

The Rt. Hon. John Bercow MP  
Speaker's Commission on Digital Democracy  
House of Commons  
LONDON  
SW1A 0AA  
30 August 2014

Dear Mr Bercow,

**MAKING LAWS IN A DIGITAL AGE: CALL FOR EVIDENCE**

Our first submission to your call considered the first three questions of the Commission posed relating to the impact of technology on law making. As stated in the initial submission, we felt that a longer and more comprehensive response was required to the question of evidence that could potentially be used in a UK setting.

This submission considers the implications of using technology in the context of legislation, and also how we might visualise a continuum of good digital practice across Government and Parliament, from open policy-making to open law-making. We believe there are valuable examples that may usefully inform your thoughts.

We hope this position piece is of use to you, and look forward to the Commission's future work. We are at your disposal should you require us to expand or clarify any point.

Yours sincerely,



**ANTHONY ZACHARZEWSKI (Director)**  
on behalf of The Democratic Society

In the call for evidence the Speaker's Commission on Digital Democracy asked *'Are there any examples from other parliaments/democratic institutions in the UK or elsewhere of using technology to enhance legislation and the legislative process, which the Commission should consider?'* We believe this question deserves a longer submission, as it is a more complicated question to answer than may be initially imaged.

We have structured our response as two sections, supported by examples, evidence and case studies. The first section outlines how we can conceptualise open Parliament and open Government as sharing similar principles, the second introduces what we believe should be done, and the final section how it should be done.

## What can we do?

### *Open Government, Open Parliament: shared principles*

To the public, the evolution of policy into legislation is perceived as a continuum, with specific stages incompletely understood by those outside of the process. For this reason, we believe that a program of 'open law-making' should ideally be portrayed to users/citizens as part of a single pathway.

Visualizing a single pathway from policy-making to law-making will also be helpful in developing a series of principles and good practice to underpin both. In this respect, digital technology can be the stimulus that focuses us to consider the broader cultural change needed to address limitations in the current system; technology in itself is not a panacea and it will not effectively correct poor existing practices.

This is a point explored more fully by Dr Andy Williamson in his submission to the Commission; we need to look beyond new digital tools to existing processes that do and do not work, and then critically explore how technology can help us to make democracy work better. He makes several positive suggestions, and suggests that a clear direction is needed with open, measureable benchmarks.<sup>1</sup> We very much support this argument.

Considering greater openness brings us to open policy-making, a new philosophy that seeks to expand the collective intelligence beyond the Government and civil service to build better policy, making sure every citizen has a say in how his or her own life is governed. Likewise, opening the legislative procedure up to the public will allow citizens the chance to understand and have an impact on the legislation that regulates the UK.

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<sup>1</sup> <http://www.andywilliamson.com/index.php/submission-speakers-commission-digital-democracy/>

At present, open-policymaking is experimental; while useful case studies do exist<sup>2</sup>, open policy-making should be considered more in terms of a fertile ground for experimentation in digitized public debate as a way to extend public involvement. Also, Parliament has already surpassed Government in some areas, particularly in sharing information and publishing legislative process online. However, we believe it can be improved and we explore potential options in greater detail later in this submission.

The emphasis in open policymaking has so far been on establishing principles that can be adapted to meet the varying needs of different types of public engagement, and, in our opinion, these are equally valid for open law-making. These principles include institutional will and trust to genuinely involve the public in decision making, absolute openness about the process and how decisions are made, a user friendly experience that provides understandable background information and *accessible* sources, and, finally, a mechanism to actively seek public involvement in a way that has the power to change outcomes.

The aims of Government and Parliament should unite to create a system that is more accountable, inclusive and collaborative. This attitude paves a new way of communicating with the public, of which digital is a subset, and is critical for successful engagement, which in turn allows legislation to be enhanced through open debate.

### *Visualising the evolution of an idea*

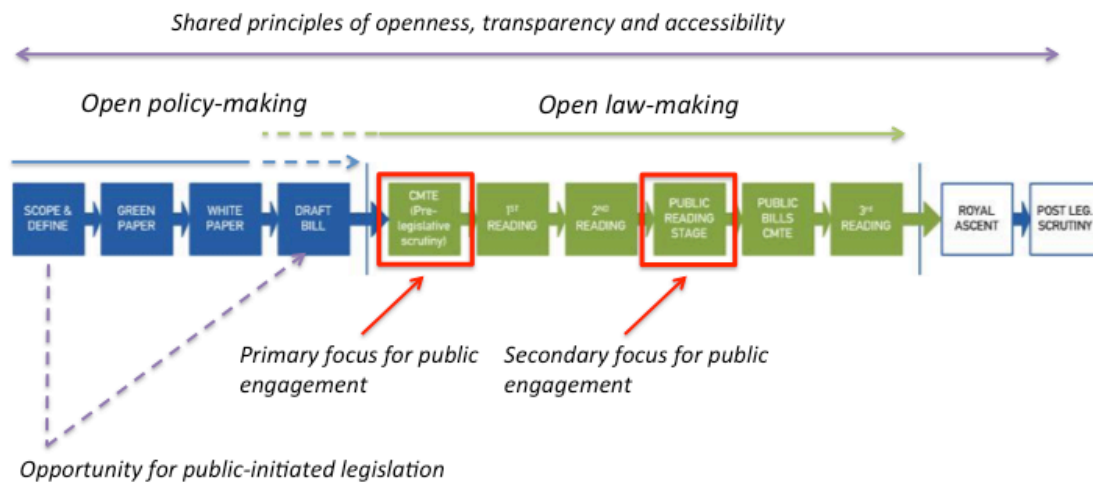
The generation of a political idea and the subsequent development of green and white papers with associated consultation is the domain of open policymaking, with the pre-legislative stage the first opportunity for public scrutiny under Parliament's remit (figure 1). For much of the general public these are not distinct; some policy goes through an additional process that may enshrine it in law. It is therefore worthwhile considering how we can ensure this feels like an integrated process to improve user/citizen experience.

Our figure, and our recommendations, focus on a few key areas: to consider how technology can be used to improve those engagement processes and support a new role for the public as initiators of legislation; to amplify existing opportunities for public engagement; and finally to enhance, using digital tools, transparency and communication throughout.

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<sup>2</sup> <http://openpolicy.demsoc.org/matrix-tools/>

Figure 1: From open policy-making to open law-making



*Always start at the beginning, that's where the start is*

We believe that engagement should be possible at all stages and conceptually, this means that if open policymaking evolves sufficiently, we support a process by which it can act as the natural opportunity for the public to play a role in the development of new laws at an early, pre-legislative, stage. Specifically, open-policymaking could lead to public-initiated legislation.

The Open Ministry<sup>3</sup> (an NGO from Finland) uses crowdsourcing tools to collate citizen-generated suggestions for legislative change. Citizens and lawyers work collaboratively to develop popular ideas into proposals - those supported by over 50,000 people are presented to Parliament. So far, 10% of suggested ideas have been drafted into proposals, with 1% are due to be debated in Parliament. Arguably, these figures suggest a low proportion of conversion, yet perhaps the salient point is that the opportunity exists at all: Finnish law provides a right for public-initiated legislation.

To promote a similar practice in the UK, we would need not only a policy-driven forum to collate ideas and legal support to convert into legislative language (as is the case for Open Ministry) but also a mechanism for introducing the resultant bill to Parliament. Technology can support the former requirement, but whether reform of the current legislative process could facilitate citizen-initiated legislation is a more esoteric question. Given congested timetabling of Government bills, one possible avenue would be for public legislation to be proposed as a Private Members' Bill; in practice, such advocacy from Members would need to be complemented by Government support. This approach may also be consistent with the recommendations of the Power Enquiry, supporting an increased power for Parliament to initiate legislation and to act on public petition<sup>4</sup>.

<sup>3</sup> <http://openministry.info>

<sup>4</sup> [www.Parliament.uk/briefing-papers/SNo3948.pdf](http://www.Parliament.uk/briefing-papers/SNo3948.pdf)

### *Tracking the fate of petitions: closing the loop*

There may be room to improve the current communication regarding petitioning Parliament without a drastic change to the current system. Currently public petitions that gain 100,000 signatures are offered “consideration” for Parliamentary debate. While we feel that it would be a mistake to guarantee a Parliamentary debate for such petitions given a UK population of over 63 million people, creating a more open and visible process for citizens to follow the fate of each petition could have potential benefits. At the least, a citizen facing website could communicate the reasons why a petition has or has not been debated in Parliament, whether the debate has triggered any additional action, and links to potentially useful data and information around the topic; this would help citizens to see the impact of their actions and understand the process. This is simply a matter of communicating work that is already being done.

### *Focus public engagement*

One clear avenue for improvement is to increase the level of dialogue with the public around new laws. Public engagement is more successful if used early on in the legislative process. One of the key dangers of relying on the Public Reading stage for public input is that comments arrive too late – the decision has already been made with minimal opportunity to implement suggested changes. Without visible response to public opinion, there is a danger that latter stage consultation damages public trust<sup>5</sup>. We believe that avenues for enhancing the legislative process are more abundant when we include the earliest stages of pre-legislative scrutiny. Extrapolating good practice from other nations is problematic given the individuality of the different societies and processes involved, but the following examples may usefully inform the UK’s future position.

In Estonia, the People’s Assembly Rahvakogu provides an internet-based platform where citizens can contribute to the legislative process. Ideas are discussed online, complemented by offline events, and formulated into a coherent report to be reviewed by analysts and presented to Parliament<sup>6</sup>. This is similar to the approach employed by the Brazilian Chamber of Deputies (e-Democracia) and the Senate of Chile (Senador Virtual) in their use of online tools during the legislative process<sup>7</sup>.

### *Umpires and gatekeepers*

In these examples, the final formulation of the ideas presented to Parliament is influenced, directed and informed by experts. Raw ideas from the public are not directly presented to Parliament, but are translated into a viable proposal through politically neutral (but highly skilled) advocates. Trusted mediators are

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<sup>5</sup> Departmental Dialogue Index Lindsey Colbourne, 2010. <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Strategic-Research-documents/DDI-Background-Report.pdf>

<sup>6</sup> <https://www.rahvakogu.ee/pages/what-is-rahvakogu>

<sup>7</sup> [http://edemocracia.camara.gov.br/home#.U\\_-QMBazfqs](http://edemocracia.camara.gov.br/home#.U_-QMBazfqs)

one way to rationalise and make sense of the input from digital engagement, which, if left unstructured can lead to a mass proliferation of commentary that can be overwhelming for lawmakers.

Notably, the People's Assembly is run by an NGO; it need not, therefore, be Parliament's role to act as a direct facilitator of public discussion, and one option to consider is whether Parliament can play a role in assigning and supporting an external group to provide such a service. In this respect, working with an intermediary capable of balancing a public interface with a sound understanding of Parliamentary process may be an economic way of managing a more extensive public engagement exercise.

Any UK-based programme must consider a realistic way to analyse and systematise the handling of public input. It needs to ensure that responses are delivered in a format and to a scale that can be reviewed and not ignored, but it must do so without excluding minority or contrarian opinions. Any 'listeners' to public opinion must retain political neutrality whilst developing an ability to respond to people's input in a human way.

### How can we do it?

As a green paper develops to a white paper, bill and Act, the associated discussion shifts from position, principle and ideology to practice, implementation and technical detail; intuitively, the use of technology to promote transparency and to facilitate public engagement must work with and throughout this progression. At present it does not.

This section explores how technology can assist in addressing existing issues for the common legislative process as part of a more general culture change.

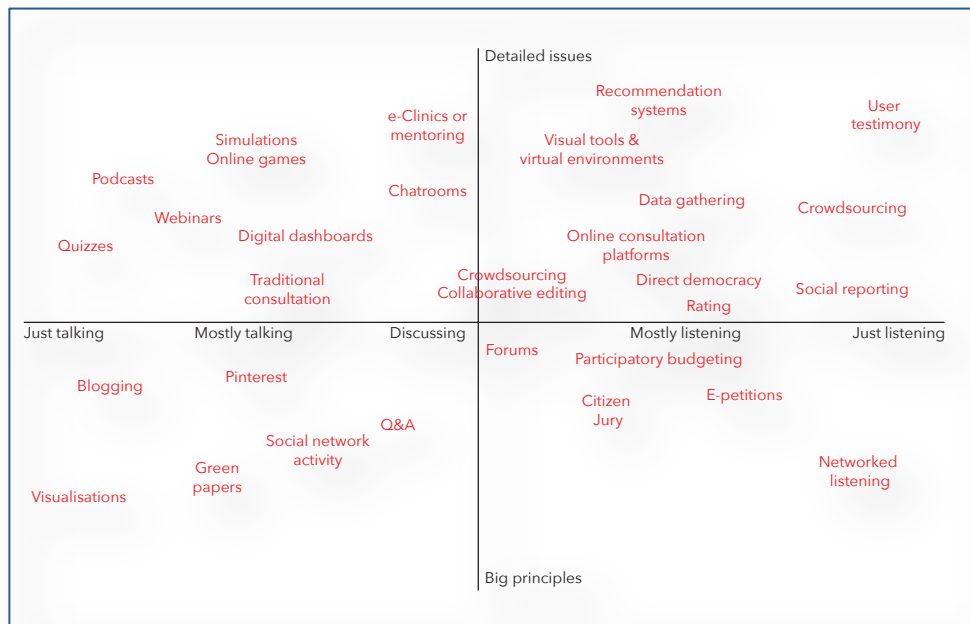
### *A Digital Typology*

There is a subtle but important distinction to make between ensuring that legislation is continually accessible for public review and comment, and ensuring that this is done in a thoughtful, structured way that reflects the different types of interaction that are appropriate at the different stages. As figure 1 suggests, the pre-legislative stage is a logical point to encourage open public input, with the Public Reading stage requiring a more structured, detailed conversation about specifics. The other stages, through which the law evolves, should be transparent, open and accessible to the public, with Parliament staying receptive to comment but not actively eliciting engagement.

Figure 2 offers a typology of digital tools appropriate to different types of public dialogue. It distinguishes between tools that support Parliament in actively engaging and listening to the public, as we might expect to happen at the pre-legislative scrutiny stage. This type of conversation may require considerable resources to analyse and respond. The figure also describes tools that facilitate quantitative, easily analysed 'closed' questions that might be useful to resolve

specific issues later in the process, where the technology itself mediates and collates public input. Matching digital tool to legislative stage provides flexibility for cost, type of legislation and level of public interest. This latter point is relevant, as the public may be disengaged but they are not necessarily dispassionate<sup>8</sup>; using a variety of different media may stimulate greater awareness of a given law.

Figure 2: A typology of digital engagement<sup>9</sup>



### Accessibility

Improving accessibility requires an awareness that accessibility operates across several different strata.

The most obvious starting place is to put measures in place to prevent the digital divide from disenfranchising sectors of the public. Government research evidences the demographic profile of those potentially disenfranchised through Internet use. Improving the digital literacy of 'internet users' by linking to existing initiatives may help<sup>10</sup>. Screen-based readability tests are also relevant and a significant body of research has enabled clear, brief guidelines that should be taken into account. Critically, online must not replace offline – digital tools open new channels for communication without closing old ones, and replication

<sup>8</sup> [www.parliament.uk/briefing-papers/SNo3948.pdf](http://www.parliament.uk/briefing-papers/SNo3948.pdf)

<sup>9</sup> In the goldfish bowl: science and technology policy dialogues in a digital world  
Susie Latta, Charlotte Mulcare and Anthony Zacharzewski, 2013 accessed 28.08.2014 at <http://www.sciencewise-erc.org.uk/cms/in-the-goldfish-bowl-science-and-technology-policy-dialogues-in-a-digital-world/>

<sup>10</sup> <http://www.tinderfoundation.org/what-we-do/learn-my-way>

of engagement across the divide must strike the balance of offering people equivalent opportunities in both worlds, whilst recognizing a significant culture change between the two. The digital environment provides an efficient repository for all discussion, an archive and audit trail, and offline engagement should be incorporated into this.

The most basic element to accessibility (digital or otherwise) is this: any information that is presented in an open way needs to be understandable by the broadest number of people. Digitization of political processes provides an opportunity to address more conventional issues regarding political literacy,

Although Parliament has a fantastic range of information they have made publicly available online, we feel that this information is not easily navigable and is often couched in language and terminology that is little understood by the general public. British social attitudes (surveys) suggest a barrier exists for over half the population; 57% agree that 'politics and Government seem so complicated that a person like me cannot really understand what is going on' (an improvement on 64% in 1994)<sup>11</sup>. For the legislative procedure to be open the information does not merely need to be available it needs to be understandable.

Consideration of 'readability' can be assessed by using existing measures from NIACE, with a recommended target level of 9-10 for entry-level reading<sup>12</sup>. The Office of the Parliamentary Council's 'Good Law' initiative paves the way for a clearer framework to legislation<sup>13</sup> while acknowledging that the causes of complexity are sometimes unavoidable. Notably, the OPC question the level of detail required in law and seek to explore other avenues for policy development, promoting openness as a clear prerequisite for cultural change in the legislative procedure.

Translating legislative complexity into language suitable for public debate is already being addressed. The UK Cabinet Office is experimenting with dual drafting of legislation: one traditional draft and one that is in simpler language and format, and in Scotland, a drive for 'Plain English' is similarly underway.

This has been successfully used in Sweden for 30 years, where all laws are available in 'Easy Read' format. Factors critical in the success of the Swedish approach have been summed up as: support from politicians; a legal basis that emphasizes the importance of clear language and effective communication; cooperation between plain language experts, lawyers and other experts when reforming texts; involving the intended readers while testing the texts and adequate resources to plan and carry out systematic plain language activities<sup>14</sup>.

If successful, the creation of two versions of a law as standard practice may underpin the accessibility of future legislation in the public domain – if drafted concurrently, both versions may be posted throughout the legislative process to

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<sup>11</sup> <http://bsa-30.natcen.ac.uk/read-the-report/politics/can-people-make-a-difference.aspx>

<sup>12</sup> <http://www.niace.org.uk/misc/SMOG-calculator/smogcalc.php#>

<sup>13</sup> <https://www.gov.uk/good-law>

<sup>14</sup> <http://www.plainlanguage.gov/usingPL/world/world-sweden.cfm>



ensure accessibility throughout. This dual language reflects a duality in the way a legal document can be read. The first aspect, 'the letter of the law', requires understanding of the technical precision that is necessary to translate policy to legal enforcement, and may be more exclusive to those with specialist knowledge (though it should still be available to all). The second 'spirit of the law' concerns broader conceptual issues, and this should be accessible to all for review and comment.

### *Visibility*

Visibility is a key issue: regardless of how good the digital platforms for comment are, the public will not engage in discussions they are unaware of. Committee calls for evidence, public reading stages and, indeed, Parliamentary communication both offline and in a digital equivalent all need to be more widely promoted. Publicizing through social media as well as the conventional press and through basic advertising strategies should become standard practice. This in turn should be supported by a more general drive to increase public awareness of how they can best exercise their democratic rights in the legislative process.

Any issue we might create legislation for already has a rich bed of discussion online, and if these can be connected to Parliament's platform and managed within that context, existing networks can become a means to enrich ideas rather than a combative resistance. Once technological avenues for public interaction have been created, they need to be advertised: by 'networking the networks' more interest in the legislative procedure can be generated that will drive engagement throughout the subsequent stages. In this respect, there are already good examples from Parliament: the Home Affairs committee inquiry on knife crime, where evidence from young people and children was incorporated<sup>15</sup> and outreach work from the Education Committee showcase good practice here. Key principles from these projects are transferable and could be made 'standard'.

### *Transparency*

We suggest there are three tranches of information that could be usefully posted online. The first involves the stepwise development and documentation of the legislation itself, from its inception, to its various amendments and final as actual law. As discussed, the critical 'working' document under consultation may require two versions. If we consider a 'joined up' approach between Government and Parliament, we could theoretically link iterations of green and white papers. In practice, even without dual versions or a link to archived policy discussions, we are a long way from being able to create an online audit trail. This in turn limits the possibility of the second tranche of material, which would, ideally be the conversation that surrounds the evolving law. Digital tools exist to facilitate collaborative drafting that enables comments to be recorded<sup>16</sup> and,

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<sup>15</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/11202.htm>

<sup>16</sup> Scribd, Read+Comment,& Crocodoc are examples of suitable programmes

ideally, archived online. This type of program may support administrative collaboration within the political remit (i.e., in-house work) even if it is not used for mass public participation.

The final stream of information is, arguably, more problematic; a new law is associated with a rich bed of evidence that underpins and informs legislative decisions, and for the public to enjoy a well-informed perspective on the legislation, this should be made available. Data proliferation on the web may come at the cost of quality and validity, and Government reviewed evidence posted online may redress this balance. Examples of Governments using technology to support this include Open Ahjo<sup>17</sup>, which is an application that allows citizens to access Zip files, which present the evidence used by Helsinki Local Government to make decisions in policy. Nesta's 'Red Book for Evidence' uses a similar approach<sup>18</sup>. Already, the UK Government has a good track record with posting data online, and expertise to make dense material accessible: the ONS's graphs and interactive maps, for example, make 2011 Census data easy to visualise,<sup>19</sup> though arguably more prone to misinterpretation.

Given three extensive streams of information, a balance has to be achieved between providing transparency by supplying the complete story, yet displaying the breadth of information in such a way that it does not become overwhelming for viewers. The Internet lends itself well to data-mining, a process through which top-line information can be 'drilled down' into increasingly technical components. A good example of a structure that frames this well is the Government's 'Inside Government' site, which provides top-level information with the option of mining down further<sup>20</sup>. Adapting this format to enable archiving of old discussions and versions whilst organizing current debate and supporting evidence may make the user's experience more focused. Theoretically, organization of evidence is possible, but requires significant in-house resources: someone must organize, filter and connect the data appropriately, which requires understanding, analysis and an overview. Without these skills, and an appropriate user interface, meaning becomes 'drowned by data'.

Significant legislation exists to identify and restrict evidence that may not be shared in the public domain; our recommendation here would be to remain open about the fact that some material cannot be shared, and to seek public trust and understanding rather than glossing over omitted data.

## Security

Many potential participants will want to remain anonymous, and may be reluctant to give an honest opinion on contentious issues if they fear comments can be traced. Primarily, the prevention of astroturfing, multiple votes and spam

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<sup>17</sup> <http://dev.hel.fi/apis/openahjo>

<sup>18</sup> <http://www.nesta.org.uk/blog/red-book-evidence>

<sup>19</sup> [www.ons.gov.uk/ons/guide-method/census/2011/index.html](http://www.ons.gov.uk/ons/guide-method/census/2011/index.html)

<sup>20</sup> <https://www.gov.uk>

usually requires users to post some (albeit minimal) personal details in order that their contributions can be authenticated, validated and tracked. Once personal data are involved for authentication, security measures to prevent hacking are needed, but these must be balanced against the need to maintain a user-friendly interface online.

It is inevitable that the storage of public data, technological tools and data protection will be outsourced, and that cost will play a role. Our recommendation is to ensure that the definition of 'cost-effective' does not compromise security, precision or performance, all of which become more expensive to resolve in the longer term. HSCIC's failure to protect public data resulted from a weak security system and a systemic failure to delete sensitive information – avoidable mistakes. HSCIC also allowed private companies to access public data<sup>21</sup>, a move that damaged public trust in data storage. Reassurance must be based on a firm commitment that data will never be sold or passed onto third parties.

### *Minimising bias*

Lobbying is a significant practice in the UK<sup>22</sup>, and can enable a minority of voices to exert a disproportionate impact on legislation. Technology can exacerbate this effect, as shown by online petitions powered by strategic lobbying groups evidence such as 38 degrees<sup>23</sup>. While lobbying may be orientated towards political aspirations, it is also a commercial trade worth approximately £20M per year. This is reflected in the disproportionate access of some lobbying groups: the Confederacy of British Industry, for example, has a significantly higher access to Ministers than the next most significant group, the Trade Unions Congress. Lobbying has, therefore, can derail legislation, a potential that may be amplified by increasing digital routes for communication.

It is possible to address bias in submissions using demographic information citizens provide and then assessing how representative the sample of users is of the UK public as a whole. This would mean that if the submissions were unfairly weighted towards a certain age group, for example, the bias could be considered. Active networking to secure participation from a broader age group is one potential way of remedying this. A more problematic alternative is to weight submitted comments across groups to create a post-public submission balance.

### **Conclusion**

This submission has explored a wide scope of open law-making in Parliament, open policy-making in Government and technology. Our recommendations to the Commission focus on the area where we believe real benefits exist: creating informed, dynamic interactions between the public and their representatives that supports the development of new laws.

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<sup>21</sup> <http://www.hscic.gov.uk/dataregister>

<sup>22</sup> Dr Phil Parvin (January 2007). "Friend or Foe? Lobbying in British democracy" (PDF). Hansard Society. Retrieved 2008-12-12. <http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/Friend-or-Foe-Lobbying-in-British-Democracy-2007.pdf>

<sup>23</sup> <http://www.38degrees.org.uk/campaigns/achievements>