



# Defamation and Media Conference 22 November 2017

## Social media

# The size of social media

## Daily Active Users (DAUs)

In Millions

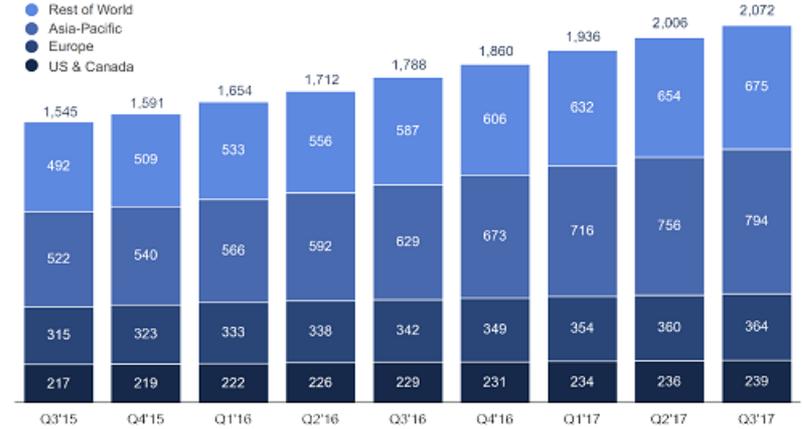
- Rest of World
- Asia-Pacific
- Europe
- US & Canada



## Monthly Active Users (MAUs)

In Millions

- Rest of World
- Asia-Pacific
- Europe
- US & Canada



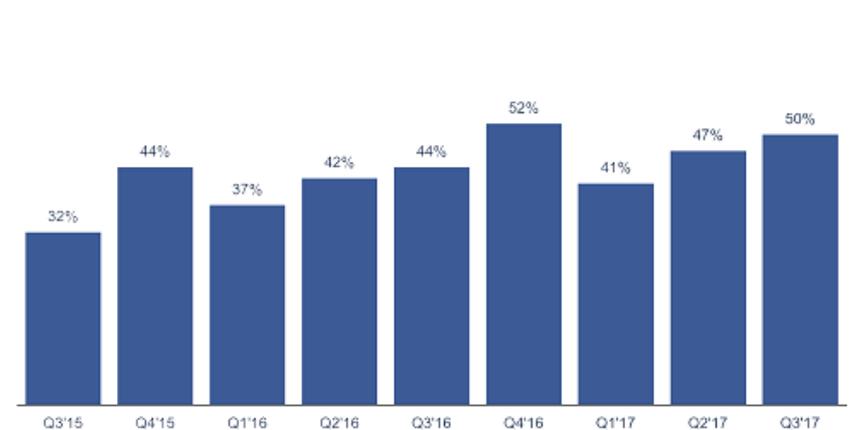
## Revenue

In Millions

- Payments and Other Fees
- Advertising



## Operating Margin

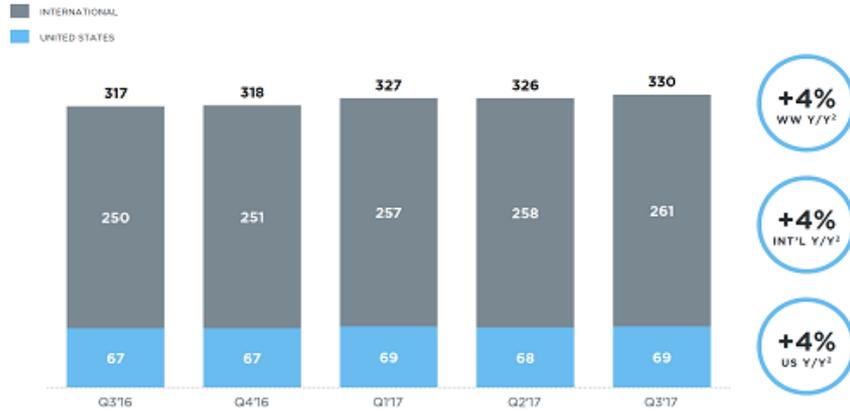


# The size of social media



## MONTHLY ACTIVE USERS<sup>1</sup>

(quarterly average, millions)



## QUARTERLY REVENUE

(\$, millions)



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# The political push back

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## – Conservative Party manifesto 2017

“... new rights to require social media companies to delete information about young people as they turn eighteen”

“We will put a responsibility on industry not to direct users .. to hate speech, pornography, or other sources of harm. We will make clear the responsibility of platforms to enable the reporting of inappropriate, bullying, harmful or illegal content, with take-down on a comply-or-explain basis.”

“We will continue to push the internet companies to deliver on their commitments to develop technical tools to identify and remove terrorist propaganda, to help smaller companies build their capabilities and to provide support for civil society organisations to promote alternative and counter-narratives.”

## – US Senate investigation

“Your power sometimes scares me.

...

I do find your power breath-taking”.

Senator John Kennedy, Republican of Louisiana,

# Actions against the perpetrator

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# Actions against the perpetrator

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- Take down requests
- Causes of action
- Defamation issues in social media cases
- Tracking down the perpetrator
- Orders
- Damages in Internet cases

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# Causes of action

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- Defamation
- Privacy
- Data protection
  - *Google Inc v Vidal-Hall & Ors* [2015] EWCA Civ 311
  - GDPR – Recital 18

*“This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.”*
- Harassment

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# Serious harm

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- Section 1 Defamation Act 2013

  - *“Serious harm*

    - *(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.*

    - *(2) For the purposes of this section, harm to the reputation of a body that trades for profit is not “serious harm” unless it has caused or is likely to cause the body serious financial loss.”*

- *Monroe v Hopkins* [2017] EWHC 433

- *Dennis Rice and Byline Media Holdings Limited*

- *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334

- *Pirtek (UK) Ltd v Jackson* [2017] EWHC 2834

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# Identifying the perpetrator

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- Responsibility for publication – what participation is required for liability to arise?
- Content / technical means to identify those responsible
- The use of disclosure orders in Internet cases
  - *Lockton v Persons Unknown and Google*
  - *AB Bank Ltd v Abu Dhabi Commercial Bank*
- Spartacus orders
  
- Persons unknown orders in Internet cases

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# Persons unknown orders and judgments

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- Orders and damages can be obtained even if the identity of the guilty party is not known
  - *Brett Wilson LLP v Person(s) Unknown, Responsible for the Operation and Publication of the Website www.solicitorsfromhelluk.com* [2015] EWHC 2628 (QB) (16 September 2015)
  - *Smith v Unknown Defendant, Pseudonym 'Likeicare' & Ors* [2016] EWHC 1775 (QB) (15 July 2016)
  - *Pirtek (UK) Ltd v Jackson* [2017] EWHC 2834
- Can be served via an email address or even a social networking site
- Can restrain the guilty party from disseminating information
- May bind any third party with notice

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# Damages in internet cases

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- Internet publication may be seen as less tangible than for example newspapers publication
- But allegations published on the Internet can obtain traction – particularly if supplemented by a forum
- Publication may be small but to key individuals
- Libel
  - *Gentoo & Peter Walls v Baines & Others* - £119,000 (libel and harassment)
  - Factors: seriousness; extent and duration of publication – talk of the town; audience – key associates and stakeholders; actual damage caused – “no smoke without fire”; aggravation
  - *Brett Wilson LLP v Person(s) Unknown* - £10,000
  - *Smith v Unknown Defendant* - £10,000
  - *Monroe v Hopkins* - £24,000
  - *Dennis Rice and Byline Media Holdings Limited* - £2,500

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# The legal context – potential criminal offences

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Section 16 of the Offences Against the Person Act 1861	Section 51 of the Criminal Justice and Public Order Act 1994
Section 49 of the Children and Young Persons Act 1933	Protection from Harassment Act 1997
Section 2(1) of the Obscene Publications Act 1959	Section 55 of the Data Protection Act 1998
Section 21 Theft Act 1968	Sections 28 to 32 of the Crime and Disorder Act 1998
Juries Act 1974	Section 45 of the Youth Justice and Criminal Evidence Act 1999
Section 1 of the Protection of Children Act 1978	Section 127 of the Communications Act 2003
Contempts under the Contempt of Court Act 1981	Sexual Offences Act 2003
Part III of the Public Order Act 1986	Sections 8 and section 10 of the Sexual Offences Act 2003
Section 160 of the Criminal Justice Act 1988	Section 8 of the Fraud Act 2006
Section 1 of the Malicious Communications Act 1988	Serious Crime Act 2007
Computer Misuse Act 1990	Section 76 of the Serious Crime Act 2015
Section 5 of the Sexual Offences (Amendment) Act 1992	Section 33 of the Criminal Justice and Courts Act 2015

# Actions against the platform

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- Right to be forgotten
- Intermediary liability
- International element

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# The legal context – intermediary defences

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- Section 5 of the Defamation Act 2013
- Section 10 of the Defamation Act 2013
- Section 1 of the Defamation Act 1996
- Regulations 17 to 19 of the Electronic Commerce (EC Directive) Regulations 2002
  - *CG v Facebook Ireland Ltd & Anor* [2016] NICA 54
- Common law

	Defamation only	Defeated by notice	Substantive law / jurisdiction	Depends on practicality of proceedings	Relate specifically to the Internet
s.1 DA96	Yes	Yes	Yes	No	No
s.5 DA13	Yes	Yes	Yes	Yes	Yes
s.10 DA13	Yes	No	No	Yes	No
Regs	No	Yes	Yes	No	Yes

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# International element

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- Service out
  - *Google Inc v Vidal-Hall & Ors* [2015] EWCA Civ 311
  - CPR PD 6B 3.1 (21)
  
- Governing law
  - *Google Spain (C-131/12)*
  - *Weltimmo (C-230/14)*
  - *Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH* – Opinion of AG Bot 24 October 2017