

## **Joint Oireachtas Committee on Justice and Equality**

### **Opening Statement**

**9 October 2019**

#### **Introduction**

Thank you Chair, first of all I'd like to thank the members of this committee for inviting us to today's hearing. My name is Dualta Ó Broin and I am Head of Public Policy for Facebook Ireland Limited - and I am joined by Claire Rush, who is our Lead Counsel on Content & Regulatory matters. We are both based here in Dublin at Facebook's International Headquarters.

We welcome the opportunity to engage with the members of this committee as part of your consideration of the subject of "Online Harassment, Harmful Communications and Related Offences". As the members may be aware, our representatives have engaged on these and related subjects over the past few years with the Oireachtas Committee on Children and Youth Affairs, and the Committee on Communications, Climate Action and Environment.

#### **Regulation of Online Content**

We recognise the real concerns that citizens, and members of the Oireachtas have in relation to the fast moving and evolving nature of harmful content on the internet, including on our platform. We take our role in keeping harmful content off our services very seriously.

We recognise that if society were designing the internet as it exists today from scratch, we wouldn't ask companies to make the judgements that we are making in relation to harmful content alone.

We therefore welcome the fact that Governments and policymakers around the world are taking an active role in addressing harmful online content. It is with their, and your help, that the rules which govern the internet can be updated in such a way that allows people the freedom to express themselves and for entrepreneurs to build things, while also protecting society from broader harms.

Our Community Standards are the rules which govern what is and is not allowed on our platform. We draft and update these rules in consultation with a wide range of experts, including NGOs and academics from around the world (including Ireland) to cover a range of content issues including hate speech; bullying; harassment; graphic violence and nudity.

In many cases, our Community Standards go further than national laws, for example in the area of Non-Consensual Intimate Images (NCII). We have zero tolerance for the sharing of NCII on

our platforms, once we are made aware of these images, we remove them and we use media-matching technology to prevent further sharing or re-uploading of these images.

However, decisions about content can be complex and we know we don't always get it right. That is why we are establishing an external oversight board<sup>1</sup> which will adjudicate at a global level on decisions we have made in relation to content. The decision of the oversight board will be binding on the company.

### **Proposals for the regulation of harmful content in Ireland**

While our response earlier this year to the Minister for Communications, Climate Action and Environment's consultation on the Regulation of Harmful Online Content and the Implementation of the revised Audiovisual Media Services Directive is quite detailed, in the interest of informing today's discussion I will summarise two of the key points.

- 1) We outline how, in our view, an effective and efficient system of oversight by a regulator might operate, and
- 2) On the subject of notice and take down, we recognise that there can be a role for a regulator to review certain incidents where content has been first reported to a service provider, but has not been removed.

We look forward to the publication of the heads of the Online Safety and Media Regulation Bill and engaging in future consultation opportunities.

### **Removing harmful content from Facebook**

Every single piece of content on Facebook - be it a photo, a text post, a comment, a profile or a page - can be reported to us for violating our content policies. In each case you can report the content by clicking on the link in the top right hand corner, or, in the case of a comment, by pressing your thumb on the comment for a few seconds (if using a mobile phone). If the content is found to be against our Community Standards, it is removed.

We are also investing heavily in artificial intelligence (AI) so that we can more rapidly detect harmful and illegal content on our platforms, and it has been very successful in certain areas. However there are types of content which are more challenging for AI, for example bullying and harassment where context can be important. This is why we depend on reports from our community of users.

---

<sup>1</sup> <https://newsroom.fb.com/news/2019/09/oversight-board-structure/>

Our most recent Community Standards Enforcement Report<sup>2</sup>, in which we publish quarterly breakdowns of the content that we have removed, demonstrates the efforts we are making to tackle a range of illegal and “legal but harmful” forms of content.

For example, in the first quarter of this year, we removed 5.4 million pieces of Child Sexual Abuse Material globally - 99.2% of which we removed before it was reported to us. The report also demonstrates the improvements we are making in developing AI tools to deal with challenging areas of harmful content such as Hate Speech, where our proactive detection rates have increased from 38 % in Q1 2018 to 65.4% a year later.

### **Bullying and Harassment in our Community Standards**

Our Community Standards recognise that Bullying and Harassment takes place in many different places and can have many different forms. We do not tolerate this type of behaviour as it prevents people from feeling safe and respected on Facebook.

In addition to removing content, we give users tools to help them protect themselves against bullying, for example blocking other users and controlling who sees your posts, and we operate a [Bullying Prevention Hub](#)<sup>3</sup>, which gives young people, parents and teachers the tools and resources to address the complex issues which bullying presents.

In Ireland, we work with experts to inform our safety policies and deliver online safety programmes. In the past 12 months we have invested €1 million in a partnership with the National Anti-Bullying Research and Resource Centre in DCU and SpunOut.ie. The main goal of this partnership is to help raise awareness of online safety and tackle the issue of online bullying among young people by offering online safety and anti-bullying training to every secondary school in Ireland.

The programme is underway with over 100 teachers from schools across Ireland attending the first set of training sessions in September.

In addition, the research carried out through the school’s training programme will inform SpunOut.ie's online safety resources for teenagers.

### **Commentary on the Harassment, Harmful Communications and Related Offences Bill 2017**

While we understand that the Committee is currently focusing on the broader subject of how to address harmful online content - given that the Private Members’ Bill relating to Harassment, Harmful Communications and Related Offences seeks to address these issues, we have

---

<sup>2</sup> <https://transparency.facebook.com/community-standards-enforcement>

<sup>3</sup> <https://www.facebook.com/safety/bullying>

included our commentary relating to the Bill, as currently drafted, in an appendix, which may be of interest to the Committee members.

## **Conclusion**

I hope that this gives Committee members a brief overview of the steps we are taking to address harmful content on our platform. We have put these measures and more in place because we want users to feel safe and secure when they are using our services.

Claire and I look forward to your questions and we would be happy to follow up in writing on any point which is of interest to the Committee members.

ENDS.

## Appendix

### Harassment, Harmful Communications and Related Offences Bill 2017– Commentary

#### Scope of application of offences

We understand that the sharing of harassing or harmful communications online is a societal challenge that needs to be addressed. At the outset, it is worth noting that social media platforms like Facebook do not actually engage in harassment or harmful communications, and so, they should not be held liable for such acts of communication which are carried out by users of the platform. It is important to note that any legislation in this regard ought to be compatible with the provisions of the e-Commerce Directive, which places existing obligations on information service providers to act expeditiously to remove content upon being made aware of its illegality.

We do not, therefore, believe that the Law Reform Commission intended for the Bill to hold intermediaries such as Facebook liable for such communications. However, given we are dealing with criminal rather than civil liability here, any uncertainty around this question could obviously have a real and serious chilling effect on freedom of expression. We would therefore very much welcome the inclusion of specific language in the Bill to clarify this point.

For example, the following new definition could be inserted into section 2(1):

*“information society service” has the meaning assigned by Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015.*

The following language could be added to the definition of “communication” in section 2(1):

*For the purpose of this definition, “communication” does not include the provision of information society services.*

However, because the Bill does not then go on to use the term “communication” in a number of places where one might expect to see it, such as in section 3, amending the definition of “communication” is not by itself going to address the uncertainty in this area. Accordingly, we would welcome the inclusion of a new subsection in each of sections 2, 3, 4, 5 6 and 11 as follows:

*subsection (1) shall not apply to providers of information society services.*

Of course, if the above suggested changes are not to be adopted, we would very much welcome the opportunity to raise more detailed points we have around these provisions in due course.

#### Protection of Privacy of Victims

Section 11 of the Bill provides for the protection of privacy of victims. However, the language of this provision is modelled on the reporting restrictions set out in section 7 of the Criminal Law (Rape) Act 1981, which has remained largely unchanged since originally enacted and was clearly not originally drafted by the legislature with online platforms in mind. We would therefore have concerns that the language of this provision, including the definitions therein, may no longer be fit-for-purpose in the digital age. So for example, if we assume for present purposes that content posted by a user on the Facebook platform could fall within the meaning of 'publication' in this section 11, an issue arises from the fact that there is no definition of 'publisher' in the Bill.

Therefore, the Bill is not clear on who should be considered the "publisher" in a specific scenario, particularly when dealing with user generated content on a platform such as Facebook. Facebook expects that a user uploading content onto the Facebook platform would be considered to be the publisher, as opposed to Facebook, given that Facebook did not upload the content and does not exercise editorial control over the content uploaded. However, the Bill as currently drafted does not make this clear.

It is also worth pointing out that in many instances, Facebook will not know that the name of a person against whom an offence under the Bill is alleged to have been committed appears on the Facebook platform until this is specifically notified to Facebook given the volume of posts that are made to the Facebook platform daily from around the world, and the fact that Facebook does not exercise editorial control over these posts. It appears unlikely that it could have been the intention of the original drafter of the Bill to potentially consider online platforms such as Facebook to have liability in these circumstances and in our view the Bill should be amended to make the position clear in this regard, in the event that the changes suggested above are not adopted in respect of this section 11.

### **Causing "alarm, distress, or harm"**

Turning to the issue of compliance with take-down requests that may be received which rely on the provisions of the Bill, it would be very difficult for Facebook to assess what constitutes persistent communication with or about another person or whether a particular post is causing "*alarm, distress, or harm*" to that person. From a practical perspective, there is a large degree of subjectivity in this terminology and what causes harm, distress, or alarm to one person may not impact on another person at all. We would, therefore, request that the relevant sections are amended to bring certainty and objectivity to the test that will need to be applied by third-party entities such as Facebook to determine whether or not these sections of the Bill are engaged in a particular scenario.

### **Extra-territorial Jurisdiction**

The text of section 7 of the Bill departs from that proposed in Appendix A of the LRC Report. Furthermore, as previously acknowledged by the Minister for Justice and Equality, the proposals here on extra-territorial jurisdiction may raise constitutional issues in the absence of some basis

in international law. So by way of example, section 7 as currently drafted appears to allow for a scenario whereby proceedings may be brought in Ireland at a time when neither the perpetrator of the alleged offence nor the victim of the alleged offence are present in the State, and in respect of an alleged offence under the Bill that was perpetrated outside the State. This is incredibly wide-ranging in scope and may raise some concerns as to constitutionality. These issues are arguably further complicated by the fact that online platforms by their very nature involve cross-border activities and services. We would therefore welcome the opportunity to comment on these proposals in the next iteration of the Bill.

### **Norwich Pharmacal Orders**

Section 14(2) of the Bill provides that the “court may make an order (previously referred to as a Norwich Pharmacal order), subject to such terms as it considers appropriate” directing a digital service undertaking to disclose certain details that are then specified. The use of the words “subject to such terms as it considers appropriate” in this section, it is submitted, gives incredibly wide ranging discretion to the court in relation to what it may order in this regard.

Again, it seems unlikely that this could have been the intention of the original drafter of the Bill and we believe that these words “subject to such terms as it considers appropriate” ought to be deleted from this section of the Bill. Further, this section makes no provision for the fact that the name and address of the intended respondent may not be available to a digital service undertaking such as Facebook. Therefore, we believe that the underlined wording below should be added to the end of this section 14(2):

“...or both the name and address of the intended respondent, where such details are reasonably available to the digital service undertaking”.

### **Other comments**

We understand that the next iteration of the Bill is likely to contain a specific offence of **stalking** (as recommended by the LRC). As we have not had sight of this provision, we cannot comment on same but would welcome the opportunity to do so in due course.

Finally, more generally, we understand from statements previously made by the Minister for Justice and Equality that the next iteration of the Bill may contain a significant number of amendments.

We would therefore welcome the opportunity to comment on same in due course.