



**Submission to the Hate Speech Public Consultation as part of the Review of the Prohibition of Incitement to Hatred Act 1989**

**About Technology Ireland:**

Technology Ireland is an Association within Ibec, which represents the ICT, Digital and Software Technology Sector. The Association is a pro-active membership organisation with over 200-member companies located throughout Ireland. We advocate on behalf of Ireland's indigenous and foreign direct investment (FDI) technology companies to Government and policy makers.

**Summary of Technology Ireland Position:**

Technology Ireland welcomes the opportunity to deliver this submission to the Department of Justice and Equality. We fully recognise the need to protect all members of our society from hate crime, which is often linked closely to hate speech.

To successfully protect our society, any proposed legislation in the area of hate speech must:

- a) accurately and clearly define the offence
- b) be subject to practical and reasonable enforcement - ideally it should follow a uniform approach with our EU partners, particularly given the transnational nature of modern communications.

To meet these twin requirements, Technology Ireland would like to see the following key points taken into consideration.

## **Key Points:**

### **1. With regard to traditional and digital media any proposed changes to the Prohibition of Incitement to Hatred Act should define more clearly the content deemed illegal and covered by removal obligation**

It is crucial that any proposed changes to the Hatred Act should provide a strict and clear definition of what constitutes illegal content. As it stands today, the Act deals with incitement on the grounds of race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. While the foremost aim is to prevent hate speech, legislation must be carefully crafted to preserve freedom of expression and communication – as enshrined in the Charter of Fundamental Rights of the European Union, Article 10 of the European Convention on Human Rights, and Article 19 of the Universal Declaration of Human Rights. This freedom underpins democratic societies the world over. It is important that any changes to the act do not impinge on that freedom. Clear precise definitions and the avoidance of broad stroke descriptions should preserve the existing balance between preventing hate speech and preserving free speech.

### **2. Any proposed changes to the Prohibition of Incitement to Hatred Act should consider the technical realities that online platforms and cloud infrastructure providers work with.**

Hate speech proves a very challenging area for detection and removal , as the content is culturally nuanced and layered, language-dependent, often highly colloquial, and can fall within the grey area of permissible and impermissible speech. This area is a tremendous challenge for technology and for reviewers, and policymakers should take care to ensure that any proposed changes minimise the censorship risks, including from overly tight turnaround times for removal. . Such difficulties become even more pronounced when transnational communications are considered. Any revised regulation should protect fair competition, due process and a free and open internet. Requirements should not be placed on online platforms that are impractical or excessively onerous.

It should also be noted that cloud infrastructure providers are the underlying IT infrastructure and greatly differ from other types of cloud services or social media. They provide the building blocks for cloud IT, analogous to power cables in the ground for a city. It is not technically possible for a cloud infrastructure provider to take down or disable access to one specific piece of content because the infrastructure provider does not have access to the customers' content (which itself is the essence of the cloud infrastructure industry business model). For example, to take down a specific comment in a website by a user a cloud infrastructure provider may need to take down the entire website in question, which has unintended consequences. Therefore, it is key to ensure cloud infrastructure Services are not in the scope of the legislation.

### **3. Any proposed changes to the Hatred Act should be consistent with existing protections.**

Any amendments to the Hatred Act should be as consistent as possible with existing legal frameworks, including safe harbour, to avoid uncertainties and discrepancies. This is particularly pertinent with reference to Articles 12 to 15 of the European Union E-Commerce Directive and Article 25 of Directive 2011/93/EU. These articles state that:

- The legislature should ensure proportionality between the adopted measure and its objectives.
- The legislature should preserve the protection that online platforms and intermediaries benefit from under the E-Commerce Directive.
- Member States shall not impose a general monitoring obligation on providers

### **Conclusion**

Technology Ireland is strongly supportive of the aim of protecting all members of society from the impacts of hate crime and recognises the clear links between hate speech and hate crime. Legislation in this area can only be successful if the definition of hate speech is clearly defined, while also not infringing on the right to freedom of expression and communication. In our view any legislation impacting online platforms must be practical and recognise existing and future technical limitations. The legislation should be consistent with existing regulations and should follow a uniform EU wide approach.

Technology Ireland recognises that this consultation is only a starting point and that further consultations will be held before any legislation is proposed. Technology Ireland and its members support the work of the Department of Justice and Equality and look forward to participating in future discussions.