

Expert Group on an Individual Complaints Mechanism

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Dublin Rape Crisis Centre

Response to the Online Safety Expert Group on an Individual Complaints Mechanism

March 2022

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About Dublin Rape Crisis Centre

The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. DRCC has been at the forefront of the Irish response to sexual violence for more than 40 years. That response includes:

- Running the National 24-Hour Helpline and associated services;
- Providing individual advocacy, counselling and other support;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU) and those reporting to An Garda Síochána or attending court;
- Data collection and analysis on trends and issues relating to sexual violence.

As a frontline service provider, we work with and support people who have been directly affected by sexual violence including online abuse. We are also committed to eliminating its tolerance through education, awareness raising, advocacy and policy analysis. Through that work, we see the often life-long consequences of the trauma and harm caused by sexual violence of all kinds. We also know from our experience that often times this harm is as a result of digital technology that is used to harass and humiliate.

About this submission

We are pleased to provide comment to the online safety expert group for their examination of the practicalities and potential operation of an individual complaints' mechanism. We have structured our responses to the expert group in the form of answers to the questions set out in the consultation document.

In addition, we support the submission being made by the Children's Rights Alliance on behalf of a coalition of organisations including Dublin Rape Crisis Centre. The particular focus of that submission relates to children and young people but is equally applicable to the wider population, in particular those who are particularly vulnerable because of age, relational abuse, or other issues.

Questions and responses.

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

1.1 The current regulatory system provides no effective avenue of redress for those who do not receive an effective remedy because of the action or inaction of a provider. Their option under the current proposed regime is to accept what the provider has offered or exercise their right to go to court. This is not an accessible remedy for most people, nor will it be effective. Court applications are likely to be prohibitively expensive for all but the extremely wealthy, made more expensive and traumatic by the reality that their opponent in court will be a service provider with deep pockets and almost endless access to expert legal resources.

1.2 The current proposed scheme will not permit a timely remedy. Access to the courts will not produce a timely take down of harmful material or other practical, effective remedy if the provider fails to carry out that action.

1.3 The proposed framework proposes a system of *super-complaint*¹. This may be welcome but does not substitute for the right of every person to access a fair, independent tribunal and to an effective remedy where they have suffered harm at the hands of a regulated entity. A *super-complaint*, of its nature, will be managed by entities who will have to make decisions on potential or actual themes for such complaints which may or may not cover the individual harm that is the subject of the complaint. Such complaints can only be built up over time, thus further denying a user a timely, fair, independent and accessible remedy. Such a system is a useful investigation method where trends are emerging but it actually leaves most individuals without access to a remedy other than what the provider offers. This is a denial of an individual's right to an effective remedy as part of their right to access justice.

1.4 The lack of a viable, affordable, effective appeal against a provider's decision will contribute to a culture and system whereby platforms will be partially self-regulating, thus undermining the purposes of the Bill.

1.5 The lack of an effective appeals mechanism will tend to contribute to a culture of impunity for abusers whereby they may be encouraged or permitted to continue, knowing that the complaints system is in-house with provider and that no mechanism for independent objective oversight exists, while the person abused lacks an effective alternative.

1.6 There is a foreseeable danger that there will be an ongoing failure to deal with online abuse, causing continuing, long-term harm, trauma and loss to those who are the object of such abuse.

1.7 Without such a mechanism, the Commission will lack vital evidence on practice of the platforms: evidence that would build the understanding of the Commission in relation to developing ever-better standards and codes.

2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

2.1 There are synergies. The proposed regulation of providers through a range of investigative powers and sanctions, as well as the development of binding Codes of Conduct and provision for super-complaints procedures provide an important, if 'top-down', approach to regulation. It still however lacks a recognition of the need to ensure that each individual user's rights to an adequate and effective investigation are protected through an individual complaint mechanism to an external source.

2.2 In addition to protecting the rights of users of the platforms, an individual complaints' mechanism is essential to inform An Coimisiún and the Online Safety Commissioner about

¹ General Scheme of the Online Safety and Media Regulation Bill Head 52B.

gaps or adjustments needed in regulation, awareness and education. It will bring the necessary balance between the rights of the users and the commercial objectives to the platforms.

2.3 We do not see any conflict. Rather, a protection of individual rights which is currently missing from the Bill.

3. What risks do you foresee if there were no individual complaints mechanism?

3.1 The principal risk is that online harm will continue to be a significant problem for those who experience digital abuse in an unregulated or under-supervised environment. It is necessary to have external oversight of commercial, corporate, for profit providers handling of complaints in order to ensure that providers establish and maintain robust, fair and timely complaint handling mechanisms which accomplish the objective of protecting individual rights, taking down harmful content, limiting abuse and reducing harm.

3.2 The proposed power of scrutiny by An Coimisiún is insufficient because it will not give independent assessment or data on either inadequate or indeed good practice in providers' in-house complaints mechanism, thus limiting its understanding of what constitutes safe digital platform regulation and therefore failing to fulfil its mandate in relation to safety.

3.3 The so-called *super-complaint* mechanism requires 'gatekeepers' to gather, distil and make assessments which will only relate to chosen specialist themes, thus denying an individual remedy to many, likely including those who are least resourced and most vulnerable.

3.4 Without an individual complaints' mechanism, it is likely that providers will continue to partially self-regulate thus negating one of the purposes of the Bill.

3.5 Those who share information in the broadcast and offline media world will continue to be regulated more closely than those who provide material in the digital world. This is unfair and an additional burden on an industry which is currently an important source of information, ideas and debate and which ready has difficulty surviving as it competes against digital operators.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

4. 1 All categories of harm named in the Bill should be covered.

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

5.1 Yes. As is commonplace with other complaints mechanisms, criminal matters for the police should be referred to the police or other appropriate law enforcement agencies.

5.2 A robust first instance investigation should already have dealt with most suspected criminal activity and ensured that it was referred to the relevant law enforcement body.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

6.1 As is the case with other oversight bodies – Health Information and Quality Authority (HIQA), Financial Services and Pensions Ombudsman (FSPO) – the legislation and subsequent codes of conduct and rules of the An Coimisiún should require providers to engage in a timely, robust and thorough investigation of complaints at the outset. If the providers provide such systems, then only particularly complex or novel cases will come before independent complaints mechanism.

6.2 The experience of other countries suggests that in reality, most cases are solved at provider level, with the provider knowing that an independent appeal is likely to be pursued in the case of shortcomings in the first instance complaint.

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures How would this balance be affected by matters of scale and volume of content?

7.1 Many tribunals and complaints mechanisms have had to address the balancing of rights between complainant, provider and/or regulator. This balancing is required by the Irish constitution, the EU Charter of Fundamental Rights and the European Court of Human Rights amongst others. Issues of freedom of expression, fair procedure, right to privacy, rights to an effective remedy and rights to be protected from serious harm are amongst the rights that must be considered.

7.2 Guidance on complaints systems which will also be relevant for an individual complaint mechanism is provided by the UN's guidance on General Principles for Business and Human Rights² and would require the mechanism's guiding principles to ensure that it is legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue with stakeholders. Ireland's National Action Plan on Business and Human Rights, and subsequent guidance issued in 2021,

² https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf_para.31

recognises the right to a remedy as a priority focus in establishing responsible business practices consistent with those General Principles³

8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

8.1 It should be overseen by the Online Safety Commissioner to ensure coherence, clarity and ongoing learning.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

9.1 Tier 2. An avenue of appeal which will be required for only the most complex or novel of cases or as a result of significant failure by ineffective provider systems. The main obligation for investigation and remedy should be with the providers' own robust and effective complaints' systems.

10. How should the success or otherwise of an individual complaints' mechanism be measured?

10.1 This is a matter to be reviewed once a form of individual complaints' mechanism is established.

10.2 However, in broad general terms, the mechanism will succeed if those who experience online harm which is not effectively dealt with by the provider have an affordable, easily understood, appropriate system available to limit the harm and provide an effective remedy. Indicators are likely to include:

- Timeliness. Digital harm happens quickly. Remedies too must happen quickly.
- Focus on the needs of users. Both providers and complainants need to be satisfied that their needs are being addressed.
- Ongoing learning. Providers should be able to learn from this mechanism about improvements to their complaint investigation systems.
- Cost effectiveness.
- Fair. Procedures are fair and transparent.

³ <https://www.dfa.ie/media/dfa/alldfawebsitemedia/National-Plan-on-Business-and-Human-Rights-2017-2020.pdf> and https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Guidance_on_Business_and_Human_Rights.pdf

- Trust. Digital users know and trust An Coimisiún and the Online Safety Commissioner.
- Platforms learn from complaints appealed to the mechanism to improve their processes, procedures and investigation.

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

The review should take place no earlier than five years of operation of the mechanism, as this is an entirely new regulatory system which needs time for development, building understanding, and understanding effectiveness

Conclusion

We trust that the above submission is useful to the Online Expert Group in its consideration of an independent complaints' mechanism. If we can be of any further assistance, please do not hesitate to contact us.

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Broadcasting Authority of Ireland

WRITTEN SUBMISSION TO THE ONLINE SAFETY EXPERT
GROUP ON AN INDIVIDUAL COMPLAINTS MECHANISM

March 2022

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Introduction

The Broadcasting Authority of Ireland (“the BAI”/“the Authority”) is the statutory body with responsibility for the regulation of broadcasting services in Ireland, established pursuant to the [Broadcasting Act 2009](#). It is the representative body appointed by the Irish Government to the European Regulators Group for Audiovisual Media Services (“[ERGA](#)”), an advisory body to the European Commission on the development and implementation of media policy and legislation, including the Audiovisual Media Services Directive (“the [AVMSD](#)”), and, more recently, the Digital Services Act (“the [DSA](#)”), and the [European Media Freedom Act](#).

Through its national and European work, for the past number of years, the BAI has been contributing extensively to the formulation of audiovisual policy and legislative proposals, as well as on the transposition and implementation aspects of regulatory law for audiovisual media services and online platforms. In accordance with proposals set out in the Online Safety and Media Regulation Bill (OSMR) 2022, the BAI will be dissolved, and its staff and functions will transfer to the new Irish media regulator – an Coimisiún na Meán/the Media Commission.

It is in this context, that the BAI welcomes the opportunity to respond to the consultation of the Online Safety Expert Group on an Individual Complaints Mechanism (ICM).

Overview of BAI Policy on Harmful Online Content Regulation 2019-2022

BAI Submission to Government Consultation on the Regulation of Harmful Online Content on Online Platforms and the AVMSD, 2019

The BAI has been evolving its policy on the regulation of online platforms prior to and since its first [submission](#) to Government in early 2019. This submission proposed a systemic approach to the regulation of online platforms pursuant to the AVMSD, with the overall aim of preventing, minimising, and rectifying online harm as it would affect Irish citizens.

The approach proposed by the BAI was principally driven by the requirement for the regulator to manage issues of scale, but the BAI was firmly convinced that the strategic approach underpinning systemic regulation, which focused on the regulation of a platform’s systems, policies, processes, and procedures, was best suited to the activities of large platforms, given the extent of their reach and their impact on society and individuals in an evolving media environment.

In developing its 2019 policy submission, the BAI examined the potential for an ICM as part of the proposed regulatory framework. The key barrier to implementation of such a mechanism was identified as one of managing the potential scale of complaints that might arise – both in Ireland and, based on the final provisions of the law, from across the European Union in relation to the matters in scope of the AVMSD. The experience of major platforms in trying to fully, and adequately, address complaints in a timely manner (notwithstanding the significant level of resources and technology dedicated to such activities), was factored into the BAI’s thinking, as were the practical challenges of dealing with language, cultural/social differences, and the range of political sensitivities across the Member States of the European Union.

Submission to Oireachtas Joint Committee on Tourism, Culture, Arts, Sport, and Media, 2021

In 2021, the BAI further developed its policy position in response to the publication of the General Scheme of the Online Safety and Media Regulation Bill and at hearings of the Oireachtas Committee for Tourism, Culture, Arts, Sport, and Media.

In its [submission](#) to the Joint Committee, the BAI welcomed the General Scheme's provision for a Systemic Complaints Mechanism and noted that this approach would assist the regulator in managing issues of scale. However, the BAI also noted its concern on the absence of a takedown mechanism within the General Scheme and advised the Committee to reconsider the inclusion of a system facilitating the swift removal of content. The Authority noted that there must be the potential for the Media Commission ultimately to order the timely, fair, and proportionate removal of content in certain circumstances, subject to any necessary regulatory safeguards that would be desirable to accompany such interventions.

Submission to Online Safety Expert Group on an ICM, 2022

This submission builds on our existing regulatory policies, knowledge, and experience, including our experience in developing and managing an independent complaints regime for broadcast content in Ireland, and our significant engagement with a wide range of stakeholders on the future regulation of online platforms. It represents an evolution of our policy position, reflecting public debate, and the progression of issues and developments in online content regulation over recent years.

We firmly believe that different kinds of complaints mechanisms can, and should, play a role in a regulatory framework for media services, including online platforms, and that users of platforms, particularly children, should have a right to be heard and have an opportunity for redress. ICMs within regulatory regimes have the potential to vindicate the rights of individual or collective interests where these have been adversely impacted by the policies, practices, decisions, actions, or inactions of a regulated entity.

The BAI is of the view that any ICM for content on online platforms would need to be adequately resourced and scoped appropriately in order to function effectively. We would also note that we strongly support the systemic regulatory framework for online safety, as set out in the OSMR Bill, and believe this approach may assist in supporting the objectives of addressing harms which impact on individuals.

In this submission, in answering the suggested questions posed by the Expert Group, we elaborate on these matters which we hope may assist the Group in considering an individual complaints mechanism.

Response to Suggested Questions

Question 1

What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

Currently, online platforms have varying policies, processes, and practices for addressing complaints in accordance with their own standards and procedures, and on their own terms. The BAI fully acknowledges the level of dissatisfaction and frustration – indeed, at times, distress – expressed by platform users with the manner in which their complaints have been addressed or failed to be addressed by platforms. The BAI also acknowledges the wider hurt and impact that such actions or inaction may have on those close to the user, as well as on society more generally.

In principle, the value of an ICM as part of a wider regulatory system, as an avenue of redress and as a way of reducing online harm, is as a mechanism to balance the power and impact of platforms with the rights of individual citizens. It would provide an *independent* right of redress and has the potential to remove an individual from a harmful situation and/or address the harm being caused to an individual in an accountable and transparent manner, providing it is resourced sufficiently.

It is vitally important to have clarity on whether the ICM is expected to deliver value in additional ways. The functions, goals, and consequences of an ICM decision will have quite significant implications for how it is to be introduced in statute. Is it also intended to serve other regulatory and/or legal purposes beyond addressing immediate harms? For example:

- Is it intended as providing a means for the regulator to assess a platform's overall compliance with an online safety code?
- Will the ICM contribute to an assessment of a platform's performance within the wider compliance and enforcement regulatory regime envisaged pursuant to the legislation?
- Is it intended as a direct or indirect route for the regulator to sanction a platform for a breach of statute or statutory code?
- Are consequences intended for the individual or group that posted the harmful content online?
- Are consequences intended for a platform that fails to comply with a direction issuing from an ICM decision?

If an ICM is established in statute, the BAI considers that its key purpose should be solely as a means of removing an individual from a situation of harm (as defined in the legislation) which presents a specific and immediate threat to the life, health, or well-being of any individual. (We elaborate further on this below.)

In addressing the questions posed above, it is important, in the BAI's view, not to lose sight of the potentially significant changes that could be realised by a systemic approach to regulation of such practices (depending on the regulatory approach adopted). For example:

- Platforms would operate under a uniform code of standards applying to all platforms and compiled independently by a regulator in consultation with all interested stakeholders.
- Such a code could set clear expectations on the timelines, processes, and procedures for responding to complaints by service users.
- A platform would be required to account to the regulator for the operation of its complaints systems and processes, and the measures taken to ensure compliance with regulatory codes and standards.
- A platform's performance against such commitments would be assessed and measured by the independent regulatory body who would report on and publish the results of its activities in this regard.

Such approaches have the potential to deliver significant strategic change, over time, not only to the complaints mechanisms currently provided by platforms, but to the ways in which platforms provide their services to users of their platforms. Accordingly, the introduction of an ICM should not be introduced at the expense of a strategic approach to regulation of the activities of online platforms.

Careful consideration needs to be given to the form of redress arising from a decision in the ICM process and the procedures for giving effect to any such decision. If the primary function of the ICM is to remove harmful content impacting an individual, this could be done by way of a "take-down" notice (i.e., a direction of the regulator to remove a specific piece of content). However, it will be important that the system and procedures for taking down such content should be reflected in the legislative provisions. If our understanding of Section 139ZV of the Bill is correct, the *Content Limitation Notice* procedure as envisaged in the Bill would appear to be quite an onerous procedure for the regulator to provide redress for an individual experiencing immediate harm and, therefore, would not appear to be a suitable mechanism for take-down of content arising from individual complaints.

Of course, if a decision of an ICM is intended to serve more than the objective of removing harmful content impacting an individual, further statutory provisions will also need to be provided to support the additional regulatory functions attaching to such actions.

Question 2

Do you see any conflict or synergies between an individual complaints' mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

In the BAI's view, an ICM would not conflict with the systemic approach to regulation envisaged in the OSMR Bill, although we do not consider an ICM to be a systemic approach to regulation, nor see it as an alternative to a systemic approach. Depending on the scope and objectives of the ICM regime, it could be viewed as complementary and as having the potential to, not only protect individuals from harm, but to create real-time data and information to inform the regulatory system, including the need to revise and evolve the regulator's harmful online content policies and codes over time.

If a legislative provision on an ICM is included in the Bill, the BAI is strongly of the view that platforms should still be the initial point of complaint and potential resolution for platform users. Platforms should be required to have clear complaints-handling arrangements in place,

including policies, procedures and processes that comply with any specific provisions of the legislation and/or any online safety code to be introduced by the Media Commission. They should also be accountable and transparent in relation to all the measures taken to comply with the legislation and the Media Commission's codes.

Given the very significant level of resources required to support an ICM, it is essential to ensure that the scale of that activity does not overwhelm or become the sole focus of a new and developing regulator and the regulatory framework it will be responsible for introducing. It is important, therefore, to guarantee that the level of resources provided to support an ICM does not undermine the work of the new regulatory body or, indeed, set it up to fail.

The BAI strongly cautions against the introduction of an ICM in an overly prescriptive way in the legislative provisions that underpin it, especially in ways that might restrict the regulator's ability to develop solutions to address problems systemically, or in a manner that would constrain or may be unrealistic for the regulator to give effect to in practice (e.g. provisions that bind the regulator to specific timelines for responses).

Caution is also strongly advised in ensuring that the design of the regulatory scheme, and the introduction of an ICM specifically, does not facilitate platforms in abrogating their legislative and regulatory responsibilities to their users.

Expectations regarding the timeline within which an ICM scheme can be introduced needs to be carefully managed. Assuming **all** the necessary resources are made available to support an ICM, significant time will be needed to develop supporting codes, policies, IT systems and processes required to deliver it. The development of such systems and procedures would also require significant consultation with rights organisations and advocacy groups to ensure the processes and procedures adopted by the Media Commission adequately address human rights issues and incorporate the needs and requirements of those who will be using an ICM. In addition, sourcing and training of staff to manage and operate the ICM will also take a significant period of time to put in place.

Question 3

What risks do you foresee if there were no individual complaints mechanism?

There is a clear link between the specific risks to individuals that might arise and the content/harms within the scope of an ICM. However, the obvious general risks of not having an ICM, as highlighted by those who support such an approach, is the risk in some cases of individuals being exposed to varying degrees of harm, including real and substantial risks to the life, health, or well-being of individuals, exacerbated by delays in having a complaint resolved or resolved on a timely basis by a platform. These are the situations where the true value of an ICM may lie and where the absence of an ICM may create challenges. Of course, the timeliness of delivering good outcomes in an ICM will be entirely dependent on operating procedures and the level of resources available to support and deliver on such ambition. Finally, it is important to evaluate the potential benefits of an ICM *in context* as part of the wider changes envisioned in the Bill to how platforms process complaints and manage content generally.

Question 4

Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints' mechanism?

The BAI's response on this question has been closely informed by the consideration of the matter of scale, which is discussed in more detail in Questions 6 and Question 7 below.

At the outset, we believe that harmful online content that is, or may, relate to criminal activity should be outside the scope of an ICM. See further our response to Question 5 below.

We also suggest that very careful consideration be given to the categories of harm that should fall within the scope of an ICM if it is to be introduced. We believe that it would be altogether impractical and unrealistic to consider all harms in the scope of the Bill.

If an ICM is to be introduced, an incremental approach to the scope of harms it considers could be adopted. An incremental approach will mean that operational, legal, and regulatory issues involved in the design and implementation of an ICM can be dealt with in a managed way without the regulator becoming overwhelmed by the scale of the different kinds of issues within its remit. This would also give the ICM a degree of "focus" and create a strong evidence base to determine whether it is appropriate (or indeed practical) for the ICM to be extended to include other harms.

Approaches which might be considered could include:

- limiting the harms in scope to the most egregious forms of harm or harms which present a specific and immediate threat to the life, health, or well-being of any individual,
- limiting the mechanism initially to certain categories of complainants (such as minors), and gradually expanding the range of harms and potential complainants over time.

The BAI believes that not all content within the scope of regulation (and therefore complaints) needs to be in the scope of operation of an ICM. Other, alternative approaches could be utilised for dealing with different kinds of complaints concerning other forms of online content e.g. harms affecting society more generally, commercial communications etc. The BAI strongly believes that a systemic approach to regulation, including solutions involving NGOs, advocacy groups and/or existing dispute resolution bodies, are realistic and achievable, and could assist in delivering the objectives of the statute and, in many cases, providing individual redress. Furthermore, the Authority recommends that the Media Commission be given the power to initiate such solutions, as well as having the power to convene such structures according to regulatory need. Such solutions have the potential to address societal issues regarding online content, including e.g., freedom of expression concerns, expressed by societal interests. The BAI would be happy to elaborate its proposals further in this regard to the Expert Group, should it be considered desirable.

Question 5

Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

The BAI believes that harmful online content that is, or may relate to, criminal activity should be outside the scope of an ICM. A clear distinction between harmful content and harmful online content that may be of a criminal nature, reflecting, *inter alia*, existing legislation creating criminal offences manifesting through online content, needs to be preserved. It would not appear to be appropriate for the Media Commission to make determinations through an ICM about whether conduct of individuals in posting individual items of content in specific cases is, in essence, criminal in nature. The roles, specific legislative and constitutional remits and investigatory powers afforded to other players in this area e.g., An Garda Síochána, Hotline, the Director of Public Prosecutions, should be preserved. However, there should be a responsibility for the regulator to alert the appropriate State authorities of criminal or potentially criminal content that comes to the regulator's attention when exercising its functions.

Specificities and complexities associated with regulating how platforms manage criminal content will need to be reflected clearly, and cautiously approached, in the Media Commission's codes at a more systemic level. Consequently, the BAI recognises the value of, and clear need for, structured co-operation arrangements, and channels of communication and information sharing etc. between all relevant bodies.

Question 6

How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

In the view of the BAI, the scale issue is one of the most significant challenges associated with the implementation of an effectively functioning ICM. As this question highlights, the issue is complicated further by complexities involved in the interaction between European Union Law and National Law, and the question of what extent, if any, an ICM would need to be made available to the entire population of Europe.

As a starting point in considering this question, the BAI submits that an ICM which covers all the harms envisioned in the Bill and which is to be made available to all European citizens may be unworkable in practice. Rather than starting with a very broad approach in mind, the BAI has suggested in its response to Q4 that if an ICM is to be introduced, it could start by focusing on an individual issue (e.g. the protection of minors from cyberbullying) and its scope could be expanded on an incremental basis. This would allow the operational, legal, and regulatory issues involved in implementing an ICM to be explored without scale overwhelming the new regulator.

Consequently, the BAI suggests that the Expert Group may wish to consider exploring potential approaches to making the scope of an ICM manageable. For example:

1. The scope of the mechanism could be restricted to a single issue, or small number of issues.
2. Access could be limited to those directly impacted by harmful online content.
3. In the first instance, complaints could be directed to the service provider, and only when all avenues of complaint have been exhausted by the complainant with a platform should a complaint be submitted and considered by the ICM.
4. The basis upon which a complaint can be made could be confined e.g. only in cases where there is a real and substantial risk to the life or well-being of the complainant.
5. Notices could be issued by the Media Commission without prejudice to determinations of liability regarding the platform or user that posted the content.
6. The regulatory purpose of an ICM could be limited to decisions on whether content is harmful and should be removed.
7. Any challenge to a decision of an ICM could be limited to administrative grounds only.
8. Consider restricting the scope of the ICM to Irish residents only, providing this can be accomplished in a way that does not deprive Member States of the ability to offer similar protection to their own residents (e.g. the German Netz law¹). Such an approach, if it was to be considered by the Expert Group, would need to be carefully considered from both a legal and reputational perspective.

The OSMR Bill as currently drafted, although reflecting the provisions of the AVMSD, does not make a distinction between harmful online content pursuant to the Directive and the specified types of harmful online content, such as cyberbullying, in the legislation. The Media Commission is afforded a discretion to decide whether it wants to adopt codes and/or policies to implement Article 28b of the AVMSD separately or whether it wants to combine the approach it takes with other online safety issues that fall outside the immediate scope of the Directive. While it may be difficult for the Media Commission to give practical effect to this distinction, there may, nonetheless, be value in exploring whether an ICM might have a basis in national law solely, unconnected to the transposition of Article 28b of the AVMSD.

If the Media Commission is required to receive complaints from all over Europe, this is likely to drastically increase the volume of complaints received and would require the Media Commission to develop significant capacity or find other means to resolve issues in numerous other EU languages.²

As referenced elsewhere in this submission, issues of scale as they affect an ICM might also be addressed through alternative avenues, for example by the use of co- and self-regulatory arrangements e.g. for complaints on commercial communication and by the use of structured co-operation mechanisms/arrangements between European Union statutory regulators (e.g. to address issues of language, culture etc.)

¹ https://www.bmj.de/DE/Themen/FokusThemen/NetzDG/NetzDG_node.html

² The current population of the European Union is approx. 447,000,000, as compared with Australia, a frequently cited comparator, which has a population of only c. 25,000,000 citizens.

Question 7

In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g., freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

An ICM situated within the wider structure of the Media Commission offers the optimum possibility of achieving the most appropriate balance between protecting and supporting the needs of individual citizens with the vindication of fundamental rights, including the right to freedom of expression. As a statutory regulator, the Media Commission can be expected to comply with fundamental regulatory and administrative law principles, including procedural fairness, accountability, and proportionality in its decision-making. As a media regulator, the Commission can be expected to afford audiences the protections they have always enjoyed, while providing assurance to citizens that the enduring objectives of media regulation – Freedom of Expression, Plurality and Diversity – continue to be a high priority.

In its 2019 *Submission to Government Consultation on the Regulation of Harmful Online Content on Online Platforms and the AVMSD*, the BAI set out its proposals for balancing the regulation of harmful online content on platforms with the fundamental rights of all users, including freedom of expression and those affected by harmful online content. The Media Commission and an ICM will sit within the wider framework of protections afforded to Irish citizens pursuant to the Irish Constitution, the European Convention on Human Rights, and the EU Charter of Fundamental Rights, as well as the Irish Government’s commitment to discharging its obligations under Article 19 of the International Covenant on Civil and Public Rights (ICCPR). The balancing of such rights is already reflected in current broadcasting legislation which requires the BAI to “ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld”.

Given the need to balance such rights, the BAI remains convinced of the need to ground online safety regulation in a *statutory* body that is accountable in respect of its obligations to balance the democratic and individual rights enshrined in the Constitution and in legislation with the right of citizens to be afforded certain protections in the media sphere.

In the view of the BAI, that appropriate balance can be achieved through:

- The inclusion of clear categories and definitions of “Harmful Content” in the legislation
- Adoption by the Media Commission of the guiding principles of the “Smart Regulation” approach recommended by the (previous) UN Special Rapporteur on Freedom of Expression, Mr. David Kaye³ i.e. an incremental and evidence-based approach to the regulation of platforms.
- The wider online safety regime proposed in the 2022 Bill – where the decisions of the ICM will sit within a wider regulatory framework aimed at promoting the reduction of harm and public awareness (e.g. through Online Safety Codes, Media Literacy), and holding platforms to account.
- Proportionality in the implementation of sanctions.

³ <https://freedex.org/a-human-rights-approach-to-platform-content-regulation/>

- The application of principles of natural justice which the Media Commission (and, by extension, the ICM), as a statutory body, will be required to apply to its decision-making practices.
- The publication of transparency reports by the Media Commission in respect of its decision-making pursuant to the ICM.
- The judicious use of Content Limitation Notices pursuant to Section 139ZV of the Act, including the publication of guidance concerning the principles underpinning the issuing of such notices by the Media Commission and the circumstances in which such notices may be applied.

Question 8

Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

The BAI is of the view that if an ICM is to be introduced, it would best sit within the wider regulatory framework with which the Media Commission is charged, rather than being implemented by a separate body.

The BAI believes there is a compelling case for a single media regulator. At a practical level, users of various media services are unlikely to distinguish between different forms of content, the means by which they have received such content, or between the functions of one regulatory body and another. An ICM situated within the Media Commission will facilitate synergies between the various aspects of online content regulation e.g. interpreting and applying the Online Safety Code(s) drawn up by the Commission. It offers efficiency at various levels (e.g. between the regulator and the regulated entities) as well as consistency in the application of regulatory principles, policies, and rules.

Given the scale of the tasks facing the new Media Commission, it may well be preferable to have a second Online Safety Commissioner to oversee the functions of the ICM, including the management of any legal challenges that might arise from its decisions. However, the Governance structures of the Media Commission should facilitate joined-up thinking and the consistent application of regulatory principles, policies, and rules in a cohesive and synergistic fashion.

Question 9

Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

On the basis that an ICM is implemented within the Media Commission, the BAI believes it should be introduced as an avenue of appeal as opposed to a first-line service (see also our responses above). We note that a number of civil society organisations envisage an ICM operating only when the user has exhausted all other available avenues with the platform.

Question 10

How should the success or otherwise of an individual complaints' mechanism be measured?

The success of an individual complaints' mechanism should be measured by how accurately, speedily, and consistently it can resolve complaints, having regard to its statutory objectives and the resources that have been assigned to it. Measurements, such as items of content removed, accounts banned etc. may not be the most appropriate mechanism for assessing whether the *correct* decisions are made through the ICM. Any measurement should be careful to ensure that a balance has been achieved between competing rights in the decisions reached.

Question 11

What would be the appropriate period for review of the operation of an individual complaints' mechanism?

The BAI suggests that a review of the effectiveness of the operation of an individual complaints' mechanism should be undertaken on a periodic basis. This may need to occur more frequently at the outset, e.g. after the first year of operation, but less frequently thereafter.

An Individual Complaints Mechanism

Response from the American Chamber of Commerce Ireland (AmCham) to the Online Safety Expert Group's public consultation on an individual complaints mechanism.

March 2022

The American Chamber of Commerce Ireland

The Voice of US-Ireland Business

The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and Investment.

AmCham welcomes the opportunity to contribute to the expert group's consideration of an individual complaints mechanism in relation to the Online Safety and Media Regulation Bill.

AmCham notes that the creation of an individual complaints mechanism was previously considered in the context of the stakeholder consultation process, carried out over a two-year period, by the Department in relation to the Online Safety and Media Regulation Bill. Following this consultation process, the Department ultimately proposed a model whereby the Media Commission would operate on an auditor-based approach, ensuring that complaints were handled systemically.

AmCham, at this juncture, welcomes this consultation process and appreciates the opportunity to input, given the importance of ensuring all voices and viewpoints are considered when significant policy and regulatory changes are being considered.

AmCham member companies in this sphere make it their priority to protect users from illegal or harmful material on their platforms and are supportive of changes to protect users from harms in digital environments. AmCham believes it is of the utmost important than consumer complaints can be handled in the most efficient manner to bring about a resolution for consumers, allowing for protection from harms, while ensuring fundamental freedoms for the consumer are respected.

In response. To the Online Safety Expert Group's Public consultation on an individual complaints mechanism, AmCham would make four points:

Firstly, in terms of the regulatory model for the Media Commission, following a two-year Department consultation, AmCham shares the conclusion reached by the Department that a systematic approach, as proposed under the Online Safety and Media Regulation Bill, would offer important protections for consumers, while also providing a regulatory environment which supports business. AmCham notes that a systemic approach includes a required code of conduct, significant sanctions, and liability for directors, which is welcomed by AmCham members.

Secondly, on examination of the most suitable regulatory model through which complaints are addressed, proportionality and maintaining the balance between harm and freedom of expression will be essential to ensure that there are no unforeseen circumstances. in order to strike the correct balance between protection from harm and the protection of fundamental freedoms.

Concern does exist that a significant shift away from the systemic model, upon which the Department decided following the initial consultation process, may, in practice, incentivise businesses to pre-emptively remove content from their platforms to remove any risk of liability. This may, in effect, lead to an increased perception by the consumer that the company is engaging in censorship, when this is not the intention of the company, nor the purpose of any action they are taking in this regard.

Furthermore, a significant change to the regulatory model to include an individual complaints mechanism must be considered in terms of the overall resourcing and funding of the regulator, given that such a move would likely increase the resourcing and financing needs.

Furthermore, the complexities which exist across online platforms and services must be considered. As such, given the diversity which currently exists within the digital sector, and the resulting differing

ways in which harms may present across platforms or digital environments, ensuring flexibility exists for companies to allow them to tackle harmful content in the most appropriate way for their particular digital environment will be important.

When looking to the Online Safety and Media Relations Bill, while there is no specific provision for an individual complaints mechanism, this does not mean that complaints cannot be brought to the regulator. In fact, under the Online Safety and Media Regulation Bill, nominated bodies, which include expert nongovernmental organisations, will be able to bring systemic issues to the Media Commission for the regulator's attention. This, in combination with the provision of powers to the Media Commission to develop Online Safety Codes, ensure companies have adequate processes in place to tackle illegal and harmful content, and ensure companies are accountable, will be beneficial in terms of providing protection from harms. Furthermore, in this context, it is important that the regulatory framework is designed with a view to the future, with the expectation that machine learning will be utilised to a greater extent by companies and platform providers to remove and reduce the impact of harmful content.

Thirdly, should the expert group recommend that an individual complaints mechanism be incorporated, under the Online Safety and Media Regulation Bill, AmCham is of the view that this model must be advanced in a manner which works for both consumers and for companies.

As such, AmCham would refer the expert group to the processes utilised by ComReg and by the Financial Services and Pensions Ombudsman. Under such processes, prior to engaging with the complaints mechanism, the consumer must have exhausted the complaints processes offered by the relevant company.

- Such an approach would ensure companies can identify and address any issues arising, or weaknesses in their operations or internal processes to further protect users; without the regulatory body becoming overburdened with common complaints.
- Furthermore, this would allow the prioritisation of resources within the Media Commission to serious, egregious, or unusual complaints, and the associated investigations.
- Such an approach would also remove the need for the regulatory body to become involved in each individual complaint which could, in practice, inadvertently delay the resolution of the complaint for the consumer. In this context, it would also be important that any essential information which should be shared with the relevant company, resulting from a complaint, should not be delayed unnecessarily through a need for the regulatory body to become involved with each individual complaint.

Furthermore, the resolution of an individual complaint should not act as a basis for sanctions to be applied to a company, given the implications this may have in incentivising companies to pre-emptively remove content, and inadvertently increase the perception of censorship in the service being offered to the consumer.

Finally, AmCham notes the importance of the Online Safety and Media Regulation Bill as the transposing legislation for the Audiovisual Media Services Directive (AVMSD). In this regard, it is important that this Bill is progressed through the legislative process in an urgent manner, given the need to ensure Ireland's position as a regional regulatory hub within the EU is protected.

AmCham reiterates its appreciation for the opportunity to contribute to this consultation process and welcomes the Expert Group's consideration of this matter.



16th March 2022

Ms Isolde Goggin

Chair

Online Safety Expert Group on an Individual Complaints Mechanism

C/O Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin TD

23 Kildare Street

Dublin 2

D02 TD30

Dear Chair and Expert Group Members,

We wish to respond to the recent call for input to the Expert Group established by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin TD, in relation to the Online Safety and Media Regulation Bill.

For your consideration we wish to make the following points:

“The Online Safety and Media Regulation Bill, available here, sets out a systemic regulatory framework for online safety. This framework empowers Coimisiún na Meán (the Media Commission) to tackle the availability of defined categories of harmful online content through binding online safety codes and other measures. These codes will set out rules and expectations for how designated online services can make their services safer, including in relation to standards for complaints handling.”

We also note that the purpose of the Expert Group *“is to examine the possibility of providing for an individual complaints mechanism in the Online Safety and Media Regulation Bill.”*

On this basis, our understanding is that ‘advertising’ is not included in this remit.

Nonetheless, in line with your call for input on the topic, we would like to ensure that the Expert Group takes note of the following:

- There is already a well-established and fully functioning cross border complaints system in place in EU member states. This is operated through the European Advertising Standards Alliance (EASA) network. A further advantage of the EASA network is that it’s Europe based, not only EU based.

Board Members: C. Balsamo | B. Dooley | E. Doyle | B. Hughes | C. Leahy | A.M. Lenihan | S. McElligott | K. O’Kelly | K. O’Leary | E. Sheehan | C. Stoney | A. Whittall | S. Williams | D. Winterlich

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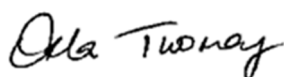


This system has dealt with online complaints for many years. In recent years this has included some developing areas, such as influencer marketing. A core strength of the self-regulatory process is the fact that it can move quickly to address new forms of advertising content. Importantly, each national organisation can take account of local social and cultural content. As this system is already a very effective mechanism for dealing with individual complaints, we believe that there would be no added value in the Irish media commission having a similar mechanism.

- It is also worth noting that, in many cases, the Code provisions outlined by each individual self-regulatory organisation (SRO) in each member state are actually more detailed than those contained in the AVMSD. In an Irish context, it is the ASAI which receives almost all complaints about broadcast (and online) advertisements, and it is our view that this is unlikely to change.
- All of the national SRO's enjoy excellent relationships with their statutory authorities. ASAI and the Broadcasting Authority of Ireland have a well-established and strong working relationship which has functioned effectively and efficiently. A similar relationship with the media commission would allow ASAI to provide feedback on local social and cultural trends. In addition, EASA, which manages the cross-border complaints mechanism, is a strong contributor to EU policy in areas of advertising standards.

We hope these points are of assistance to the Expert Group. Should any further information be required please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink that reads "Orla Twomey".

Orla Twomey,
Chief Executive.

Board Members: C. Balsamo | B. Dooley | E. Doyle | B. Hughes | C. Leahy | A.M. Lenihan | S. McElligott | K. O'Kelly | K. O'Leary | E. Sheehan | C. Stoney | A. Whittall | S. Williams | D. Winterlich



Written Submission to the Expert Working Group set up to review the Individual Complaints Mechanism as part of the General Scheme of the Online Safety and Media Regulation (OSMR) Bill

8th March 2022

Introduction

CyberSafeKids is an Irish charity set up in 2015 to provide expert guidance to primary schools, children and parents in the safe and responsible use of all communications technologies, as well as being a strong advocate for children's digital safety and wellbeing nationally. To date, the charity has spoken to 36,000 children aged 8 - 13 in schools across Ireland and to 8,000 parents, as well as hundreds of teachers. Our sessions provide practical advice on how to embrace the opportunities for learning and enjoyment that technology can deliver, whilst equipping children with the tools to avoid harm.

We welcome the opportunity to make a written contribution to the Expert Working Group on the issue of including an Individual Complaints Mechanism into the General Scheme of the Online Safety and Media Regulation Bill (OSMR).

First and foremost we want to take the opportunity to affirm our commitment to seeing legislation put in place that will fundamentally change the landscape in Ireland in relation to online safety in general, and particularly with regard to children.

The UK Information Commissioner, Elizabeth Denham, expressed concern in 2021 that 13 (the minimum age restriction on most of the popular social media platforms such as Snapchat and TikTok) is "too young" for children in social media environments, because they risk being exposed to "self-harm and extreme dieting" content.¹ She added further that society was yet to make sure that children have the same protections online as in the real world.² We know of children as young as 8 years old using social media who are simply lying about their age to gain access (our latest annual report found that 81% of 8-year olds and 75% of 9-year olds had at least one social media account).³ In addition, Anne Longfield, the former UK Children's

¹ Thirteen may be too young for social media, online watchdog warns, 04.03.2021,

<https://www.telegraph.co.uk/news/2021/03/03/thirteen-may-young-social-media-online-watchdog-warns/>

² Ibid

³ CyberSafeKids Annual Report 2020



Commissioner said in comments made at the end of her tenure in February 2021, that tech companies have a “cavalier” attitude towards protecting young and vulnerable social media users⁴; “I think they will wonder how adults ever let that happen and I think they will look at it in the same way we now look back and wonder how children were allowed to ride in cars without seatbelts.”⁵

Responses to specific questions posed by EWG

1. **What value would you see an Individual Complaints Mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?**

We feel that it is essential that an Individual Complaints Mechanism (ICM) be available to Irish children and their guardians and that OSMR should **provide a vital safety net at a critical point in time**. If a child is being bullied or harassed online through the sharing of harmful material about them and they have tried and failed to get this content removed from the online service(s) in question, then it is essential that there is scope to seek redress through the office of the Online Safety Commissioner and that they can access support and remedial action in a timely fashion (i.e. through time bound takedown notices). We have supported families in situations where there has been either no response (or a negative response) from online services to get content removed or accounts closed. In such cases we have seen that content remaining online can cause great distress to the child involved and to their families. They feel powerless. We have successfully intervened in these cases but we do not offer this kind of formal service and have no resources or formal powers to do so. We rely on building good collaboration with the online service providers so we can access them on behalf of those contacting us. **The ability to seek an individual remedy should be a service that is widely available to all children through the office of the Online Safety Commissioner.**

2. **Do you see any conflict or synergies between an Individual Complaints Mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?**

⁴ Children ‘will grow up to question exposure to wild and dangerous social media’, 15.02.21, <https://www.irishnews.com/magazine/technology/2021/02/15/news/children-will-grow-up-to-question-exposure-to-wild-and-dangerous-social-media--2222126/>

⁵ Ibid.



We believe that offering an Individual Complaints Mechanism would be complementary to the other safeguarding measures that the new law will put in place. The Online Safety Codes will offer a minimum standard to which all services must adhere, and on which they must provide regular reports. Within the codes, there should be minimum standards around how complaints are handled and the timeframes to which they should adhere. We are concerned that online services are currently not sufficiently transparent about the complaints they receive, how they are handled and the timeframes around each case. We have heard plenty of examples of complaints not getting a response at all. Under the new scheme, the onus should still be on the online services to provide an adequate frontline response and resolution to complaints. It should only be in the event that they have either failed to respond within a reasonable timeframe (which should be determined in the codes but expressly no more than 48 hours) or provided an inadequate response, that a case can then be brought through the ICM. This will provide an added incentive to online service providers to deal efficiently and effectively with any complaints presented to them.

The E-Safety Commissioner, Julia Inman Grant, recently said (in an interview on RTE's *Primetime* on 25th January 2022) *"the Individual Complaints Mechanism is the one of the most successful aspects of our Scheme... so much of the online abuse is targeted at the individual... to be able to help them when there is nowhere else to turn, is really useful."*

It is noteworthy that the new Online Safety Act which came into force 2022 in January expands their scheme further, in recognition of the support it can provide to victims.

3. What risks do you foresee if there were no Individual Complaints Mechanism?

We are concerned that without an ICM the law would fail to provide the vital safety net we outlined above. This would disincentivise individuals to report a case that they did not feel had been adequately handled or had received no response from an online service, if they did not believe they could get a timely remedy to their individual case. Why would they report a case just to have it logged but to receive no remedy? Timeliness is often everything in these cases; it is about getting harmful content removed as quickly as possible so that it does not continue to provide ongoing harm. The online services are often effective in presenting a very positive picture of their performance. They have huge capacity and funds to provide such reports whilst avoiding specifics around issues like complaints handling. We want to see real accountability put in place, where they can be called out by individuals over online harms they have been unwilling to remove. A big question for us is, if the ICM is *not* put in place, how many times



would an online service provider have to fail in order to face a sanction? Would 10 reports constitute a failure or would it be in the region of 50-60 or even higher? Each one of those is an individual case and a failure in such cases could mean continuing distress and harm. A further question remains over how such cases would be monitored and logged by third parties and what resources would be provided to them to do so.

4. Which of the categories of harmful online content set out in the Bill should be covered by an Individual Complaints Mechanism?

We believe that the ICM should cover (and include time bound takedown notices by way of resolution):

- a. Cyberbullying material
- b. Image-based abuse (sharing, or threatening to share, intimate images without the consent of the person shown).
- c. 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
- d. Any illegal content including Child Sexual Abuse Material

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

No, the same approach should be used - i.e. timely removal of the offending content. Further actions will differ, particularly in the case of illegal content, but the timely removal is the key action. Fines could differ in relation to the severity of the offence.

6. How can issues of scale and volume of content be addressed, particularly if an Individual Complaints Mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

- a. Whether or not the ICM is available to the whole of Europe, there should be an efficient triage system in place and it should be clear that all channels with the relevant online service have been exhausted within a reasonable timeframe (again, not more than 48 hours) before bringing the complaint to the Commission to ensure it can focus on where the need is greatest and most urgent.



- b. If there is an onus on the Irish Online Safety Commissioner to offer the ICM to all European countries, then EU funding (or a levy from online services based in Europe as a whole rather than just in Ireland and fines should further represent a proportion of European budgets, rather than just Irish budgets) will need to be sought to support the cost of extending this service to the whole of Europe, including translation, triage structures in regional or national centres.
- c. If the online service providers are doing their job properly in relation to handling complaints then the ICM should not be overwhelmed. Effective triage will need to be put in place to ascertain whether or not this is the case.

Comment on private communication services

We are very concerned that the designated online services **will not include private (also called interpersonal) communications services** in relation to harmful content. We know that 39% of the 8-12 year olds we surveyed last year were using WhatsApp, despite the minimum age restriction of 16 on this service.⁶ We also know that children largely use the group chat function available through this service, as well as similar services like Signal. We have come across a number of incidences of bullying through WhatsApp in primary schools. We question how a service that allows group chats with up to 250 members can be defined as ‘private’.

Perhaps a minimum standard could be applied that says that any harmful content shared within a group of 5 (for example) or more participants, or shared across to additional groups with 5 or more participants, means it falls under the category of a ‘designated service’. We believe it would be a significant oversight to discount such services from the category of a designated service in relation to harmful content and that the onus should be on such services to ensure that content is not negatively impacting on a child.

Final Remarks

We would like to thank the EWG for providing this opportunity to us to comment on the Individual Complaints Mechanism. We believe the OSMR, with this provision included, has the potential to change the landscape in relation to online safety in Ireland, if we get it right.

Website:	www.cybersafekids.ie
Facebook:	https://www.facebook.com/CyberSafeIreland
Twitter:	@CyberSafeIE

⁶ CyberSafeKidsAnnual Report 2020



UCD Centre for Digital Policy
Ionad um Bheartas Digiteach UCD



21 March, 2022

BY EMAIL: onlinesafetyconsultation@tcagsm.gov.ie

Re. Consultation on an individual complaints mechanism

To the expert group on an individual complaints mechanism,

Members from Dublin City University's Anti-Bullying Centre, University College Dublin's Digital Policy Centre, and ISPCCC would like to thank the expert group for the opportunity to provide feedback on the practicalities and potential operation of an individual complaints mechanism as it pertains to the Online Safety and Media Regulation (OSMR) Bill 2022.¹

As a preface to our questions' responses, we note the following contextual factors situating the individual complaints proposal in Ireland:

First, the authors acknowledge our previous research and expertise showing how the impacts of harmful online content can be devastating for those who experience it,² gendered,³ and can carry particularly negative consequences for children.⁴ This is consistent with research findings that the effects of online harms are amplified due to the nature of the online environment⁵ and that members of historically marginalised and vulnerable groups are at increased risk of experiencing such harms.⁶

¹ See: [gov.ie](https://www.gov.ie/en/publication/98270-online-safety-expert-group-on-an-individual-complaints-mechanism) (1 March 2022) Consultation on an individual complaints mechanism

<https://www.gov.ie/en/publication/98270-online-safety-expert-group-on-an-individual-complaints-mechanism>

² Farries, E., & Sturm, T. (2019). Feminist legal geographies of intimate-image sexual abuse: Using copyright logic to combat the unauthorized distribution of celebrity intimate images in cyberspaces. *Environment and Planning. A*, 51(5), 1145-1165. doi:10.1177/0308518X18786964; Siapera, E., Moreo, E., & Zhou, J. (2018). *Hate track: Tracking and monitoring online racist speech*. Irish Human Rights and Equality Commission, <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-Speech-Online.pdf>

³ Farries, E. & Ansbro, D. (2020, November 24) RE: Harassment, Harmful Communications and Related Offences Bill 2017 [letter to members of the Oireachtas Committee on Justice and Equality]. Retrieved from <https://www.iccl.ie/wp-content/uploads/2020/11/ICCL-UCD-Submission-on-Harassment-Harmful-Communications-Bill.pdf> ; see also: Andreasen, M. B., Mazzone, A., Foody, M., Milosevic, T., & Norman, J. O. H. (2022). The Gendered Experiences of Image-based Sexual Abuse: State of the Research and Evidence-based Recommendations. Retrieved from: <https://antibullyingcentre.ie/wp-content/uploads/2022/02/DCU-Online-Abuse-Report.pdf>

⁴ ISPCCC, Opening Statement on the General Scheme of the Online Safety and Media Regulation Bill, Retrieved from: https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/submissions/2021/2021-05-13_opening-statement-john-church-et-al-ceo-ispccc_en.pdf ; ABC, Written Submission to the Oireachtas Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, Retrieved from: <https://antibullyingcentre.ie/wp-content/uploads/2021/04/School-Bullying-with-specific-reference-to-cyberbullying-and-internet-security-during-Covid-19.pdf>; ABC, written submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht on the OSMR, Retrieved from: <https://antibullyingcentre.ie/wp-content/uploads/2021/04/School-Bullying-with-specific-reference-to-cyberbullying-and-internet-security-during-Covid-19.pdf> ; ABC submission to the Joint Oireachtas Committee on Justice and Equality on Harmful Communications, Retrieved from: <https://antibullyingcentre.ie/wp-content/uploads/2021/12/Oireachtas-Joint-Committee-on-Justice-and-Harmful-Communications.pdf>

⁵ Supra notes 2, 3 and 4

⁶ Supra notes 2 and 3

People are at greater risk due to their age, LGBT+ status, race or racialisation, and ethnicity.⁷ Given these demonstrated risks and harms, we acknowledge the many children's groups and advocates in Ireland who have called for individual complaints mechanisms.⁸ The experiences of these advocates are important and their input has been pivotal in bringing this call to focus. Children and young people's voices have also been prominent in putting a spotlight on the real issues they experience every day online, and in articulating the difference such a complaints mechanism would make.⁹

Second, we note the risk highlighted by individuals within the expert group that the OSMR Bill may be superseded by similar EU legislation currently tabled.¹⁰ For example, it is not clear to the authors how an Individual Complaints Mechanism will function alongside the role of the National Digital Services Coordinators provided for in the text of the Digital Services Act (DSA) Package.¹¹ Concerns have been raised that there will be significant overlap and conflicts between the proposed Irish scheme and the requirements of the forthcoming EU legislation – so much so that if the domestic scheme takes effect it will need to be significantly recast.¹² Officials at the Department recognise there will be overlaps and that these will need to be worked through when the DSA is finalised.¹³

Third, we see that the Expert Group requests for the practicalities and potential operation of the individual complaints mechanism will receive responses backed by limited real world data and empirical research-based evidence. Two models raised particularly for comparative evaluation include the Australian eSafety Commissioner¹⁴ and the Irish Data Protection Commission.¹⁵ Regarding the former, we have positive reports from the Australian Communications and Media Authority particularly in regards to cyberbullying complaints mechanism for young people who experienced

⁷ Supra notes 2, 3 and 4

⁸ See Supra note 4 and also the call of the #123OnlineSafety Campaign of which ISPC is a member:

<https://www.childrensrights.ie/resources/press-release-individual-complaints>; the Ombudsman for Children's Office and the Special Rapporteur on Child Protection, Professor Conor O'Mahony, retrieved from:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-12/2/?highlight%5B0%5D=conor&highlight%5B1%5D=online&highlight%5B2%5D=safety&highlight%5B3%5D=safety&highlight%5B4%5D=online&highlight%5B5%5D=safety; calls by various women politicians in Ireland:

<https://www.independent.ie/irish-news/i-spend-my-evenings-blocking-abusers-td-36474560.html>; and impacts on female journalists: <https://www.theguardian.com/media/2021/may/02/un-catalogues-chilling-tide-of-abuse-against-female-journalists>

⁹ Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht debate - Thursday, 6 May 2021. *General Scheme of the Online Safety and Media Regulation Bill 2020: Discussion (Resumed)*

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-06/2/?highlight%5B0%5D=conor&highlight%5B1%5D=online&highlight%5B2%5D=safety

¹⁰ Mr Ronan Lupton SC associated himself with the written submissions of Professor McIntyre.

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-07/3/

¹¹ Section 1 lays down provisions concerning national competent authorities, including Digital Services Coordinators, which are the primary national authorities designated by the Member States for the consistent application of this Regulation (Article 38); This has been acknowledged in Oireachtas discussions: <https://www.kildarestreet.com/committees/?id=2022-01-19a.699&s=Digital+Services+Act#g702>

¹² Digital Rights Ireland, Submission to Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht General Scheme of the Online Safety and Media Regulation Bill, March 2021

https://pdfhost.io/v/9Tbplu6L4_Microsoft_Word_OSMR_submission_Digital_Rights_Ireland_finaldocx.pdf; See also oral submissions

https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/submissions/2021/2021-05-26_opening-statement-tj-mcintyre-chairman-digital-rights-ireland_en.pdf

¹³ Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht debate - Thursday, 6 May 2021. *General Scheme of the Online Safety and Media Regulation Bill 2020: Discussion (Resumed)*, Retrieved from:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-06/2/?highlight%5B0%5D=conor&highlight%5B1%5D=online&highlight%5B2%5D=safety

¹⁴ The functions of the eSafety Commissioner are set out in Section 27 of the Online Safety Act 2021:

<https://www.legislation.gov.au/Details/C2022C00052>

¹⁵ Data Protection Commission: <https://www.dataprotection.ie/>

serious cyberbullying.¹⁶ Further, in the accounts of the Australian eSafety Commissioner, the volume of incoming complaints was not raised as an issue that hampered the effectiveness of the mechanism itself.¹⁷ However, we have not seen independent evaluation reports verifying the efficacy of this function. Regarding the latter, it is well established that the Data Protection Commission, with its function as the de-facto EU regulator, has been overwhelmed despite resources totalling over EUR 19 million for 2021.¹⁸ There is also a dearth in industry evidence with respect to the breadth and depth of the problems an individual complaints mechanism is seeking to solve.¹⁹ We acknowledge the concerns raised by members in this expert group about how mechanisms and resources will be put into place to effectively manage the potential volume of complaints an individual complaints body may receive.²⁰ As we detail below, we also stress the need to better educate and resource existing regulatory bodies, to understand the nature of online crimes and harms, to provide support, compassion, and effective solutions, at speed.

Fourth, we acknowledge the limitations of the proposed solution and the existence of parallel proposals. Experts have described the limitations of singling out harmful content and removing it in a binary fashion rather than considering how AI and machine learning in corporate environments function to amplify and reward harmful forms of content in a manner that is non-binary.²¹ We query whether this focus on an individual complaints mechanism as the panacea loses sight of these larger systemic issues and query how existing parallel proposals might respond to these systemic problems. For example, the international NGO Article19 proposes the institution of social media councils (SMCs) at the national level as alternative supervisory bodies which would be independent from social media companies and more representative of specific populations.²² SMCs would explore developing non-binary approaches to content moderation in which stakeholders could all share their views on requirements in discussion with industry who could outline what is technically possible, towards

¹⁶ Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme), Retrieved from:

<https://www.infrastructure.gov.au/sites/default/files/briggs-report-stat-review-enhancing-online-safety-act2015.pdf>

¹⁷ We acknowledge the Australian eSafety Commissioner Ms. Julie Inman Grant's testimony in front of the Oireachtas Joint Committee, discussing the effectiveness of the Australian scheme:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-21/2/?highlight%5B0%5D=julie&highlight%5B1%5D=inman&highlight%5B2%5D=grant&highlight%5B3%5D=safety&highlight%5B4%5D=granted&highlight%5B5%5D=online&highlight%5B6%5D=online

¹⁸ This figures were taken from: <https://www.wrangu.com/available-resources-by-member-states-for-dpa-and-enforcement-actions-personal-data-protection-is-fundamental/>

¹⁹ Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht debate -

Wednesday, 19 May 2021, *General Scheme of the Online Safety and Media Regulation Bill 2020: Discussion (Resumed)*:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-19/2/?

²⁰ Mr Ronan Lupton SC in his statement to the Oireachtas described 'complaints lines - call centres, almost - had to be set up to deal with the volume coming through.' See:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-07/3/

²¹ See e.g. Douek, Evelyn, Content Moderation as Administration (January 10, 2022). forthcoming Harvard Law Review Vol. 136, Available at SSRN: <https://ssrn.com/abstract=4005326> or <http://dx.doi.org/10.2139/ssrn.4005326>; Gillespie, T., Aufderheide, P., Carmi, E., Gerrard, Y., Gorwa, R., Matamoros-Fernández, A., ... & West, S. M. (2020). Expanding the debate about content moderation: Scholarly research agendas for the coming policy debates. *Internet Policy Review*, 9(4), Article-number.

²² Article19 (2021a). Social Media Councils. One piece in the puzzle of content moderation. <https://www.article19.org/wp-content/uploads/2021/10/A19-SMC.pdf>; Article 19 (2021b). Facilitating the creation of a Social Media Council in Ireland.

Article19. 1 - 9; Celeste E., & Farries E., (2022) Towards an Irish Social Media Council: Challenges and Opportunities. Abstract submission to the AoIR 2022.

reaching agreements on avenues forward.²³ Simultaneously, people are being targeted and harmed and have a right to an effective remedy.²⁴

Finally, we acknowledge that the extensive Joint Committee on Tourism, Culture, Arts, Sport and Media hearings, which took place during the pre-legislative scrutiny of the Bill, also involved feedback from numerous experts and rights groups, including those representing young people.²⁵ Nonetheless, we find it important that feedback from these demographics as regards to the individual complaints mechanism be solicited by the expert group as well, if at all possible within the short timeframe designated for the expert group's operation. In relation to the perspectives of children and young people, for example, this could perhaps be achieved by engaging the Department of Children, Equality and Disability Participation Unit²⁶, or via the Office of the Ombudsman for Children.²⁷

With this contextualisation, the authors provide input to these matters in response to some of the suggested questions.

Question 1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

The value an individual complaints mechanism could add is to provide an appeal mechanism to the regulator when service fails to effectively respond to a complaint. The mechanism might enable more direct engagement with the service(s) on behalf of the individual. An individual complaints mechanism could therefore complement the existing mechanisms available from other institutions, which do not provide sufficient avenues of redress for victims of various types of online harms and exposure to harmful online content. We discuss this further below. This value may be contingent on also ensuring those other institutions are appropriately resourced and that the addition of a new complaints mechanism does not create overlap and conflicts between them, or with the requirements of the forthcoming EU legislation.

Furthermore, an individual complaints mechanism could provide additional value if it were also used as a tool for compensation and reparation for those individuals affected by failures of companies' moderation systems. Since one of the key structural features of the Bill is to impose administrative and financial sanctions on media providers, we question whether the proceeds of such financial sanctions should only be directed to the regulator? Or should an individual complaints mechanism also be used to channel repairs to individuals who experienced significant harms on platforms, warranting redress.

Existing mechanisms available from other institutions

The changes proposed by the Government through the OSMR Bill will address the issue of complaints handling through Codes of Conduct (Practice) and/or via a 'super complaints scheme' to address

²³ For example, Article19 have suggested that once the DSA comes into force, the SMC could serve as an out-of-court dispute settlement mechanism as required under Article 17. The complaints mechanism that it will operate will meet the requirements for certification as provided for in Article 18 of the Proposal for the DSA.

²⁴ EU Charter of Fundamental Rights: <https://fra.europa.eu/en/eu-charter/article/47-right-effective-remedy-and-fair-trial>

²⁵ See for example the Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht debate (13 May, 2021), Retrieved from:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-13/2/

²⁶ Government of Ireland, Department of Children, Equality, Disability, Integration and Youth Unit, Retrieved from:

<https://www.gov.ie/en/policy-information/dff67e-participation/>

²⁷ Ombudsman for Children. Retrieved from: <https://www.oco.ie/>

systemic issues. In respect of making an individual complaint about harmful content one comes across online and wishes to report, presently in Ireland one must complain under a variety of fragmented policies and procedures. These include the policies of the platform providers and also defamation proceedings, which a complainant must typically bring in the High Court. Defamation proceedings involve delays and costs for proceedings which may or may not be successful.

An existing mechanism of particular note is the Data Protection Commission which offers an individual complaints mechanism where a person has a concern about how their personal data has been handled. The Law Reform Commission in its 2016 Report states “Such a cause of action could be particularly beneficial in the context of harmful digital communications if based on the constitutional right to privacy.”²⁸ However, the Data Protection Commission is clear that while its remit “...is primarily concerned with its own area of regulation, namely, data protection, it recognises that the regulation of online safety issues, including harmful content, and data protection will naturally complement and be mutually supportive of each other.”²⁹

An Garda Síochána also offer a number of avenues including Garda National Protective Services Bureau (GNPSB),³⁰ which provides support to its members who are investigating a range of sexual and online crimes. The GNPSB’s Online Child Exploitation Unit also investigates reports of cyberbullying it receives.³¹ The Garda National Cyber Crime Bureau (GNCCB) is the national Garda unit tasked with the forensic examination of computer media seized during the course of any criminal investigations, including online harassment and child exploitation offences.³² Hotline.ie is the Irish national reporting centre where members of the public can securely, anonymously, and confidentially report concerns in respect of illegal content online, especially child sexual abuse material (CSAM).³³ Hotline.ie also operates an individual complaints mechanism for those who want to report Intimate Image Abuse, an offence under the *Harassment, Harmful Communications, and Related Offences Act 2020*.³⁴ In recent years, rights experts, observing deficiencies in Irish policing, have advocated a wholesale process of reform for An Garda Síochána to ensure “a rights-based policing service emerges which is professional, legitimate and fully supported by the public it is there to serve”.³⁵ Such reform must necessarily be also directed to the policing of online harms. The Commission on the Future of Policing in Ireland has also advocated that the capacity and expertise of the existing online policing mechanisms like the GNCCB be expanded as a matter of urgency and the personnel appointments in the field be fast tracked.³⁶

²⁸ Page 138, Para 3.28, Law Reform Commission. Harmful Communications and Digital Safety Report. (2016). Retrieved from:

<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communication%20and%20Digital%20Safety.pdf>

²⁹ Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht debate -

Wednesday, 5 May 2021 General Scheme of the Online Safety and Media Regulation Bill 2020: Discussion (Resumed).

Retrieved from:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-05/3/

³⁰ An Garda Síochána National Protective Service Bureau, Retrieved from: <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/>

³¹ An Garda Síochána Online Child Exploitation Unit. Retrieved from: <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb-online-child-exploitation/>

³² An Garda Síochána, Garda National Cyber Crime Bureau (GNCCB). Retrieved from: <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-cyber-crime-bureau-gnccb/>

³³ Irish National Centre for Combatting Illegal Content Online, Retrieved from: <https://hotline.ie/>

³⁴ <https://www.irishstatutebook.ie/eli/2020/act/32/enacted/en/print>

³⁵ Kilpatrick A (2018) A Human Rights-Based Approach to Policing in Ireland, Irish Council for Civil Liberties, 2018, at 6. Retrieved from: <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf>

³⁶ Commission on the Future of Policing in Ireland (2018) The Future of Policing in Ireland, at p27 Retrieved from <https://assets.gov.ie/180551/8b6b5065-5720-4a24-a40c-a2b15446770c.pdf>

The protection of people online is a key policy priority for the authors. This includes ensuring their right to a remedy: "...free, widely-known, safe, confidential and child-friendly complaint and reporting mechanisms to the relevant authorities", as recommended in the General Comment No. 25 on children's rights in relation to the digital environment.³⁷ The authors promote the availability of similarly accessible mechanisms to all marginalised identities and communities. The addition of a well-defined individual complaints mechanism could add significant value to the regulatory framework for online safety in the OSMR Bill, as it could give individuals an avenue for redress that is not explicitly provided for elsewhere. This would be contingent however on ensuring there are no overlaps and conflicts with the EU regulations and that other Irish bodies which we have identified above are similarly appointed and resourced per previous expert recommendations.

b) Reducing risk of harm

An individual complaints mechanism could help ensure that children and adults who are victims of abusive targeting, and whose cases are not effectively handled by online platforms, have access to regulator's support which can prevent serious harm. For example, if a person is experiencing persistent abuse across multiple platforms (some of which may not even be designated by the Commission and are outside of the scope of voluntary arrangements as explained in Section 139W) which cannot be adequately removed by the existing reporting mechanisms; and if the nominated bodies do not draw the Commission's attention to this particular case, then allowing the individual in question to bring their case to the regulator, would constitute a welcome addition to the regulatory framework in terms of avenues of redress and reducing the risk of harm.

As we explain in our response to question 9, we envisage this support as Tier 2 type of service. The individual or parent/guardian as appropriate would need to provide evidence of the abuse and failures to have the content removed/ abuse cease (e.g. screenshots of having repeatedly blocked one or multiple accounts and inability to have the content removed despite having reported such abusive content). Sometimes, it is critical for a person experiencing bullying and cyberbullying to receive help in time, and if they are unable to see the content removed or the abuse stopped, it sends the wrong message that such abuse is sanctioned.³⁸ This can contribute to feelings of hopelessness, and having a responsive body to which people can turn to in such situations can be critical for more severe relentless cases of abuse.³⁹

Regarding children in particular, many children feel reluctant to report abuse to parents and teachers or even to tell their friends.⁴⁰ Having an option for the child to report on their own; to do so anonymously; and to provide instructions for children on how to report in a child-friendly easy to understand manner, is crucial from our perspective. Such an approach contributes to the implementation of the United Nations Convention on the Rights of the Child (UNCRC) Article 12, that children have the right to be heard on matters that concern them.⁴¹

³⁷ United Nations Human Rights Office of the High Commissioner: General Comment Number 25 (2021) on children's rights in relation to the digital environment. Retrieved from:

<https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

³⁸ Milosevic, T., & Vladislavjevic, M. (2020). Norwegian children's perceptions of effectiveness of social media companies' cyberbullying policies: an exploratory study. *Journal of children and media*, 14(1), 74-90.

³⁹ Hinduja, S., & Patchin, J. W. (2019). Connecting adolescent suicide to the severity of bullying and cyberbullying. *Journal of school violence*, 18(3), 333-346.

⁴⁰ Mishna, F., Birze, A., Greenblatt, A., & Khoury-Kassabri, M. (2021). Benchmarks and bellwethers in cyberbullying: the relational process of telling. *International Journal of Bullying Prevention*, 3(4), 241-252.

⁴¹ United Nations Human Rights Office of the High Commissioner. General Comment (25) on children's rights in relation to the digital environment. Retrieved from:
<https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

Therefore, we see an individual complaints mechanism as a possible avenue for securing the provisions in the Bill laid out Sections 139K(4 and 5). These currently state that the Commission will set the standards for designated services' complaints handling, which should ideally secure better scrutiny of the effectiveness of the designated companies' internal reporting tools and mechanisms; as well as provisions for auditing (Section 139P).

Question 2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

We do not see at present any apparent conflict with the provision set out in Section 139k(5) and an individual complaints mechanism. Such reporting demands from the regulator to the designated companies could place a significant burden on small and medium size enterprises, but we are not best positioned to comment on this.

The super complaints scheme proposal will allow the Media Commission to establish a "super complaints scheme" where nominated bodies can bring issues to the attention of the Commission and this could allow for synergy with an individual complaints mechanism. The authors understand the purpose of this super complaints scheme will be for systemic issues. However, in a radio interview Minister Martin⁴² has suggested that it will allow individuals to bring individual complaints via this scheme, where their complaint satisfies a "risk test" where there is any risk to a person's life or a significant risk to a person's physical or mental health, (OSMR, S.139A, Subsection 4). Should this be in the intention of the scheme it will need to be explicitly laid out as such and realistic thresholds put in place to avoid it being out of people's reach, rendering it ineffective. Also, consideration needs to be given as to how speedily such a scheme would be as an alternative to an individual complaints mechanism where an individual goes directly to the Online Safety Commissioner where a platform/service fails to address their complaint effectively and/or efficiently.

Question 3. What risks do you foresee if there were no individual complaints mechanism?

The risk that we see is that the current reality will remain: It is often the case that harmful online content lingers on the platforms, slipping through moderation cracks, leaving users and marginalised groups in particular without a remedy. We have detailed in this submission existing issues with resourcing and expertise which also require remedy. There are numerous further risks under the OSMR, including: if nominated bodies do not detect an issue with one or more platforms; if designated platforms fail to address harmful online content, despite the measures outlined in Section 139k(5); if harms occur on a platform outside the mandate of the Regulator or jurisdiction of Ireland or another member state; or if such platform is not within the scope of a voluntary agreement per Section 139W. There is also the risk of retraumatizing individuals who are already harmed and who under existing systems may have to tell/relive their trauma multiple times until a resolution is reached.

We note that ISPCC obtained a legal opinion through the Public Interest Law Alliance (PILA) on whether an individual complaints mechanism, as provided for in the Australian *Enhancing Online Safety Act 2015* is mandated by the Revised AVMSD.⁴³ This opinion states that the Government must provide for such mechanisms as code making, complaints and disputes handling to transpose the relevant sections Article 28a and Article 28b of the revised Directive to achieve the result intended by the Directive, which would include an individual complaints mechanism to provide for an effective remedy. It further notes that the designation of the Media Commission as public servants and its establishment in statute, will mean that such a Commission and its Commissioners under Section

⁴² RTE Radio 1, Online Safety. Retrieved from: <https://www.rte.ie/radio/radio1/clips/22050053/>

⁴³ ISPCC legal opinion available from Fiona.Jennings@ispcc.ie

2.1(h) of the Irish Human Rights and Equality Act 2014, are subject to Section 42 of the Act, namely the Public Sector Equality and Human Rights Duty. This legal obligation means that such public bodies must uphold the equality and human rights of everyone affected by its policies and strategies; the Online Safety Commissioner is no different. In meeting this obligation, the Commissioner will need to be able to demonstrate how it proposes to protect the rights of users, in particular their right to an effective remedy.

Question 5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

We propose categories of harmful online content connected with a criminal offence should be distinguished from other categories of harmful online content. Our position is consistent with the position articulated in the European Parliament's resolution of 20 October 2020 on the Digital Services Act and fundamental rights issues. The resolution posits that "any legally mandated content take-down measures in the Digital Services Act should concern illegal content only, as defined in EU and national law, and that the legislation should not include any undefined concepts and terms as this would create legal uncertainty for online platforms and put fundamental rights and freedom of speech at risk".⁴⁴

Members of this authored submission have raised concern with a process that requires complainants to engage with criminal law procedures and officials in ways that are possibly retraumatising in seeking the swift removal of harmful content. However, we also acknowledge that the Gardai have been embodied with particular powers not afforded to other bodies to ensure democratic process and the rule of law. This points to our earlier comments that, in seeking to solve the problem of harmful content online, and to ensure the well-being of complainants procedurally, existing bodies like An Garda Síochána must be urgently resourced and reformed in order to ensure rights-based policing services which adequately support the public.

Question 8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

This question illustrates well the potential further overlap between existing regulatory mechanisms and further mechanisms proposed in the Bill. Our feeling is that the function could be retained within the Online Safety Commissioner and that guidance feedback could be provided to this body through a separate body like the Social Media Council.

Question 9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

As stated in our responses to questions 1 and 2, we see the complaints mechanism as being primarily an avenue of appeal (tier 2). The mechanism would be an opportunity for users to demonstrate that they have exhausted all possible options in terms of reporting the content to the platform(s). This approach might address the issue of volume of received complaints and ensure that complaints that reach the regulator are not trivial in nature.

⁴⁴ European Parliament resolution of 20 October 2020 on the Digital Services Act and fundamental rights issues posed: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0274_EN.html

We find it difficult to envisage what Section 139k(5) will look like in practice, but we imagine that the designated companies will be asked to self-assess their complaints handling, which they will provide in an aggregate form (e.g. this many reports have been received and have been handled in this time frame); and that they will not be providing any details about the individuals who reported content which was not removed as it did not violate Terms of Service (we do not know if such divulging would be constitutional and allowed from the perspective of privacy regulation either). Perhaps one avenue to pursue, depending on feasibility, might be to request reporting to the nominated bodies which would then be obliged to review the evidence supplied by the user in the given case, and forward such vetted requests to the regulator. The regulator would need to ensure that the nominated bodies have the resources to handle such complaints.

Question 10. How should the success or otherwise of an individual complaints mechanism be measured?

We think that it is critical to measure the success from the perspective of end users, and children and minority groups in particular, who have relied on the mechanism for help. This measure could be quantitative (survey questionnaires), but it is also important to capture mechanism users' experiences in a qualitative manner, for example via interviews with such individuals. This would also constitute an opportunity to examine the extent to which content removal is an effective remedy for various types of harmful content and provide data with the aim of updating social media content policies.

In line with DSA Article 31, vetted researchers from academic institutions and independent research bodies with expertise in the area should play a role in this process and be provided with access to necessary data to execute such evaluation.

Question 11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

We suggest a period of review of no less than three years and no more than five years after the complaints mechanism is initiated. This interval would also allow designated and vetted researchers to design empirical methods for meaningful evaluation, as we describe in our Question 10 response. It is also supported by the time frames proposed for other pieces of legislation: The 'age of digital consent' review in the Data Protection Act 2018 is set at three years⁴⁵ and the Digital Services Act Package is due to be reviewed five years from when it comes into force.⁴⁶ Therefore, in order to design empirical methods for the meaningful evaluation that we describe in our Question 10 response, and based on the time frames proposed for other pieces of legislation, we are of the opinion that the evaluation time frame be no less than 3 years.

About the organisations

DCU Anti-Bullying Centre (ABC) is a national university designated research centre located in DCU's Institute of Education. The Centre is known globally for its research excellence in bullying and online safety. It is home to scholars with a global reputation as leaders in the field. The work of the Centre builds on 25 years of research in which we were the first in Ireland to undertake studies on school, workplace, homophobic and cyberbullying.


⁴⁵ Gov.UK. The Data Protection Act. Retrieved from: <https://www.gov.uk/data-protection>

⁴⁶Regulation of the European Parliament and of the Council, on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Retrieved from: https://ec.europa.eu/info/sites/default/files/proposal_for_a_regulation_on_a_single_market_for_digital_services.pdf

The members of **the UCD Centre for Digital Policy** believe that policy making and evaluation must be deliberative, emergent, and iterative, with sociocultural values at their core. Such an ambitious agenda will require working with stakeholders and beneficiaries to develop effective and evidence-based formal and informal regulation and institutional digital policies, maintain such policies over time, and foreground urgent issues of sustainability, equity, and human rights. The members of the centre draw on interdisciplinary methods from computing, law, design, human rights, and social science to create policy, amplify positive effects on society (especially vulnerable citizens, who may include women, people of colour, the poor, migrants, children, and others), and study policymaking across technologies and sectors.

ISPCC is *for* children. Our purpose is to listen to them, empower them, strengthen their resilience and enable them to live their best possible lives. ISPCC provides a range of services directly to children and families and advocates for change to enhance the lives of children in Ireland. ISPCC's work is made possible through public and corporate support, as well as funding provided by government agencies for the delivery of specified services.

About the authors

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Consultation on an individual complaints mechanism

What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

An individual complaints mechanism would be an invaluable addition to the Bill because, like the comparable well-established regulatory arrangements in, for example, Australia and New Zealand, it would be the most efficient and timely means of obtaining effective redress. The Australian and New Zealand regulatory models, including an individual complaints mechanism, have operated effectively. The regulatory bodies have reported that, for example, social media companies operating in Australia and New Zealand have not had any difficulties complying with the system, such as the Australian Tier 1/Tier 2 system, which originally applied to harmful online material directed at children and has since been expanded to harmful online material directed at adults: see, for example <https://www.esafety.gov.au/report/how-to-report-serious-online-abuse-illegal-restricted-content>.

Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

Not a conflict, synergies. The online safety codes are useful standard-setting regulatory tools, comparable to the complaints handling provisions in the Central Bank's Consumer Protection Code (2012). But it is notable that the Oireachtas has also enacted an individual complaints mechanism for consumers, in the form of the Financial Services and Pensions Ombudsman.

What risks do you foresee if there were no individual complaints mechanism?

The main regulatory risk is that the absence of an individual complaints mechanism will leave individuals with no effective and efficient, and notably timely, remedy. The only alternative will be civil litigation, which the courts have already pointed out is not an effective remedy and which, as the Report of the Expert Review of Civil Justice Administration (2020) has noted, is usually beyond the resources of most individuals.

Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

The categories that are included in, and excluded from, the Australian eSafety Commissioner's remit: see <https://www.esafety.gov.au/report/how-to-report-serious-online-abuse-illegal-restricted-content>.

Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

I don't think this asserted distinction is appropriate. Surely it is not the case that an individual complaint about harmful online content that is connected with a criminal offence "would require the involvement of appropriate law enforcement bodies". For example, if the Central Bank, as financial regulator, is inquiring into breaches of the Central Bank Acts, all of which are criminal offences, it does always "require" the involvement of the Garda Síochána. I think a better distinction would be between the categories that are included in, and excluded from, the Australian eSafety Commissioner's remit: see above.

How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

Similar issues arise in the context of the regulatory system underpinning the 2016 EU General Data Protection Regulation (GDPR). While this is challenging, it has not been a barrier to determining that a regulatory system is required in order to vindicate data protection rights of individuals, including the take-down type right associated with the "right to be forgotten" under GDPR. In addition, perhaps the question of scale and volume are separate matters to be addressed within the context of competition law?

In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures How would this balance be affected by matters of scale and volume of content?

The existing provisions in the 2022 Bill, notably those that address how harmful online material is defined in the Bill and how additional forms of harmful material could be designated by Order, appear to have considered at length this question. This would presumably be applied to an individual complaints mechanism.

Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

I believe it is sensible to have the Tier 1/Tier 2 system that applies in Australia, and mentioned in the next question.

Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

b) avenue of appeal, as in Australia, which has been shown to be an efficient and effective system.

How should the success or otherwise of an individual complaints mechanism be measured?

Effectiveness of the Tier 2 "appeal" in terms of timeliness of responses; and also that Tier 1 direct applications to the online media operators will, ordinarily, be addressed quickly, so that the Tier 2 "appeal" will not be needed in most instances.

What would be the appropriate period for review of the operation of an individual complaints mechanism?

If by this is meant the review of the effectiveness of the system as whole, I think 3 years after enactment, with a time limit of 6 months in which to complete the review and for the Minister to publish the report of the review online (without prejudice, of course, to the additional annual report to the Oireachtas by the Minister).

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**ISPCC submission to the Online Safety Expert Group on an
Individual Complaints Mechanism**

21 March 2022

Introduction

ISPCC is grateful to have the opportunity to submit to this public consultation on what it sees as an important matter in terms of better protecting children online whilst ensuring they can contribute meaningfully to the digital environment.

ISPCC views itself as a child-centred technology advocate: it recognises all the benefits technology has while being aware of potential risks and harms, and gaps in the current regulatory approach. Through our suite of Childline services, children and young people tell us first-hand about their online experiences – the good and not so good.

ISPCC has championed the need for an individual complaints mechanism, or equivalent since 2016 when first recommended by the Law Reform Commission's *Report on Harmful Communications and Digital Safety*.¹ This core policy objective is reflected in the Revised Audio-visual Media Services Directive (AVMSD) which the *Online Safety and Media Regulation Bill 2022* (OSMR) will transpose, and a proposed individual complaints mechanism may see video-sharing platform services (VSPS) within its scope. The core aim of the Revised AVMSD is 'reinforcing the protection of users, especially minors, from certain forms of illegal and harmful audiovisual content online.'²

ISPCC via PILA (Public Interest Law Alliance) sought a legal opinion which outlines why the Government is legally obliged to provide for such an individual complaints mechanism in the OSMR (Appendix A). Online safety has been, and will continue to be, a core policy priority for ISPCC.

Expert Group Terms of Reference

1. In respect of the Terms of Reference of the Expert Group, ISPCC is concerned that the first term asks of the group;

¹ <https://www.lawreform.ie/news/report-on-harmful-communications-and-digital-safety.683.html>

² [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707\(02\)&rid=2](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707(02)&rid=2)

To examine if an individual complaints mechanism is *practicable* [emphasis added] in the context of the Online Safety and Media Regulation Bill and, if not, if there is another method of resolving matters raised by such a mechanism;

Should this not read:

To examine if an individual complaints mechanism is *legally required* [emphasis added] in the context of the Online Safety and Media Regulation Bill and, if not, if there is another method of resolving matters raised by such a mechanism;

ISPCC is concerned that if this first grounding principle is wrong, all others may also be wrong, as they are informed and derived from the first one, then the Expert Group may be limited in what it can recommend; that is what is ‘practicable’ versus what is actually ‘legally required’.

2. The definition of an individual complaints mechanism given to the Expert Group has the potential to be contentious too:

For the purposes of these terms of reference, an “individual complaints mechanism” is a mechanism whereby members of the public may complain to an Online Safety Commissioner about individual items of content that they suspect may fall within a category of harmful online content.

The mention of ‘individual items of content’ seems to be all-encompassing and goes beyond what was first recommended by the Law Reform Commission (LRC) in its 2016 report, i.e., harmful communications.³

Requirement for an Effective and Efficient Remedy

In any event ISPCC sees the provision of an individual complaints mechanism, or equivalent as legally required and, for it to be practical it must be well scoped out in terms of understanding the problem it is trying to solve.

ISPCC sees two types of harmful content being conflated, unintentionally, or otherwise. There is (i) harmful communications and (ii) harmful content. Harmful communications being content about an individual and directed/targeted towards them and harmful content being ‘random’ single, unrelated pieces of content people view and want to report in the public interest; whether removal/takedown happens is a separate matter.

There is a real and acknowledged concern regarding the potential cost and manageability that providing for such an individual complaints mechanism could have. However, any complaints mechanism must move beyond traditional media and traditional complaints lines to be effective in the digital environment, and this will involve new approaches and resources, including an annual ring-fenced budget. Working to keep citizens safe online must be a government priority, nationally and at EU level as mandated. Whilst any individual

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<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 164

complaints mechanism will be available to all of society, this is very much a women and children's issue that'll require understanding of their specific needs.⁴

Dearth of Real-World Evidence

- Australia's eSafety Commissioner⁵ and New Zealand's Netsafe⁶ (to a certain degree) are the only models which we can refer to and that we have evidence from, albeit limited.
- There is a lack of transparency in terms of the breadth and depth of the types of complaints being received and how these are being handled and resolved, or not.⁷
- There is no doubt about the breadth and depth of the problem and why access to an effective and efficient remedy is required, in particular in terms of cyberbullying content.⁸

Ireland will have a key role in regulating certain companies with European Headquarters here delivering services on an EU-wide basis to Union citizens and legislative developments will be closely watched.

Expert Group Consultation Questions

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

ISPC is acutely aware of the central and indeed embedded role technology and Internet has in children's lives today. Individual complaints mechanisms can provide an avenue for members of the public to complain about a service. This can include how a service vindicates the rights of its users and how it executes its policies and procedures which can give insights into how fairly companies treat their customers/users. Complaints mechanisms give insights into users' issues and the operations of services on how effective and efficient, or otherwise they deal with such issues, from the perspective of the consumer/user, vitally important for transparency.

An overriding value such a complaints mechanism would bring would be the benefits it would bring to children and young people, in particular in terms of their mental wellbeing, knowing they had a supportive and responsive avenue of redress.

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<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pgs. 58-59

⁵ <https://www.esafety.gov.au/>

⁶ <https://www.netsafe.org.nz/>

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https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-19/2/?highlight%5B0%5D=alan&highlight%5B1%5D=complaints&highlight%5B2%5D=online&highlight%5B3%5D=facebook

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<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Children's Consultation

Avenues of Redress

The changes proposed by the Government through the OSMR Bill will address the issue of complaints handling through Codes of Conduct (Practice) and/or via a 'super complaints scheme' to address systemic issues. In respect of making an individual complaint about harmful content one comes across online and wishes to report, presently in Ireland one must complain under a variety of fragmented policies and procedures. These include the policies of the platform providers and defamation proceedings, which a complainant must typically bring in the High Court. Defamation proceedings involve delays and costs for proceedings which may or may not be successful.

Many children and young people fail to get the support they need via these avenues, hence the need for an individual complaints mechanism, or equivalent in these limited cases.

While there are current alternative avenues available, these don't necessarily fulfil the role of what an individual complaints mechanism specifically for online safety issues could; some can be lengthy; some involve the criminal justice system where people don't necessarily want to go. However, the complaints systems they have in place could offer learnings for an equivalent complaints system within the OSMR.

The **Data Protection Commission** offers an individual complaints mechanism where a person has a concern about how their personal data has been handled. The LRC in its 2016 Report states 'Such a cause of action could be particularly beneficial in the context of harmful digital communications if based on the constitutional right to privacy.'⁹ It goes on to say how the *Data Protection Act 2018* affords the right to the removal and rectification of such content and right to erasure ('right to be forgotten').

However, for less serious forms of activity where the individual's priority is removal of content and protection of personal privacy rather than punishment of the wrongdoer, then data protection does offer effective remedies. However, it further states 'The civil law may also provide more effective remedies in some cases, as victims of such behaviour frequently attach greater priority to removal of the harmful content rather than punishing the perpetrator.'¹⁰

The Data Protection Commission is clear that whilst its remit '...is primarily concerned with its own area of regulation, namely, data protection, it recognises that the regulation of online safety issues, including harmful content, and data protection will naturally complement and be mutually supportive of each other.'¹¹

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<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Page 128, Para 3.28

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<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 121

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https://www.oireachtas.ie/en/debates/debate/joint_committee_on_media_tourism_arts_culture_sport_and_the_gaeltacht/2021-05-05/3/?highlight%5B0%5D=online&highlight%5B1%5D=safety&highlight%5B2%5D=safety&highlight%5B3%5D=dpc&highlight%5B4%5D=online&highlight%5B5%5D=safety&highlight%5B6%5D=safety&highlight%5B7%5D=online&highlight%5B8%5D=safety&highlight%5B9%5D=dpc

Hotline.ie¹² is the Irish national reporting centre where members of the public can securely, anonymously, and confidentially report concerns in respect of illegal content online, especially child sexual abuse material (CSAM). Hotline.ie also operates an individual complaints mechanism for those who want to report Intimate Image Abuse, an offence under the *Harassment, Harmful Communications, and Related Offences Act 2020*.¹³

An Garda Siochana **Garda National Protective Services Bureau (GNPSB)**¹⁴ provides support to its members who are investigating a range of sexual and online crimes. The Bureau's Online Child Exploitation Unit investigates reports of cyberbullying it receives.¹⁵

States and business operators ought to be aware of The *UN "Protect, Respect and Remedy" Framework for Business and Human Rights*¹⁶ and how it rests on three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The three principles form a complementary whole in that each supports the others in achieving sustainable progress.

There are other such examples of where individuals can avail of complaints mechanisms which may provide operational guidance for same in the OSMR.¹⁷

Individual Complaints Mechanism Added Value – Australia

Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme), Lynelle Briggs AO. October 2018¹⁸

'The cyber-bullying complaints scheme is considered to be an appropriate safety net for users. The majority of submitters [to the public consultation] saw no justification for reducing regulation and moving to an industry based approach.'¹⁹

Online Safety Act 2021²⁰

The new legislation that now underpins eSafety retains and enhances its role, including access to online content schemes (complaints). It builds on existing processes to:

- articulate a core set of basic online safety expectations to improve and promote online safety for Australians.
- reflect a modernised online content scheme to address harmful online content.
- create a new complaints-based, removal notice scheme for cyber-abuse being perpetrated against an Australian adult.

¹² <https://hotline.ie/>

¹³ <https://hotline.ie/contact-us/report>

¹⁴ <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/>

¹⁵ <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/online-child-exploitation/>

¹⁶ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁷ Charities Regulator; Ombudsman for Children; Ombudsman; Irish Human Rights and Equality Commission; Advertising Standards Authority of Ireland

¹⁸ <https://www.infrastructure.gov.au/sites/default/files/briggs-report-stat-review-enhancing-online-safety-act2015.pdf>

¹⁹ <https://www.infrastructure.gov.au/sites/default/files/briggs-report-stat-review-enhancing-online-safety-act2015.pdf> Pg. 6

²⁰ <https://www.legislation.gov.au/Details/C2022C00052>

- broaden the cyberbullying scheme to capture harms occurring on services other than social media.
- reduce the timeframe for service providers to respond to a removal notice from the eSafety Commissioner from 48 to 24 hours.
- bring providers of app distribution services and Internet search engine services clearly into the remit of the new online content scheme.
- establish a specific and targeted power for the eSafety Commissioner to request or require Internet Service Providers (ISPs) to disable access to material depicting, promoting, inciting or instructing in abhorrent violent conduct, for time-limited periods in crisis situations, reflecting industry's call for Government leadership on this issue.

The Australian *Online Safety Act 2021* ought to have persuasive force in terms of providing for such an individual complaints handling mechanism in the Irish situation.

Reducing Risk of Harm

For the purpose of this submission, ISPCC will illustrate the type of problem it is looking for an individual complaints mechanism to solve, for example in the case of cyberbullying. 'Cyberbullying is an intentional, repeated and unwanted negative behaviour act that is carried out by one or several people, using electronic devices and the Internet, against a victim.'²¹

When ISPCC speaks of cyberbullying, it is referring to a situation where a child experiences harm because of repeated, targeted bullying behaviour online. For example – countless nasty texts being sent to their phone; numerous humiliating memes being created about them and shared online; closed groups created specifically to plan further bullying episodes; being tagged in nasty public comments to shame or ridicule; constant 'pings' alerting them to the intensity of the 'experience'. A horrible situation for any child to find themselves in, feeling powerless to do anything about it.

In the paper *Bullying and cyberbullying studies in the school-aged population on the island of Ireland*, the authors state that the range of cyber victimisation rates on the island of Ireland is within the worldwide average (10–40%).²² The authors of the same study also note the need for further research into the prevalence of cyberbullying, possibly due to the rapid growth in the use of Internet-enabled devices and more children and young people having an online presence at an increasingly younger age.

A recent report from the National Anti-Bullying Research and Resource Centre at Dublin City University, highlights the increased prevalence of cyberbullying victimisation in Ireland in the 'lockdown' in 2020 to 28%, with Ireland reporting the highest rates, followed by Italy and Germany.²³

There is little doubt that cyberbullying is an issue for children and young people, a type of bullying that happens online via platforms, game chatrooms and forums where the impacted person is subjected to a constant stream of harmful communications that can have a

²¹ <https://tacklebullying.ie/cyberbullying/what-is-cyberbullying/>

²² https://www.researchgate.net/publication/317233279_Bullying_and_cyberbullying_studies_in_the_school-aged_population_on_the_island_of_Ireland_A_meta-analysis Pg. 17

²³ https://antibullyingcentre.b-cdn.net/wp-content/uploads/2020/08/Short-report_Covid_for-media_TM_with-Author-names-1-2.pdf

devastating impact on their mental wellbeing. This type of behaviour is wrong and those impacted should not have to tolerate it. Currently there is very little an impacted person can do to address this type of behaviour in a speedy and meaningful manner.

Children and young people who endure cyberbullying need the hosting service(s) to remove the content (harmful communication) as quickly as possible to mitigate further perpetuation of harm. The proposals in the OSMR Bill do not explicitly give children and young people access to an individual complaints mechanism, which would allow them to challenge any failure to remove such content in an effective and efficient manner, or at all. The absence of such a mechanism is contrary to the fundamental rights of the child to an effective remedy.²⁴

Children and young people, who are cyberbullied across one or many different online services at the same time, have nowhere to go to get such content taken down. Often the pieces of content in isolation may not meet the threshold services require to initiate an investigation, and invariably the content remains up.

Children's Rights in the Digital Environment

Article 48 of the UN General Comment on a child's right in the digital environment²⁵ states:

'They [the State] should ensure that businesses provide effective complaint mechanisms; such mechanisms should not, however, prevent children from gaining access to State-based remedies.' This includes ensuring their right to a remedy: '...free, widely-known, safe, confidential and child-friendly complaint and reporting mechanisms to the relevant authorities'. The protection of children and young people online and the design and regulation of the products and services they use ought to be a priority.

The explanatory memorandum²⁶ to the forthcoming Digital Services Act states that 'Digital services can support achieving Sustainable Development Goals by contributing to economic, social and environmental sustainability.' In rising to meet this challenge to ensure children and young people are safe and protected, digital services and States should consider using Sustainable Development Goal (SDG) 16.2 as inspiration for action:

SDG 16.2 target is to: 'End abuse, exploitation, trafficking and all forms of violence against and torture of children'. Having responsive remedies could support the delivery of this goal.

Therefore, the addition of a well-defined individual complaints mechanism could add significant value to the regulatory framework for online safety in the OSMR Bill, as it could give individuals an avenue for redress that is not explicitly defined elsewhere, and it could potentially disrupt algorithmic recommender systems that can amplify such content to mass audiences very quickly, thus reducing risk of future harms.

2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

²⁴ <https://fra.europa.eu/en/eu-charter/article/47-right-effective-remedy-and-fair-trial>

²⁵ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

²⁶ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>

Online safety codes (OSMR, S. 139K); Compliance with online safety codes: information notices (OSMR, S. 139O)

An individual complaints mechanism could provide synergy with these sections as they pertain to online safety codes as they seek ‘... to minimise the availability of harmful online content and risks arising from the availability of and exposure to such content’; ‘... to provide the protections set out in Article 28b(1)(a), (b) and (c) of the Directive’ (which ISPCC’s legal opinion outlines in terms of the legal requirement to provide such a mechanism); ‘... the handling by service providers of communications from users raising complaints or other matters’; ‘...to provide the Commission with information relating to the provider’s compliance with an online safety code’. An individual complaints mechanism would allow the Online Safety Commissioner to have the perspective of victims in terms of how they feel complaints are being handled.

‘However, the way algorithmic systems shape information flows online is an area of concern among a wide category of stakeholders. Several stakeholders, in particular civil society and academics pointed out the need for algorithmic accountability and transparency audits, especially with regard to how information is prioritized and targeted. Similarly, regarding online advertising, stakeholder views echoed the broad concerns around the lack of user empowerment and lack of meaningful oversight and enforcement.²⁷ Any online safety codes will need to ensure they address this concern as a means of reducing the amount of harmful content online and how such content is amplified by its systems.

Scheme for notifications by nominated bodies (OSMR, S. 139U) ‘Super Complaints Scheme’

The super complaints scheme proposal will allow the Media Commission to establish a ‘super complaints scheme’ where nominated bodies can bring issues to the attention of the Commission, and this could allow for synergy with an individual complaints mechanism. ISPCC understands the purpose of this super complaints scheme will be for systemic issues. However, in a radio interview Minister Martin²⁸ has suggested that it will allow individuals to bring individual complaints via this scheme, where their complaint satisfies a ‘risk test’ where there is any risk to a person’s life or a significant risk to a person’s physical or mental health, (OSMR, S.139A, Subsection 4). Should this be in the intention of the scheme it will need to be explicitly laid out as such and realistic thresholds put in place to avoid it being out of people’s reach rendering it ineffective. Also, consideration needs to be given as to how speedily such a scheme would be as an alternative to an individual complaints mechanism where an individual goes directly to the Online Safety Commissioner where a platform/service fails to address their complaint effectively and/or efficiently.

Audit of complaints and complaint handling (OSMR, S.139P)

An individual complaints mechanism would provide synergy with the audit of complaints and complaint handling as it would give the regulator additional insights into how complaints are dealt with from the perspective of the individual and not just the platform/service. It would further support the regulator in terms of it identifying emerging and evolving trends in issues

²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en>

²⁸ <https://www.rte.ie/radio/radio1/clips/22050053/>

being reported, at both individual and systemic level, in turn informing future categories of online harms and development of robust codes.

Duty of Commission to encourage use of mediation (OSMR, S. 139V)

The use of mediation as a means to resolve disputes seems to be reserved for where ‘...a dispute arises between a platform provider and a public service provider in relation to the remuneration of the public service provider’ and not for individuals who require the removal of content directed at them, e.g., cyberbullying.

3. What risks do you foresee if there were no individual complaints mechanism?

Ireland has a unique opportunity to show leadership on the global stage in being one of the first countries to address this issue meaningfully and ISPCC recommends we take up this challenge in the best interests of children, especially those children and young people who will be in most need of having to access such a regulator. There should be no ambiguity about Ireland’s position on online safety and ensuring children and young people can make an individual complaint ought to be a cornerstone of any robust regulatory framework.

The main risk is that Ireland may not be complying adequately with the provisions in national and EU law and the implications, and perhaps unintended consequences, this could have. This proposed legislation is ground-breaking and there will be one opportunity to get this right, notwithstanding other impending European legislation. By not explicitly providing for an individual complaints mechanism, or equivalent will leave individuals without a clear pathway to a remedy where traditional pathways have failed.

ISPCC Legal Opinion²⁹

ISPCC’s legal opinion is of the view that the Government is legally obliged to establish an individual complaints mechanism to vindicate Revised AVMSD Article 28 (b)(3)(i) ‘procedures regulating reports/complaints made by minors to the platform providers’.

Public Sector Equality and Human Rights Duty Compliance

The designation of the Media Commission as public servants and its establishment in statute, will mean that such a Commission and its Commissioners under Section 2.1(h) of the Irish Human Rights and Equality Act 2014, are subject to Section 42 of the Act, namely the Public Sector Equality and Human Rights Duty.³⁰ This legal obligation means that such public bodies must uphold the equality and human rights of everyone affected by its policies and strategies; the Online Safety Commissioner is no different. In meeting this obligation, the Commissioner will need to be able to demonstrate how it proposes to protect children’s rights, in particular their right to an effective remedy.

Protection of Fundamental Rights³¹ – Articles 24 and 47

ISPCC believes that, in its current form, the OSMR Bill could fall significantly short of providing the necessary protection for the fundamental rights of children who need to have egregious cyberbullying content directed towards them removed in an effective and efficient manner to prevent future harms, where all other avenues have failed.

²⁹ Full Legal Opinion is available at Annex A

³⁰ <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>

³¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>

Most individuals in situations where they are being cyberbullied and/or targeted online, would benefit from having the content removed quickly. Without an individual complaints mechanism, there is little hope of this.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

All categories under 'Harmful online content' (OSMR, S.139A) should be covered by an individual complaints mechanism, or equivalent once the risk test has been satisfied. ISPCCC would be concerned that thresholds could be set high, dissuading people from availing of it, and ultimately rendering it useless.

Any new categories under 'Power to specify other harmful online content' (OSMR, S.139B), where appropriate, should also be covered by an individual complaints mechanism, or equivalent in the future.

Operational protocols and memorandums of understanding should be developed where appropriate, in particular where the regulator may need to work alongside other regulatory bodies, service providers and/or An Garda Síochána to resolve a complaint.

In some cases, people may not wish to enter the criminal justice system and protections must be put in place to respect this. For example, where a person is subjected to harmful communications that may be criminal in nature but does not wish to proceed with a criminal case against the perpetrator(s).

Please also refer to ISPCCC response to question 9 in respect of this question (4).

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

Categories of harmful online content connected with a criminal offence should be distinguished from other categories of harmful online content in terms of how they are responded to (they ought to have a speedier response than non-criminal) and in how the victim wishes to proceed with such a complaint. As mentioned earlier in this submission, most individuals in situations where they are being cyberbullied and/or targeted online, would benefit from having the content removed quickly and signposted to support. Some may not wish to enter the criminal justice system – for whatever reason – and this right must be respected.

As noted in the LRC 2016 Report, '... because this type of harmful communication often involves children and young people for whom the criminal justice process should be seen as a last resort and only after other responses, such as education or suitable diversion programmes, have been applied'³² special protections ought to be provided for in these instances. ISPCCC does not support the criminalisation of children and supports all other avenues being explored first. They ought to merit special protections, not just where they may be the victim, but the perpetrator too.

32

<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 5

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

Terms of Reference Definition

As stated previously, the mention of ‘individual items of content’ in the definition supplied to the Expert Group for the purposes of its work seems to be all-encompassing and goes beyond what was first recommended by the LRC in its 2016 report, i.e., harmful communications.³³ The recommendation at the time was for ‘...a complaints scheme whereby users can request free of charge the removal of harmful digital communications...’.³⁴

The definition supplied to the Expert Group intimates that any individual who ‘comes across’ any ‘random’ single, unrelated’ pieces of harmful content ought to be able to avail of an individual complaints mechanism where a platform is ineffective/inefficient in removing the content. For this intent and purpose another mechanism within a broader complaint handling system may need to be developed.

It would be regrettable if the Expert Group felt limited in what it could recommend based on the Terms of Reference and, perhaps a recommendation of the group would be for a more practical definition of an individual complaints mechanism to be included in the OSMR, along the lines of what was in the LRC report.

Therefore, for a practicable solution to be proposed the definition ought to be interpreted as a mechanism whereby members of the public may complain about individual items of content that fall within the categories of harmful online content as it relates to them (i.e., harmful communications). And this would align closer with the risk test proposed in the OSMR Bill.³⁵

ISPCC sees that a key way of addressing any potential concerns of scale and volume is by setting clear criteria when such a mechanism can be availed of – for example, in limited cases where traditional avenues (via the platform/service directly) has failed in terms of effectiveness and/or efficiency, then such a mechanism should kick in but only in cases where the reporter is a victim and/or target of harmful communications directed towards them...like in the case of cyberbullying.

In terms of ‘random’ single, unrelated pieces of harmful content a person ‘stumbles’ across online they could be reported directly to the platform and where appropriate reported to a nominated body and lodged to a systemic complaints register overseen by the Commission. Where institutions are already set up to receive such notifications, they ought to be used, e.g., Hotline.ie for reports of child sexual abuse material.

³³

<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 164

³⁴

<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 11

³⁵ <https://www.gov.ie/en/publication/98270-online-safety-expert-group-on-an-individual-complaints-mechanism/#online-safety-and-media-regulation-bill>

Such a register could also be used to monitor and record complaint progress and compliance with any online safety codes.

Management of Complaints

The Broadcasting Commissioner will deal with complaints for traditional broadcasting services and the On-demand Audiovisual Services Commissioner will deal with complaints in respect of on-demand audiovisual media services (OSMR, S. 11); whilst the Online Safety Commissioner will deal with complaints via a Scheme for notifications by nominated bodies (OSMR, S. 139U) 'Super Complaints Scheme'.³⁶

Video Sharing Platform Services (VSPS) are defined as platforms that provide '... programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility...' ³⁷ and will be regulated under the online safety regulatory framework by the Online Safety Commissioner, if an individual complaints mechanism was to be applied to those services this would be available to all Union citizens.

In terms of 'programmes' these will have originated from sectors already regulated, e.g., broadcasting and film which would imply that minimal complaints would be made in respect of them as they would have already been subject to regulatory frameworks under their respective bodies. And, where complaints are made, the Online Safety Commissioner ought to be able to redirect these back to these bodies to process.

In terms of user-generated video content that is viewed as harmful but not directed towards an individual in terms of 'harmful communications', then the complaints handling for this could possibly rest within a separate part of the Online Safety Commissioner, or a separate Online Safety Commissioner.

Key to managing any potential issue with scale will be an effective and efficient complaints handling system and robust auditing and enforcement of online safety codes.

Digital Services Act Package Considerations

The impending DSA is expected to come into force toward the end of 2022 and consideration ought to be given as to how its proposal of Digital Services Coordinators will fit into this proposed regulatory framework. Perhaps this network of Member State Coordinators will complement and support the regulatory framework outlined in the OSMR and the operations of an individual complaints mechanism.

Australian Experience

The issue of scale and volume has been highlighted as a reason why an individual complaints mechanism would not work. The eSafety Commissioner in her evidence at an Oireachtas hearing last summer stated how the same 'fear mongering' was used when it was being established and this did not happen.³⁸

³⁶ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/76725/61834cef-c977-4a66-9b97-95cf03216c2c.pdf#page=null>

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808&from=EN#d1e664-69-1>

Article 1 (b) (aa)

³⁸

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-

And, on the point that such a mechanism would lack any real teeth because of jurisdictional issues, eSafety at that same meeting stated that ‘... less than 1% of the content that we deal with is actually hosted in Australia. It is almost all hosted overseas... There are thousands of different sites, and we have about an 85% success rate.’³⁹

Further speaking on its impact, it stated ‘It helps to have the government crest behind us, as well as a strong set of remedial actions and powers to hold either perpetrators or the platforms to account... in our new Bill [Online Safety Act 2021], that our laws and regulatory schemes will have extra-territorial reach.’⁴⁰

A carefully defined individual complaints mechanism designed to be used in limited cases where all traditional avenues have failed could have a feasible chance of working.

Future-focused

Designated services for regulation will be required to take on board the requirements of the legislation and to ensure they implement those as fully and as carefully as they can, and this ought to lessen the need for such a mechanism into the future.

As the OSMR, Revised AVMSD and the DSA bed in, it is hoped that the need for such an individual complaints mechanism will be lessened. Ongoing development, monitoring and enforcing of online safety codes ought to encourage more robust policies reducing such content and behaviour on platforms/services and supporting positive digital citizenship. In any event an individual complaints mechanism will put a spotlight on issues where previously there has been little transparency.

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures

Fundamental right to an effective remedy

The DSA proposal states: ‘Union citizens and others are exposed to ever-increasing risks and harms online – from the spread of illegal content and activities to limitations to express themselves and other societal harms. The envisaged policy measures in this legislative proposal will substantially improve this situation by providing a modern, future-proof governance framework, effectively safeguarding the rights and legitimate interests of all parties involved, most of all Union citizens. The proposal introduces important safeguards to allow citizens to freely express themselves, while enhancing user agency in the online environment, as well as the exercise of other fundamental rights such as the right to an effective remedy, non-discrimination, rights of the child as well as the protection of personal

[21/2/?highlight%5B0%5D=julie&highlight%5B1%5D=inman&highlight%5B2%5D=grant&highlight%5B3%5D=safety&highlight%5B4%5D=granted&highlight%5B5%5D=online&highlight%5B6%5D=online](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-21/2/?highlight%5B0%5D=julie&highlight%5B1%5D=inman&highlight%5B2%5D=grant&highlight%5B3%5D=safety&highlight%5B4%5D=granted&highlight%5B5%5D=online&highlight%5B6%5D=online)

³⁹

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-21/2/?highlight%5B0%5D=julie&highlight%5B1%5D=inman&highlight%5B2%5D=grant&highlight%5B3%5D=safety&highlight%5B4%5D=granted&highlight%5B5%5D=online&highlight%5B6%5D=online

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https://www.oireachtas.ie/en/debates/debate/joint_committee_on_tourism_culture_arts_sport_and_media/2021-07-21/2/?highlight%5B0%5D=julie&highlight%5B1%5D=inman&highlight%5B2%5D=grant&highlight%5B3%5D=safety&highlight%5B4%5D=granted&highlight%5B5%5D=online&highlight%5B6%5D=online

data and privacy online.’ The OSMR regulatory framework will have to align with the proposed DSA framework, which highlights the right to an effective remedy as a key protective factor.

Freedom of Expression

ISPCC does not support the rationale that providing for an individual complaints mechanism will remove a person’s right to freedom of expression. This right has been misunderstood and conflated. Calling-out and removing blatant cyberbullying content that goes against most platforms and services’ Terms of Use is not infringing on this right.

Part of any public awareness initiative of the mechanism will need to incorporate clear education messages, in particular on what it means to be a good digital citizen.

ISPCC fully recognises and supports an individual’s right to freedom of expression, but not where harmful and abusive behaviour is masqueraded as such.

8. How would this balance be affected by matters of scale and volume of content?

OSMR notes that ‘These latter categories are subject to a risk test regarding risk to life or a reasonably foreseeable risk to physical or mental health. The Bill provides that all determinations about whether any particular online content is harmful is to be done on the balance of probabilities.’

This approach is prudent and could help with managing any potential issues of scale and volume.

Reporting mechanisms will need to be well-scoped out in order for people to have an appreciation of when such a mechanism can be used and the threshold such a complaint must reach. Also, a repository of anonymised cases should be made available to support this education and awareness effort.

ISPCC outlines below its proof of concept for how such an individual complaints mechanism could work. ISPCC presents this in a number of steps, based in part, on how the eSafety Commission in Australia operates a similar mechanism, the Report Remove⁴¹ tool operated by NSPCC and the IWF in the UK, and the Report Harmful Content⁴² service also operated in the UK that is provided by the UK Safer Internet Centre and operated by one of its consortium partners, South West Grid for Learning (SWGfL).

ISPCC Proof of Concept for Delivering an Individual Complaints Mechanism

ISPCC Case Scenario: Rory is a 13-year-old boy who loved everything about being online. However, that has all now changed. Rory was subjected to a litany of cyberbullying over a period of six months and now he no longer has an interest in being online and in the ‘real world’ has withdrawn from family and friends due to his cyberbullying experience. Rory received a barrage of horrible text messages, was subjected to constant mean and nasty commentary in a games’ chat room with other players, and had horrible things said about him and directed towards him on different social media platforms. In isolation, this behaviour may not look like cyberbullying, but when seen all together, it was clear that Rory was being

⁴¹ <https://www.nspcc.org.uk/keeping-children-safe/online-safety/online-reporting/report-remove/>

⁴² <https://reportharmfulcontent.com/>

cyberbullied. The only thing Rory wanted was to get all this horrible content about him removed from the hosting services.

Request to Remove Harmful Communications

Criteria:

- Child must be a resident in Ireland (Online Safety Regulatory Framework); European Union Citizen (Video-sharing Platform Services as per Revised AVMSD).
- Child must have reported the online harmful content (e.g., cyberbullying) to the host service(s) in the last time-defined period (e.g., 48 hours in Australia)
- Child must have either not received a response or received an unsatisfactory response from the hosting service(s).
- The Online Safety Commissioner must have jurisdiction over the host service(s), and/or access to a counterpart with similar functionality in the jurisdiction of the host service(s) (Potentially the Digital Services Coordinator via the DSA Package). Where the service is based outside the state the Law Reform Commission recommended that such an Online Safety Commissioner has ‘...some extra-territorial effect in connection with an Irish citizen or a person ordinarily resident in the State.’⁴³
- Where the child is in immediate risk, they are advised to contact the appropriate services.

Procedure:

1. A child victim/concerned child and/or their parent/guardian logs on to the Media Commission website for example and clicks on the Online Safety Commissioner section.
2. In the Online Safety Commissioner section, the child can log into the individual reporting mechanism portal.
3. Here, they are presented with an online form they must fill in with the details of their complaint, to include;
 - a) Full name – reports cannot be made anonymously.
 - b) Profile of complaint (based on harms reflected in the OSMR Bill).
 - c) Upload evidence of the cyberbullying – e.g., ‘URLs or web addresses, screenshots, scanned printouts of any messages or photos and videos.’⁴⁴
4. Submit the form to the Online Safety Commissioner. There could potentially be two options here:
 - (i) A service with expertise on the relevant type of issue triages the complaint at the back end (e.g., Hotline.ie for child sexual abuse material; AN Other for cyberbullying content). The now classified/profiled content is referred onward to the Online Safety Commissioner.

OR

⁴³<https://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf> Pg. 12

⁴⁴ These are examples of useful content to support a case in the Australian system <https://www.esafety.gov.au/report/cyberbullying/collecting-evidence>

(ii) The Online Safety Commissioner reviews the complaint and decides this meets the definition of cyberbullying as outlined in law (within a time-defined period).

5. The Online Safety Commissioner progresses the case with the host service(s).
6. Where the content is not within the jurisdiction of the Online Safety Commissioner, i.e., the host service does not have a base in Ireland, some type of extra-territorial mechanism must be available to the Commissioner. (Possibly the Digital Services Coordinator in another Member State). ISPCCC notes that the Commission can enter into Voluntary arrangements with providers in third countries (OSMR, S. 139W).
7. The host service(s) has a time-defined period in which to remove the content. Australia's eSafety rehost removal period is now 24 hours.
8. The child is signposted to suitable support services.

Adopting a Phased Approach

1. Provide for such an individual complaints mechanism with a time-defined period and a built-in review mechanism for the purpose of Ireland leading out on this important global public policy issue to get an understanding of the complexities of the problem that we are trying to solve. (i.e., to fully understand the gaps and challenges). Australia took this approach when it was first established; its remit has since been broadened and underpinned with new legislation in July 2021.
2. The reporting mechanism may decide to deal with just one type of complaint initially e.g., cyberbullying for a time-defined initial phase.
3. Utilise existing services with an expertise in the field of harmful online content to offer support and guidance to the Online Safety Commissioner in building up the context of the cases presented.

A similar suitable system could be adopted for reports of 'random' single, unrelated pieces of harmful content.

9. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

In a RTÉ Drivetime interview Minister Martin stated that the Online Safety Commissioner would have responsibility for the new online safety regulatory framework and for 'additional measures and legislation that could be brought forward at a European level'.⁴⁵

Expressions of Harmful Content

In terms of how an individual complaints mechanism should be overseen, it may be useful to look at how such harmful content manifests. It may be useful to develop a broader system for complaints handling instead of a narrow mechanism. Depending on how the harmful

⁴⁵ <https://www.rte.ie/radio/radio1/clips/22050053/>

content is manifesting (targeted harmful communications versus 'random' single, unrelated items), it could be escalated and reviewed appropriately.

(i) Harmful content (in the form of harmful communications) that is directed towards an individual in the form of cyberbullying; promotion/encouragement of suicidal/self-harm behaviour; promotion/encouragement of practices associated with eating disorders that could cause harm, intentionally or otherwise should be overseen by the Online Safety Commissioner.

(ii) 'Random' single, unrelated pieces of harmful content online appearing on video-sharing platforms pursuant to the definition in the Revised AVMSD may be better placed under a second Online Safety Commissioner dealing specifically with this issue.

(iii) Harmful Content as it pertains to the Digital Services Act Package

Once finalised, any monitoring and oversight proposed by this Expert Group may need to be relooked at in terms of the role of the Digital Services Coordinator what the DSA is proposing, and where differences may lie, if at all.

The DSA Proposal states: 'Very large online platforms are obliged to conduct risk assessments on the systemic risks brought about by or relating to the functioning and use of their services (Article 26) and to take reasonable and effective measures aimed at mitigating those risks (Article 27). They are also to submit themselves to external and independent audits (Article 28). The Section includes also a specific obligation in case very large online platforms use recommender systems (Article 29)'.⁴⁶

10. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

An individual complaints mechanism should be structured as (b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling. However, in cases where there is an obvious high-level risk to the individual, they ought to be able to bypass the requirement to engage with the online service.

11. How should the success or otherwise of an individual complaints mechanism be measured?

The success and efficacy of the mechanism ought to be deemed on clearly defined and measurable outputs and outcomes based on the legislative framework underpinning it, i.e., the objectives of such a mechanism.

Potential Success Outputs:

- Number of complainants availing of it – demonstrates need.
- Number of cases resolved as per stated objective – demonstrates efficacy.
- Mapping of emerging and evolving patterns and trends – supports meaningful policy development and supports future education responses.

⁴⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&rid=2>

Potential Success Outcomes

To understand if a complaints handling mechanism is working, as it ought to, it is imperative to have meaningful engagement with the users of such a mechanism and understand how they experience it. The Commission may want to signpost users to a questionnaire to give feedback on its operations and their experience of same.

In line with DSA Article 31, vetted researchers from academic institutions and independent research bodies with expertise in the area should play a role in this process and be provided with access to necessary data to execute such evaluation.⁴⁷

12. What would be the appropriate period for review of the operation of an individual complaints mechanism?

ISPCC suggests that the individual complaints mechanism be reviewed at no less than three years and no more than five years after coming into force. This interval would also allow designated and vetted researchers to design empirical methods for meaningful evaluation. It is also supported by the time frames proposed for other pieces of legislation: the 'age of digital consent' review in the *Data Protection Act 2018* is set at three years and the Digital Services Act Package is due to be reviewed five years from when it comes into force

Such a mechanism will require significant awareness initiatives to encourage and promote public engagement.

As providing for such a mechanism in this marketplace is somewhat novel and complex, an in-built monitoring framework that tracks and potentially resolves/rectifies any teething issues, where legal and practicable, could help in its overall success at review stage.

Conclusion

ISPCC has been campaigning on this and wider online safety policy issues for many years and recognises and appreciates the complexities of this public policy space.

However, many questions remain unanswered in terms of who and how this legislative package and forthcoming ones at EU level will work together. ISPCC suggests that a roundtable with key stakeholders to work through these novel and complex issues may prove useful in finding a legal and practical path forward. This may be a piece of work that the National Advisory Council for Online Safety (NACOS) could convene.

We are at an important juncture with this legislation, and it is in everyone's best interests that it be as robust and meaningful for the people it intends to serve.

ISPCC wishes the Expert Group well in its work on this important matter and is available for further engagement should that be useful.

⁴⁷ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>

Querist: The Irish Society for Prevention of Cruelty to Children (ISPCC)

A legal opinion is sought by the Querist, the ISPCC, regarding the omission of an individual reporting mechanism from the proposed Online Safety and Media Regulation Bill 2019.

1. Background

The General Scheme of the Online Safety and Media Regulation Bill 2019 (hereinafter “the Bill”) was approved by government for detailed legal drafting by the Office of the Attorney General on 9 January 2020. The new Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has responsibility for same, now under Minister Catherine Martin. Minister Martin was granted Government approval on 8 December 2020, to add further Heads to the General Scheme of the Bill. These Heads concern the regulation of television broadcasting services and video on-demand services, the funding of the Media Commission and a number of additional Heads on online safety.

The Bill will become an Act of the Oireachtas, transposing DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. (hereinafter “the directive”)

It is noted that this directive was introduced in 2010 and later amended to provide for “changing market realities”. It is further noted that the Oireachtas has engaged in a lengthy consultative process regarding transposition and has chosen an Act rather than Regulation, all of which confirm the importance of this legislation both at EU and domestic level.

2. The Legal Issues

The Directive is the governing legislation, which must be transposed by Member States (MS), within two years, namely 19th September 2020 or face infringement proceedings. Four MS have passed implementing legislation- Denmark, Sweden, the Netherlands and Hungary. Infringement letters have issued to the remaining MS, on 20th November 2020, to include the UK, pre-Brexit. The UK scenario is important as Irish legislation follows for the most part, to the letter that of the UK.

The Bill/Act provides for the repeal of the Broadcasting Act 2009, the disestablishment of the Broadcasting Authority and the establishment of a domestic regulatory Commission. The government has committed to the following actions:

1. *We will enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner. The Online Safety Commissioner will:*
2. *Require online platforms to set out the steps they will take to keep their users safe online and to build safety into the design of their platforms.*

3. *Ensure that new Online Safety Codes can combat cyber bullying material and material promoting eating disorders, self-harm, and suicide.*
4. *Provide a mechanism for further categories of harmful content to be added following consultation with the Oireachtas.*
5. *Require that services operate effective complaints procedures.*
6. *Ensure that advertising, sponsorship, and product placement are not harmful and that they uphold minimum standards.*
7. *Require platforms to have takedown measures that are timely and effective.*

The above are definite commitments which should be written into the Bill/Act as the functions of the Commissioner. The below are soft commitments and while worthwhile are aspirational only:

1. *Promote positive digital citizenship among children and young people, in conjunction with Webwise and other educational partners, schools, and the Ombudsman for Children.*
2. *Develop a research programme led by internationally recognised experts to review the existing and developing literature in relation to (a) the consequences, benefits and potential harms to society and children specifically of digital activity and (b) the concept of duty of care and the public interest in the design of online platforms.*
3. *We will support digital literacy schemes across the country and will continue to support the Digital Skills for Citizens Scheme.*
4. *Work with the relevant government departments, to ensure the full implementation of the Audio-visual Media Services Directive (AVMSD)."*

The Australian model of eSafety Commissioner, pursuant to the Australian Enhancing Online Safety Act 2015, provides for an individual reporting mechanism. Querist asks can or should a similar complaints' mechanism be included in the proposed Irish Bill.

3. Relevant Law

The current legal position in Ireland is as follows:

- (a) Presently under law in Ireland any victim must complain under the policies of the platform providers and/or institute proceedings for defamation, usually in the High Court. This involves delays and costs for proceedings which may or may not be successful.
- (b) It would appear that the changes proposed by the Government through the Bill will address the concerns raised by the Querist through Codes of Conduct (Practice).
- (c) The Querist can advocate, but not legally rely, on the Australian enhancing Online Safety Act 2015 as the model. The Australian Act does not have force of law in Ireland, only persuasive force. The Irish Superior Courts frequently rely, however, on Australian law common law decisions as persuasive authorities. Statute, which is in issue here, is different.

- (d) Querist also raises the matter of rights under the United Nations Convention on the Rights of the Child (UNCRC) and Article 17 of the Revised European Social Charter. While the Irish Superior Courts have relied on conventions and charters in recent times in their decisions, these again have persuasive legal force only, as international law is not directly applicable in Ireland.
- (e) The Australian Act provides directly at section 12 for the UNCRC bringing the Convention under its statutory regime. It is very arguable that Ireland should do likewise in the proposed Bill, being a common law regime very similar to Australia.
- (f) For the strongest position legally, Querist must look to law, directly enforceable in Ireland, namely the law of the European Union, in this case the directive, the EU Charter of Fundamental Rights and the Constitution of Ireland.

4. Application of the Law to the Facts within

The legal arguments for a complaints' mechanism to protect minors are to be found in

- (A) Article 28b of the Directive, being EU law, which has supremacy and
- (B) Article 24 of the EU Charter of Fundamental Rights, the Rights of the Child, again which has supremacy and
- (C) Article 42a of Bunreacht na hÉireann, the Rights of the Child.

(A) Article 28(b) of the directive provides at paragraph 1 thereof

1. Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that videosharing platform providers under their jurisdiction take appropriate measures to protect:

- (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);

(B) Article 42a of Bunreacht an hÉireann provides under the title CHILDREN as follows:

1. The state recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

Article 42a.1° above, almost replicates Article 40.3.1°, which comprises the adult personal rights to life, bodily integrity and privacy, meaning those rights should be replicated for children under 42a.1° and with greater force. The Supreme Court has also recently very strongly recognised the right to dignity of the person, both under Article 40.3.1° and in the Preamble.⁴⁸

(C) Article 24 of the EU Charter of Fundamental Rights, under the Rights of the Child provides:

⁴⁸ N.V.H. v Minister for Justice and Equality & ors, [2018] 1 IR 246; [2017] IESC 35

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

5. The implications of the current legal position

Directive Article 28b provides for the “protection of minors” and “appropriate measures”. Those “appropriate measures” can be further broken down as below, but must be read subject to Constitutional Article 42a and EU Charter Article 24.

Directive Article 28 (b)(3)(i) provides that protection of minors is given effect by

“(i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);”

Article 28(b)(3)(d) provides

“(d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;”

On reading of the above is that there is a two-stage process whereby the government establishes under Article 28(b)(3)(d) user-friendly mechanisms for reporting concerns at first stage to the platform provider and a second stage where the government must set out procedures for handling complaints and their resolution if those reported concerns have become complaints.

Any balancing of the right to remove material and the right to free expression, must in my opinion be considered through the prism of the Constitutional and EU Charter “*best interests*” principle as well as the EU Charter provision of “*children have a right to such protection and care as is necessary for their well-being.*” These high-level legal protections necessitate a mechanism, stronger than voluntary Codes of Practice, to vindicate the right to have offensive material removed promptly in the case of children.

The Government has set out its interpretation of Articles 28a and 28b in a table of “appropriate measures” in its Correlation Table⁴⁹ document and makes no provision for an individual complaints’ mechanism. This interpretation is, however, in contrast to the actual wording of the directive and the assumption that the platform provider cannot offend constitutional fair procedures through *nemo iudex in causa sua*. (One cannot act as a judge in your own cause-impartiality)

Furthermore, the assumption that the Commissioner and not the platform provider is to address complaints is supported by **Article 30(2) of the directive** which provides:

⁴⁹ Online Safety and Media Regulation Bill Correlation table between the General Scheme and the revised Audiovisual Media Services Directive

“National regulatory authorities or bodies shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.”

Directive Articles 28a and 28b are therefore intended to be subject to Constitutional regulatory supervision under directive Article 30, which must be done pursuant to constitutional Articles 42a of the rights of the child and Article 40.3° constitutional fair procedures, which cannot offend impartiality, and clearly leads to a conclusion of an individual complaints’ mechanism under the auspices of the Commissioner.

6. Conclusion

I am of the opinion that Article 30 above, coupled with Constitutional Article 42a, the wordings of Articles 28 (b)(3)(d) and 28(b)(3)(i), the overarching EU Charter Article 24, together with the commitments 5 and 7 under the Programme for Government mandate the Government to establish an individual complaints’ mechanism to vindicate the Article 28 (b)(3)(i) procedures regulating reports/complaints made by minors to the platform providers. Legislation for said individual complaints’ mechanism is the only constitutional and EU Charter interpretation of directive Articles 28a and 28b and 30.

January 12th 2021

LAW SOCIETY SUBMISSION



ONLINE SAFETY AND MEDIA REGULATION BILL - INDIVIDUAL COMPLAINTS MECHANISM

EXPERT GROUP ON AN ONLINE SAFETY INDIVIDUAL COMPLAINTS MECHANISM

21 MARCH 2022

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The Law Society of Ireland ('the **Society**') welcomes the establishment of an expert group on an online safety individual complaints mechanism ('the **Expert Group**') by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media to examine the possible provision of an individual complaints mechanism in the Online Safety and Media Regulation Bill ('the **Bill**'). The Society appreciates the opening of a public consultation to allow input from relevant stakeholders on the establishment, practicalities and potential operation of such a mechanism.
- 1.2. The Society is the educational, representative and co-regulatory body for the solicitors' profession in Ireland. This submission is based on the views of members of the Society's Human Rights & Equality Committee which is comprised of solicitors with experience and expertise in national and international human rights, as well as comprehensive knowledge of media regulation.
- 1.3. The introduction of the General Scheme of the Online Safety and Media Regulation Bill ('the **General Scheme**') is timely given the growing need to protect individuals, particularly younger members of Irish society, from harmful online content and to provide access to redress for those affected by same.
- 1.4. This submission sets out the Society's response to the questions posed by the Expert Group in its Consultation Document.

2. Response to consultation questions

2.1 What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

- 2.1.1** The Society considers the establishment of the proposed individual complaints mechanism to be essential in providing a platform for individuals to voice concerns and raise complaints. Until now, online platforms and their content have largely been untamed and to a degree, untouchable. It is only in recent years through the use of 'Norwich Pharmacal' Orders that service providers have been required to disclose information in relation to the identity of service users responsible for posting harmful and defamatory content online. However, this mechanism is prohibitively expensive for many individuals. The Society believes that an individual complaints mechanism would fill this gap.
- 2.1.2** A key avenue for redress for individuals affected by harmful and defamatory online content is the effective removal of this content which may, over time, lead to an eventual reduction in the risk of harm. In circumstances where the service provider is different from third parties providing the content (**'content providers'**), it would be beneficial to establish a mechanism to sanction content providers through measures such as content limitation notices, takedown orders and fines.
- 2.1.3** It should be the responsibility of service providers of a designated online service to investigate individual complaints related to content providers, subject to an Online Safety Code on Complaints Handling. The complaints process should incorporate a preliminary examination process which would help to triage complaints and ensure that only those complaints which fall within the statutory remit move forward for investigation.
- 2.1.4** The power of the Online Safety Commissioner (**'the Commissioner'**) to set Codes of Practice should contain a provision to establish a robust complaints system for individual platforms that, in turn, could increase the likelihood of complaint resolution for individuals in the first instance. The Commissioner would be a last resort in situations where online services or platforms fail to deal with complaints appropriately.

The Media Commission (**'the Commission'**), of which the Commissioner is to be a member, can define categories of very serious and harmful content (**"defined categories"**). Where a complaint is made in respect of a defined category, the service provider must make a formal notification to the Commission within a defined period informing them of receipt of same. This is similar to the complaints process established by the Health Information and Quality Authority (**HIQA**). In addition, the service provider should stipulate the timeframe for completion of an internal investigation into the complaint. The service provider should then formally notify the Commission of the outcome of the investigation and the steps taken in relation to same.

- 2.1.5 The content provider should be afforded an opportunity to appeal the decision of the service provider to the Independent Appeals Panel (Tier 2).
- 2.1.6 In relation to all other complaints, service providers can complete an annual return of those received, investigated and the outcomes of same.
- 2.1.7 A benefit of an individual complaints process being conducted by the service provider is that, if the complaint is founded, it will lead to a more immediate, efficient and largely cost free “take down” of inappropriate material (as against having to wait for a regulatory body’s investigation process to complete). This is important where any delay in taking down material can cause further harm given the ability for high-speed sharing of damaging material across multiple platforms, making subsequent take down largely redundant.

2.2 Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

- 2.2.1 Media service providers are to be well regulated under the General Scheme which is to include a “super complaints” process (see [Head 52B – Systematic complaints scheme](#)) together with a broad range of statutory powers which relate to the investigative processes and sanctions. However, this should complement, rather than be a substitute for, an individual complaints mechanism.
- 2.2.2 Current provisions of the General Scheme can be utilised as part of the individual complaints mechanism to review regulated service providers who do not satisfactorily or adequately investigate complaints in accordance with the complaints code.

2.3 What risks do you foresee if there were no individual complaints mechanisms?

- 2.3.1 As stated, many individuals feel powerless in the face of unregulated online content. An individual complaint mechanism will provide a voice to individuals and help redress the balance of power. A risk associated with the absence of an individual complaints mechanism is that individuals would have less access to affordable, swift and adequate access to justice.

2.4 Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

- 2.4.1 Service providers should have sufficient remit to investigate all categories of complaints. Their complaints process, which should be subject to inspection by an authorised officer, should contain a preliminary investigation process to filter out vexatious or unmeritorious complaints. The Bill should make provision for the code to include defined categories of harmful content and service providers should be required to notify the Commission of such complaints within a particular timeframe (see para 2.1.5 above).

2.5 Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

2.5.1 Yes, a distinction should be made between the categories. The General Scheme already seeks to achieve a significant amount, particularly in terms of regulation. As such, we are concerned that it risks overextending itself in attempting to cover all things related to online safety.

2.5.2 Harmful online content connected to a criminal offence should be dealt with solely by An Garda Síochána. However, in respect of a designated online service, either through the designation of any rules or codes that may apply, the Commission can create an obligation on the service provider to report any online content connected to a criminal offence to An Garda Síochána and impose sanctions for either failing to do so and/or where a conviction follows.

2.6 How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

2.6.1 It is simply not feasible to expect the Commission to have the sufficient resources and manpower to assess, and potentially investigate, a huge number of complaints. As stated, it is recommended that the Commission follow the example of HIQA and place the onus firmly on the service provider to assess and triage complaints, ensuring that only those that warrant investigation are investigated.

2.6.2 In addition, the service provider should notify the Commission of the defined categories of complaints within a specified time period and submit an annual return of the investigations conducted in relation to all other complaints. The Commission can then notify other Regulators where complaints are founded and any sanctions applied e.g. the European Regulatory Group for Audiovisual Media Services.

2.7 In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

2.7.1 Service providers should be expected to have a robust, fair procedures as part of the complaints process, not only in relation to the mechanics of the investigation, but also in relation to the preliminary investigation/triage stage, with due regard to the protection of all the rights of any person involved.

2.7.2 In relation to children, the Council of Europe recommends that Member States ensure that a child's right to an effective remedy under the European Convention of Human Rights¹ is respected and protected when their rights have been infringed online.² This means that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'.³

2.7.3 Pursuant to the complaints code, the service provider should be required to set out the supports provided to individual complainants relating to defined categories of complaint, which should include liaising with other agencies.

2.8 Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

2.8.1 The mechanism should be overseen by the Online Safety Commissioner, with the complaints being investigated by the service provider.

2.9 Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

2.9.1 As stated, service providers should be charged with conducting all investigations and providing formal notice to the Commission when complaints in respect of defined categories are received. The Commission should only be engaged as a Tier 2 appeal function. Where the complaint has not been properly investigated, or appropriately managed, the Commission can then impose a sanction.

2.10 How should the success or otherwise of an individual complaints mechanism be measured?

2.10.1 It should be measured by reviewing statistics which relate to the notification of defined categories of harmful content, the annual returns of complaints and management of same; the sanctions imposed and notifications to other Regulators.

2.10.2 In addition, feedback from those who use the process will assist in developing and improving the codes through learning from such complaints over time.

2.10.3 Paragraph 31 of the [UN Guiding Principles on Business and Human Rights](#) provides a useful guide on complaints mechanisms which could be useful in the context of formation of a complaints process, and in defining indicators for success.

¹ [European Convention on Human Rights Arts 6 and 19](#)

² Council of Europe, '[Recommendation CM/Rec\(2018\)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#)'

³ Ibid

2.11 What would be the appropriate period for review of the operation of an individual complaints mechanism?

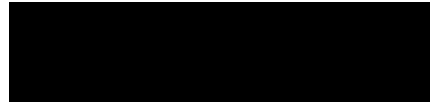
2.11.1 The mechanism should be reviewed after five years.

Conclusion

We hope that these observations and recommendations will be useful to the Expert Group in its consideration of these matters. We will be glad to engage further on any of the issues raised.

For further information please contact:

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IAB IRELAND'S RESPONSE TO THE CONSULTATION ON AN INDIVIDUALS COMPLAINT MECHANISM IN THE OSMR 21/3/22

IAB Ireland

IAB Ireland (www.iabireland.ie) is the trade association for the Irish online advertising industry. IAB Ireland is licensed by IAB US and is a member of the IAB Europe network. The IAB network shares three core objectives, namely to: prove, promote and protect the online advertising industry. These objectives are fulfilled through the dissemination of authoritative research, the organisation of educational events and by promoting industry-wide best practice. IAB members include advertisers, agencies, ad tech companies and media owners/platforms all working together to help deliver a sustainable industry.

The global IAB network is committed to supporting statutory and self regulation of digital advertising. As part of IAB Ireland's policy remit it plays an active role in public consultations, engages with policy makers/regulators, holds member briefings on legislation/regulation and contributes to Privacy and Data Fora/Summits. IAB Ireland is represented at board level of the Advertising Standards for Ireland (ASAI) and played an active role in the ASAI code review working group and in the recent adoption of rules in respect of the marketing of HFSS products into the ASAI code.

IAB IRELAND'S CONCERNS IN RESPECT OF AN INDIVIDUAL COMPLAINTS MECHANISM IN THE OSMR

IAB Ireland and its members welcome the transposition of the AVMS Directive which provides for regulation of editorially controlled audiovisual services, broadcasting and video on-demand, and the regulation of video sharing platform services, which are being regulated for online safety purposes, as well as the establishment of a new regulator, the Media Commission, to oversee the compliance of services with these regulations.

As the representative body for all the key stakeholders in digital advertising, IAB Ireland is uniquely positioned to share the view of the entire digital advertising ecosystem in respect of the OSMR.

We note that the OSMR bill “sets out a systemic regulatory framework for online safety. This framework empowers Coimisiún na Meán (the Media Commission) to tackle the availability of defined categories of harmful online content through binding online safety codes and other measures. These codes will set out rules and expectations for how designated online services can make their services safer, including in relation to standards for complaints handling.”

Taking the OSMR's remit as outlined above into account as well as the Expert Group's consideration of an individual complaints mechanism in the OSMR Bill, it is IAB Ireland's understanding that digital 'advertising' is not within remit.

Advertising content is regulated in Ireland by the Advertising Standards Authority for Ireland (ASAI), part of the European Advertising Standards Alliance (EASA) network. As Ireland's advertising self-regulatory organisation (SRO), ASAI deals with individual complaints in respect of all advertising types including digital advertising. In recent years this has included some developing areas, such as influencer marketing. A core strength of the self-regulatory process is the fact that it can move quickly to address new forms of advertising content. Importantly, each national organisation can take account of local social and cultural content. This system is already an established, valued and a very effective mechanism for dealing with individual complaints.

We believe that the inclusion of digital advertising in the individual complaints mechanism in the OSMR bill would create overlapping regulation, causing legal uncertainty to the detriment of both the implementation of the OSMR bill as well as the ASAI's regulation of digital advertising.

Furthermore as part of the EASA network, ASAI participates in a European cross border complaints system benefiting from and sharing learnings on best practice across European SROs.

We hope that this response to your consultation is useful to The Expert Group and we would be very happy to respond to any further questions you may have in this respect.

IAB Ireland, March 21st, 2022

Submission to OSMR Bill Expert Group Re Individual Complaints mechanism

On Behalf of RTÉ Broadcast Compliance

March 2022

Introduction

RTÉ welcomes the opportunity to outline some insights and views, drawing on our experience of the complaints system over recent years.

The current complaints system for broadcasters works well and the public have a structured process to pursue a complaint, firstly, with the broadcaster, and secondly, referral to the BAI, if they are not satisfied with the broadcaster's response.

If the BAI upholds a complaint, there is a defined sanction with the broadcaster required to publish a notice acknowledging the adverse finding and identifying the breach of the Act/Codes. The process also provides for a broadcaster to make a voluntary disclosure of non-compliance and a process of engagement with the BAI Compliance Committee to devise and implement a remedial plan or course of action, if deemed necessary, to mitigate against a recurrence.

For a serious breach or repeated breaches of the Act/Codes, the current Section 53 provides that that BAI can appoint an Investigating officer.

The current system is tiered, with Section 53 provisions applicable to more serious matters.

Is an individual complaints mechanism practicable?

The issue of how practicable it will be is dependent on:

- The scope of such a scheme,
- The rights and due process afforded to a complainant,
- The thresholds that will apply in making a valid complaint,
- The provision of guidance on what is required when a person wishes to make a complaint,
- And guidance on the classes of complaints that will not be acceptable.

The scope of a scheme

The volume of information held in online and on-demand platforms is vast and growing all the time. By way of example, there is over 4,000 hours of RTÉ and acquired content on the RTÉ Player and this will increase.

In looking at the scope of a scheme, the following issues arise:

- The Broadcasting Act 2009 allows a period of 30 days to make a complaint. Should content that has already been subject to the regulatory system in the

first instance, be exempt from further complaint if available online/on-demand?

- In recent times, issues have arisen about content (programmes and films) made many years ago in a particular historical and societal context. A recent example would be the film *Gone with the Wind*. But this also applies to other genre, such as comedy. RTÉ has adopted an approach of applying an advisory with content like this.
- If a film or programme, or a series that was broadcast years previously contains content/language that is not acceptable by today's standards is available 'on demand' how and in what ways is it envisaged a complaints process would apply to content of this kind?

The Rights of Complainants

At the outset, RTÉ draws attention to Point 3 in the Terms of Reference –

“To examine the fundamental rights and due process requirements for complainants, online services and the uploaders of the content subject to a complaint, taking into account relevant provisions on such matters in section 46 (Part 8B – Chapter 7 of the 2009 Act) of the Online Safety and Media Regulation Bill, which provides an Online Safety Commissioner with the power to issue content limitation notices.”

This consultation is about an “individual complaints mechanism” and the above speaks of “complainants.”

‘Complainants’ clearly envisages an individual or a body/entity that makes a complaint.

The Thresholds to be met by a complainant

In recent years RTÉ has dealt with so-called “copy & paste” complaints. In some instances, we have dealt with several thousand such complaints related to a single broadcast, with all the administrative demands that arise.

This has arisen where an individual, a small group or an entity draft a template complaint about a broadcast they wish to complain about, and then circulate this widely over emails and social media platforms, urging others to simply sign their name and send to the email address provided for RTÉ complaints.

This gives rise to issues for a new Media Commission:

- If a complaint is originated by a person, a small group of people or an entity and then circulated with the purpose of eliciting as many responses as possible, how can a Commissioner ascertain that every single complainant who signs the complaint genuinely watched or listened to the content in question?

-

- If it is not possible to ascertain this, is the new Commission to work on the basis that, if for example, it receives a few thousand identical complaints, are all to be accepted as *bone fide* individual complaints?
- Also, if all are to be accepted as *bone fide* will a Commissioner be obliged to respond to every single complainant, even if this runs to several thousand?

If “copy & paste” complaints are accepted, the Expert Group should examine whether the potential number should be open-ended, or whether there should be a reasonable limit on the number of identical complaints that the Commission will accept.

Fundamentally, a complaint will be judged to have merit only by reference to the standards in the Act/Codes. Whether the Commission receives 5, 50, 500 or 5,000 identical complaints, the volume will be irrelevant to determining the merit of the complaint; but the potential administrative burden is another matter.

Also, it is worth pointing out that RTÉ does not accept anonymous complaints.

There is another aspect of a complaints process that RTÉ wishes to draw attention to.

Section 47(1) of the Broadcasting Act 2009 states “a broadcaster shall give due and adequate consideration to a complaint, made in writing by a person in respect of the broadcasting service provided by the broadcaster which, in the opinion of the broadcaster, has been made in good faith and is not of a frivolous or vexatious nature.”

In recent years RTÉ has rejected several complaints citing this provision. To date, those decisions have been upheld by the BAI Compliance Committee.

In looking at what thresholds might apply for such complaints, it is worth examining the grounds RTÉ relied upon in making these determinations. They may be appropriate to assist with drafting clear guidance on what may constitute complaints that are not made in good faith, or that are frivolous and/or vexatious.

The grounds cited by RTÉ included –

- Defamatory and libellous comments about named individuals
- Foul and/or demeaning language
- Seeking to use current programming to re-open complaints and/or legal matters that were previously dealt with by due process
- Distorting and mispresenting content – e.g., attributing statements, quotes, remarks to a person that were never said in the broadcast
- Attempts by the same complainant to repeatedly pursue complaints of the same nature against different broadcasts when the statutory and/or regulatory basis for rejecting these complaints has been previously outlined by the BAI Compliance Committee in written decisions provided to that complainant.

Dealing with complaints where the same complainant seeks to pursue the same complaint under different guises involves significant administrative resources in tracking and detailing previous complaints and their outcome and relating that to current complaint(s).

Given the potential scope of content available online/on-demand, RTÉ would urge that any proposed individual complaints mechanism should have defined guidelines on the nature of complaints that will not be acceptable and indicate that the determination of the Commission on such complaints will be final.

If there is to be an individual complaints mechanism it will require a robust structure that allows for genuine complaints but also protects against misuse of the process.

Additionally, based on experience of processing complaints under the Broadcasting Act 2009, a complainant should be clear that for a complaint to be accepted as valid it must be submitted in accordance with the requirements of the Commission.

Summary

Subject to more detailed analysis, it appears the current draft of the OSMR Bill envisages that Section 53 type investigations would be the default option for the new Commission. If this reading is correct, it could result in investigations into alleged breaches that would fall well below the threshold for Section 53 in the current Act.

Based on RTÉ's experience, a default threshold of this kind would require significant and extensive administrative resources in terms of the number of Commissioners and support staff required to effectively manage the volume of investigations that will inevitably arise.

In the absence of defined parameters of the kind referenced above, the potential administrative burden on the new Commission is likely to be quite significant.

Complaints about programme content are materially different to complaints in other spheres, where the complainant is likely to be alleging a grievance about how they were personally impacted or are concerned about how they might be impacted by a decision in an area like finance, employment, environmental, access to certain entitlements, health, etc. Complaints in areas like this require a degree of investigation to determine relevant facts, a sequence of decision making, eligibility and other factors that may be relevant to the alleged grievance.

To that extent, there is no 'one size fits all' complaints process – the process must be relevant and functional relative to the nature of the complaints to be addressed.

RTÉ hopes the above assists your considerations and we are willing to engage further if deemed helpful.

Meta Platforms Ireland Ltd's response to the Expert Advisory Group's Consultation on Individual Complaints

Introduction

At the outset, Meta would like to thank the members of the Expert Advisory Group for carrying out their important work and for affording Meta the opportunity to input into their process via this consultation.

We have been supportive of the Irish Government's stated intention of achieving a proportionate and effective approach to the regulation of harmful online content since it first announced that it would bring forward comprehensive online safety legislation in early 2019.

As a company we have been calling for greater regulation of harmful content¹ and the appointment of an Online Safety Commissioner in Ireland for several years. We made a detailed submission to the Joint Oireachtas Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht during their pre-legislative scrutiny of the Online Safety and Media Regulation (OSMR) Bill in March of 2021.

In our submission, we called on the Irish Government to rapidly establish the regulatory body to implement the Audiovisual Media Services Directive (AVMSD) on an EU wide basis, and to pause progress on the national online safety measures until the Digital Services Act (DSA) had been finalised.

We reiterate that position as it is particularly relevant for the purposes of this consultation, especially given that

- a) At this point it is highly likely that the DSA will be finalised in the near future and the OSMR Bill is unlikely to be enacted by that point;
- b) The Irish Government has approved the designation of the Media Commission as its Digital Services Coordinator for the purposes of the Digital Services Act; and
- c) While recruitment is planned, to our knowledge no staff members have been hired to begin preparatory work for the implementation of the complex legislation. It is likely to take several years for the regulator to reach its full intended staffing complement of 300.²

Given that no proposal has been presented, at this time it is not possible for Meta to form a view on the operation of an individual complaints mechanism within the current OSMR Bill framework. We offer these general comments which we hope are of assistance to the Expert Advisory Group's consideration of this important subject.

Systemic Approach to regulation

Meta supports the proposed manner of regulation intended to be achieved by the current text of the OSMR Bill, namely that regulation in this area will be system based, principle led and adopt a risk based and proportionate approach. This aligns with the approach to the regulation of Video Sharing Platform Services contained in the revised AVMSD, and overall approach of the Digital Services Act.

¹ https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html

² It is important to note that that estimate of required resources predates the decision to designate the Media Commission as the Digital Services Coordinator.

The European Union, via its co-legislators, is not alone in endorsing the systemic approach to the regulation of harmful online content. It has also been endorsed by the Council of Europe's guidance note³ on best practices in content moderation, and the UN's special Rapporteur's report⁴ on the promotion and protection of the right to freedom of opinion and expression, which specifically cautions against regulatory models where government agencies (rather than the courts) become the arbiters of lawful expression.

Regulatory Fragmentation

Regulatory alignment within the European Union is desirable for all companies - both large and small, global and European. It provides a stable environment within which to innovate and build new technologies. It also greatly reduces the cost for companies to do business by providing the most efficient method for achieving compliance. It is also desirable for users, who will not be faced with a patchwork of different regulatory systems depending on which Member State they are located in.

The European Commission sought, via the Digital Services Act, to avoid the regulatory fragmentation to which the Ireland-only measures in the OSRM Bill will contribute.

Recital 2 of the European Commission's DSA proposal states "*Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services. Those diverging national laws negatively affect the internal market.....,The conditions for the provision of intermediary services across the internal market should be harmonised*" and Recital 4 of the DSA notes that "*[t]he approximation of national regulatory measures at Union level concerning the requirements for providers of intermediary services is necessary in order to avoid and put an end to fragmentation of the internal market and to ensure legal certainty, thus reducing uncertainty for developers and fostering interoperability.*" (emphasis added)

Furthermore, a separate out of court dispute mechanism is proposed by DSA (Article 18) which, if implemented, would be operated by the Media Commission as Digital Services Coordinator for Ireland. This would result in an unharmonised patchwork of appellate schemes and would cause serious issues for the regulator as having a myriad of different reporting schemes operating within a newly established regulatory body is not likely to lead to efficient regulation.

Any measure which further compounds this fragmentation or lack of alignment with European legislation will also run contrary to the Irish Government's stated focus in its National Digital Strategy - published in February 2022 – of "working to maximise the coherence of digital and regulatory structures".

Evidence base for Policy decision

We recognise that the members of the Expert Advisory Group are eminently qualified to undertake the work which they have been requested to do by the Irish Government. While we understand the desire among certain stakeholders to resolve this issue immediately, we believe that a more suitable point for the consideration of this issue will arrive once the Media Commission has been established and is in operation over a period of time.

³ <https://www.ohchr.org/en/calls-for-input/reports/2018/report-content-regulation>

⁴ <https://www.ohchr.org/en/calls-for-input/reports/2018/report-content-regulation>

The regulator, to be established under the OSMR Bill, will have extensive powers of oversight, investigation and audit of the complaints handling processes of potentially any information society service established in Ireland. The legislation also provides for the establishment of a super-complainants scheme - which allows appointed NGOs to engage directly with the regulator and to bring trends to its attention, which may require further action.

It is therefore reasonable to assume that the Media Commission, once established, will be best placed to assess any deficiencies within the complaints handling processes of industry - taking on board the input of NGOs on an ongoing basis - and provide a report to Government which contains the appropriate evidence base for a policy decision to be made on the inclusion or otherwise of an individual complaints mechanism.

Resources of the regulator

Meta has consistently advocated for the Media Commission to be fully resourced and staffed with qualified individuals who can carry out all of its functions. While we welcome the Government's announcement that preparatory work will take place on an administrative basis prior to the enactment of the legislation, and the initial allocation the body received in Budget 2022, we note that recruitment processes are yet to commence.

Any individual complaints mechanism which requires the regulator to adjudicate on individual items of content is resource intensive. Even if a severely limited category of content is permitted, and the threshold of harm is set high, the regulator will be required to carry out the same rights balancing exercise which platforms carry out.

In our experience, this can be relatively straightforward in many cases given appropriately qualified staff and systems which contribute to the decision making process. However, by virtue of the fact that complainants are likely to be approaching the regulator once they have exhausted the internal processes of a company, it is likely that the regulator will be presented with the most difficult cases, where breaches of fundamental rights are inevitable regardless of what decision is taken.

Given that the regulator has also been confirmed as the Digital Services Coordinator for Ireland under the DSA, it is now inevitable that the regulator will not be fully resourced to undertake the vital systemic regulation work that is required of it when the legislation is enacted. As a result, the inclusion of an individual complaints mechanism at this point will inevitably draw significant resources away from the Media Commission and prevent it from rapidly achieving its regulatory goals.

This is another reason why Meta believes that the most appropriate time for a policy decision to be made on the inclusion or otherwise of an individual complaints mechanism is when the regulator is fully staffed and resourced to carry out its existing functions - and is in a position to provide the evidence base required for such a decision.

Conclusion

In conclusion;

- Meta reiterates its view that a systemic approach to the regulation of harmful online content is the most effective and efficient method to ensuring that online harms are minimised.
- Regulatory fragmentation is undesirable for all stakeholders, including users. The introduction of an individual complaints mechanism at this time by Ireland would run contrary to achieving regulatory alignment within the EU, and to the goals which Ireland has set itself in its National Digital Strategy.
- The Media Commission, once established, will be best placed to provide the appropriate evidence base to make a policy decision on whether an individual complaints mechanism is warranted or desirable.
- Any individual complaints mechanism will require significant resources on the part of the regulator - which is yet to begin recruitment. The inclusion of an individual complaints mechanism at this time will inevitably draw resources away from the regulator's systemic work.



Ms Isolde Goggin
Chair
Expert Group on an online safety individual complaints mechanism

By email to: onlinesafetyconsultation@tcagsm.gov.ie

Please note that this letter is being issued by email only.

16 March 2022

Dear Ms Goggin,

I am writing to you in your capacity as Chair of the Expert Group that was established in January of this year by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin T.D., to examine the possibility of providing for an individual complaints mechanism in the Online Safety and Media Regulation Bill.

As you know, the Ombudsman for Children's Office is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). One of the OCO's two core statutory functions under the 2002 Act is to promote the rights and welfare of children up to the age of 18 years. In accordance with this statutory function and our corresponding duty under section 7(4) of the 2002 Act to advise on any matter relating to children's rights and welfare, including proposals for legislation, we have been monitoring and engaging with developments relating to the proposed Online Safety and Media Regulation Bill (OSMR Bill) since 2019, including through our membership of the National Advisory Council for Online Safety (NACOS).

Our particular focus in this regard is the proposed establishment of an Online Safety Commissioner within a new Media Commission. We very much welcome the proposal to establish an Online Safety Commissioner and, with that, to put in place a regulatory framework for online safety to address the spread and amplification of harmful online content. In our view, the proposed new regulatory framework represents a significant opportunity to strengthen the protection of children from such content.

Having reviewed the relevant parts of the OSMR Bill 2022, we are of the view that several of the regulatory tools that it is proposed the Online Safety Commissioner will employ under the new regulatory framework have the potential to have a positive impact. We continue to have concerns, however, about the absence of a provision in the OSMR Bill for an individual complaints mechanism in respect of online safety. In brief, while we appreciate the challenges arising in relation to this


matter, we are not persuaded that the current proposals set out in the OSMR Bill have the potential to give meaningful effect to children's right to an effective remedy. We are also of the view that it would be preferable to put in place an independent, non-judicial mechanism that service users, particularly children, have the option of availing of as an alternative to court in circumstances where they are not satisfied with the outcome of local complaints procedures operated by service providers.

In light of these concerns, we welcomed the Minister's decision to establish an Expert Group to examine the possibility of providing for an individual complaints mechanism. We also welcome the corresponding decision made by you and your colleagues on the Expert Group to hold a consultation in relation to this matter.

Regrettably, due to the demands of our current work programme, we are not in a position to make a written submission to the consultation you are holding. I appreciate that the issues you are examining are complex and that you need to conclude your deliberations and report to Minister within a tight timeframe. If you consider that it may be appropriate and helpful, I would be happy to meet with one or more members of the Expert Group you are chairing to bring our observations to your attention, taking into account questions posed in your consultation document.

I wish you well in the important work you are doing and hope that it will be possible to find a workable solution that can strengthen the potential of the legislation to serve service users well, especially children.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Niall Muldoon', written in a cursive style.

Dr Niall Muldoon
Ombudsman for Children

To: The Chairperson and Members of the Expert Group, The Online Safety and Media Regulation Bill

From: Neil Brady, CEO and Co-Founder, CaliberAI

Dear Chairperson and Members,

Thank you for affording CaliberAI the opportunity to provide its input on a crucially important aspect of this legislative package vis-à-vis the provision of an individualised complaints system to deal with online harm.

Please find below a brief overview statement, along with some background on the founding and development of my company, CaliberAI, that may be relevant in understanding the approach set out here.

Also, please find CaliberAI's responses to the questions set out in your call for submissions.

Yours sincerely,

Neil Brady

CEO and Co-founder, CaliberAI, March 21st, 2022.

Overview: An Individualised Complaints System (ICS)

How to address the challenge of online harm is a problem governments around the world are struggling to respond to right now. If the Irish State, as the European Union's (EU) regulatory jurisdiction for most large social media platforms, can take the lead on this effectively, it will redound hugely to Ireland's international credit.

If it does not, it will have adverse effects on the country's already challenged reputation in the data regulation space. Other countries, particularly within the EU, are watching closely.

The scale of the challenge is such that it will not be met using conventional means. It will be necessary to use a range of technologies, including Artificial Intelligence (AI) based ones, in order to cope with a problem that is itself at least partially rooted in such kinds of technologies (i.e. bots). It could be said that this is a question of fighting fire with fire.

A number of administrations have recognised the importance of partnering government/regulatory bodies with leading-edge technology companies that can potentially play a role here. The Australian Federal Government, for example, has established a special unit within its e-Safety Commission, that works with companies that may offer technology solutions, or part-solutions, in regulation and/or oversight of online content.

CaliberAI is an Enterprise Ireland (EI) backed, Trinity College Dublin (TCD) spinout company that has developed a range of AI based tools and technologies that can assist in the construction of an effective ICS mechanism. These tools - presently ranging from a browser extension to a social media comments moderation plugin - are powered by a unique, synthetic dataset of defamation text, and a 'harm-speech' (hate) dataset, and have been designed to augment human capacity to flag and manage text that has the potential to be defamatory or harmful.



CaliberAI, established three years ago in the ADAPT in TCD was initially funded by EI.

In late 2020, the company spun out from TCD and raised private investment which, along with EI's continuing support, has enabled it to reach its current stage of development.

CaliberAI has recently begun to sign its first commercial customers, including

- Mediahuis (Independent News and Media)
- The Daily Mail Group (Ireland)
- Prospect Magazine (UK)
- Dublin's largest media law firm, McCann FitzGerald

CaliberAI is a unique team of linguists, media lawyers, computer technology experts, journalists, editors, academics and philosophers, including Dr. Carl Vogel, Professor of Computational Linguistics, TCD.

Full details of the international advisory panel as well as the membership and structure of the executive team can be found on our website, [here](#).

Though an Irish registered company, CaliberAI's executive team is global in scope, with members based in Cape Town, Berlin, Dublin, Madrid and locations in Canada and The United States.

We would look forward to having an opportunity to tell you more about our operation and perhaps demonstrate what CaliberAI's technologies might be able to do to assist you in achieving your aims here.

For now, we have endeavoured to respond to the questions posed in the call for consultation. Please see below.

OSMR - Questions and Answers

- 1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?**

Persons who believe they have been harmed by online content very often feel that they are impotent and that they are denied any means of redress. Individual complaints mechanisms operate in almost every other sphere of 21st century activity, for example in dealing with public services, in financial transactions, in consumer rights etc. The individual is significantly disadvantaged and disempowered in this respect in the social-media sphere. Anger, frustration and a sense of helplessness build up. The individual's complaint is – literally – individual to him or her. It is unlikely that people who believe they have been subjected to harmful content will have their concerns met by the knowledge that there is a regulatory framework in place, according to existing legislation.

- 2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?**

Absolutely not. These instruments must be complementary. There will always be breaches or failures with any codes. An individualised complaints system is required to address these.

- 3. What risks do you foresee if there were no individual complaints mechanism?**

Without such a mechanism, the general public are still going to be left with a sense of helplessness. This is likely to bring the legislation, the regulatory authorities and indeed, government itself into disrepute. They will be seen as offering a veneer of theoretical protection but without the reality of redress for the aggrieved citizen.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

The Bill has identified a number of categories, ranging from criminal offences (scheduled in the Bill) to cyber-bullying, the promotion of suicide and self-harm and the promotion of seating disorders. All of these should be covered by any individual complaints mechanism.

However, consideration should also be given to additional categories of harmful content. CaliberAI has identified more than 20 categories or subcategories of content that may be harmful or that may constitute hate-speech. These range from homophobia to antisemitism, from climate-change denial to sectarianism, from islamophobia to Holocaust denial.

Governments around the world are gradually starting to understand that, whether by way of overt taxonomies or the methods of algorithmic design and construction, the articulation of such categories, however contentious and geographically varied they may need to be, are unavoidable.

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

Yes, a criminal offence stands in a different place to other unacceptable behaviour – vulgarity, rudeness, untruthfulness etc etc. Many of these may be unacceptable and hurtful but if they do not meet the test of criminality (as defined by law) this distinction is necessary.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

The issues of “scale and volume” here are the “elephant in the room”, whether one is referring to AVMS platforms such as YouTube, or other ‘Very Large Online Platforms’ (or

VLOPS, as termed under the Digital Services Act). The traditional form of complaints system was based on the “call centre” in which agents dealt with individual communications by telephone. Latterly, complaints have been received by e-mail or social messaging systems. Ultimately, these have to be dealt with by humans who will seek to effect some form of adjudication.

Such systems however will not be able to deal with the “scale and volume” of complaints relating to online content.

AI can offer at least a partial solution here. Such mechanisms, properly deployed, can be an effective first line response where great volumes of traffic arise, and are already in widespread use, for example, in the financial services sphere. Customers can have the great majority of their queries or transactions addressed through online engagement with robot intelligence which has been programmed to “understand” customers’ needs and problems and then lead them through to solution and outcomes. Ultimately, of course, a certain proportion of business will have to be referred to a “human” agent but the “first line” AI response will deal with the vast majority of the traffic.

AI systems like CaliberAI’s can be tailored and programmed to identify the elements in a complaint that suggest it may have validity or otherwise. They can identify the taxonomies of harmful content or hate speech, indicating whether or not a complaint passes a first test and should be admitted to the system or, conversely, if it should be rejected.

(Note: Please see my Business Post opinion article of March 20th, 2022, for further detail, available [here](#)).

- 7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures How would this balance be affected by matters of scale and volume of content?**

The principles to be followed here are long and well established. In the words of the late US Supreme Court Justice Oliver Wendell Holmes: “The most stringent protection of free speech would not protect a man in falsely shout fire in a theatre and causing panic.”

By extension, any assertion that the utterance of hate speech or harmful content can be acceptable on the basis of freedom of expression, is abhorrent.

8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

What is important here is that there be a clear and unambiguous investing of responsibility and authority in one body for processing and dealing with individual complaints. It must have the necessary statutory powers but equally important, it must be adequately resourced in suitably qualified personnel and in technology. If the political will is there, these objectives are probably attainable in any one of the three models outlined above.

Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

This question may pose something of a false dichotomy. Both the designated online service – or front line response as we have referred to it above – and the “appeal” tier should be part of a single continuum. The individual complaints mechanism should be a single process with various options along the way as it advances. For example, many complaints could very likely be resolved by way of simple apology, by taking down offensive content or by some form of mediation. Others may have to be escalated to the highest levels of the complaints mechanism.

9. How should the success or otherwise of an individual complaints mechanism be measured?

Success will be judged by the extent to which people trust the mechanism and believe in its efficacy and fairness. This will be reflected to a great degree in usage take-up. It will

also have to have “buy in” to a considerable degree from the tech companies and platform providers, something that is increasingly being mandated by governments around the world (e.g. Australia’s recent decision to compel tech companies’ sharing of data about how they handle misinformation and disinformation. See [this Reuters article](#) for further detail).

Arrangements will have to be put in place, based on modern polling methodologies, to measure people’s awareness of any complaints system, their belief in its efficacy and fairness and their satisfaction – or otherwise – with outcomes.

10. What would be the appropriate period for review of the operation of an individual complaints mechanism?

It would be wise to have a number of review dates.

It would have to be assumed that continuous assessment and monitoring at leadership/management level would be in place from Day One. There will be a need for operational flexibility and nimbleness.

Beyond this, however, a one-year review and then a two-year (root-and-branch review) by appropriately qualified and independent parties would be appropriate.

It is difficult to imagine that any period shorter than two years would be sufficient to fully evaluate the mechanism’s effectiveness and the responses of various stakeholders.

END



RCNI Feedback to the Expert Group on an Individual Complaints Mechanism in the Online Safety & Media Regulation Bill 2022

Introduction – Rape Crisis Network Ireland (RCNI) and this Feedback

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

RCNI welcomes very much the opportunity to feed back to the Expert Group on the potential inclusion of an Individual Complaints Mechanism (ICM) in the Online Safety and Media Regulation Bill 2022. It will be seen from our responses below to each separate question that we are very much in favour of an ICM. We are also part of the 1,2,3 Online Safety Campaign, an alliance of several Children’s Rights Alliance organisations which is being led by CRA itself.

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

- (a) RCNI’s view is that an independent and effective ICM would add a very necessary backstop avenue of redress to vindicate the rights of individuals, both children and adults, to fair procedures (Article 6) and to an effective remedy (Article 13) under the European Convention on Human Rights, in any situation in which the designated online service (DOS) had not itself done so through effective, timely and fair operation of its own Online Safety Code.
- (b) An effective, independent ICM will do much to reduce the risk of harm from online abuse to children and adults by taking down material, making it inaccessible and by reducing its spread on the internet, in particular.

2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

RCNI’s view is that there are no conflicts between an ICM and any existing provisions in the Bill. On the contrary, having an effective ICM procedure in place enhances the learning of the Online Safety Commissioner about online safety issues, especially new ones as they arise. These can then be addressed through other means as well as the ICM, e.g. educational and legal policy initiatives.

3. What risks do you foresee if there were no individual complaints mechanism?

The risk is that aggrieved individuals would have no means of resolving their own safety issue quickly and effectively other than that provided by the DOS. If the DOS procedure set out in the Online Safety Code were to fail for any reason, that means that the risk of continuing psychological and/or reputational and financial damage would continue to increase. Psychological damage caused by online sexual abuse is neither trivial nor short in duration for its victims.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

Every category of harmful online content set out in the Bill should be covered. Also, any new category of harmful online content which is added in future (e.g. age-inappropriate online content) should be covered.

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

There should be a clear protocol between An Garda Síochána and the Online Safety Commissioner which sets out the procedure where harmful online content connected to a criminal offence is detected or reported by a victim. Other than that, we see no reason for any other distinction in how the different categories of harmful online content are treated.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

RCNI's view is that the ICM should only come into play on rare occasions when the relevant DOS does not provide a timely or effective response to a complaint about harmful online content. Provided that the relevant Online Safety Code is followed, this should not arise very often and therefore, there should be no issue about unmanageable volumes of complaints which will involve ICM. We also note that under the Bill, broadcasting and audio-visual on-demand media services will both be subject to individual complaints mechanisms. The proposed ICM will bring the regulation of harmful online content into line with these existing mechanisms. In our view, this is a fair and equitable solution.

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

(a) Any ICM addressing harmful online content must be simple and accessible to use for all potential victims of online sexual abuse, including children, young people and vulnerable adults. It must also be effective and timely to prevent any further harm, insofar as this is possible. Further, it must be independent and well-resourced if it is to protect and support the needs of victims of this pernicious form of online abuse.

(b) Anyone who is the source or conduit of harmful online content, other than content which is already illegal (ie that which it is already a criminal offence to disseminate) which is the subject of a complaint to the ICM should have the right to reply and to have that reply considered. There should also be a right of appeal.

8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b)

by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

RCNI's view is that it would make the most sense for An Coimisiún and the same Online Safety Commissioner who has oversight over the systemic regulatory framework to oversee the ICM. In this way, the Online Safety Commissioner would benefit from the insight gained from the ICM work whenever it had to review Online Safety Codes or monitor compliance with them.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

RCNI's view is that (b) is appropriate. Any ICM should only come into play in those rare and likely complex cases where the relevant DOS has not provided any timely or effective solution, ie the first-tier platform-specific remedies have been exhausted.

10. How should the success or otherwise of an individual complaints mechanism be measured?

Success should be measured primarily by the proportion of satisfactory resolutions of all complaints. This should be and remain high as a proportion of all complaints dealt with, if the ICM is working as it should. If large numbers of complaints are not being resolved to the satisfaction of complainants, the ICM should be adjusted.

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

RCNI suggests that a period of five years would be appropriate to allow time for the ICM to become established and overcome any initial difficulties before its operation can be judged fairly. However, if there is an issue with its effective operation, this will become obvious most likely much more quickly and in this case, remedial measures can be taken without waiting till the five-year period is completed.

Please do not hesitate to get in touch if you would like any more information on any point in this submission.

Rape Crisis Network Ireland clg (RCNI),

Address: Carmichael Centre, North Brunswick Street, Dublin D07 RHA8.

Tel: 087 963 5201

Website: www.rcni.ie and www.rapecrisishelp.ie

Email: legal@rcni.ie

Ref: RCNI/LPD/1

Date: 21st March 2022



Extern Problem Gambling
69 Tramore Heights
Tramore
Co. Waterford
Tel: 0892415401
Web: www.problemgambling.ie

09.03.2022

Harms of Online Gambling

According to the latest HRB Gambling Prevalence survey there are 137,000 presenting with some level of risk associated with their gambling.

There is a substantial body of academic evidence supporting the belief that online gambling can increase the likelihood of problem gambling behaviours vs offline gambling. This is largely attributed to the isolation, the constant availability and hidden nature of online gambling, as well as a 'disassociation' in relation to money in the online gambling space.

We believe that there are other risks posed by social media companies and their engagement with the gambling sector.

Currently, Meta and Twitter don't allow targeted ads at under-18s but they cannot guarantee that under-18s won't see these ads (both for alcohol and gambling). A 2019 ESPAD survey estimated that there are 3,400 people aged 15-16 displaying serious problem gambling behaviours in this state. The problem gambling prevalence rate among Irish males in this age group is over 5 times that of the general population. The same survey found to almost 40% of the same age category spent over 6 hours on social media today.

We have no Irish data on prevalence of gambling advertising on social media for young people but anecdotally we hear that it is prolific. UK data has shown that that young people are more likely to see gambling advertising online, with 77% of people aged 18 to 24 saying they had seen gambling ads online, compared to 55% of those 65 and over.

The other aspect of this that is vitally important is the need for self-exclusion through social media. The Gambling Regulation Bill proposes that there be a national self-exclusion register for online and offline betting provisions. It is vitally important that when a person reaches the point of self-exclusion, they can protect themselves – this is an evidence-based approach. A single-complaints mechanism could give a person one point of contact in reducing the prevalence and reporting situations whereby this exclusion is not abided by.

This is also going to be vitally important for social media companies, however the Gambling Regulation Bill doesn't appear to cover these. On Twitter, Facebook and Instagram you can currently request not to see advertisements from certain companies. However, these companies then 'partner' with other brands to push their advertisements. There is no mechanism by which an individual can inform the social media companies of the risk gambling advertising poses to themselves and thus protect themselves from social media advertising. There needs to be a mechanism for people to submit complaints about these ads.

Barry Grant, Project Manager, Extern Problem Gambling

Submission to Online safety expert group on an individual complaints mechanism

March 2022



Founded in 1995, the Children's Rights Alliance unites over 130 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Ag Eisteacht
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Aoibhneas
AsIAM
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Blossom Ireland
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Childminding Ireland
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
Clarecare
COPE Galway
Cork Life Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Educate Together
EPIC
Equality for Children
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaeilscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
Jack and Jill Children's Foundation
Jigsaw
Katharine Howard Foundation
Kids' Own Publishing Partnership
Kinship Care
Leap Ireland
Let's Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
My Mind
My Project Minding You
Museum of Childhood Project
Music Generation
New Directions
National Childhood Network
National Council for the Blind of Ireland
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Private Hospitals Association
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
TASC
Teachers' Union of Ireland
Terenure College Rugby Football Club
Transgender Equality Network Ireland
The Anne Sullivan Foundation
The Ark, A Cultural Centre for Children
The Irish Red Cross
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Women's Aid
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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The Children's Rights Alliance is a registered charity – CHY No. 11541

Introduction

The Children’s Rights Alliance unites over 140 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights.

The Children’s Rights Alliance welcomes the publication of the Online Safety and Media Regulation (OSMR) Bill in January 2022. The Bill has the potential to put an end to the age of self-regulation by the big tech and social media giants and create a level of accountability that is sorely needed. It could open the window to a safer online world for children and young people in this country.

While the online world brings unparalleled opportunity to children to learn, create, connect and socialise, it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health and well-being, online grooming and extortion. For too long legislation and policy have not kept pace with the evolution of the online world. This has left children and young people at risk and unprepared to appropriately and safely navigate online platforms.

Research commissioned in 2021 by the Children’s Rights Alliance as part of the [1,2,3 Online Safety campaign](#) found that 91 per cent of the public believe that the Government should stand up to the big tech companies and set rules that protect the public from harmful or illegal use. This research also showed that 70 per cent of the public believe that the Government should introduce laws that hold social media companies responsible for content they allow on their platforms.¹ Self-regulation of the industry can result in inconsistent standards being applied.

The continued momentum in progressing the Online Safety and Media Regulation Bill is welcome and is a step in the right direction for the protection of children and young people online. This submission will focus on the need for the introduction of an individual complaints mechanism.

¹ Children’s Rights Alliance, ‘Irish public send clear message to Government – do not shy away from regulating social media and big tech’, (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?
3. What risks do you foresee if there were no individual complaints mechanism?

Children make up one third of global online users.² Results from a National Survey of Children, their Parents and Adults regarding Online Safety conducted between December 2019 and October 2020, found that 62 per cent of children and young people in Ireland, aged nine to 17 years, use social media.³ This rises to 90 per cent of 15 to 17 year olds.⁴ In 2020, CyberSafeKids found that 84 per cent of eight to 12 year olds in Ireland are on social media platforms despite current age restrictions.⁵ They also reported that a quarter of all children have seen or experienced something online in the last year that bothered them, with almost one third of those children having kept it to themselves rather than report it to their parents or someone else.⁶

The inclusion of an individual complaints mechanism is vital to ensure that children and young people whose rights are not respected by the online service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.⁷ This would also be in line with the Council of Europe [Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#) which state that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'.⁸ Guidance is given on what constitutes an effective remedy and it includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.⁹ Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.¹⁰

The UN Committee on the Rights of the Child in its 2021 General Comment on children's rights in the digital environment highlights that 'States parties should ensure that appropriate and effective remedial judicial and nonjudicial mechanisms for the violations of children's rights relating to the digital environment are widely known and readily available to all children and their representatives'.¹¹ Failure to include an individual complaints mechanism would deny children their right to access an effective remedy when harm occurs online.

There is clear public support for the introduction of an individual complaints mechanism. In 2021, as part of the [1,2,3 Online Safety campaign with 18 of its members](#), the Children's Rights Alliance, commissioned public polling on online safety and 77 per cent of those surveyed¹² believe that an Online Safety Commissioner should have the power in law to investigate complaints made by members of the public when social media companies fail to uphold the rights of the person.¹³ Our members have supported children and families in situations where there has been either an insufficient or no response to a complaint made about harmful content. This has resulted in distress

² Unicef, *Children in the Digital World* (UNICEF 2017).

³ National Advisory Council for Online Safety, *Report of a National Survey of Children, their Parents and Adults regarding Online Safety 2021* (2021) 8.

⁴ *ibid.*

⁵ CyberSafeKids, *Annual Report 2020*, (2021) 24.

⁶ *ibid.* 3.

⁷ European Convention of Human Rights Arts 6 and 13.

⁸ Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.* at para 44.

¹² Survey conducted between the 17th –28th September 2021 to a nationally representative sample of 1,003 adults in the Rep. of Ireland.

¹³ Children's Rights Alliance, 'Irish public send clear message to Government – do not shy away from regulating social media and big tech', (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

to the children, young people and their families.¹⁴ The introduction of an individual complaints mechanism, alongside the introduction of future Online Safety Codes, could indirectly reduce harm caused to children and young people by requiring platforms to resolve complaints they receive swiftly and effectively.

- 2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?**

- 8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?**

The individual complaints mechanism should be overseen by An Coimisiún and by the same Online Safety Commissioner(s) who have oversight of the systemic regulatory framework. Currently there is very little transparency around the number of complaints made to online platforms and the types of complaints that they are receiving.¹⁵ The introduction of an individual complaints mechanism would strengthen the existing provisions of the Bill as it would give the Online Safety Commissioner a real insight into the types of complaints platforms receive and are failing to resolve or take adequate action through their own complaints mechanisms. This would help to inform the development of future online safety codes, particularly those on complaints handling. The Online Safety Commissioner would also gain valuable insights into trends and emerging issues through the more complex complaints they receive which could inform the development of new online safety codes over time.

- 4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?**

- 5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?**

An individual complaints mechanism should cover the different categories of online content set out in the Bill.

It will be important that protocols are developed between the Gardaí and the Media Commission to ensure the effective and swift removal of material that falls into the category of offence-specific i.e. illegal categories of online harm under section 139A(2)(a) such as child sexual abuse materials, intimate images and material that incites hatred. It will be important that this is also addressed in the online safety codes.

¹⁴ CyberSafeKids, Written Submission to the Expert Working Group set up to review the Individual Complaints Mechanism as part of the General Scheme of the Online Safety and Media Regulation (OSMR) Bill, 8 March 2022.

¹⁵ Houses of the Oireachtas, *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* (2021) 27.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

While concerns have been raised about the volume of complaints that the Online Safety Commissioner could receive, including from online users across the EU as many of the online platforms are headquartered in Ireland, this is not a reason to exclude an individual complaints mechanism from the scope of the legislation. Each online service or platform should have its own efficient and effective complaints system that deals with complaints at the local level. It is only the most complex cases that should need to be resolved by the Media Commission, provided that the online platforms put in place their own appropriate complaints mechanisms which comply with the legislation and the codes of conduct that the Online Safety Commissioner will develop. (See Appendix 1 for our proposed Individual Complaints Mechanism).

Failure to provide an individual complaints mechanism based on concerns of volume denies children and young people access to an effective remedy which they have a right to under Article 6 (right to fair procedures) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. Any complaints mechanism introduced must comply with these rights. The Council of Europe recommends Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights¹⁶ is respected and protected when their rights have been infringed online.¹⁷

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

It is important in the development of an individual complaints mechanism that due consideration is given to the vindication of fundamental rights, in particular freedom of expression and the right to fair procedures.

The UN Convention on the Rights of the Child (UNCRC), which Ireland ratified in 1992, predates the evolution of the digital technology that is nowadays used in everyday life meaning that the Convention does not currently encompass an article on the digital rights of children. However, a number of rights enshrined in the UNCRC apply in the context of children and the digital era including:

- Article 3 (Decisions made in the child's best interests)
- Article 12 (The child's right to participate and have their views heard)
- Article 13 (Right to freedom of expression)
- Article 15 (Freedom of association)
- Article 16 (Protection of privacy)
- Article 17 (Access to appropriate information)
- Article 28 (Right to education)

¹⁶ European Convention of Human Rights Art 6 and 13.

¹⁷ Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

One of the most fundamental rights when it comes to the online world is the duty on governments to take on all legislative, administrative and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19).

In 2021, the UN Committee on the Rights of the Child published a General Comment or guidance on how to apply children's rights in relation to the digital environment. It notes that '[t]he digital environment is becoming increasingly important across most aspects of children's lives, including during times of crisis, as societal functions, including education, government services and commerce, progressively come to rely upon digital technologies. It affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse'.¹⁸

A child's right to an effective remedy under the European Convention of Human Rights,¹⁹ when their rights have been infringed online,²⁰ is also reflected in the Council of Europe's *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*.²¹

Another aspect of online safety for children and young people is in relation to their privacy rights and how these are best protected. An individual's right to privacy is protected under both the International Covenant on Civil and Political Rights (Article 17) as well as the European Convention on Human Rights (Article 8) with specific protections for a child's right to privacy under the UN Convention on the Rights of the Child (UNCRC).²² Online safety legislation should ensure children and young people's rights to both privacy and protection. While the right to privacy is not absolute, States should seek to achieve a proportionate balance between these rights. One way to ensure that rights are respected would be to ensure that the definitions of harm outlined in the Bill are clear and precise to ensure they are in compliance with other human rights standards, in particular the right to freedom of expression.²³

Any complaints mechanism should seek to protect the fundamental rights of both the user and uploader. In cases where the material is considered that it could be harmful, rather than in clear cases where it is illegal, this could be achieved by ensuring that sufficient notice is given to both parties of the complaint being made, and sufficient time provided for a right of reply. Key also to this would be an accessible appeals mechanism for any uploader, who may themselves be a child or young person.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

Each online service or platform should have its own efficient and effective complaints system that deals with complaints at the local level. It is only the most complex cases that should need to be resolved by the Media Commission, provided that the online platforms put in place their own appropriate complaints mechanisms which comply with the legislation and the codes of conduct that

18 UN Committee on the Rights of the Child, General Comment no 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, para 3.

19 European Convention of Human Rights Art 6 and 19.

20 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 24.

21 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 11.

22 UN Convention on the Rights of the Child A/RES/44/25 (20 November 1989) Art 16.

23 Irish Human Rights and Equality Commission, *Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill* (2021) 24.

the Online Safety Commissioner will develop. (See Appendix 1 for our proposed Individual Complaints Mechanism).

The Law Reform Commission (LRC) has recommended establishing a statutory Digital Safety Commissioner, modelled on comparable offices in Australia and New Zealand.²⁴ The LRC also envisioned that this office would have responsibility for publishing a Code of Practice on Digital Safety which would include an efficient take-down procedure.²⁵ Under the LRC proposals, if a social media site did not comply with the standards in the Code of Practice, an individual could then appeal to the Digital Safety Commissioner, who could direct a social media site to comply with the standards in the Code.²⁶ The LRC further recommended that if a social media site did not comply with the Digital Safety Commissioner's direction, the Commissioner could apply to the Circuit Court for a court order requiring compliance.²⁷

The current Bill does not follow the recommended approach of the LRC, or the existing models in Australia ([eSafety Commissioner](#)) or New Zealand ([Netsafe](#)), in providing a mechanism for individuals to appeal to the Online Safety Commissioner when an online service provider fails to comply with the standards of the Online Safety Codes. The powers of the Commission set out in the current Bill should be amended in line with the recommendations of the Joint Committee on Tourism, Culture, Arts, Sport and Media. The inclusion of an individual complaints mechanism is vital to ensure that children and young people whose rights are not respected by the online service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.²⁸ This should also align with the clear description of a child-friendly remedy outlined in the Council of Europe *Guidelines*²⁹ while also complying with the UN Committee on the Rights of the Child's guidance.³⁰

The lack of an individual complaints mechanism relating to online services means that there is a discrepancy between where a broadcaster or provider of an audiovisual on-demand media service fails to comply with a media code and where an online service provider fails to comply with an online safety code. In relation to a broadcaster's failure to comply with a media code, an individual can make a complaint directly to the Media Commission under section 11 which substitutes section 48 of the Broadcasting Act 2009. Under this section, once a complaint is made within the relevant timeframes set out in the legislation³¹ the Commission may refer the complaint in the first instance to the service or broadcaster concerned,³² dismiss the complaint³³ or refer it to an authorised person for investigation.³⁴ Where a complaint is referred or dismissed, the Commission must notify the person who made the complaint about its action 'as soon as practicable'³⁵ and place a notice on its website about the action taken within 60 working days from the date that the complaint was received.³⁶

The procedures for investigation are set out in section 139Z. Section 139Z (1) provides that the Commission can appoint an authorised officer to carry out investigations. An investigation can be

24 Law Reform Commission, *Report on Harmful Communications and Digital Safety* (LRC 116 - 2016) 144.

25 *ibid.*

26 *ibid.*

27 *ibid.*

28 European Convention of Human Rights Arts 6 and 13.

29 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

30 *ibid* at para 44.

31 S48(2) :A complaint shall be made in writing to the Commission not more than 30 days after—

(a) where the complaint relates to one broadcast, the date of the broadcast, (b) where the complaint relates to 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, (c) where the complaint relates to 2 or more related broadcasts, of which at least two are made on different dates, the later or latest of those dates, or (d) where the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service.

32 Online Safety and Media Regulation Bill 2022 s11 which substitutes a new section 48(3) into the Broadcasting Act 2009.

33 *ibid.*

34 *ibid.*

35 *ibid.*

36 *ibid.*

commenced where the Commission has reason to suspect that there has been a contravention.³⁷ This section applies to the complaints that will be received under proposed new section 48 relating to broadcast and audio-visual on demand media services.

A similar procedure could be adopted for individual complaints relating to online services or platforms where in effect the Commission will engage in a pre-investigation screening of complaints to ensure that they are dealt with in the appropriate way (reverted back to the provider, dismissal or investigation). This would ensure that there is no discrepancy between online services and media services.

10. How should the success or otherwise of an individual complaints mechanism be measured?

The success of the individual complaints mechanism should be measured by reference to the number of people who have achieved an effective and efficient remedy. It should also be measured by the impact it has in making platforms' complaints mechanisms more efficient and effective at handling complaints at the local level.

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

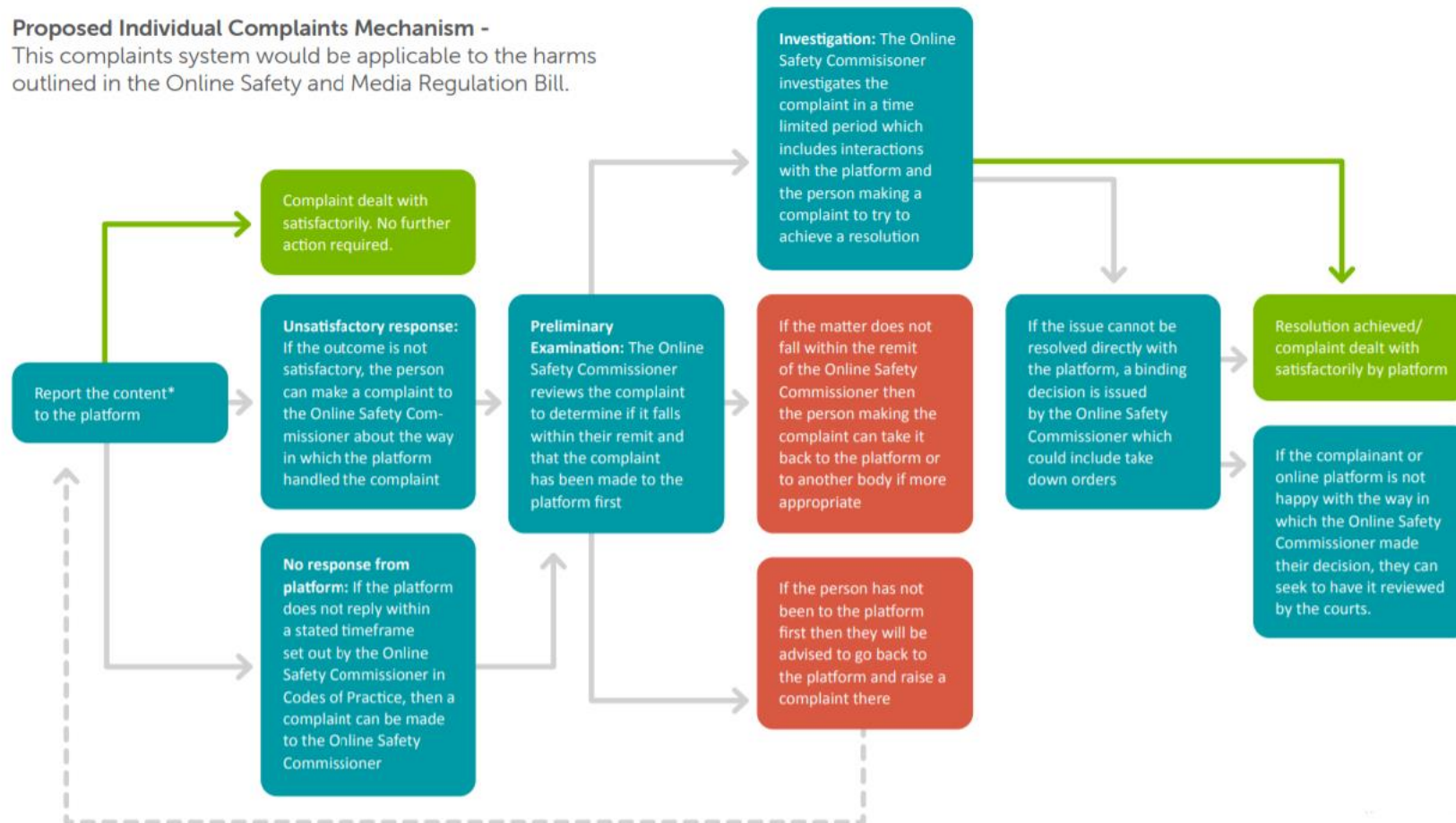
The individual complaints mechanism should be reviewed after five years of it being operational. This would ensure that there is sufficient time for the process to get up and running, for it to be promoted effectively and for any initial learnings to be taken on board. It would also provide a sufficient period of time for the Online Safety Commissioner(s) to be able to track trends and emerging issues which can then inform the development of Online Safety Codes.

³⁷ Online Safety and Media Regulation Bill s139Z A



Our Voice Heard, Our Safety Online

Proposed Individual Complaints Mechanism -
 This complaints system would be applicable to the harms outlined in the Online Safety and Media Regulation Bill.



Submission to the Online Safety Expert Group – Twitter's Position on an Individual Complaints Mechanism

March 21, 2022

Twitter welcomes the opportunity provided by the Online Safety Expert Group to participate in this consultation on individual complaints as part of the development of the Online Safety and Media Regulation Bill.

Once again, we would like to commend the government on its commitment to a rigorous consultation process. Twitter shares the government's mission to make the Internet safer for everyone. We are an open and public platform where people from all over the world come together for a free exchange of ideas and information – protecting the public conversation and promoting healthy online discourse is our number one priority. In this context, “health” refers to our overall efforts to reduce harmful activity on the service. In measuring the health of the service, Twitter considers how healthier debate and critical thinking can be encouraged. To protect the health of the public conversation, Twitter leverages both machine learning algorithms and human review to assess whether content or behaviours are in breach of our Twitter Rules.

In this brief submission, we will outline our belief that the systemic model of governance proposed by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media is the most effective, fair, and future-proof regulatory approach.

Twitter has also contributed to Technology Ireland's submission. Therefore, the points contained within this consultation are in addition to – or expanding upon – the points made in Technology Ireland's submission paper.

We would also like to refer the Expert Group to Twitter's [paper](#) on protecting the Open Internet. It contains five principles that we believe are central to creating regulatory models that address today's challenges while preserving the features that make the Open Internet an unprecedented environment for individual and collective expression, information sharing, and economic growth.

General Comments

Twitter has engaged with the Department of Tourism, Culture, Arts, Gaeltacht, Sport, and Media on the Online Safety and Media Regulation Bill (OSMR) for several years. Throughout this consultation process, the goal of the regulation has been clear: to create a systemic model of regulation for content moderation that considers the diverse array of companies and services in the sector – firms both large and small and every size in-between; those with centralised moderation and those that rely on community moderation; those that exist because of advertising and those with subscription or voluntary models of upkeep. We believe that any attempt to legislate in this area needs to carefully consider and balance the user's right to both safety and freedom of expression, while acknowledging the diversity of services and methodologies across the industry.

The current draft of the OSMR takes a systemic approach to addressing platform moderation and provides an avenue for open and transparent dialogue between the Media Commission and service providers. This approach to governance considers the specific challenges that companies such as Twitter face. The current focus of this legislation is directed at ensuring that appropriate policies exist for addressing content types and user complaints, and that the systems in place for handling complaints are

proportionate to potential risks. Importantly, it allows for nuances in platform methodologies and it anticipates how the sector may evolve through technological cycles. It will enable companies of all sizes to compete on a level playing field and ensures the Media Commission can focus on impact at scale. Indeed, introducing an individual complaints mechanism may undermine the Commission's ability to tackle systemic issues and re-orient it towards an entirely different casework function.

Further, introducing an individual complaints mechanism into legislation initially drafted for a systemic enforcement model may have unintended consequences. For example, the risk of significant penalties for erring in a decision on an individual complaint may see service providers over-remove content. This could result in a chilling effect on the freedom of expression. A systemic model that focuses more on the processes employed by platforms better preserves the delicate balance between protecting freedom of expression and safeguarding individuals online.

We also believe that a systemic model is mutually preferable to more onerous and inflexible notice-and-takedown modes of regulation where platforms and websites are incentivised to remove content at scale and against the clock. These regimes are ultimately counterproductive to developing a diverse digital economy – entrenching incumbents of scale that can employ tens of thousands of moderators – and they run against the open nature of the Internet which [Twitter and other companies seek to preserve](#). Further, it should also be noted that in Frances Haugen's appearance before the Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media, she said that such notice-and-takedown laws have already failed due to the volume of content available online. She broadly encouraged a focus on systems, not content.

We believe, as many independent experts do, that the increasing focus of regulation should be on content discovery, suggestions, amplification, and propagation of content (including down- or up-ranking). The systemic model included in the proposed legislation allows for this evolution to be captured in the safety codes drafted by the Media Commission. Platform policy experts acknowledge that the most sustainable, high-impact focus comes from investing in technology that reduces the visibility and virality of harmful content. The OSMR's systemic model is currently optimised for this approach, which makes it fit for purpose into the future. A focus on content takedown and reports will make the OSMR regime less and less relevant over time, as many platforms – including Twitter – are already majority-reliant on machine learning to detect and moderate harmful behaviours.

As the advisory group is undoubtedly aware, technologies are now with us that will dramatically change the Internet, e.g. blockchain. These technologies will change what we see and how we see it – some of them will decentralise services so that content is hosted across thousands if not millions of locations. This presents a potentially insoluble challenge for a centralised content moderation model and any regulatory system that's designed with only today's platforms and technologies in mind. Adapting our regulatory models to this horizon will help to ensure their endurance.

Regional Alignment

Twitter supports regional and global regulatory alignment around systemic models where possible. A coherent national and regional approach to content regulation provides the clarity that cross-border services require to fulfil user expectations that their experience of platforms will be consistent regardless of where they are in the world.

At the core of this regional alignment is the preservation of the Country of Origin principle. Any regulatory model introduced needs to be aligned with the processes included within the Digital Services Act (DSA), the Digital Markets Act, the Democracy Action Plan and other major pillars of the EU's digital agenda. This provides essential clarity for consumers and service providers alike on their rights and obligations and how each system of laws interacts with others. Indeed, such alignment is central to the preservation of the concept of a Digital Single Market.

The DSA has proposed introducing new rules for individual complaints mechanisms that may overlap or conflict with a complaints mechanism specific to the OSMR. This is particularly significant if the Media Commission is to act as the Digital Services Coordinator for the purposes of Ireland's enforcement of the DSA.

Regional alignment of regulation is also crucial for small-to-mid-sized tech companies. In fact, it may be existential. For some companies – those existing and those yet to be founded – it would put a hard ceiling on growth and further fragment the Internet if Ireland and other EU member States were to diverge significantly from the DSA and other major EU regulations. Were there to be separate and distinct regulatory regimes across Europe and the world, it may incentivise a compliance model that would change the nature of our services. It may also further entrench the dominance of the largest platforms – which can afford onerous and divergent compliance regimes – while stifling fair competition. We believe that Ireland has a unique role to play in advocating for regulatory cohesiveness across the European Union.

Twitter strongly supports the objectives of the OSMR to make the Internet safer for everyone and greatly appreciates the opportunity to engage with the Expert Group on this issue. Ireland can become a leader in convening like-minded countries and advocating for a systemic regulatory approach that will lay the foundation in Europe for the next twenty years of the Internet – protecting consumers, encouraging openness and freedom, while promoting business innovation.

Addendum: Enforcement Data – EU & Ireland

This section will detail the enforcement data for the European Union and Ireland. The global information is found in our transparency report and is public information which you can find at transparency.twitter.com. Also, note that the data is based on inferring a user’s country using a combination of sign-up location, user-selected location, and IP address. The data refers to the country of the reported account and not the country of the reporter’s account.

It should also be noted that Twitter’s reliance on user reports has significantly diminished over the past number of years. [REDACTED]

[REDACTED] This dramatically reduces the reporting burden on users. We hope to continuously increase our capacity to identify abusive behaviours and patterns of violative account behaviour through machine learning. With respect to the data shared below, our proactive efforts mean that user reports and data around subsequent enforcement actions now reflect a narrower view of the company’s overall approach to platform safety.

Note: The following data in this section refers to the EU and Ireland and is non-public, commercially sensitive information and is not for publication or resharing.

The data included in this section coincides with the latest Twitter Transparency Report covering the period of January–June 2021. The Twitter Transparency Report has been published on a biannual basis since 2012 and is now on its 19th edition. Policymakers want to be better informed about our actions, and we recognise these calls for greater transparency. To this end, our original report has evolved into a more comprehensive Twitter Transparency Center covering a broader array of our transparency efforts. We now include sections covering information requests, removal requests, copyright notices, trademark notices, email security, Twitter Rules enforcement, and state-backed information operations.

[REDACTED]

[REDACTED]

[REDACTED] In instances where no violations of the company’s Terms of Service are found, there can be a number of reasons e.g. users may misinterpret the [Twitter Rules](#) or have differing views on when and how they should be applied – we have simplified the Rules to make them as clear as possible; or accounts that are reported may have already been suspended or received strikes because they were flagged by machine learning, etc.



Technology Ireland submission to the Online safety expert group on an individual complaints mechanism

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.

Introduction:

Technology Ireland is very grateful to the Expert Advisory Group for the opportunity to comment on an individual complaints mechanism. We very much welcome and support all efforts of the Expert Advisory Group to engage with stakeholders on this point with a view to ensuring any proposals are effective, practical, proportionate, and legally robust in line with the objectives to be achieved.

Submission:

1. We share the ideals of the [Digital Ireland Framework](#) that *“regulation needs to be measured, understandable, enforceable, and effective.”* and *“must simultaneously ensure the safety of our citizens and promote innovation and progress”*.

We consider that the OSMRB's current approach, which focuses on addressing systemic issues concerning user complaints and facilitates open and transparent regulatory dialogue between the Media Commission and service providers, is the right one and consistent with the Digital Ireland Framework and the objectives of AVMSD. A separate individual complaints mechanism risks undermining the considered outcomes-focused mechanisms set out in the OSMR.

Under the OSMRB, there is already comprehensive provision to ensure that users' complaints are appropriately considered by service providers and systemic issues are addressed. In particular:

- The Media Commission is empowered to introduce binding online safety codes which cover the handling by service providers of user complaints (s.139K(4)).
- The Media Commission is specifically required to implement a code requiring certain designated service providers to report at regular intervals (at least quarterly) on the handling of user complaints (s. 139K(5)).
- The Media Commission is empowered to appoint persons to carry out audits of user complaints handling processes and report on compliance (s. 139P). It will be an offence for a service provider not to cooperate with any such audit. All audit reports will be published (with any appropriate redactions).
- The OSMR creates a scheme whereby nominated bodies can raise systemic concerns they may have in relation regarding a service provider's compliance with the Online Safety Codes (S. 139U).
- The Media Commission can also initiate audits in response to notifications received from a nominated body as part of the 'systemic complaints' process (s. 139P (9)).

The OSMRB will require service providers to make difficult judgement calls at scale. By way of example, based on the current definition of harmful online content, service providers will have to consider whether: (a) a person is bullying another through content on its service; and (b) whether that gives rise to a reasonably foreseeable risk of significant harm to a person's health. These are highly subjective, evaluative assessments.

The focus in the current draft of the OSMR is rightly: (a) on ensuring service providers have appropriate systems and processes in place for conscientiously considering users' complaints; (b) those systems and processes are proportionate to the potential risks and harms to users; and (c) providing space and mechanisms for service providers and the Media Commission to candidly and transparently engage in appropriate regulatory dialogue to reach the best outcomes for users, and society as a whole.

In contrast, the imposition of an individual complaints mechanism, whereby individual, rather than systemic decisions are scrutinised, eschews considered outcomes-focused regulation and risks chilling the appropriate regulatory dialogue. It risks creating a more adversarial framework that will result in inconsistent results and fragmented regulation.

In short, the comprehensive existing range of provisions appropriately ensure that the focus of the OSMR and the Media Commission is on how user complaints are systemically addressed rather than individually dealt with.

It should also be noted that there are proposals concerning individual complaints mechanisms and alternative dispute resolution under the DSA. The potential overlap between such mechanisms under the DSA and OSMR would result in an unharmonized patchwork of mechanisms which risks confusion among users and would be unduly duplicative and onerous on the Media Commission, particularly, where the Commission will be designated as the Digital Services Coordinator for Ireland.

Lastly, OSMR specifically recognises the need to ensure that the requirements placed on service providers (i) must not be inconsistent with the limitations placed on the liability of intermediary service providers pursuant to the safe harbour provisions (Articles 16 to 18 of SI No. 68 of 2003) and (ii) that no obligation should be placed on service providers to monitor the information they transmit or store outside of having appropriate systems in place (s 139 X).

A complaints mechanism that is focussed on individual content rather than how systemic issues are addressed risks being inconsistent with these overarching principles.

2. The focus on systemic issues in the OSMRB rather than individual complaints is appropriate in light of the scale in which concerns are raised by users.

On many of the services of our members, users can flag content, however many do so simply to express disagreement with the content, rather than considering it harmful or unlawful.

Given this scale, it is eminently appropriate for service providers and regulators to focus on the systems and processes for addressing these flags. If even a fraction of these users' flags resulted in a complaint through the individual complaints mechanism, then - compounded with the complaints from all other platforms - the system would likely be overwhelmed and paralysed, ultimately undermining the effectiveness and objectives of such a complaint process.

3. In light of the likely scale of an individual complaints mechanism, if the Media Commission was required to operate it, there is a distinct risk it would be overburdened. However, if an individual complaints mechanism were to be operated independently of the Media Commission, this risks displacing the regulatory authority of the Media Commission

The Media Commission already has a host of new obligations and regulatory responsibilities on foot of the OSMRB and the AVMSD. In light of the likely scale of an individual complaints mechanism, if the Media Commission was required to operate it, there is a distinct risk it would be overburdened. The Media Commission should not be overburdened with further responsibilities which could detract from its core and critical functions.

Notwithstanding this, if the responsibility for an individual complaints mechanism was vested in a different body, then there is a risk that such an operator could undermine or displace the regulatory authority of the Media Commission. Furthermore, such a model would be expensive and reduce the opportunity for learning, knowledge, and expertise development within the Media Commission. Any mechanism should all be operated within the Media Commission if it is to be effective. Given Ireland's rich and varied cultural history, the Media Commission, in exercising its functions, must balance a wide range of nuanced considerations.

Under the OSMRB (s. 7(2)), the Media Commission must endeavour to exercise its regulatory functions to ensure, for example, that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, that the broadcasting services and audiovisual on-demand media services available in the State are open and pluralistic, and that the Media Commission's policies in relation to those services best serve the needs of the people of the island of Ireland.

The Media Commission is singularly capable of doing this. It can leverage its significant expertise and sensitivity. If a separate body is created to operate an individual complaints mechanism, alongside the Media Commission's role in online safety regulation, there is a distinct risk that it could displace the regulatory authority of the Media Commission and lead to inconsistent or divergent regulation. This could undermine the public's trust in the regime.

4. An individual complaints mechanism risks interfering with the freedom of expression of service users

Freedom of expression is not just a policy aim, but a universal value at the heart of human rights. It is of fundamental importance both in its own right and as an essential tool for the defence of all other rights. Freedom of expression is a cornerstone of democracy and applies equally to ideas that may "*offend, shock or disturb*".

User-generated expressive activity on the internet provides an unprecedented platform for the exercise of freedom of expression. Indeed, the internet is the most participatory form of mass speech yet developed. The services of our members have been transformative in giving a voice to millions of people in Ireland, no matter where they are located, and significantly enhancing their ability to access information.

We absolutely recognise that freedom of expression may be subject to limited restrictions which are prescribed by law and necessary in a democratic society. However, the existence of an individual complaints mechanism, particularly one through which service providers can be sanctioned, significantly risks distorting the delicate balance between the need to protect individuals from harm online and the protection of fundamental rights.

By focusing on individual complaints rather than the overarching effectiveness of systems and processes deployed to protect those online and considering the broad and subjective definition of harmful content, service providers will likely be presented with a stark choice. They can either: (a) carry out complex factual and legal determinations on questions of the legality of individual pieces of content; or (b) adopt the risk-averse, simpler, and lower-cost approach of blocking any content that appears to constitute or could be considered harmful.

The likely outcome of this choice would directly prevent a service user from hosting information on the platform, as service providers would be compelled to err on the side of caution, not least to avoid possible subsequent individual liability. In doing so, an individual complaints mechanism risks having a severe “chilling effect” on freedom of expression.

In contrast, where the regulatory focus is on the systems and processes deployed by service providers to protect individuals online, the risk of the freedom of expression of service users being unjustifiably interfered with is significantly reduced. As such a more holistic, nuanced approach can be taken by service providers and regulators.

5. The intended jurisdictional application of OSMRB will create significant uncertainty with respect to the operation of an individual complaints process and will likely lead to inefficiencies

The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has confirmed that the obligations on video sharing platform services (VSPS) arising from the AVMS Directive are intended to have EU-wide effect, but otherwise the provisions of the OSMRB are limited to Ireland. The AVMS

Directive does not provide for an individual complaints mechanism to regulators and there is no cross-border cooperation provision in that regard.

We note in this context the breadth of the categories of Irish law offences (currently 40 in number) which are included in the definition of illegal content under the OSMRB. This contrasts with the provisions of the revised AVMS Directive relating to VSPS (Article 28b) which, as regards illegal content which should be subject to **appropriate protective measures**, is limited to offences [under EU law] relating to the dissemination of material concerning child pornography; the provocation of terrorist offences; offences concerning racism and xenophobia.

Considering these points, it would likely be difficult to ascertain with any degree of clarity the remit of the operator of any individual complaints mechanism to deal with complaints arising from residents in other Member States outside of Ireland based on the subject matter of the complaint.

In short, this would likely lead to considerable uncertainties, potentially interpreting locally unlawful content in various member states and requiring the operator of the mechanism to have multi-language capabilities and knowledge of local cultural nuances and context in order to administer the mechanism. This leaves the operator becoming overburdened by complaints from residents outside of Ireland and determining questions of whether these complaints fall with its remit.

6. The use of content limitation notices should be reserved for the most extreme circumstances.

The terms of reference set out that the Expert Report must consider *“The threshold which must be met before an Online Safety Commissioner may issue a content limitation notice on foot of a complaint”*.

The scope of the Media Commission’s power to issue content limitation notices is broad and highly invasive. It expressly envisages age-gating, which risks the unjustified reduction in the availability of content and the creation of a second-tier internet. The wide imposition of content limitation notices would significantly undermine freedom of expression and plural democratic discourse.

A content limitation notice should only be issued if there is an acute risk of significant and widespread harm to a wide section of society. When issuing such a notice the Media Commission should be required to explicitly consider the impact of the notice on freedom of expression. The power to issue a content limitation notice could also be subject to the approval of the Court.

If, notwithstanding the submissions raised above, the Expert Group considers that an individual complaints mechanism is necessary, then it is crucial for such a mechanism to be workable and appropriately targeted. The submissions below are expressly subject to our primary position that an individual complaints mechanism risks undermining the systemic focus of the OSMR and disproportionately diverting resources of the regulator to resolve individual cases. These submissions are made with reference to Irish and international comparisons.

1. There should be a requirement for a complainant to exhaust any internal complaints and appeal mechanism operate by the service provider first.

Specific requirements will be placed on service providers by the Online Safety Codes to operate an effective internal complaints mechanism. These would be largely redundant if individuals could directly seek independent recourse. This is wasteful and would add regulatory cost to market participation if they were asked to fund both their internal complaints system and the Media Commission's. Any individual complaints mechanism to the Media Commission should be a tiered process, expressly requiring complainants to exhaust redress options via the service provider's internal complaints and appeal processes prior to initiating a complaint to the Commission.

A requirement to defer to internal complaints mechanisms in the first instance is well established practice in comparable regimes. This tiered approach is consistent with most mechanisms operated by regulatory authorities in Ireland and internationally for example, a consumer can only bring a complaint to the BAI under the current broadcasting regime if it has not been successfully resolved by an internal process or the company concerned has not responded within a specific timeframe. The same process applies the Financial Services and Pension Ombudsman Service and to ComReg.

This approach would bring many advantages. It would uphold the principle of regulatory accountability by requiring the regulated service provider to handle complaints from its customers in the first instance. It would also ensure the provider receives swift feedback on internal processes and can address any issues without unnecessary delay. It would avoid the regulator being burdened by large volumes of complaints, many of which can be resolved quickly and easily. This allows finite resources to be devoted to complaints involving serious failures of systems or processes or complex areas of law.

The scope of who can bring a complaint to the Media Commission should also be limited to recipients of the service directly impacted by the decision and resist attempts to expand to any individual or entity which has submitted a notice for takedown.

2. The ability to complain should be limited to illegal content within the domestic regulatory framework rather than harmful content and individuals should only be able to complain about certain breaches of the Online Safety Codes.

In light of the broad and subjective nature of harmful content, it is far more appropriate that the decisions of service providers concerning harmful content are evaluated at a systemic rather than individual level.

The Online Safety Codes will likely contain a host of obligations that are placed on service providers. It will only be appropriate for individuals to complain concerning compliance with certain of these obligations.

Many international comparators narrowly circumscribe the types of complaints that they can deal with. For example, complaints can only be made to Ofcom in the UK in respect of certain provisions of the Broadcasting Code.

Furthermore, the scope of decisions which may be reviewed by the Media Commission should be limited to exclude deceptive or high-volume commercial content and claims by bad actors. It is also crucial from a resource, language and cultural point of view, that any such individual complaints mechanism be limited to illegal content within the scope of the OSMRB at a domestic level only, and not on a pan-EU basis.

3. There must be a threshold of harm reached before a complaint can be considered by the independent authority

Subject to the comments above on limiting complaints to illegal content, to avoid the operator being overburdened by vexatious complaints or complaints that have limited impact on the complainant, the operator of the individual complaints mechanism should require that a complainant must have either a) suffered serious or sustained harm on the service or b) had their content repeatedly taken down.

This threshold of harm was recommended by the Pre-Legislative Scrutiny Committee of the House of Lords in the UK when considering the scope of the Online Safety Bill. As such, an individual should not be permitted to make a complaint to the Media Commission where the service provider has rejected the complaint on the basis that it has not been made in good faith or is frivolous or vexatious

4. The investigative powers of the operator of an individual complaints mechanism and the sanctions it can impose should be appropriately limited.

The operator of an individual complaints mechanism would be tasked with looking at specific pieces of content and isolated decisions taken by service providers.

Given the narrow focus of the operator, its investigative and sanction powers should be limited. The operator should simply have the power to require the service provider to retake a decision concerning a specific piece of content in light of its direction. It should not have the power to fine a service provider, which should only occur following the conclusion of the administrative sanctions process set out in the OSMR for systemic breaches of an online safety code, nor should it be able to award compensation, given the nature of the duties under the OSMR.

If it were granted such powers, the complaints process would resemble adversarial court proceedings, which would likely be lengthy and unwieldy. This would not be in the best interests of complainants, users, service providers or Irish society as a whole. There are already alternative court procedures concerning, for example, defamatory content, that allow private citizens to seek redress.

5. There should be a time limit for a complaint being brought.

The internet is a highly dynamic and fast-changing environment. Content can be disseminated at speed and to a wide range of people. Considering this, a user should be required to submit a complaint within 20 working days following the outcome of the internal complaints process including any internal appeal system.

Many of the domestic and international comparators similarly impose time limits. For instance, complainants to Ofcom in the UK have 20 working days following the broadcast of a programme, and complainants to the BAI in Ireland have 30 days. It could, however, be possible for the operator to consider complaints brought out of time in exceptional circumstances.

6. Parallel Dispute Resolution Processes should not be permitted

We would encourage the regulator to ensure that users can resort to an out of court settlement body only if no parallel dispute resolution process is ongoing or settlement previously reached regarding the same content or decision to seek to avoid conflict with any complaint/out of court settlement mechanism set out in the DSA.

Similarly, service providers should be permitted to refuse to engage in an individual complaints process in certain instances, including where the same content is already being reviewed or resolved by another body and where the decision pertains to judicial removal orders.

7. The Mechanism needs to be separate from the investigation/decision process in OSMRB

Any individual complaints mechanism needs to be clearly standalone and separate from the investigation / decision process set out in the OSMRB to avoid an unnecessarily complex, time-consuming, overly burdensome, and largely unworkable complaints process for all stakeholders, including complainants and the Media Commission.

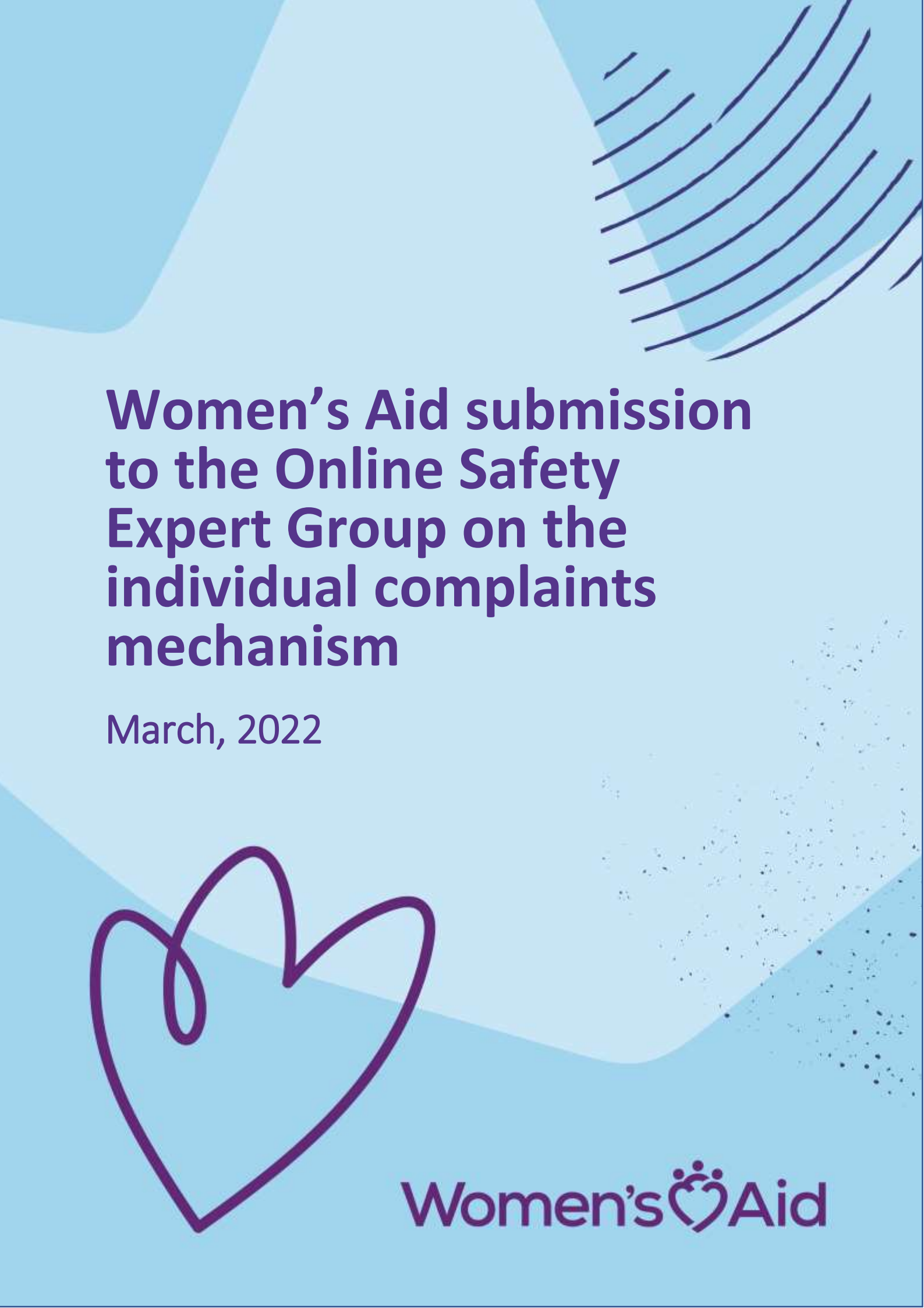
8. Informal engagement with the Media Commission should be encouraged

The complaints mechanism could promote informal engagement with the Media Commission, per eSafety in Australia where it has been recognized that such engagement can resolve issues quickly rather than the back-and-forth process of formal engagement.

Conclusion

Technology Ireland is strongly supportive of the overall objectives of the Online Safety and Media Regulation Bill and, given that it also transposes the AVMSD into Irish law, we encourage its adoption without undue delay. We hope that our comments and observations in this submission are useful to the Expert Advisory Group in its work and reiterate that our primary position that an individual complaints mechanism would be inappropriate as it would risk undermining the systemic focus of the OSMRB and disproportionately diverting resources of the regulator to resolve individual cases.

Technology Ireland remains committed to participating in future discussions and remains at the disposal of the Expert Advisory Group to respond to questions and clarifications relating to this submission.



Women's Aid submission to the Online Safety Expert Group on the individual complaints mechanism

March, 2022



Women's  Aid

Introduction

Women's Aid is a national, feminist organisation working to prevent and address the impact of domestic violence and abuse (henceforth DVA) including coercive control, in Ireland since 1974. We do this by advocating, influencing, training, and campaigning for effective responses to reduce the scale and impact of DVA on women and children in Ireland and providing high quality, specialised, integrated, support services. More information on Women's Aid is available on our website womensaid.ie.

Women's Aid is pleased to provide a submission to the Online Safety Expert Group on an individual complaints mechanism in the Online Safety and Media Regulations Bill.

Context: Need for individual complaint mechanism and takedown orders

Women's Aid has welcomed the Online Safety and Media Regulation Bill and the establishment of an Online Safety Commissioner to oversee the new regulatory framework for online safety. However, we are extremely worried about the lack of an **individual complaint mechanism linked to takedown orders**, especially in relation to Image-based Sexual Abuse (henceforth IBSA) within the Bill.

Cyber-stalking and online harmful content, particularly Imaged Based Sexual Abuse have been a great concern for Women's Aid over a number of years. While men and boys are also victims of cyber-abuse, women and girls disproportionately experience severe type of cyber-harassment, including cyber-stalking, online sexual harassment and image based sexual abuse.¹

¹ [Cyber Violence against Women and Girls](#), 2017

The Harassment, Harmful Communications and Related Offences Act 2020 created much needed offences in relation to image-based sexual abuse. However criminal prosecutions take time and, for a variety of reasons, do not always go ahead. **In the meantime, the images are available and can be shared and re-posted numerous times.** The more IBSA material is allowed to go viral, the more difficult it is to eliminate it from the Internet and the more harm that is done.

Other harmful forms of cyber abuse we often hear about include impersonating the woman and /or posting degrading and humiliating lies about her on social networks, including promoting them as escorts, doxing (disclosing personal information to deliberately make someone feel unsafe) or outing them.

All these forms of abuse can have a major impact on the survivor's wellbeing, mental health, employment and social connections.

For many women, **the most pressing concern is to have harmful content removed** before it goes viral and **causes significant and permanent damage.** A fast, free and effective way to remove harmful content is needed, especially but not only in relation to image-based sexual abuse. Other forms of cyber-abuse can also be devastating: in fact, Coco's Law is named as such because this young woman tragically died by suicide due to other forms of online abuse.

Women's Aid strongly believes that individual complaints and most importantly providing the Online Safety Commissioner with the power to issue take down orders is essential to protect women and girls online. The Commissioner should be able to issue these orders against online services as well as against end-users who upload harmful material.

In relation to IBSA content, it is worth noting that in Australia it is also possible to issue a *remedial direction*, which can order a person to delete content from their devices, to prevent non-consensual sharing of intimate images when there are concerns such content could be uploaded or re-uploaded². Similar measures exist under civil law in Germany.

² [Image-based Abuse Scheme](#), 2021

Answers to Consultation questions

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

Women's Aid believes that an individual complaint mechanism would add value to the regulatory framework for online safety on both the above counts.

In relation to **avenue of redress**, there needs to be a mechanism for redress if an individual is not satisfied or does not agree with the online services response to a complaint, and also if there is no appropriate response within very strict time-frames, particularly in the case of requests to remove IBSA content.

The main value of the individual complaint mechanism however would be in **reducing the risk of harm** as it should provide an efficient, easy and fast avenue of removal of IBSA content before it goes viral.

As mentioned above, the longer such material is available the more irreversible the damage for the victim: therefore, fast removal through the Online Commissioner would greatly reduce risk of harm.

2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

We would hope that online safety codes on complaint handling, if well devised and consistently implemented, would greatly reduce the number of individual complaints. On the other hand, analysis of individual complaints after a suitable period of time may bring to light gaps in the relevant codes or in their implementation by online services.

3. What risks do you foresee if there were no individual complaints mechanism?

The lack of an individual complaints mechanism means that Online Service Providers are the ultimate authorities on a complaint against them, with no further **external** redress option for individual complainants. When a person is not satisfied with an Online Service Provider response to a complaint or request, such as a request to remove content, there is no further avenue to have that complaint re-assessed impartially. The super complaint scheme, while useful, does not address this gap.

We believe that Online Service Providers cannot currently be trusted to self-regulate. For example a recent BBC investigation has found “that women's intimate pictures are being shared to harass, shame and blackmail them on a massive scale, on the social media app Telegram” and that they are not removed, even after they have been reported to the platform³.

The UK Revenge Porn Helpline report⁴ found that in 2020, while 52% of IBSA content was found on pornography sites, 18% was shared in email, texts and private messages, 18% on Facebook, 15% on Instagram and 10% on other social media, showing that company code of conducts alone do not work.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

³ [Telegram: Where Women 's Nudes are Shared Without Consent](#), 2022

⁴ [Intimate Image Abuse, an Evolving Landscape](#),

All.

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

Yes. For IBSA content there should **not** be a requirement to have engaged with the online service process before using the individual complaint mechanism to request take down of content.

This requirement could instead be included for the other categories of harmful online content.

This approach, used by the e-Safety Commissioner in Australia⁵, ensure that any delay in taking down IBSA content before it goes viral is minimised .

While sharing intimate images without consent is an offence, law enforcement cannot be the only answer. As mentioned above, prosecutions cannot always go ahead and in any case they have extremely protracted timeframes.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

Women's Aid believes that the resources for the Commissioner should be commensurate with its aim and scope and that Ireland being the EU HQs of so many tech multinationals includes the responsibility to get it right for the other Member States users as well as Irish users, as mentioned in the Seanad second stage debate.

Without an individual complaint mechanism there is a risk of leaving European users with no redress avenue, as national online safety authorities may not be able to intervene if the Online

⁵ [ESafety Commissioner, Regulatory Schemes](#), 2022

Service Provider is based in Ireland, nor would they have access to the assistance of Hotline.ie in removing material, as they only assist Irish residents. Hotline.ie also does not appear (at the time of writing) to have any relationship with the major social media platform providers and so is presumably very limited in its potential scope of influence on these key stakeholders.

Note that in any case Hotline.ie does not seem to have any formal powers to request take down of IBSA content.

A fee on multinational tech companies based in Ireland may be explored to address the issue of appropriately resourcing this work.

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures How would this balance be affected by matters of scale and volume of content?

In regards to IBSA specifically, letting it go viral is so damaging that the precautionary principle should apply; therefore when there is a dispute in relation to intimate images shared without consent there should be a positive obligation on online services to take down such images/content within strict time lines while their status is being determined or while procedures to ensure freedom of expression/fair procedure are carried out.

In relation to balancing protection of the individual and freedom of expression, it is also worth noting **that allowing serious cyber abuse to go unchecked impacts negatively on freedom of speech**, as people who are targeted will be silenced and may stop participating online. This is particularly the case for women, marginalised groups and activists.

For example Plan International research on girls' and young women's online experiences, tellingly titled *Free to be online?* found that 19 per cent of girls who were harassed very frequently said

they use the social media platform less and 12 per cent just stopped using it altogether⁶. Similarly Australian research on women's experiences of online abuse in their working lives found that women subjected to online abuse often reduce or stop their online presence and/or engage in self-censorship to try and prevent the abuse⁷.

8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

Women's Aid has no preference in this regards.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

As mentioned above, Women's Aid believes that, as in Australia, the individual mechanism should be a Tier 1 service in relation to IBSA complaints and a Tier 2 service in relation to all other complaints.

10. How should the success or otherwise of an individual complaints mechanism be measured?

The individual complaint mechanism should ensure that online services are held to account and that illegal and harmful content is removed quickly. A number of indicators should be developed to measure success of the mechanism, for example:

- number of complaints received and dealt with, disaggregated by sex/gender of victim and type of complaint

⁶ [Free to be Online?](#), 2020

⁷ eSafety Commissioner (2022). Women in the Spotlight: Women's experiences with online abuse in their working lives. Melbourne.

- number of successful take downs of material and whether achieved informally or by take down orders
- outcomes of complaints
- time-frame of response and take downs
- changes to safety codes initiated through a review of individual complaints

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

Women's Aid suggests a review two years from the mechanism becoming operational.

Additionally, there should be regular reviews and ongoing pathways for feedback from relevant NGOs so as to keep pace with the fast evolving of technology.

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