, more effective services and so on. That can link up health data, pensions data and so on.

Individual Government Departments are forging ahead in how they are using social media and also data. Some are better than others. The Department for Environment is lauded as one of the most effective in terms of using social media both to anticipate potential issues coming up but also to deal with them. Other Government Departments, such as the Department for Transport, in sharing open data are very innovative in how they have made it available. But, yes, we are also at an early stage. I would encourage the Committee to look at the work of the Government Digital Service. I think that is the pioneer. It is part of Government, but it has the air of something that sits slightly outside it, which allows it to be a
relatively rare thing in Government—to be truly quite innovative and act almost as a start-up, which I happen to think is a positive thing; others might think it is a negative thing.

Chair: Minister, thank you very much for your time this morning.

Oral evidence: Social media data and real time analytics, HC 245 2