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Samhain 2021

## Joint Committee on Tourism, Culture, Arts, Sport and Media

Report of the Joint Committee on the Pre-Legislative Scrutiny of the General  
Scheme of the Online Safety and Media Regulation Bill

November 2021



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- Deputy Ciarán Cannon T.D., Fine Gael
- Deputy Peter Fitzpatrick T.D., Independent
- Deputy Brendan Griffin T.D., Fine Gael
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- Senator Shane Cassells, Fianna Fáil
- Senator Annie Hoey, Labour Party
- Senator Fintan Warfield, Sinn Féin

Joint Committee on Tourism, Culture, Arts, Sport and Media



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Senator Micheál Carrigy  
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Senator Shane Cassells  
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Senator Annie Hoey  
Labour Party



Senator Fintan Warfield  
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## FOREWORD

The Online Safety and Media Regulation Bill is a piece of legislation with immense scope that, when enacted, will place Ireland among the first countries in the world to provide systemic regulation of online platforms. The Committee has engaged in an extensive and robust pre-legislative scrutiny process in order to reflect the vast importance of the Bill, and in order to more fully consider the wide-ranging impacts—both negative and positive—of its contents.

At the forefront of the Committee's approach to this pre-legislative scrutiny process was the Irish citizen. Our thirty-three recommendations champion effective and robust measures to deliver an optimal regulatory framework for the online environment and overarching mediascape insofar as these fall within the scope of the Bill.

We call for an individual complaints mechanism to be established for designated online platforms, for an Online Safety Commissioner to be explicitly included in the legislation, for designated online platforms to be required to provide data for public interest research, and for children's navigation of online spaces to be protected so as not to render them vulnerable to data profiling or to harmful advertisements.

As the online environment has gradually become interwoven with the lives of all sections of the Irish population, the Committee has sought to understand how this legislation can best respect human rights while preserving the safety of every user. This work is now crucial to a democratic and pluralistic society. The Committee explicitly seeks to safeguard and promote participation in the processes of the future Media Commission, so that the regulatory landscape may develop in a responsive and effective manner.

Furthermore, the Committee cannot neglect the impact of this legislation on broadcasters and on online service providers: here, we put forward an array of recommendations to encourage that the principles of clarity and proportionality be upheld in the legislation.

It is ardently hoped that the Committee's report is a faithful representation of the valuable evidence that was kindly submitted during the course of the pre-legislative scrutiny process. On behalf of the Committee, I must thank all stakeholders for their written contributions and for their attendance at oral hearings. I must also extend my gratitude to the Department for their cooperation and work throughout these proceedings. Finally, I would like to thank my colleagues, the Committee's Secretariat, and the Oireachtas Library and Research Service, for their commitment to the processes involved in the undertakings of this report.



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Niamh Smyth T.D.

Cathaoirleach

20 October 2021



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## SUMMARY

On 9 January 2020, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media secured Government approval for the publication of the General Scheme of the [Online Safety and Media Regulation \(OSMR\) Bill](#); after new provisions to the Bill were approved on 9 December 2020, the finalised General Scheme was published. The OSMR Bill contains, *inter alia*, provisions for measures related to online safety, the transposition of the EU Audiovisual Media Services Directive, the dissolution of the Broadcasting Authority of Ireland, and the subsequent establishment of a Media Commission, of which the Online Safety Commissioner forms a notable part.

The Joint Committee on Tourism, Culture, Arts, Sport and Media agreed to undertake pre-legislative scrutiny at its meeting on 16 December 2020. The following report highlights core issues raised by stakeholders who presented evidence to the Committee in oral and written format, including—but not limited to—the operation of the content levy, complaints mechanisms, regulation of harmful and illegal content, advertising standards, and the myriad concerns relative to the establishment of the Media Commission itself.

## KEY RECOMMENDATIONS

1. The Committee recommends that specific provisions are made within the Bill for the means of collecting the levy, the party responsible for the collection of the levy, the percentage value of the levy, and the providers liable to pay the levy.
2. The Committee recommends that content levy-funded schemes be: (a), contestable, and, (b), contestable exclusively among independent producers.
3. The Committee recommends the removal of restrictions on applications for funding on the part of audiovisual programming produced primarily for news or current affairs, as is contained within Head 77.2(c).
4. The Committee recommends that provisions be made for an individual complaints scheme within the General Scheme of the Bill.
5. The Committee recommends that, where provisions are made for an individual complaints scheme, these provisions be responsive to the needs

- and protection of children and other vulnerable groups, and that these include effective takedown procedures and other appropriate measures.
6. The Committee recommends that Head 52A of the General Scheme of the Bill be amended to add a requirement that online social media platforms provide a quarterly report to the Media Commission on their complaints handling.
  7. The Committee recommends that the Bill be altered to remove exclusions of defamatory content, as well as of violations of data protection, privacy, consumer protection, and copyright law.
  8. The Committee recommends that all reference to intention be excluded from definitions of categories of online harmful content.
  9. The Committee recommends that disinformation be included as a category of harmful online content.
  10. The Committee recommends that financial harm be included as a category of harmful online content, to include such content as gambling.
  11. The Committee recommends that, where content such as pornography and gross or gratuitous violence are defined, these definitions are highly specific so as to avoid subjective interpretation or potential loopholes.
  12. The Committee recommends that explicit reference be made to prevalence and placement of online content in considerations of harmful content.
  13. The Committee recommends that Head 49C of the General Scheme be amended to indicate a minimum age for a child to be permitted to create an account with designated online services.
  14. The Committee recommends that Head 19 of the General Scheme of the Bill is amended to include the position of the Online Safety Commissioner.
  15. The Committee recommends that the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement.
  16. The Committee recommends that any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill.
  17. The Committee recommends that the Joint Committee on Tourism, Culture, Arts, Sport and Media have a role in recommending persons to be nominated

for appointment to the Media Commission in line with its existing role in respect of the Broadcasting Authority of Ireland.

- 18.** The Committee recommends that, within the legislative package, no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner.
- 19.** The Committee recommends that there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.
- 20.** The Committee recommends that highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner.
- 21.** The Committee recommends that a regulatory role in online safety education is explicitly included within the legislation for the Online Safety Commissioner.
- 22.** The Committee recommends that, in addition to the obligation on regulated entities to provide periodic reports on compliance with any codes that the Commission develops, there should be obligation on regulated entities to provide any kind of granular information the Commission deems necessary to fulfil its supervisory tasks.
- 23.** The Committee recommends that provision be made in the legislation to enable public interest research based on data provided by regulated platforms.
- 24.** The Committee recommends a ban on advertising to children online, including, at the very minimum, advertisements of junk food, alcohol, high fat/salt/sugar (HFSS) foods, and gambling.
- 25.** The Committee recommends a moratorium on advertising infant formula products online.
- 26.** The Committee recommends the prohibition of any form of profiling or tracking children's data.
- 27.** The Committee recommends that self-regulation, or other non-statutory mechanisms, are not included as part of the advertising regulatory framework.

- 28.** The Committee recommends that Head 3 (6) (d), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media Regulation Bill, be reworded as follows: “the likely expectation of the audience as to the nature of public service content, with particular regard to Irish language speakers.”
- 29.** The Committee recommends that Head 3 (6) (f), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media Regulation Bill, be reworded as follows: “the fundamental rights of the audience and operators of services providing access to audiovisual media services, with particular regard to Irish language speakers and Irish language media.”
- 30.** The Committee recommends that prominence of public service media content is specifically protected on a legislative basis within the present Bill.
- 31.** The Committee recommends that Ireland introduce a mandatory production quota for the production of European and/or Irish works.
- 32.** The Committee recommends that provisions be made for consultations with broadcasters and content providers during the process of defining relevant audiovisual media services and delineating the operations of the relevant Heads within Parts 5 and 6 of the Bill.
- 33.** The Committee recommends that a full review is conducted of the potential areas for overlap between the Online Safety and Media Regulation Bill and the Digital Services Act, including, but not limited to: terminology, complaints mechanisms, and affected services.



## BACKGROUND

### Broadcasting Act 2009

The [Broadcasting Act 2009](#) was published with the aim of revising pre-existing law in relation to broadcasting services and content, and, for such purpose, established the Broadcasting Authority of Ireland (BAI), or Údarás Craolacháin na hÉireann—and, in doing so, dissolved the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission.

Among other functions, the BAI acts as the regulator of the broadcasting industry in Ireland. Under the Broadcasting Act 2009, the BAI is funded by a broadcasting levy that is cost-recovery in nature, computed on the basis of the Authority's operating costs in the previous year.

### Broadcasting (Amendment) Bill 2017

On 9 May 2017, the Minister for Communications, Climate Action and Environment secured Government approval to publish the General Scheme of the Broadcasting (Amendment) Bill 2017, which would amend the Broadcasting Act 2009 and the Communications Regulation (Postal Services) Act 2011, in addition to addressing issues relating to retransmission fees.

The Joint Oireachtas Committee on Communications, Climate and Environment published a report in March 2018 that detailed its pre-legislative scrutiny of the Broadcasting (Amendment) Bill 2017.<sup>1</sup> Several key issues were outlined in this report, including the compensation mechanism, implications for cross-border broadcasters, the part-funding of the Broadcasting Authority of Ireland with licence fee monies, the licence fee collection agent, and the bursary scheme for journalists in local and community radio.

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<sup>1</sup> Joint Committee on Communications, Climate Action and Environment. (2017). *Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of a Broadcasting (Amendment) Bill 2017 and Retransmission Fees*. Dublin, Ireland: Houses of the Oireachtas. Available from: [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_communications\\_climate\\_action\\_and\\_environment/reports/2018/2018-03-08\\_report-pre-legislative-scrutiny-of-the-general-scheme-of-a-broadcasting-amendment-bill-2017-and-retransmission-fees\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_communications_climate_action_and_environment/reports/2018/2018-03-08_report-pre-legislative-scrutiny-of-the-general-scheme-of-a-broadcasting-amendment-bill-2017-and-retransmission-fees_en.pdf)

## Broadcasting (Amendment) Bill 2019

On 2 August 2019, the Minister for Communications, Climate Action and Environment published the [Broadcasting \(Amendment\) Bill 2019](#).<sup>2</sup> The Bill was intended to reduce the broadcasting levy for all broadcasters, to grant exemption from the broadcasting levy to certain community broadcasters, and to part-fund the BAI from television licence monies. It also was intended to facilitate the creation of a bursary scheme for journalists in local or community radio.

The Broadcasting (Amendment) Bill 2019 had reached Committee stage when the Dáil was dissolved in January 2020, and was subsequently overtaken by—notably—the development of the Online Safety and Media Regulation Bill. On 18 May 2021, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media announced the integration of the Broadcasting (Amendment) Bill 2019 with the Online Safety and Media Regulation Bill.<sup>3</sup>

## Online Safety and Media Regulation Bill

On 9 January 2020, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media secured Government approval for the publication of the General Scheme of the [Online Safety and Media Regulation \(OSMR\) Bill](#); after new provisions to the Bill were approved on 9 December 2020, the finalised General Scheme was published.<sup>4</sup> The OSMR Bill contains, *inter alia*, provisions for measures related to online safety, the transposition of the EU Audiovisual Media Services Directive, the dissolution of the Broadcasting Authority of Ireland, and the subsequent establishment of a Media Commission, of which the Online Safety Commissioner forms a notable part.

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<sup>2</sup> Department of Communications, Climate Action and Environment. (2019, 2 August). *Minister Bruton Publishes Broadcasting Bill* [Press release]. merriestreet.ie. Available from:

<https://merriestreet.ie/en/news-room/releases/minister-bruton-publishes-broadcasting-bill.html>

<sup>3</sup> Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. (2021, 18 May). *Online Safety and Media Regulation Bill – Minister Catherine Martin proposes additional measures to assist community broadcasters, public service media and the radio sector* [Press release]. gov.ie. Available from: <https://www.gov.ie/en/press-release/8ce9d-online-safety-and-media-regulation-bill-minister-catherine-martin-proposes-additional-measures-to-assist-community-broadcasters-public-service-media-and-the-radio-sector/>

<sup>4</sup> Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. (2020, 9 December). *Minister Martin presents additions to new law proposed for online safety and media regulation* [Press release]. gov.ie. Available from: <https://www.gov.ie/en/press-release/1e05a-minister-martin-presents-additions-to-new-law-proposed-for-online-safety-and-media-regulation/>

The Joint Committee on Tourism, Culture, Arts, Sport and Media agreed to undertake pre-legislative scrutiny at its meeting on 16 December 2020. It commenced its pre-legislative scrutiny of the OSMR Bill in early February 2021.<sup>5</sup> The Committee received written evidence from sixty-one (61) stakeholders (see [Appendix 1](#)). In addition, the Committee held fifteen (15) oral hearings to consider pre-legislative scrutiny of the OSMR Bill with a wide range of stakeholders (see [Appendix 2](#)).

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<sup>5</sup> Joint Committee on Tourism, Culture, Arts, Sport and Media. (2021, 11 February). *Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht seeks stakeholder and expert submissions on Online Safety and Media Regulation Bill 2020* [Press release]. Dublin, Ireland: Houses of the Oireachtas. Available from: <https://www.oireachtas.ie/en/press-centre/press-releases/20210211-joint-committee-on-media-tourism-arts-culture-sport-and-the-gaeltacht-seeks-stakeholder-and-expert-submissions-on-online-safety-and-media-regulation-bill-2020/>

## KEY ISSUES: THE ONLINE SAFETY AND MEDIA REGULATION BILL

In examining the General Scheme of the Online Safety and Media Regulation (OSMR) Bill, the Joint Committee has identified several areas of particular interest, and highlight the need for further consideration of these in the drafting and publication of the Bill.

These core issues are as follows:

- The establishment and operation of the content levy, as contained within Heads 76 and 77 of the Bill;
- Complaints and complaints handling mechanisms, and, in particular, the systemic complaints scheme contained within Head 52B of the Bill;
- The regulation of illegal content and the regulation of harmful content;
- The functions of the Media Commission, and, in particular, the establishment of an Online Safety Commissioner;
- The co-operation and synergisation of the Media Commission with the Future of Media Commission;
- Advertising standards, and, in particular, advertisements targeted at minors;
- The integration of the Broadcasting (Amendment) Bill 2019;
- The transposition of the European Audiovisual Media Services Directive; and
- The Digital Services Act, the Digital Markets Act, and the interface between these and Online Safety and Media Regulation Bill.

## CONTENT LEVY

### RECOMMENDATIONS

1. The Committee recommends that specific provisions are made within the Bill for the means of collecting the levy, the party responsible for the collection of the levy, the percentage value of the levy, and the providers liable to pay the levy.
2. The Committee recommends that content levy-funded schemes be: (a), contestable, and, (b), contestable exclusively among independent producers.
3. The Committee recommends the removal of restrictions on applications for funding on the part of audiovisual programming produced primarily for news or current affairs, as is contained within Head 77.2(c).

### RELATED HEADS

#### HEAD 76 | CONTENT LEVY ESTABLISHMENT

Head 76 provides for the Media Commission to make regulations pertaining to the imposition of a content production levy on media services providers that: (a), are established in the State, and/or, (b) target audiences in the State. This applies to both linear and on-demand services.

The legal basis for this provision is Article 13 of the revised European Audiovisual Media Services Directive (AVMSD).

It is not intended that the establishment of the levy occur before such a time as the Media Commission can research and review the viability of such a levy. Under this Head, the levy will be enforced by means of a liquidated sum debt. The Media Commission will be able to collect the debt via established European foreign judgement procedures, as well as European order for payment processes.

#### HEAD 77 | CONTENT LEVY SCHEME

Head 77 provides for the development of schemes for funding, generated by the content levy, of various audiovisual programmes. As with Head 76, it is not intended that such schemes are developed before such a time as the Media Commission can research and review the viability of the content levy.

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### MECHANISTIC AMBIGUITY

The Broadcasting Authority of Ireland (BAI) acknowledged that provisions for a content levy and associated schemes is a relatively new domain, and therefore requires much work to fully delineate the operations of such a levy. The BAI pointed, for example, to the need to decide on the percentage of the levy, the collection of the levy, the bodies liable to pay the levy, the bodies eligible to receive levy-generated funding, and the allocation of the funding with regard to scheme particularities. Moreover, stakeholders expressed concern as to the lack of detail surrounding the status of this scheme, observing that clarity was required with regard to whether the content levy was intended to supplement or completely replace current funding schemes for broadcasters.

Screen Ireland, in a written submission to the Joint Committee, remarked that the structure and operation of any content levy would be required to adhere to the principles of non-discrimination, proportionality, and low audience and/or turnover exemptions. Screen Ireland also suggested that state aid compliance must be considered in the decision to apply a content levy in Ireland, as any financial contribution must comply with European law, and, in particular, state aid rules. Screen Ireland recommended that funding be made available within the area of public service broadcasting so as to further develop such Irish projects and thereby retain valuable intellectual property in Ireland. Screen Ireland further noted that talent and skills development plans should form part of a prerequisite for funding.

Screen Producers Ireland highlighted the delay in respect of the commencement of Heads 76 and 77 of the Bill, noting that much time will elapse between the establishment of the Media Commission and the eventual elaboration of content levy mechanisms. The lack of statutory commencement date was of particular concern to certain stakeholders. Indeed, Virgin Media Television recommended that the content levy be initiated upon commencement of the Bill as a whole.

The Dublin City University Institute of Future Media, Democracy, and Society (FuJo) noted that the promotion of European works, as contained within Head 76, does not necessarily signify in Irish works, and, as a corollary, it could be possible for an

Ireland-facing operation to theoretically fulfil its content obligation through a reliance on material from other Member States.

### **ELIGIBILITY FOR CONTENT LEVY FUNDING**

Many stakeholders noted the introduction of content levies across several European jurisdictions. RTÉ and TG4 observe that there is a pressing need to invest in Irish programming, particularly given their belief that subscription services and advertising services are generating much revenue from Irish households.

Several stakeholders emphasised that the schemes arising from content levy-generated funding should be allocated primarily to the independent production sector, as the essential thrust of the content levy is to showcase Irish production and storytelling.

There was some consensus among stakeholders that the levy-funded schemes should be contestable, with funding allocated to those projects deemed the most meritorious—though the criteria upon which this could be decided were not discussed. Screen Producers Ireland suggested a potential caveat to the contestability of such a fund: that applications for the fund could only be made by independent producers.

Head 77.2(c) stipulates that content levy schemes may not provide funding for audiovisual programmes which are produced primarily for news or current affairs. The Broadcasting Authority of Ireland (BAI) remarked, in an oral hearing on 5 May 2021, that, if the State is to encourage media plurality and combat disinformation, there should be no restriction on news and current affairs in content levy schemes.

The Dublin City University Institute of Future Media, Democracy, and Society (FuJo) further noted that it may be worth exploring the possibility of medium-neutrality in respect of funding the production of Irish works. FuJo stated that content levy-funded schemes could potentially be allocated to print, radio, and online media, as it is claimed Article 13 in the AVMSD is not absolute: it does not state that promoted European works must be audiovisual.

## CONTENT LEVY VS. INVESTMENT OBLIGATIONS

Sky Ireland noted the complexity of introducing a content levy, and, in particular, the administrative expense incurred by levies that would not be incurred by the imposition of investment obligations. Obliging regulated services to invest in certain projects, as opposed to imposing a content levy, would create a floor—and not a ceiling—for possible funding sources, while still retaining the characteristics of the content levy in promoting Irish content.

Netflix anecdotally observed that levies do not necessarily stimulate the audiovisual sector—nor do they necessarily result in improved outcomes for audiences. Due to the competitiveness of the market, investment decisions in audiovisual works are predicated on demand, and not necessarily on plurality or diversity. As a result, the fact that levies provide for certain types of content may result in less direct investment in such content from service providers, thereby stiling the broader creative ecosystem.

Technology Ireland stated that any move to impose a form of digital charge or tax would be counterproductive in nature, as it would potentially discourage technology companies from providing outlets for public interest media—many of which utilise free webhosting in order to access wider audiences. The cost of such a levy, Technology Ireland noted, would likely be borne by advertisers, including small businesses for whom digital advertising is the most cost-effective method available: it would thus create a certain untenability for these businesses.

Stakeholders also highlighted the possibility that individuals who already pay a licence fee could also be subject to other charges if a content levy were to be introduced. Consequently, a further argument was made for the encouragement of investment in projects, rather than the imposition of content levies.

However, in an oral hearing with the Joint Committee on 27 May 2021, the Joint Creative Audiovisual Sectoral Group (JCASG) demonstrated a marked preference for levies over investment obligations. They observed that investment obligations prerequisite the definition of works to be produced, which poses a particular problem for Ireland as a consequence of the linguistic landscape of Ireland: other countries,



such as France, stipulate that, to be able to attract investment, works produced must be in French. In Ireland, nevertheless, it may be that linguistically based definitions of investable works would provoke polemy. Content levies do not require such a definition of works to be produced.

Furthermore, investment obligations do not, according to the JCASG, necessarily safeguard project multiplicity—that is to say, a contestable content levy may allow for funding to be granted to a number of projects, while an investment obligation could result in large sums of funding being granted to one sole project.

### INDECON REPORT

Indecon International Economic Consultants (Indecon) is a research economist firm that were appointed by RTÉ and TG4 to independently conduct an analysis of the potential for a creative content fund. The resulting report, *Analysis to Inform Potential National Media Creative Content Fund*, was published in March 2021.<sup>6</sup>

According to the report, the Irish audiovisual sector appears to have experienced a sharp decline in 2020 as a consequence of the COVID-19 pandemic; advertising and subscription-based television represent the most significant aspects of the Irish audiovisual market. The principle of the content levy would support the long-term sustainability of the audiovisual sector in Ireland, as a complement to existing state funding, and in alignment with the necessity to render the Irish audiovisual market viable in the digital age—while simultaneously addressing imbalances in how market participants contribute to the overall maintenance of cultural values and to the promotion of European works.

Indecon modelled six levy-based frameworks for the audiovisual sector, manipulating the percentage levies to be imposed on on-demand services, subscription-based television, and television advertising, and outlined evidence that such funding would have significant net benefits for the Irish audiovisual market.

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<sup>6</sup> Indecon International Economic Consultants. (2021). *Analysis to Inform Potential National Media Creative Content Fund*. Dublin, Ireland: Indecon House.

**FIGURE 1: ECONOMIC MODELLING OF THE CONTENT LEVY**

Scenarios for Funds Raised by Levy in Year 1					
AV Revenue Segments		Subscription (pay TV)	SVOD	TV Advertising	Total
2021 Revenue Estimate (€m)		514	83	184	<b>782</b>
Scenario 1	Assumed Levy Rate	1.00%	1.00%	1.00%	
	Funds Raised by Levy in Year 1 (€m)	5.14	0.83	1.84	<b>7.82</b>
Scenario 2	Assumed Levy Rate	2.00%	2.00%	2.00%	
	Funds Raised by Levy in Year 1 (€m)	10.29	1.67	3.68	<b>15.63</b>
Scenario 3	Assumed Levy Rate	3.00%	3.00%	3.00%	
	Funds Raised by Levy in Year 1 (€m)	15.43	2.50	5.52	<b>23.45</b>
Scenario 4	Assumed Levy Rate	0.50%	0.50%	1.00%	
	Funds Raised by Levy in Year 1 (€m)	2.57	0.42	1.84	<b>4.83</b>
Scenario 5	Assumed Levy Rate	1.00%	1.00%	2.00%	
	Funds Raised by Levy in Year 1 (€m)	5.14	0.83	3.68	<b>9.66</b>
Scenario 6	Assumed Levy Rate	2.00%	2.00%	4.00%	
	Funds Raised by Levy in Year 1 (€m)	10.29	1.67	7.36	<b>19.31</b>

*Source: Indecon analysis based on industry data*

The report warned that it is vital to implement levies in a non-discriminatory manner among sectors and market players, as equity of treatment could result in breaches of European state aid rules, competition law, and potential legal challenges on the part of particulars.

## COMPLAINTS MECHANISMS

### RECOMMENDATIONS

1. The Committee recommends that provisions be made for an individual complaints scheme within the General Scheme of the Bill.
2. The Committee recommends that, where provisions are made for an individual complaints scheme, these provisions be responsive to the needs and protection of children and other vulnerable groups, and that these include effective takedown procedures and other appropriate measures.
3. The Committee recommends that Head 52A of the General Scheme of the Bill be amended to add a requirement that online social media platforms provide a quarterly report to the Media Commission on their complaints handling.

### RELATED HEADS

#### HEAD 52A | AUDITING COMPLAINTS HANDLING

Head 52A grants the Media Commission the power to audit any user complaints and complaints handling mechanisms that are operated by designated online services. The Media Commission, under Head 52A, may also mandate a designated online service to take specified actions, such as restoring or removing individual pieces of content, or, indeed, altering the operations of their systems. Head 52A provides that this function of the Media Commission could be undertaken on a periodic or ad-hoc basis as required.

#### HEAD 52B | SYSTEMIC COMPLAINTS SCHEME

Head 52B attributes the establishment and operation of a “super-complaints” scheme to the Media Commission, whereby certain bodies, such as non-governmental organisations or members of the European Regulators Group for Audiovisual Media Services, would be able to identify recurrent or grave issues on a systemic basis and, accordingly, would be granted the means of reporting these issues to the Media Commission.

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### INDIVIDUAL VERSUS SYSTEMIC COMPLAINTS HANDLING MECHANISMS

The Department, in an oral hearing with the Committee, stated that a systemic mechanism for the handling of user complaints was preferable, as any attempt to establish an individual complaints mechanism would inevitably be burdened with backlogs, and thus the effectiveness of the regulator in addressing such complaints would be hampered. While there is currently no provision for individual complaints in the General Scheme of the Bill, it will still be possible to make complaints to the regulator or to certain non-governmental organisations that may, under the Bill, be designated as “super-complaints” services. However, the responses to such complaints can only be made on a systemic, and not an individual, basis.

There was notable opposition to the establishment of an individual complaints mechanism from Facebook Ireland, who suggested that the operational scale of the regulated platforms would be such that only a systemic complaints mechanism could work effectively. Technology Ireland proposed that the Bill should not provide for an individual complaints mechanism, since such a mechanism would be ineffective and administratively unworkable for both the Media Commission and individual platforms—Technology Ireland expressed a belief that an individual complaints mechanism would not deliver better outcomes for citizens and users of online services, as the number of complaints the Media Commission might expect to resolve would be limited by necessity, and the Commission’s resources would be inefficaciously diverted from the pursuit of ameliorating systemic issues for the benefit of all users.

Twitter suggested that the systemic approach is preferable to notice-and-takedown approaches, whereby platforms and websites are incentivised to pre-emptively remove content to avoid liability—such regimes, Twitter suggested, are counterproductive to the development of a diverse digital economy and to the open nature of the Internet.

However, most of the stakeholders with whom the Committee has engaged during its pre-legislative scrutiny process have pointed to the lack of an individual complaints mechanism as a significant weakness within the Bill—particularly with regard to

children’s rights to proper remedies under European Convention rights and Irish law. Some of these stakeholders, such as the Ombudsman for Children’s Office (OCO) provided counterarguments to the Department’s reticence to introduce an individual complaints mechanism: with respect to the potential for the Online Safety Commissioner to become overwhelmed with individual complaints, many stakeholders do not envisage that the Commissioner would be the first or, indeed, the primary point of contact. Rather, stakeholders, such as Professor Conor O’Mahony (Faculty of Law, University College Cork) and the Child’s Rights Alliance (CRA), call for the Bill to include provisions that oblige online service providers to establish provider-level complaints mechanisms and to swiftly remove content.

The Institute for Future Media, Democracy and Society, alongside the CRA, highlighted the potential roll-out and operational capability of an individual complaints mechanism in presenting the cross-jurisdictional example of Australia, where the Online Safety Act and the eSafety Commissioner have implemented an individual complaints mechanism on a two-tiered basis: tier one offers an opt-in system for companies, and tier two mandates companies to participate. The Online Safety Commissioner, then, is envisaged as a “safety net” for platforms who fail to operate effectively on individual complaints. The Irish Society for the Prevention of Cruelty to Children (ISPCC) noted that concerns around complaint volume could be allayed by examining the functioning of the Australian eSafety Commissioner: in its annual report for 2019-2020, Australian eSafety observed that they had received 17,965 reports that spanned image-based abuse, serious cyberbullying, and complaints pertaining to other forms of online harm.<sup>7</sup>

In their oral hearing with Australian eSafety, Commissioner Julie Inman Grant stated that the mitigation and remediation of individual harms cannot truly happen on the level of processes and systems, but stressed the need for mechanisms on the level of the individual level—as both systemic and individual approaches are, in fact, complementary. Additionally, Australian eSafety noted that their tiered approach to

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<sup>7</sup> Australian Communications and Media Authority, & Officer of the eSafety Commissioner. (2020). *Annual Reports 2019-2020*. Canberra/Melbourne/Sydney, Australia: Australian Communications and Media Authority. Available from: <https://www.esafety.gov.au/sites/default/files/2020-10/ACMA%20and%20eSafety%20annual%20report%202019-20.pdf>

the individual complaints mechanism create sufficiently high thresholds that permit eSafety to concentrate regulatory endeavours on those more manifest forms of harm. They suggested that, if such systems can operate in Australia, of which the population is around 26 million, then such systems would not pose problems in the Irish context.

Other stakeholders who supported the idea of an individual complaints mechanism include:

- Rape Crisis Network Ireland
- Safe Ireland
- Safety Over Stigma
- Data Protection Commission
- CyberSafeKids

## REGULATING ILLEGAL AND HARMFUL CONTENT

### RECOMMENDATIONS

1. The Committee recommends that the Bill be altered to remove exclusions of defamatory content, as well as of violations of data protection, privacy, consumer protection, and copyright law.
2. The Committee recommends that all reference to intention be excluded from definitions of categories of online harmful content.
3. The Committee recommends that disinformation be included as a category of harmful online content.
4. The Committee recommends that financial harm be included as a category of harmful online content, to include such content as gambling.
5. The Committee recommends that, where content such as pornography and gross or gratuitous violence are defined, these definitions are highly specific so as to avoid subjective interpretation or potential loopholes.
6. The Committee recommends that explicit reference be made to prevalence and placement of online content in considerations of harmful content.
7. The Committee recommends that Head 49C of the General Scheme be amended to indicate a minimum age for a child to be permitted to create an account with designated online services.

### RELATED HEADS

#### HEAD 49A | CATEGORIES OF HARMFUL ONLINE CONTENT

Head 49A provides for the delineation of four categories of materials considered to be harmful online content:

- material which it is an criminal offence to disseminate under Irish [or Union law];
- material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains and which a reasonable person would conclude was the intention of its dissemination;

- material which is likely to encourage or promote eating disorders and which a reasonable person would conclude was the intention of its dissemination; and
- material which is likely to encourage or promote [self-harm or suicide] or provides instructions on how to do so and which a reasonable person would conclude was: (i) the intention of its dissemination and (ii) that the intention of its dissemination was not to form part of philosophical, medical and political discourse.

The provision in this Head expressly excludes content that is defamatory, or violates data protection law, privacy law, consumer protection law, or copyright law.

#### **HEAD 49B | PROVISION FOR FURTHER CATEGORIES OF HARMFUL ONLINE CONTENT**

Head 49B is a complementary measure to Head 49A, ensuring that the non-exhaustive list of categories that is enumerated in Head 49A may be amended by order. It is intended that this procedure draws upon the expertise of the regulator, that this procedure is consultative in nature, and that this procedure contains a number of checks and balances to account for fundamental rights in this domain.

#### **HEAD 49C | DEFINITION OF AGE-INAPPROPRIATE ONLINE CONTENT**

Head 49C provides a definition of age-inappropriate online content in order to facilitate the issuing of online safety guidance materials on the part of the regulator. It is considered that there are a number of categories of material that may not necessarily be harmful, but that are likely inappropriate for a minor.

### **ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT**

#### **CURRENT CATEGORIES OF HARMFUL CONTENT**

The Department noted its will to ensure that the regulatory framework for harmful content is as watertight and functional as possible, with a particular need for an approach that is proportional and balances the rights of all individuals and service providers concerned: provisions in the Bill regarding any forms of harm must simultaneously refrain from infringing on other rights, such as freedom of expression.



The Department also observed that the Bill provides for a mechanism whereby additional categories of harmful content may be added as appropriate.

Research undertaken by the Library and Research Service, under the aegis of the Houses of the Oireachtas Service, indicated that constitutional provisions in relation to regulation of the media, including legally permissible limitations to be imposed on freedom of expression, can also extend to such forms of media as television and the Internet.<sup>8</sup> In addition, European law—specifically Article 10.2. of the European Convention on Human Rights—dictates that certain limitations on freedom of expression are allowed, and that these limitations extend to Internet use, but only subject to concerns of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation and rights of others, the prevention of the disclosure of confidential information, or the maintenance of the authority and impartiality of the judiciary.

Therefore, while current legal frameworks do not preclude the Media Commission from regulating online content for fear of impinging on human rights, it signifies that the definition and use of “categories of harm” must cohere with any previously stipulated legal scope for imposing limitations on the right to freedom of expression. Furthermore, Digital Rights Ireland noted that any vagueness in approach to the limitation of freedom of expression may be unconstitutional, as any such limitation must be clearly defined.

The Broadcasting Authority of Ireland (BAI) reported concerns to the Committee pertaining to the inclusion of intent in definitions of harmful content, warning that there may be some potential practical difficulties in concluding that content was created or disseminated with a specific intention—such as where some underlying context may be unknown, or where minors are the creators or disseminators of such content.

Digital Rights Ireland also agreed with the notion that regulating based on intention could indeed be a problematic approach. TikTok and Twitter highlighted that, for

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<sup>8</sup> Oireachtas Library and Research Service. (2021). *Online Safety and Media Regulation Bill: Pre-legislative Scrutiny Post-Hearing Paper* [unpublished]. Dublin, Ireland: Library and Research Service, Houses of the Oireachtas Service.

content moderation purposes, it is often not practicable to attempt to determine the intention of the creator or disseminator of reported content. Nevertheless, the BAI noted the Bill's capacity to identify potential harms of such content, and suggested that content could be removed on the basis of this projected potential harm.

UCC's Professor Conor O'Mahony drew attention to the lack of clarity with which some of the categories of harmful content have been delineated: some content, such as pornography, or gross and gratuitous violence, are more vaguely defined than is desirable. Consequently, definitions of age-inappropriacy, for which the Bill makes certain provisions, are weakened from the regulatory perspective.

Ronan Lupton, however, observed that "age-inappropriate online content", as set out in Head 49C of the General Scheme of the OSMR Bill, may not be a practical objective of legislation, as the potential for subjectivity in defining "appropriateness" requires consultation in order to determine an Irish-specific definition for age-inappropriate online content.

The Ombudsman for Children's Office (OCO) called into question the very use of categories as a valid legislative and regulatory framework, casting doubt as to whether categories could be sufficiently specific as to be rights-compliant. The need to mitigate the risk of future legal challenges was emphasised by the OCO. The sentiments of the OCO also aligned with those of Professor O'Mahony: they stated that any lack of clarity may impede the shared comprehension of the specific content captured by these categories, and therefore impede the workability of these categories for the Media Commission. The OCO also concurred with Professor O'Mahony's statements around the weakening of the legal and regulatory background for age-inappropriacy as currently envisioned within the Bill.

Samaritans Ireland emphasised in their written submission that they do not support the blanket removal of content relating to self-harm or suicide, but that they do support the minimisation of such content, and the establishment of increased opportunities for support.

Both Digital Rights Ireland and the Irish Council for Civil Liberties (ICCL) remarked that the possibility of extending the State's regulatory capacities into governing

harmful content place what is potentially undue strain on the State. In addition, there is the risk of supplanting the internal monitoring and moderation of service providers themselves—Digital Rights Ireland noted, however, that the State has a weaker ability to control such content than service providers. Digital Rights Ireland and the ICCL stated that, rather than stringent State interventions on the level of direct regulation, legislative frameworks should be established that oblige service providers to be transparent with regard to their policies, frameworks, algorithms, and consistency of application, or that mandate service providers to adopt certain policies that go beyond self-regulation and codes of conduct.

### **MISSING CATEGORIES OF HARMFUL CONTENT**

Many stakeholders have identified categories of content for which they would desire to see provisions made in the General Scheme of the Bill. The Data Protection Commission (DPC) noted that the Bill, in its current form, expressly excludes material that violates data protection or privacy law from being within the regulatory scope of the Media Commission, thus constituting a regulatory lacuna. The DPC remarked, however, that the Media Commission should be given full regulatory power over all forms of harmful online content, regardless of the involvement of personal data in such content.

In its reasoning as to why such matters should fall within the remit of the Media Commission, the DPC highlighted its receipt of numerous requests relating to content takedown, despite the inefficacy of the data protection regime in accounting for such requests, and despite the inappropriacy of the tools at the disposition of the DPC for handling such matters. The Irish Human Rights and Equality Commission (IHREC) stated that, rather than inducing crossover between regulators, widening the scope of the Media Commission with regards to categories of harm would, in fact, provide greater legal clarity, while bolstering the effectiveness of the Media Commission.

Professor O'Mahony highlighted the omission of "financial harm" from the Bill, where it may be the case that children are harmed through exposure to gambling; the obligations to be imposed on regulatory bodies and service providers make insufficient reference to the "best interests" and to the "evolving capacities" of

children, and may, as a result, present a significant legislative loophole. Ultimately, Professor O'Mahony suggested that, where concepts are left undefined, such that there is considerable subjectivity regarding which real-world instances are captured by the definition, the predictability of the legal and regulatory environment is damaged.

Epilepsy Ireland noted their concern that a particular form of online harm—the targeting of those with photo-sensitive epilepsy using images or videos designed to trigger a seizure—could be permissible under the Bill, as Head 49A does not include materials that are inherently designed to cause direct physical harm. While they observed that such materials may or may not be already illegal under existing laws, Epilepsy Ireland suggested that explicit provision in this regard would add greater clarity and protection for those who could otherwise be subject to serious harm.

Samaritans noted that the prevalence and placement of harmful online content should be explicitly identified in the General Scheme as a key risk of harm. To this end, Samaritans suggested that measures should be directly included in the Bill that allow for the identification of inappropriate display or prevalence of potentially harmful content.

## **DISINFORMATION**

(See [discussion on the Digital Services Act](#) and [discussion on the Audiovisual Media Services Directive](#))

The Institute for Future Media, Democracy and Society in Dublin City University called attention to the lack of reference made to disinformation within the Bill. They note that the implementation of the codes of practice around disinformation shall be within the remit of the Media Commission, and therefore appropriate provisions should be made in the General Scheme of the Bill. They also observed the differentiability of actions undertaken across online platforms to address disinformation, and that it was unknown whether these actions were effective—particularly in light of the lack of general knowledge as to the extent of the impact that disinformation has on these various platforms. Furthermore, as the Digital Services Act (DSA) contains specific reference to disinformation, and, consequently,

the legislative framework in Ireland will be required to change accordingly when the DSA is enacted.

As a consequence of the inclusion of disinformation in the DSA, alongside other developments on a European level, the BAI noted that it was perhaps best to capitalise on those when they occur, and therefore to defer consideration of disinformation within the Bill itself.

Information from Eurostat indicates that the proportion of individuals with at least basic digital literacy skills in Ireland (53% of the captured population) is lower than the European average (at 58%).<sup>9</sup> According to a SOLAS consultation paper published in 2020, older people, alongside those with a low level of education and/or low income, were overrepresented among those who scored lowest on the basic measure of digital literacy.<sup>10</sup>

A Special Eurobarometer survey from 2020 noted that EU respondents were generally of the belief that public authorities should help citizens to better identify disinformation (46% of respondents) and prevent those who disseminate disinformation from abusing social media platform services (44%); 50% of Irish respondents agreed with the first statement, and 47% also suggested that public authorities should regulate social media platforms to reduce the distribution of disinformation.<sup>11</sup>

## **ANONYMOUS ACCOUNTS**

A significant concern in the regulation of harmful online content is the potential for infringement on personal rights to freedom of expression and to online anonymity. However, it is often the offer of anonymity that facilitates the creation and dissemination of harmful online content, which may not necessarily be illegal. The

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<sup>9</sup> Eurostat. (2021, 25 May). *Individuals' level of digital skills*. Available from: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc\\_sk\\_dskl\\_i](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i) (Code: isoc\_sk\_dskl\_i)

<sup>10</sup> SOLAS. (2020). *Adult Literacy, Numeracy, and Digital Literacy Strategy: Consultation Paper*. Dublin, Ireland: SOLAS. Available from: <https://www.solas.ie/f/70398/x/61f272cf8c/consultation-paper-and-strategy.pdf>

<sup>11</sup> European Commission. (2020). *Special Eurobarometer 503: Attitudes toward the impact of digitalisation on daily lives*. Brussels, Belgium: Directorate-General for Communication, European Commission. Available from: <https://europa.eu/eurobarometer/surveys/detail/2228>

balancing of personal rights with the potential harms to other users is thus the key issue in formulating regulatory frameworks.

TikTok stressed the difference between anonymity and accountability, suggesting that the crucial element of their own operations in this regard is that there is accountability for users—if a user breaches TikTok’s rules or, indeed, the law, the platform is able to identify that user. TikTok therefore expressed the belief that a person can be anonymous to other users while being accountable to the platform they use.

Twitter suggested that verification systems could become more nuanced in future, noting their opinion that the confirmation that there is a real individual using an account could mitigate some of the abuse that other users perceive may originate from anonymous accounts. However, Twitter stressed that, if a user is engaging in abusive behaviours, they will be removed from the platform, and their harmful content will be deleted, regardless of the identity used.

In their written submission, Safety Over Stigma proposed the establishment of a verification system whereby users registering accounts with online service providers must submit a form of personal identification (e.g. passport, etc.).

## THE MEDIA COMMISSION AND THE ONLINE SAFETY COMMISSIONER

### RECOMMENDATIONS

1. The Committee recommends that Head 19 of the General Scheme of the Bill is amended to include the position of the Online Safety Commissioner.
2. The Committee recommends that the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement.
3. The Committee recommends that any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill.
4. The Committee recommends that the Joint Committee on Tourism, Culture, Arts, Sport and Media have a role in recommending persons to be nominated for appointment to the Media Commission in line with its existing role in respect of the Broadcasting Authority of Ireland.
5. The Committee recommends that, within the legislative package, no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner.
6. The Committee recommends that there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.
7. The Committee recommends that highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner.
8. The Committee recommends that a regulatory role in online safety education is explicitly included within the legislation for the Online Safety Commissioner.
9. The Committee recommends that, in addition to the obligation on regulated entities to provide periodic reports on compliance with any codes that the

Commission develops, there should be obligation on regulated entities to provide any kind of granular information the Commission deems necessary to fulfil its supervisory tasks.

10. The Committee recommends that provision be made in the legislation to enable public interest research based on data provided by regulated platforms.

## RELATED HEADS

### PART 2 | MEDIA COMMISSION

Part 2 of the Bill, comprising Heads 6 through 40, contains provisions for the establishment of the Media Commission, including, but not limited to:

- establishment day;
- independence;
- objectives;
- functions;
- membership; and
- core powers.

### PART 3 | TRANSITIONAL PROVISIONS

Part 3 of the Bill, including Heads 41 through 48, provides for the transition between the Broadcasting Authority of Ireland—to be dissolved—and the Media Commission, including:

- dissolution of the Broadcasting Authority of Ireland;
- transfer of functions to the Commission;
- transfer of staff to the Commission;
- transfer of land and other property;
- transfer of rights and liabilities, and continuation of leases, licences, and permissions granted by the Broadcasting Authority of Ireland;
- liability for loss occurring before establishment day;



- provisions consequent upon transfer of functions, assets, and liabilities to the Commission; and
- final accounts and final annual report of Broadcasting Authority of Ireland.

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### INDEPENDENCE AND STAFFING OF THE MEDIA COMMISSION

The Broadcasting Authority of Ireland (BAI) welcomed the fact that the General Scheme provides for a Media Commission that is legally distinct and functionally independent, and highlighted the importance of ensuring that the Media Commission had the necessary functional range and personnel in order to meet the objectives of the Bill. The BAI noted that the self-financing model proposed in the General Scheme will allow for the discharge of arising financial burdens.

Fórsa noted that the regulator will necessitate much resourcing, comparable to the extension of the staffing complement of the Data Protection Commission, as the responsibilities and remit of the regulator is extended in the General Scheme. Fórsa drew attention to the fact that there were resourcing difficulties encountered when the BAI was initially established under the Broadcasting Act 2009, and, even as recently as 2017, continuing resourcing difficulties were highlighted in the BAI's Annual Report. The link between the staffing and independence of regulators has been examined in detail in a report published in 2019 by the European Audiovisual Observatory.<sup>12</sup>

Facebook noted some concerns in relation to the independence of the Media Commission, and recommended alignment of the wording under Head 8 with the wording already established under Article 30 of the European Audiovisual Media Services Directive. Moreover, Facebook remarked on some potential issues arising in Heads 23 through 31 of the General Scheme of the Bill, observing that some of the provisions contained therein could interfere with the independence of the Media Commission: for instance, the consent of the Minister for Communications, Climate

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<sup>12</sup> European Audiovisual Observatory. (2019). *The Independence of Media Regulatory Authorities Across Europe*. Strasbourg, France: European Audiovisual Observatory. Available from: <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>

Action and Environment is required in respect of staffing the Media Commission, and, furthermore, the Minister appears to have some direct control over the finances of the Media Commission, as is provided under Head 30.

The Irish Human Rights and Equality Commission (IHREC) recommends, in terms of independence, a separate Vote account, as well as the retraction of the capacity of the Minister or the Department to remove individual commissioners. IHREC stated that, as a regulatory body, the commission has discretion and independence as necessary conditions to its operation: the need arises from core rights, such as the rights to freedom of expression, freedom of assembly, and privacy. IHREC noted that any interference on this account should happen with full independence and without undue influence from Government.

An Garda Síochána highlighted the need for clarity as to the extent of the roles that fall within the remit of the Media Commission. In addition, they suggested that a memorandum of understanding be included within the legislation in order to ensure operational demands between An Garda Síochána and the Media Commission are appropriately managed.

Research undertaken by the Library and Research Service signalled that the Media Commission will not inherit many features of its predecessor, the Broadcasting Authority of Ireland, the most notable among these being that the Joint Committee on Tourism, Culture, Arts, Sport and Media does not appear to have a role in appointing certain members of the Commission, in addition to a lack of provision for gender parity within the Commission's membership.<sup>13</sup>

Furthermore, the post-hearing paper highlights Head 22, which stipulates that members of the Media Commission must yield their membership if they are to become Members or representatives in the Houses of the Oireachtas, in European Parliament, or in a local authority. As the reference to local authorities was not included in the Broadcasting Act 2009, there are implications for the transition from the BAI to the Media Commission insofar as that staff of the BAI were previously

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<sup>13</sup> Oireachtas Library and Research Service. (2021). *Online Safety and Media Regulation Bill: Pre-legislative Scrutiny Post-Hearing Paper* [unpublished]. Dublin, Ireland: Library and Research Service, Houses of the Oireachtas Service.

considered to be “on secondment” when serving in a local authority, rather than being required to yield their membership of the BAI. Such impingements upon potential membership of the Media Commission may warrant further consideration.

### **PARTICIPATION, DIVERSITY, AND PLURALISM**

The BAI observed that plurality should be specifically referenced as an objective of the Media Commission—though a provision for plurality as a function of the Media Commission is already in place.

In addition, the Irish Human Rights and Equality Commission (IHREC) advised that the Media Commission should be a diverse representation of Irish society. They questioned, in more precise terms, access for individuals with disabilities: in relation to procedure, they asked whether there is participation of people with disabilities throughout the legislative process, and particularly with respect to diversity and inclusion in all forms of media, including the online environment. IHREC noted that the framing of the Bill should be aided by the Convention on the Rights of Persons with Disabilities (CRPD).<sup>14</sup>

Further to these suggestions, IHREC added that, if the Commission were to transpose or incorporate wording within its legislation that related to public sector duty, it would statutorily provide the Commission with the duty to eliminate all forms of discrimination throughout, in alignment with Article 21 of the European Union Charter of Fundamental Rights on diversity and anti-discrimination. The Media Commission, IHREC remarked, should be made reflective and diverse in its policies, practices, processes, and representation.

The Law Society of Ireland suggested that the membership of the Commission itself should address matters such as gender balance, as well as the inclusion of appropriate human rights and equality expertise.

As part of the Media Commission’s representation, the Ombudsman for Children’s Office (OCO) and UCC Law’s Professor Conor O’Mahony both highly encouraged

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<sup>14</sup> United Nations. *Convention on the Rights of Persons with Disabilities (CRPD)* [web page]. Available from: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

the participation of children in the work of developing the legislation for the present Bill and the consultation of children in the regular work of the Media Commission. Professor O'Mahony stated that children's participation should be meaningful, not tokenistic, and incorporated into the Commission as an essential part of their future-proofing process.

CyberSafeKids opined that is quite simple to involve young people and children when developing codes of conduct and other programmes and mechanisms that the Online Safety Commissioner would be obliged to deliver and produce. An amendment could be included, according to CyberSafeKids, that imposes a legal obligation on the online safety commissioner to consult with children and young people on a corporate basis.

### **ONLINE SAFETY COMMISSIONER**

As with the Media Commission in general, the primary concern for a large number of stakeholders was that the Online Safety Commissioner should have the necessary expertise, staffing, and resources available in order to carry out their functions satisfactorily.

The position of the Online Safety Commissioner could be considered as central to the current online climate in Ireland: the Standard Eurobarometer 94 found that 95% of Irish respondents reported using the Internet every day or almost every day.<sup>15</sup> In addition, recently published data from the Growing Up in Ireland study revealed that 92% of children in the study sample reported having access to the Internet.<sup>16</sup> Crucially, of all children surveyed as part of the KiDiCoTi (Kids' Digital Lives in COVID-19 Times) research project, those from Ireland represented the most

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<sup>15</sup> European Commission. (2021). *Standard Eurobarometer 94: Media Use in the European Union*. Brussels, Belgium: Directorate-General for Communication, European Commission. Available from: <https://op.europa.eu/en/publication-detail/-/publication/d2dbcf78-11e0-11ec-b4fe-01aa75ed71a1>

<sup>16</sup> McNamara, E., Murray, A., O'Mahony, D., O'Reilly, C., Smyth, E. & Watson, D. (2021). *Growing Up in Ireland: National Longitudinal Study of Children. The Lives of 9-Year-Olds of Cohort '08*. Dublin, Ireland: Government of Ireland. Available from: <https://www.esri.ie/system/files/publications/BKMNEXT415.pdf>

significant proportion of children who reported encounters of at least one type of cyberbullying situation during the COVID-19 pandemic.<sup>17</sup>

In relation to the prospective work of the Online Safety Commissioner specifically, the OCO remarked that the establishment of the Commissioner will involve ensuring that the regulatory tools available to the commissioner have the potential to be effective, that the provisions made about the online content and about the material that falls within the scope of the Commissioner's work are rights-compliant, understood, and workable, and that the complaints scheme put in place upholds the right, including the right of children, to an effective remedy.

Several children's rights advocacy groups observed that there is no explicit provision for the position of the Online Safety Commissioner in Head 19 of the General Scheme of the Bill. The OCO noted that, while this omission may be deliberate, it could be preferable to make this explicit in the legislative package.

The Irish Council for Civil Liberties (ICCL) expressed concern that the lack of precision in detailing the specific roles and responsibilities of the Online Safety Commissioner could lead to challenges in the undertaking of their functions—and potential findings of *ultra vires*, where the Online Safety Commissioner could act beyond their legal power or authority.

The Irish Society for the Prevention of Cruelty to Children (ISPCC) recommends that the Committee seek particular clarity on the role of the Online Safety Commissioner with regard to the protection of children, highlighting the possibility of conflating the European-mandated Audiovisual Media Services Directive (AVMSD) Regulator with the national legislative proposal of the Online Safety Commissioner.

The ISPCC also noted that one of their primary concerns was the lack of consistency in online education in schools and youth settings throughout the country. They recommended that the Online Safety Commissioner stipulate a core curriculum, and that the Commissioner regulate and register the facilitators of online safety education

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<sup>17</sup> National Anti-Bullying Research and Resource Centre. (2020). *KiDiCoTi: Kids' Digital Lives in Covid-19 Times: A Comparative Mixed Methods Study on Digital Practices, Safety and Wellbeing. Key findings from Ireland*. Dublin, Ireland: Dublin City University. Available from: [https://antibullyingcentre.ie/wp-content/uploads/2020/08/Short-report\\_Covid\\_for-media.pdf](https://antibullyingcentre.ie/wp-content/uploads/2020/08/Short-report_Covid_for-media.pdf)

in order to ensure that children and young people receive the tools they need to safely and securely navigate the online environment.

Rape Crisis Network Ireland (RCNI) and Safe Ireland emphasised that online safety by design should be listed as a separate and equal objective of the Media Commission, with safety built into new programmes, online services, applications, and platforms to the fullest extent possible prior to these becoming accessible to users.

### **ALGORITHMIC DECISION-MAKING**

The Committee has examined whether the Media Commission could develop codes to mandate platform transparency in at least two aspects their use of algorithmic decision-making: (i), the mechanisms by which these processes occur, and, (ii), where exactly these processes are applied.

The Department noted that there is provision in the Bill to scrutinise algorithmic and automated decision-making and machine learning, and that the Media Commission will be empowered to, for instance, injunct relevant services to undertake impact assessments, thereby assuming a risk-based approach to managing such issues. The BAI recommended that, subject to GDPR, the Media Commission should have access to content that had previously been removed by algorithmic decision-making, to ensure that these processes are being applied fairly and in alignment with established regulation.

IHREC proposed that the legislation grant the Media Commission the ability to regulate conduct, as well as content, with regard to use of algorithms: the targeting of certain information to particular users via algorithms was cited as a potentially harmful and exploitative use of such technology. The Irish Heart Foundation pointed to the algorithmic targeting of digital marketing to children as an example of such harmful use (see [discussion on advertising standards](#)).

Samaritans Ireland also echoed this view, calling for transparency in the use of algorithms, and noting that it was sometimes the case that content pertaining to suicide or self-harm was sometimes targeted, via algorithms, to those who were the most at risk by virtue of these users having previously accessed similar content. In

addition, Samaritans Ireland called for the incorporation of “ethical algorithms” into legislation, which would seek to minimise the propagation of difficult or harmful content: they reference research, conducted in collaboration with Ulster University, that demonstrated that small alterations in online service provisions may, in turn, alter the cyclical tendencies of users who may have concerning relationships with these online services.<sup>18</sup>

The DCU Institute of Future Media, Democracy, and Society observed that the discussion of transparency with regard to platform usage of algorithms and machine learning required nuance: they highlighted the difference between the notions of transparency and accountability on the part of platforms. The former, according to the Institute, would not generate meaningful insight in the complex domain of machine learning and algorithms—transparency as to these processes would be inaccessible to those without relevant expertise. However, they stated that accountability would require that those with expertise, as might be found within the Media Commission, would be able to ask the correct questions and make the correct demands of platforms; seemingly, accountability could also address a current gap in online platform regulation, wherein platforms had failed to share sufficient data, such that independent oversight of algorithmic decision-making was previously impossible.

## **THE FUTURE OF MEDIA COMMISSION**

The Future of Media Commission is an independent body of which the terms of reference and membership were agreed by Government on 29 September 2020. The Commission held their inaugural meeting on 29 October 2020. The Commission’s remit is to examine how public service aims can be delivered and sustainably funded through the broadcasting, print, and online media in Ireland over the next 10 years, while ensuring that independent editorial oversight is maintained and Ireland’s creative and cultural sectors are supported.

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<sup>18</sup> Turkington, R., Mulvenna, M., Bond, R., Ennis, E., Potts, C., Moore, C., Hamra, L., Morrissey, J., Isaksen, M., Scowcroft, E., & O’Neill, S. (2020). Behaviour of callers to a crisis helpline before and during the COVID-19 pandemic: Quantitative data analysis. *JMIR (Journal of Medical Internet Research) Mental Health*, 7(11), e22984. doi:10.2196/22984

The goals of the Commission are as outlined:

- the identification of what the Irish experience has been in delivering the above aims through public service broadcasters, other broadcasters, print media and online media—at a local, regional and national level—and of the challenges created for these media by new global platforms and changing audience preferences in relation to how content is delivered;
- the consideration of the extent to which the current models of delivery are the appropriate ones the next 10 years; and
- the reviewing of best practice in other comparable jurisdictions, particularly across the European Economic Area, in terms of providing future-proofed models for meeting the needs of public service broadcasters, other broadcasters, print media and online media, in light of changing audience expectations—in particular, the preferences and behaviours of younger audiences.

Stakeholders highlighted the ongoing work of the Future of Media Commission during the Committee's undertaking of pre-legislative scrutiny on the Online Safety and Media Regulation Bill. The overlap between the Future of Media Commission and the Media Commission is notable; the Department noted that it was likely that additional legislation would be required to address many of the issues that the Future of Media Commission would raise.

The question remains, however, of how the work of the Media Commission will incorporate the recommendations of the Future of Media Commission once the former has been established.



## ADVERTISING STANDARDS

### RECOMMENDATIONS

1. The Committee recommends a ban on advertising to children online, including, at the very minimum, advertisements of junk food, alcohol, high fat/salt/sugar (HFSS) foods, and gambling.
2. The Committee recommends a moratorium on advertising infant formula products online.
3. The Committee recommends the prohibition of any form of profiling or tracking children's data.
4. The Committee recommends that self-regulation, or other non-statutory mechanisms, are not included as part of the advertising regulatory framework.

### RELATED HEADS

#### HEAD 62 | MEDIA CODES

Head 62, intended as a replacement of Section 42 of the Broadcasting Act 2009, grants the Media Commission the power to formulate media codes in line with a number of principles and policies. With regard to commercial promotion, Head 62 stipulates that the interests of children must be protected—and particularly the general public health interests of children.

#### HEAD 69 | ADVERTISING

Head 69, intended to update Section 41 of the Broadcasting Act 2009 and thus align it with the OSMR Bill, relates to the types of advertising in which media service providers may engage. Notably, it:

- prohibits advertisements of a political nature;
- prohibits advertisements relating to industrial disputes;
- prohibits advertisements which promote the merits of or adherence to a particular religion or faith;
- sets a maximum allocation of 15% of total broadcasting time to advertisements, and a maximum allocation of ten minutes per hour.

## HEAD 70 | MEDIA RULES

Head 70, based on Section 43 of the Broadcasting Act 2009, widens the scope of this original section to allow for an increase in advertising minutage flexibility. Head 70 provides, *inter alia*, that the Media Commission shall prepare and revise, as required, “media rules”, such as those relating to total daily and hourly limits for the transmission of advertisements.

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### ADVERTISING LIMITS

The Broadcasting Authority of Ireland’s (BAI) position on advertising limits is that there is value to the media regulator having oversight of all advertising limits, as opposed to a system whereby there are roles granted to other parties, such as the Minister. This approach allows for a consistent and singular policy approach across different forms of media, while simultaneously permitting for the adequate nuance with regard to the various factors that impact these distinctive forms of media.

The BAI outlined some possibilities as to the functioning of such limits, such as:

- the establishment of specific advertising limits by the Media Commission that operate within an overall upper legal limit, subject to the statutory review process of new codes and rules already proposed within the Bill; or
- align maximum hourly advertising limits on sound broadcasting services with those for television (i.e. twelve (12) minutes)—at a minimum, the inclusion of a provision for sound broadcasters to be permitted to average advertising over several hours while remaining within a daily limit.

The BAI also note that advertising “to a political end” should be expressly permitted for election periods via the Bill.

Virgin Media observed that it was unclear as to how the provisions of Head 69 could work with existing rules under the BAI’s Code on Commercial Communications.<sup>19</sup>

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<sup>19</sup> Broadcasting Authority of Ireland. (2017). *General Commercial Communications Code*. Dublin, Ireland: Broadcasting Authority of Ireland. Available from: <https://www.bai.ie/en/download/131870/>

## THE HARMS OF ADVERTISING TO CHILDREN

The Ombudsman for Children's Office (OCO) stated that children have a right to protection from material that is potentially harmful to their wellbeing, and such material could include advertising and commercial exploitation of children. They suggested that there may be scope to develop codes around advertising standards—and the protection of children—within the present legislation.

UCC Law's Professor Conor O'Mahony noted that online advertising poses risks that do not necessarily arise in radio or television advertising. Professor O'Mahony pointed to the United Nations Committee on the Rights of the Child, who released a General Comment in March 2021 pertaining to the rights of the child in relation to the digital environment: it states (p. 7) that "States parties should prohibit by law the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association or affinity".<sup>20</sup>

Professor O'Mahony warned that there was the potential for existing regulatory and legislative frameworks around advertising to lack the detail required to safeguard children's rights in the digital environment.

Particular emphasis was placed on junk food by the Children's Rights Alliance (CRA), the Irish Heart Foundation (IHF), Trinity Business School's Professor Norah Campbell, and the Advertising Standards Authority for Ireland (ASAI). The CRA urged the Committee to raise the issue of junk food and alcohol advertising to children when meeting with online service providers. The IHF concurred with Professor O'Mahony and with the United Nations around the risks that are posed by specifically profiling and targeting children for marketing purposes, and called for an outright ban on advertising to children online—which they believed could only be achieved through the present Bill.

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<sup>20</sup> United Nations. (2021). *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*. Geneva, Switzerland: Office of the United Nations High Commissioner for Human Rights. Available from: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

Professor Norah Campbell highlighted that there were direct experimental correlations between exposure to junk food advertising and consumption of junk food demonstrated in international peer-reviewed journals. Professor Campbell noted that a moratorium on junk food advertising—or advertising to children—could be piloted on a five-year basis in order to determine its suitability to the online and Irish contexts.

The ASAI stated that voluntary codes of practice were launched in 2018 in relation to the limiting of high fat, salt and sugar products in advertising, but that there had been no progress since observed in the implementation of these. The ASAI's written submission recommended that the Commission be required to take account of established non-statutory mechanisms as part of the regulatory framework, such as these voluntary codes of practice.

## INTEGRATION OF THE BROADCASTING (AMENDMENT) BILL 2019

### RECOMMENDATIONS

1. The Committee recommends that Head 3 (6) (d), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media Regulation Bill, be reworded as follows: “the likely expectation of the audience as to the nature of public service content, with particular regard to Irish language speakers.”
2. The Committee recommends that Head 3 (6) (f), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media Regulation Bill, be reworded as follows: “the fundamental rights of the audience and operators of services providing access to audiovisual media services, with particular regard to Irish language speakers and Irish language media.”

### RELATED HEADS

There are a number of additional Heads that are to be inserted into the Online Safety and Media Regulation (OSMR) Bill following the integration of the Broadcasting (Amendment) Bill (BAB) 2019 into same.<sup>21</sup> It is, at the time of reporting, unknown as to where these Heads will appear within the General Scheme of the Bill.

#### HEAD 1 | CLOSURE OF RTÉ AERTEL

This Head removes the statutory requirement for RTÉ to establish and maintain a teletext service, i.e. Aertel. The Head permits RTÉ to apply to the Minister for consent to close the service as part of its ongoing series of reforms, as teletext has since been superseded by more modern communications technology.

#### HEAD 2 | ADVERTISING MINUTAGE

This Head removes the hourly limits in respect of advertising minutage on commercial radio stations, which is currently set at ten (10) minutes per hour, while

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<sup>21</sup> Available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/136691/14b7879d-5913-4c39-b2fe-f70091432453.pdf#page=null>

retaining the overall cap of 15% of total broadcasting time. This is intended to grant greater flexibility to radio stations so that they may have additional advertising and revenue around high-audience programmes.

### **HEAD 3 | PROMINENCE OF PUBLIC SERVICE CONTENT**

This Head transposes Article 7A of the Revised European Audiovisual Media Services Directive (AVMSD) that relates to the prominence of content of general interest. This Head provides that the Commission shall establish rules around the prominence and placement of public service content provided by RTÉ, TG4, and any Section 70 television programme service contractor.

The prominence requirements under this Head apply to user interfaces of television platforms, signifying that platforms operated by entities such as Sky, Virgin Media, Eir, and Vodafone will be obliged to ensure that their user interfaces grant due prominence to public service content in accordance with rules set by the regulator.

### **ADDITIONAL AMENDMENTS**

The following additional changes to the Online Safety and Media Regulation Bill occur as a result of the integration of the Broadcasting (Amendment) Bill 2019:

- the exemption of community radio and television stations from paying industry levy [amendment to Head 40 of the OSMR Bill];
  - this exemption is granted regardless of income of community broadcasters [new addition to the Bill]
- the creation of a bursary scheme for journalists in community radio and television stations [incorporation of Section 7 of the BAB 2019 into the OSMR Bill];
- the repeal of Sections 103 and 251 of the Copyright and Related Rights Act 2000 [incorporation of Section 10 of the BAB 2019 into the OSMR Bill];
- the removal of the exemption for licence applications for additional services when under a Section 70 contract, as per the Broadcasting Act 2009, and

the subsequent regulation of these additional services<sup>22</sup> [incorporation of Section 4 of the BAB 2019 into the OSMR Bill]; and

- minor technical changes, appearing to relate to the insertion of the bursary scheme for journalists [incorporation of Sections 6, 8, and 9 of the BAB 2019 into the OSMR Bill].

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### CLOSURE OF RTÉ AERTEL

RTÉ noted its support for the closure of RTÉ Aertel in light of its need to evolve alongside market developments and changing consumption behaviour. TG4 continues to use a simple one-page teletext service to access subtitles, but have not operated a full service in many years.

The Broadcasting Authority of Ireland (BAI) highlighted that websites could decline in their primacy or in their importance, and, consequently, consideration could be given to further amendment this public object, with a view to its future-proofing and to platform-neutrality, in order that a further amendment to remove references to “websites” and suchlike is not required in coming years.

DCU’s Institute for Future Media and Journalism observed that the closure of teletext services seemed reasonable, given the overall shift toward online services.

However, they emphasised that access to news services for users with disabilities should not be impacted by the closure of teletext.

### ADVERTISING MINUTAGE

The BAI stated their belief that regulatory limits on advertising are necessary in order to balance the commercial needs of broadcasters with the viewing and listening interests and enjoyment of audiences. RTÉ remarked that the changes proposed via the incorporation of the Broadcasting (Amendment) Bill 2019 may contribute to the financial sustainability of indigenous media services.

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<sup>22</sup> Virgin Media Ireland (formerly TV3) is the sole holder of a Section 70 television programme service contract.

DCU's Institute for Future Media and Journalism warned that the need for added flexibility in advertising minutage has not been sufficiently demonstrated, and that the necessity of such an inclusion in legislation should be fully considered in light of the potential to create a discernible change in the audience experience. The Institute also noted its uncertainty as to whether the changes will, in fact, increase radio revenues, as commercial radio revenues have steadily declined since 2008—even prior to the COVID-19 pandemic. Consequently, the Institute called for empirical evidence that these changes will—or are very likely to—increase radio revenues, particularly as audiences may respond negatively to the new experience.

The BAI suggested that consideration should be given to removing the hourly limits on advertising for public service broadcasters while retaining an upper daily limit; the Minister, in this scenario, would retain responsibility for setting the overall daily limit. Such an approach, according to the BAI, would maintain the current differences in advertising inventory of which public service and other broadcasters can avail, and would recognise that the factors informing the change proposed by Head 2 also affect public service broadcasters. The BAI also suggested the incorporation of peak and off-peak advertising limits into the Bill.

Both the BAI and Virgin Media Television suggested that regulation for advertising limits for public service broadcasters should be brought under the same framework applying to all other broadcasters, so that consistent regulation would apply to all broadcasters as it relates to advertising limits.

## **PROMINENCE**

Stakeholders widely welcomed the addition of Head 3. The BAI noted that public service content requires due prominence across platforms and services to facilitate universal access for all audiences, and that prominence is particularly vital in an increasingly platform-agnostic and saturated market, underpinned by subscription-based and personalised services. RTÉ remarked that the Media Commission should have a role in regulating and enforcing prominence in the Irish market: public service media prominence, according to RTÉ, clearly signals the role and relevance of public service media, and that Ireland believes in its value. In addition, RTÉ noted that, without prominence, the public value-for-money of Irish public service media is at



risk. Screen Ireland stated that general interest content should be easy to access and find in order to ensure protection of general interest objectives.

The BAI and Screen Ireland suggested that due consideration should be given as to how the Bill may provide for statutory powers to designate, for the purpose of prominence, devices where they are used as a means of finding and accessing public service content, including smart televisions, streaming sticks, smart speakers, and other similar devices. Virgin Media Television noted the necessity to future-proof this Head.

The BAI made note of potentially problematic wording in Head 3(1)(b), which refer to a “balanced way” of providing access to news and current affairs material. The BAI highlighted that driving coverage of news and current affairs issues on the premise that each topic or debate must be “balanced” by all perspectives can lead to a certain false equivalence, whereby one view is given an artificial emphasis that is not merited. The BAI therefore advised that Head 3(1)(b) should instead refer to a “fair, objective, and impartial way” of providing such access.

Sky Ireland suggested that there was limited value in further regulation pertaining to prominence, as they purport that the market is already demonstrably delivering the desired public policy outcome. They additionally noted that guidance or rules regarding prominence should avoid being overly prescriptive, and, instead, represent a flexible and principles-based approach that holds “appropriate prominence” as a core tenet, supporting, in turn, a wide range of different approaches to user interface design. Sky Ireland proposed that additional regulatory intervention should entail accompanying obligations for PSBs to make on-demand content widely available in a non-discriminatory manner, in a format that is convenient for Irish viewers, and that imposes no additional cost on them.

TG4 did not believe it to be appropriate to include reference to existing commercial arrangements in subsection 6 of Head 3: such an inclusion would, according to TG4, give further advantage to audiovisual media services which already enjoy a strong market position and can secure their own prominence on a rolling basis. TG4 further suggested that such an inclusion would undermine their own statutory prominence,

as they do not have the market power to bring about these beneficial commercial arrangements. TG4 therefore recommended that reference to existing commercial arrangements be removed.

TG4 also expressed their disappointment that subsections 6(d) and 6(f) did not include any reference to Irish speakers, noting that these should explicitly address those whose preferred spoken language is Irish or those who otherwise have an interest in the Irish language.

DCU's Institute for Future Media and Journalism stated that public service content historically might have been considered, by default, to meet the standards of accuracy, trustworthiness, and reliability—but that such an attribution may be erroneous. Consequently, the question is raised of determining what constitutes public service content: Head 3 appears to work on the basis that it is public service content, and not public service institutions, that should be given prominence. However, the Institute noted that public service content, for the purposes of Head 3, would have to be identified on a generic basis, and thus regular news bulletins from RTÉ and Virgin Media may straightforwardly be considered as public service content, and, accordingly, deserving of due prominence.

The Institute further observed that the criteria for prominence consisting of having an Irish theme appears to be insufficient as a basis for insisting that content be given particular prominence. Indeed, they remarked that there is an inherent risk in ascribing, in advance, a “quality mark” to any piece of content, as no broadcasting institution can have access to absolute truths. They therefore suggested that some consideration of the risks to predeterminations of content superiority may inform the implementation of Head 3.

## TRANSPOSITION OF THE EUROPEAN AUDIOVISUAL MEDIA SERVICES DIRECTIVE 2018/1808

### RECOMMENDATIONS

1. The Committee recommends that prominence of public service media content is specifically protected on a legislative basis within the present Bill.
2. The Committee recommends that Ireland introduce a mandatory production quota for the production of European and/or Irish works.
3. The Committee recommends that provisions be made for consultations with broadcasters and content providers during the process of defining relevant audiovisual media services and delineating the operations of the relevant Heads within Parts 5 and 6 of the Bill.

### RELATED HEADS

#### PART 5 | ON-DEMAND AUDIOVISUAL MEDIA SERVICES

As mandated by the European Audiovisual Media Services Directive (AVMSD), Part 5 of the General Scheme of the Online Safety and Media Regulation Bill provides for the following:

- definition of a relevant on-demand audiovisual media service;
- registration of on-demand audiovisual media services;
- compliance and enforcement mechanisms; and
- sanctions for non-compliance.

#### PART 6 | MISCELLANEOUS AVMSD PROVISIONS

Part 6 of the Bill provides for a large range of measures intended to transpose various aspects of the AVMSD, including:

- complaints in relation to media service providers;
- media codes;
- definition and prominence of European works;
- duties of media service providers;

- retention of programme material;
- media rules, and inspection thereof; and
- code of practice for complaints handling.

## RELATED EUROPEAN LEGISLATION

### EUROPEAN AUDIOVISUAL MEDIA SERVICES DIRECTIVE

The Audiovisual Media Services Directive (Directive 2010/13/EU) governs EU-wide coordination of national legislation in the following areas:

- general principles
- incitement to hatred
- accessibility for people with disabilities
- principles of jurisdiction
- major events
- promotion and distribution of European works
- commercial communications
- protection of minors

The AVMSD was amended in 2018, in light of the shifting media landscape. This amended Directive is its current form.<sup>23</sup> The amendments include some key components:

- extension of certain audiovisual rules to video-sharing platforms and social media services
- better protection of minors against harmful content
- reinforced protection of TV and video-on-demand against incitement to violence or hatred

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<sup>23</sup> European Parliament, & Council of the European Union. *Directive (EU) 2018/1808 of the European Parliament and of the Council*. Luxembourg: EUR-Lex. Available from: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

- increased obligations to promote European works for on-demand services
- more flexibility in television advertising
- independence of audiovisual regulators

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### GENERAL CONSIDERATIONS

The Broadcasting Authority of Ireland (BAI) noted their support for Heads 57 to 60 of the Bill that relate to on-demand media service providers; a process for the registration of on-demand services, required by the AVMSD, is proposed therein, thus representing a clear mechanism for enforcing registration requirements where it is necessary. In respect of Part 6 of the Bill, the BAI noted there is provision for a risk-based approach to regulation: certain provisions established under this Part of the Bill could therefore be applied with due regard given to factors such as the nature of the service, the content provided, and the risk to public interest, though some of these factors are not explicitly stated in the Bill. The BAI observed that the Media Commission must take an approach that is fair, equitable, proportionate, and consistent.

The BAI suggested that there may be value in a specific provision that clearly permits the Media Commission to regulate differentially based on the nature of media services within its scope. Such a provision would, according to the BAI, ensure that the focus of the Media Commission's regulation under Part 6 would be centred around large services, in addition to those services which have the potential to cause public harm—regardless of their size. The BAI also note that such a provision could assist in avoiding undue and unnecessary regulatory burden on smaller services, as well as unnecessary administrative burden on the Media Commission.

### EUROPEAN WORKS

The BAI noted their support for the provisions relating to quotas for European works, noting that prominence of these works is of great importance.

Screen Ireland observed that the specific definitions and working of the relevant Heads are to be devised by the Media Commission, and noted their preference to be consulted during such a process. Audiovisual Ireland stated that these regulations will contribute significantly to the promotion of European culture and screen content for Irish and European audiences. It noted that these measures should be fairly and transparently implemented in the Bill, with prominence for European works across newer platforms representing a key priority, in order for European works—and particularly Irish works—to be given prominence in the discovery tools of which newer platforms make use.

Screen Producers Ireland (SPI) called for clarity on the status of quotas for the broadcasting of European works across television broadcasting services listed under the S.I. European Communities (Audiovisual Media Service) Regulations 2010. SPI noted that, while the AVMSD does not contain an equivalent to the 10% independent production quota for on-demand audiovisual media services, individual Member States have included independent production quotas for these services as part of their investment obligations, in addition to their implementation of the AVMSD. SPI further observed that clarity should be sought on the implementation of EU Commission guidance for the prominence of European works.

RTÉ remarked that the 30% quota imposed on on-demand services is intended to foster European diversity, and that they would favour an interpretation of transmission hours to emphasise volume of content, with the necessary considerations given to quality and relevance. RTÉ noted that this interpretation would avoid a potential risk around increasing titles, regardless of quality or duration, purely to meet the quota.

Screen Ireland stated that it was of the belief that one starting point to ensuring prominence of European works would be through public service media. It observed that current challenges for public service broadcasters are such that, unless Irish public service broadcasters are supported and given due prominence, European works may lose relevance, particularly for younger audiences who are more regularly engaging in a global media environment. Screen Ireland remarked that the Media

Commission should be empowered to fully regulate and enforce prominence requirements among any platform distributing content across Ireland.

RTÉ and TG4 similarly suggested that, without prominence requirements, public service media content is difficult to retrieve. TG4 stated that there are often difficulties in negotiating with commercial operators to ensure prominence of public service media broadcasters. They note that the regulatory regime relating to prominence is in urgent need of review—as well as extension to non-linear and on-demand platforms to ensure prominence of public service media content on all major viewing platforms.

RTÉ noted the opportunity that the Bill presents for the Media Commission to regulate prominence, and noted that the AVMSD allows some room for Member States to legislate for prominence. TG4 stated that a new Head could be included to provide for prominence for public service media content across all platforms, as well as across all content distribution mechanisms established both internally and externally to the State.

Sky Ireland noted themselves as an example of granting prominence to public service broadcasters, stating that, in their catch-up menus, the content of RTÉ is first, and followed by that of other public service broadcasters. They further observed that there are a plethora of new means by which content can be accessed.

## THE EUROPEAN DIGITAL SERVICES ACT AND DIGITAL MARKETS ACT

### RECOMMENDATIONS

1. The Committee recommends that a full review is conducted of the potential areas for overlap between the Online Safety and Media Regulation Bill and the Digital Services Act, including, but not limited to: terminology, complaints mechanisms, and affected services.

### RELATED EUROPEAN LEGISLATION

#### DIGITAL SERVICES ACT

The Digital Services Act (DSA) is one of two legislative initiatives, proposed by the European Commission, conceived with the aim of upgrading rules governing digital services in the EU. The Digital Markets Act (DMA) is the other of the two proposals and is discussed in the following section.

The DSA's principal goal is the creation of a safer digital space within which the fundamental rights of all users of digital services are protected. The Oireachtas Library and Research Service, in research provided to the Committee, noted that the DSA is a regulation: it thus has a general application, and is binding in its entirety and directly applicable to all states, as per Article 288 of the Treaty on the Functioning of the European Union.<sup>24</sup> Furthermore, the Library and Research Service observed that some provisions of the DSA may supersede those of the OSMR Bill where incompatibility arises, particularly as EU law is considered as holding supremacy over national law, as per Article 29.4.6. of the Irish Constitution.<sup>25</sup>

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<sup>24</sup> Available from [EUR-Lex - 12012E288 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexUri.do?uri=CELEX:32022L0288:EN:EUR-Lex). As cited in Oireachtas Library and Research Service. (2021). *Online Safety and Media Regulation Bill: Pre-legislative Scrutiny Post-Hearing Paper* [unpublished]. Dublin, Ireland: Library and Research Service, Houses of the Oireachtas Service.

<sup>25</sup> Available from: <http://www.irishstatutebook.ie/eli/cons/en/html#part7>. As cited in Oireachtas Library and Research Service. (2021). *Online Safety and Media Regulation Bill: Pre-legislative Scrutiny Post-Hearing Paper* [unpublished]. Dublin, Ireland: Library and Research Service, Houses of the Oireachtas Service.



The term “digital services” is operationalised as a large category of online services, ranging from simple websites to Internet infrastructure services and online platforms. The DSA is primarily concerned with online intermediaries and platforms, e.g. online marketplaces, social networks, content-sharing platforms, application stores, and online travel and accommodation platforms.

The impacts of the DSA are suggested to be as follows:

- measures to counter illegal goods, services, or content online, such as a mechanism for users to flag such content and for platforms to cooperate with “trusted flaggers”;
- new obligations on traceability of business users in online marketplaces, to help identify sellers of illegal goods;
- effective safeguards for users, including the possibility to challenge platforms’ content moderation decisions;
- transparency measures for online platforms on a variety of issues, including on the algorithms used for recommendations;
- obligations for very large online platforms to prevent the misuse of their systems by taking risk-based action and by independent audits of their risk management systems;
- access for researchers to key data of the largest platforms, in order to understand how online risks evolve; and
- oversight structure to address the complexity of the online space: EU countries will have the primary role, supported by a new European Board for Digital Services; for very large platforms, enhanced supervision and enforcement by the Commission.

## **DIGITAL MARKETS ACT**

The principal goal of the Digital Markets Act (DMA) is the establishment of a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally.

The DMA delineates a set of narrowly defined, objective criteria that allow for large online platforms to be qualified as “gatekeepers”. Gatekeeper platforms are digital platforms with a systemic role in the internal market, functioning as bottlenecks between businesses and consumers for important digital services.

The impacts of the DMA are suggested to be as follows:

- a fairer business environment for business users who depend on gatekeepers to offer their services in the single market;
- new opportunities for innovators and technology start-ups to compete and innovate in the online platform environment, without having to comply with unfair terms and conditions that limit their development; and
- a higher quantity and quality of available services for consumers: more opportunities to switch providers, directly access services, and fairer prices
- maintained opportunities for gatekeepers: gatekeepers will reserve all current opportunities for innovation and the development of new services, but will be forbidden from the use of unfair practices on which business users and customers depend to gain undue advantage

## ISSUES ARISING FROM STAKEHOLDER ENGAGEMENT

### THE ONLINE SAFETY AND MEDIA REGULATION BILL: OVERLAPS AND CONFLICTS WITH THE DIGITAL SERVICES ACT

Facebook Ireland noted that, in Head 16A (“Administrative Financial Sanctions”), the approach to the capping of sanction taken within the Bill is not consistent with the European Digital Services Act—the national legislative package caps the sanction at the higher of either a set monetary amount of 10% of turnover, while the DSA caps sanctions at 6% of turnover.

It was also noted by Technology Ireland that the administrative financial sanctions proposed should be limited to the most serious, repeated, and systemic cases, as the application of these sanctions under the Bill did not, according to Technology Ireland, appear to be entirely proportionate.

A press release relating to the DSA stated the following, which may impact the provisions for non-compliance sanctions within the Bill:<sup>26</sup>

“Each Member State will clearly specify the penalties in their national laws in line with the requirements set out in the Regulation, ensuring they are proportionate to the nature and gravity of the infringement, yet dissuasive to ensure compliance. For the case of very large platforms, the Commission will have direct supervision powers and can, in the most serious cases, impose fines of up to 6% of the global turnover of a service provider.”

Concerns of proportionality, as stipulated by the DSA, have additional implications for senior management liability, as contained within Head 54B of the OSMR Bill, with which many stakeholders took issue. The main difficulty, as outlined by Barrister-at-Law Ronan Lupton, is the pursuit of criminal burden of proof if such sanctions were to be applied. Furthermore, Twitter noted that such a sanction would contradict principles of an Open Internet; Technology Ireland warned that senior management liability could detract from investment in Ireland; and Facebook opined that the provision was excessive and disproportionate, recommending that it be avoided in its entirety.

The Data Protection Commission observed that the draft DSA proposes a complaints-based approach to the regulation of online content, which appears to be at odds with the systemic complaints mechanism proposed in the Irish legislative package.

Twitter signalled its support for a coherent national and regional approach to content regulation that provides the clarity required by cross-border services in order for them to provide consistent user experiences regardless of location in the world. At the core of this approach, according to Twitter, is the preservation of the country-of-origin principle and a unifying set of standards at European level. Twitter highlighted

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<sup>26</sup> European Commission. (2020, 15 December). *Digital Services Act – Questions and Answers* [Press release]. Brussels, Belgium: European Commission. Available from: [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348)

the particular need to reconcile and rationalise the wide range of overlapping definitions set out under EU legislation and national laws.

Barrister-at-Law Ronan Lupton’s written submission stated that the legal provisions for online safety contained within the OSMR Bill are likely to be subsumed and outdated given legal and regulatory developments on the scale of the European Union. Lupton projected that the DSA is likely to be implemented within the same timeframe as the OSMR Bill. Consequently, it may be that, when the DSA comes into force, redrafting of many parts of the OSMR Bill may be required—posing logistical challenges to the legislative powers at national and European levels.

Lupton cited two clashes with the DSA in Head 50 and Head 54A, providing respectively for online safety codes and sanctions for non-compliance: according to Lupton, these are already set out in numerous articles of the DSA, and would require redrafting of these specific Heads if the OSMR Bill were to be published, as currently drafted, prior to the enactment of the DSA.

TikTok recommended that clarity be sought on the types of dispute that are suitable for consideration under Head 52C (“Obligation to Consider Mediation”), and whether mediation would be delivered through a third party, through a state-sponsored body, or through the Commission itself. Facebook noted that the consideration of mediation should be optional, as opposed to mandatory, as mediation is a consensual process—and that due regard must be given to the potential overlap of Head 52C of the Bill with Article 18 of the Digital Services Act, which relates to obligations of engaging in out-of-court dispute settlements.

Facebook noted that interpersonal communication services should be excluded from the scope of services defined under the Bill, in line with the approach of the DSA. The National Youth Council of Ireland observed, however, that harmful content can appear on messaging services, and that these should therefore be designated and regulated accordingly; other advocacy groups, such as the Irish Society for the Prevention of Cruelty to Children (ISPCC) and CyberSafeKids, stressed that age-inappropriate content and cyberbullying situations appear on messaging services, and should result in the designation of these services. Such a designation would

nevertheless place Ireland's regulatory environment in disalignment with the regulatory instrument of the DSA.

## **REGULATING ILLEGAL AND HARMFUL ONLINE CONTENT**

The Digital Services Act introduces a legal basis to counter illegal goods, services, and content online. When enacted by Member States, any platform in the EU, irrespective of where they are established, may be compelled to remove illegal content. Large online platforms will also be required to establish measures that mitigate the impact and protect their users from illegal goods, services, and content.

The Digital Services Act only addresses illegal content, as opposed to harmful content. The DSA does not seek to define illegal content: rather, precisely what constitutes illegal content is determined by pre-existing EU and national laws. The DSA is intended as being complementary to the Audiovisual Media Services Directive, which does specifically target harmful content.

However, if the DSA does not specifically regulate harmful content, EU legislation on harmful content will only govern traditional TV broadcasters, video on-demand (VOD) services, and video-sharing platforms.

The General Scheme of the Online Safety and Media Regulation Bill in Ireland has both illegal and harmful content under the umbrella term of "harmful" content, although definitions of harmful content as a multifaceted concept have been enumerated. Multiple questions remain, on both a national and EU level, surrounding the regulation of illegal, as distinct from harmful, content: the General Scheme of the OSMR Bill appears, for example, to treat illegal and harmful content under the same regulatory category, though they are terminologically distinct.

Nevertheless, the European Commission has noted that "to the extent that it is not illegal, harmful content should not be treated in the same way as illegal content." In addition, Věra Jourová, the Vice-President for Values and Transparency for the European Commission, clarified the EC's reticence to introduce rules that would oblige online platforms to remove harmful online content or disinformation. Rather, Jourová stated: "In order to address disinformation and harmful content, there should

be a focus on how this content is distributed and displayed to users, rather than push for removal.”<sup>27</sup>

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<sup>27</sup> Stolton, S. (4 November 2020). *EU Commission to introduce sanctions regime for illegal content in Digital Services Act*. EURACTIV.com. Available from: <https://www.euractiv.com/section/digital/news/eu-commission-to-introduce-sanctions-regime-for-illegal-content-in-digital-services-act/>

## APPENDIX 1

### LIST OF WRITTEN SUBMISSIONS

#### STAKEHOLDERS

[Advertising Standards Authority for Ireland](#)

[Aiken, Mary](#) (Professor, University of East London)

[Alcohol Action Ireland](#)

[An Garda Síochána](#)

[Audiovisual Ireland Trade Association](#)

[Bodywhys](#)

Broadcasting Authority of Ireland

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[Campbell, Norah](#) (Professor, Trinity Business School)

[Children's Rights Alliance](#)

[CRAOL](#)

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[CyberSafeKids](#)

[Data Protection Commission](#)

Department of Children, Equality, Disability, Integration and Youth

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[Digital Rights Ireland](#)

[Dublin Rape Crisis Centre](#)

[Facebook](#)

[Fenix International Limited](#)

[Fórsa Trade Union](#)

[Global Partners Digital](#)

[Hotline.ie](#)

Houses of the Oireachtas Commission

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

Independent Broadcasters of Ireland

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

Institute of Future Media, Democracy, and Society, Dublin City University

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[Irish Council for Civil Liberties](#)

[Irish Heart Foundation](#)

[Irish Human Rights and Equality Commission](#)

[Irish Society for the Prevention of Cruelty to Animals](#)

[Irish Society for the Prevention of Cruelty to Children](#)

Joint Creative Audiovisual Sectoral Group

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[Law Reform Commission](#)

[Law Society of Ireland](#)



[Local Ireland](#)

[Lupton, Ronan](#) (Barrister-at-Law)

[National Anti-Bullying Research and Resource Centre, Dublin City University](#)

[National Office for Suicide Prevention](#)

[National Union of Journalists](#)

[National Youth Council of Ireland](#)

[Netflix](#)

[Newsbrands Ireland](#)

[O'Mahony, Conor](#) (Professor, University College Cork)

[Ombudsman for Children's Office](#)

[On-Demand Audiovisual Media Services Group](#)

[Rape Crisis Network Ireland](#)

RTÉ

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]
- [Joint Submission with TG4](#)

[Safe Ireland](#)

[Safety Over Stigma](#)

[Samaritans Ireland](#)

Screen Ireland/Fís Éireann

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

Screen Producers Ireland

- [Submission #1](#) [General Scheme]

- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[Sky Ireland](#)

[Snap Inc.](#)

[Spunout.ie](#)

[Technology Ireland](#)

[Telecommunications Industry Ireland](#)

TG4

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]
- [Joint Submission with RTÉ](#)

[The Walt Disney Company](#)

[Three Ireland](#)

[TikTok](#)

[Twitter](#)

[Virgin Media Television](#)

- [Submission #1](#) [General Scheme]
- [Submission #2](#) [Integration of Broadcasting (Amendment) Bill 2019]

[WebWise](#)

[Women's Aid](#)

## APPENDIX 2

### LIST OF ORAL HEARINGS

STAKEHOLDER(S)	DATE	
<b>Department of Tourism, Culture, Arts, Gaeltacht and Sport</b>  ■ <a href="#">Opening statement</a>  <i>Ms Triona Quill (Principal Officer)</i>  <i>Mr Ciarán Shanley (Assistant Principal Officer)</i>	13 April 2021	<a href="#">Meeting Transcript</a>
<b>Broadcasting Authority of Ireland</b>  ■ <a href="#">Opening statement</a>  <i>Mr Michael O’Keeffe (Chief Executive)</i>  <i>Ms Celene Craig (Deputy Chief Executive)</i>  <b>Data Protection Commission</b>  ■ <a href="#">Opening statement</a>	5 May 2021	<a href="#">Meeting Transcript</a>

*Ms Anne Morgan (Deputy  
Commissioner and Head  
of Legal)*

*Ms Jennifer Dolan  
(Assistant Commissioner  
for Children's Policy)*

**Kinsale Community  
School**

6 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Ms Sarah Fitzgerald*

*Ms Megan Fahy*

**Tallaght Community  
School**

- [Opening statement](#)

*Mr Rory Hynes*

*Mr Jake Bushe*

CRAOL

6 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Mr Jack Byrne (Chair)*

**Community Television  
Association**

- [Opening statement](#)

*Mr Ciaran Murray (Chair)*

**Independent  
Broadcasters of Ireland**

- [Opening statement](#)

*Mr John Purcell (Chair)*

*Mr Chris Doyle (Director)*

**Ombudsman for  
Children's Office**

12 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Dr Karen McAuley (Head  
of Policy)*

**Professor Conor  
O'Mahony**

- [Opening statement](#)

**Institute for Future  
Media, Democracy, and**

**Society in Dublin City**

**University**

- [Opening statement](#)

*Dr Eileen Culloty*

**National Anti-Bullying  
Research and Resource  
Centre**

*Dr Tijana Milosevic*

**Irish Society for the  
Prevention of Cruelty to  
Children**

13 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Mr John Church (Chief  
Executive Officer)*

*Ms Fiona Jennings  
(Senior Policy and Public  
Affairs Manager)*

**Children's Rights  
Alliance**

- [Opening statement](#)

*Ms Tanya Ward (Chief  
Executive)*

*Ms Julie Ahern (Legal and  
Policy Manager)*

CyberSafeKids

*Ms Alex Cooney (Chief  
Executive Officer)*

**Facebook Ireland**

19 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Mr Dailta Ó Broin (Head  
of Public Policy)*

**Twitter**

- [Opening statement](#)

*Mr Ronan Costello  
(Senior Public Policy  
Manager)*

**TikTok**

- [Opening statement](#)

*Dr Theo Bertram (Director  
of Government Affairs  
and Public Policy)*

**TG4**

20 May 2021

[Meeting Transcript](#)

- [Opening statement](#)

*Mr Alan Esslemont (Ard  
Stiúrthóir)*

**RTÉ**

■ [Opening statement](#)

*Mr Rory Coveney  
(Director of Strategy)*

**Virgin Media Ireland**

■ [Opening statement](#)

*Mr Peter McCarthy (Vice  
President of Legal and  
Corporate Affairs)*

**Sky Ireland**

■ [Opening statement](#)

*Dr Mark Carpenter  
(Director of Regulatory  
and Corporate Affairs)*

**Irish Human Rights and  
Equality Commission**

26 May 2021

[Meeting Transcript](#)

■ [Opening statement](#)

*Ms Sineád Gibney (Chief  
Commissioner)*

*Dr Lucy Michael  
(Commission Member)*

**Irish Campaign for Civil  
Liberties**

26 May 2021

[Meeting Transcript](#)

■ [Opening statement](#)



*Mr Liam Herrick*  
(Executive Director)

*Ms Olga Cronin (Policy  
Officer on Surveillance  
and Human Rights)*

## **Digital Rights Ireland**

- [Opening statement](#)

*Dr T.J. McIntyre (Chair)*

## **Joint Creative**

27 May 2021

[Meeting Transcript](#)

## **Audiovisual Sectoral Group**

- [Opening statement](#)

*Ms Birch Hamilton*  
(Executive Director,  
Screen Directors Guild of  
Ireland)

*Mr Ronan McCabe (Chief  
Executive Officer,  
Animation Ireland)*

*Mr James Hickey*  
(Producer-consultant and  
former Chief Executive  
Officer of Screen Ireland)

## **Screen Producers Ireland**

■ [Opening statement](#)

*Ms Susan Kirby (Chief  
Executive Officer)*

*Ms Mary Callery (Head of  
International with  
ShinAwil Productions)*

**Irish Heart Foundation**      2 June 2021

[Meeting Transcript](#)

■ [Opening statement](#)

*Ms Kathryn Walsh (Policy  
Manager)*

**Advertisement  
Standards Authority for  
Ireland**

■ [Opening statement](#)

*Ms Orla Twomey (Chief  
Executive)*

**Epilepsy Ireland**

■ [Opening statement](#)

*Mr Paddy McGeoghegan  
(Advocacy and  
Communications  
Manager)*

**Dr Norah Campbell,  
Associate Professor of**

## Marketing at Trinity

### Business School

- [Opening statement](#)

Department of Tourism, 16 June 2021  
Culture, Arts, Gaeltacht,  
Sport and Media

[Meeting Transcript](#)

- [Opening statement](#)

*Ms Triona Quill (Principal  
Officer)*

*Mr Ciarán Shanley  
(Senior Policy Analyst)*

Mr Ronan Lupton, 7 July 2021  
Barrister-at-Law

[Meeting Transcript](#)

- [Opening statement](#)

## Technology Ireland

- [Opening statement](#)

*Ms Una Fitzpatrick  
(Director)*

## ARTICLE 19

- [Opening statement](#)

*Dr Pierre François  
Docquir (Head of Media  
Freedom)*

**Samaritans Ireland**

14 July 2021

[Meeting Transcript](#)

■ [Opening statement](#)

*Mr Ciaran Moore  
(Helpline Manager)*

*Ms Louise Hamra (Policy  
Manager)*

**Safety Over Stigma**

21 July 2021

[Meeting Transcript](#)

■ [Opening statement](#)

*Ms Alicia O’Sullivan  
(Founder)*

*Professor Louise Crowley*

**Australian eSafety**

21 July 2021

[Meeting Transcript](#)

■ [Opening statement](#)

*Ms Julie Inman Grant  
(Commissioner)*

*Mr Toby Dagg (Executive  
Manager, Investigations)*

## APPENDIX 3

### TERMS OF REFERENCE

#### **FUNCTIONS OF DEPARTMENTAL COMMITTEES (DERIVED FROM STANDING ORDERS – DSO 95 AND SSO 71)**

(1) The Select Committee shall consider and report to the Dáil on-

(a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 220,

(c) Estimates for Public Services, and

(d) other matters as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency and effectiveness in the use of public moneys, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
- (b) public affairs administered by the Department,
- (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
- (d) Government policy and governance in respect of bodies under the aegis of the Department,
- (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
- (f) the general scheme or draft heads of any Bill
- (g) scrutiny of private members' Bills in accordance with Dáil Standing Order 178, or detailed scrutiny of private members' Bills in accordance with Dáil Standing Order 161
- (h) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
- (i) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
- (j) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(k) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(l) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Dáil Standing Order 133/Seanad Standing Order 116, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Cathaoirleach of the Dáil Select Committee shall also be the Cathaoirleach of the Joint Committee.

(7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other members of the European Parliament.

(8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—

such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided provisions of Dáil Standing Order 130/ Seanad Standing Order 113 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

### **SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (DERIVED FROM STANDING ORDERS – DSO 94 (2), SSO 70)**

The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;

The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 218/Seanad Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;

The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Dáil Standing Order 125 (1) )/Seanad Standing Order 108(1);



and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (i) a member of the Government or a Minister of State, or
- (ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Cathaoirleach may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Cathaoirleach of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 35. Cathaoirligh of Select Committees shall have responsibility for compliance with this instruction.





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