



Broadcasting Authority of Ireland

Joint Committee on Media, Tourism, Arts,
Culture, Sport and the Gaeltacht on the
General Scheme of the Online Safety and
Media Regulation Bill

Opening Statement

5th May 2021

Introduction

The Broadcasting Authority of Ireland (BAI) would like to thank the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht for the opportunity to meet with the Committee to discuss the Online Safety and Media Regulation Bill. As the Committee has noted, this is a hugely important piece of legislation for the regulation of media in Ireland and Europe, and we hope today's discussion will be of assistance to the Committee in its scrutiny of the Bill.

The BAI

The BAI is the independent regulator for broadcasting in Ireland established further to the Broadcasting Act 2009. The BAI has responsibility for a broad range of activities including the licensing, regulation and support of independent and public service broadcast media in Ireland. Under its Broadcasting Funding Schemes, the BAI also provides funding for programmes and archiving relating to Irish culture, heritage, and experience.

As set out in our written submission to the Committee, the BAI welcomes the publication of the General Scheme which is intended to transpose the revised Audiovisual Media Services Directive ("the AVMSD") and introduce a new framework for online safety to protect service users from harmful content. We support the regulatory framework proposed in the General Scheme, noting that it is very much aligned with the BAI's views as a media regulator and reflects the many recent changes in the wider media environment.

We also welcome the Bill's proposal for the functions and staff of the BAI to be transferred to the new Media Commission. This approach ensures the BAI brings its considerable knowledge and regulatory expertise gained in regulation to date and in planning for the future regulation of on demand and video-sharing platform services, to make a meaningful and early contribution to the future work of the Media Commission. In this regard, I will briefly set out current BAI activities in these new regulatory areas.

Harmful Online Content

The proposed Bill seeks to establish a framework for the regulation of online safety to address harmful online content. The BAI has been engaged in regulating harmful content for many years in the context of its broadcasting and audiovisual regulatory work. This work has been conducted through its policy development, codes development work, compliance and enforcement, and complaints activities and addresses areas such as harm and offence (including hate speech), protection of minors, harmful advertising content, and fairness and impartiality in the coverage of news and current affairs.

All such activities involved the requirement to balance freedom of expression considerations with the rights of audiences to be afforded certain protections, especially minors and vulnerable adults.

Transposition of the AVMSD

Through its participation in ERGA, the European Commission's Audiovisual Regulators' Advisory Group, the BAI has played a significant role in preparing for the AVMSD, and in giving practical effect to the various elements of the Directive, and in putting in train future co-operation arrangements. Most recently, the BAI co-chaired an ERGA sub-group which had responsibility for drafting a Memorandum of Understanding which set out a framework for cooperation between the Irish Media Commission and other EU media regulators.

Media Literacy and Disinformation

Also relevant to the evolving media regulatory environment, the BAI has played a leadership role in media literacy at national and European levels for some years now, most notably in the publication of its Media Literacy Policy and in the establishment of a national media literacy network (Media Literacy Ireland) – an approach that was subsequently adopted by many other European Media regulatory bodies.

Committee Members may be aware of a recent communications campaign across a wide range of platforms and media, entitled **Be Media Smart (www.bemediasmart.ie)**, which encourages the public to ‘Stop, Think and Check’ that the information they read, see, or hear is reliable and accurate. The focus of this particular campaign is for people to make informed choices about the Covid-19 vaccination based on accurate and reliable information.

Through all of these activities, the BAI has had extensive engagement with a range of players in the audiovisual sector including broadcasters, video-on-demand services and social media platforms, as well as with statutory and non-statutory interests in the Harmful Online Content area.

Disinformation is a matter of significant concern for European Governments and audiovisual regulators alike and the BAI has built up significant organisational knowledge and experience in this area in recent years. The BAI chaired a European Regulators’ working group on Disinformation in 2019-2020 which was responsible for assisting the European Commission in assessing the implementation and effectiveness of a European, voluntary Code of Practice on Disinformation, designed to address the spread of online disinformation and fake news – signatories to the Code include online platforms, leading social media networks, advertisers and the advertising industry.

Future Funding and Sectoral Sustainability

A key strategic objective for the BAI in recent years has been to support the achievement of enhanced financial sustainability for the Irish audio and audiovisual sectors. In response to the significant challenges brought about by the Covid-19 pandemic, the BAI provided supports for the sector including the operation of additional Sound & Vision funding rounds and the waiver of the broadcasting levy for the independent radio sector for the first six months of 2020.

The BAI continues to be significantly engaged with the Future of Media Commission on matters concerning future funding models for Public Service Media and Public Service Content and on the sustainability of the independent production sector.

Online Safety and Media Regulation Bill

The BAI welcomes and supports the aims of the General Scheme in providing for the future regulation of traditional and online services in this new converged media environment. The establishment of the Media Commission as the single content regulator should ensure consistency in the application of regulatory principles, policies, and rules across all areas of content regulation which should serve and protect audiences and online users while also promoting and upholding fundamental European values such as freedom of expression, cultural diversity, and human dignity. The high-level ‘macro’ approach to regulation, in managing the issue of scale, is also welcomed.

There are a number of specific Heads which the BAI believes may benefit from further Committee consideration and these are now briefly highlighted.

Independence (Resources) (Head 8)

We fully support the concept of the independence of the Media Commission and note this principle reflects current Irish legislative practice in respect of the establishment and operation of state agencies. As set out in the AVMSD, the European Commission also places a high value on ensuring the independence of national content regulatory authorities in protecting freedom of expression and in promoting freedom of the media.

We note that the Media Commission will have a wide and diverse brief and stress the importance of ensuring that it has the necessary range and number of staff, from the outset, to deliver on the objectives of the legislation.

Categories of Harmful Online Content (Head 49(a))

While the BAI agrees that the harms set out in the General Scheme warrant inclusion in the categories of harmful content to be included in the legislation, we wish to highlight two potential additional categories of harmful online content which may warrant further consideration.

The first relates to disinformation and I have already set out above how this is becoming an increasingly concerning issue both in Ireland and across Europe. However, given that the scale of regulation under the General Scheme is already very significant, it may not be appropriate to include this broader, societal, harm at this juncture. In addition, the issue of disinformation is currently under consideration by the European Commission and it may be appropriate to await legislative developments in this regard.

The second concerns Gender-based Harm, an issue of significant concern for the BAI and for many harmful online content stakeholders with whom the BAI has engaged. While we are satisfied that gender-based harms would fall in scope of the second category as set out in the General Scheme as currently drafted, it may be appropriate for the Media Commission to specify the types of harms which may fall to be regulated under this provision.

Definitions of each of the categories of harmful online content (Head 49(a))

On the matter of the definition of harmful online content as set out in Head 49 (a), we have addressed in our submission our concern with the statutory test contained in the definitions of harmful online content and consider that this should be considered further. Specifically, we are concerned with the element of the definition requiring that “a reasonable person would conclude was the **intention** of its dissemination” and believe that this may be difficult to apply at scale. In addition, in some circumstances it may also be very difficult to conclude in practice (for example, in cases of cyberbullying of a child by another child). We believe that further, more detailed consideration be given to this issue.

Compliance and Warning Notices (Online Safety Take-down Notices) (Head 53)

A consistent message received by the BAI from a wide range of stakeholders active in the field of harmful online content was that the inclusion of a system facilitating the swift removal of content was vital to the achievement of the overall policy objectives of the legislation, and the protection of online users, most especially children and vulnerable adults.

Noting that such a system was proposed but is not now provided for in the General Scheme, the BAI would like to suggest to the Committee that this matter would merit reconsideration. In the BAI's view, there must be the potential for the Media Commission ultimately to order the timely, fair, and proportionate removal of content, subject to any necessary regulatory safeguards that would be desirable to accompany such interventions.

Content Levy and associated Schemes (Heads 76 and 77)

The BAI supports the principle of a content levy in the context of the provisions of Article 13 (2) of the AVMSD and welcomes the potential for development of such a levy on foot of an assessment of viability by the Media Commission. In times of significant financial challenges for traditional broadcasters and the independent production sector, any opportunities for additional funding for the Irish audiovisual sector should be actively explored.

In considering the scope of content which could be funded under such a scheme, we believe that consideration should be given to removal of the prohibition on funding for news and current affairs content, especially given emerging concerns in respect of disinformation online.

Advertising (Head 69)

While the BAI is of the view that regulatory limits on advertising are necessary to balance the commercial needs of broadcasters with the viewing and listening interests and enjoyment of audiences, we are of the view that the Media Commission should have greater discretion in the setting and implementation of advertising limits. In our submission we set out several options which may be considered by the Committee, such as the setting of advertising limits or aligning maximum hourly advertising limits on sound broadcasting services with those for television. We would be happy to discuss further if required.

Conclusion

In conclusion, I would again like to thank the Committee for the opportunity to discuss the General Scheme and look forward to answering any questions that members may have. Thank you.