

**Joint Committee on Media, Tourism, Arts,  
Culture, Sport and the Gaeltacht**

**Opening statement by Ronan Lupton**

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**7<sup>th</sup> of July 2021**

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**1. Introduction**

- 1.1 Chairperson and members of the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht (“**Committee**”), I thank you for the invitation to appear before you and to contribute to your current deliberations on Internet Safety in Ireland and the General Scheme of the Online Safety and Media Regulation Bill (the “**OSMR**”).
- 1.2 I have set out my background and credentials in my written submission to the Committee dated 19 March 2021.
- 1.3 It is important to reiterate that the evidence I give today is entirely independent of any bodies that I represent or that collectively represent me. In saying that, my expertise is derived from a 23-year long career in the telecommunications and Internet industries as well as a media law practice at the Law Library in Dublin.
- 1.4 The details of my experience and inputs to this area and the areas under focus in the OSMR Bill are firsthand. To that end, the position I took in my written submission was somewhat more legalistic and technically focused than what I understand the Committee’s position to now be.
- 1.5 I have carefully followed the submissions, public hearings, and work undertaken by the Committee in gathering evidence and it is clear that a policy direction and focus will be forthcoming consistent with the Heads of Bill under consideration.

**2. Positioning**

2.1 I deal with five key points:

- (i) Forthcoming European Law;
- (ii) Establishing a New Media Commission;
- (iii) Online Safety;
- (iv) Civil versus Criminal Matters; and
- (v) Levies.

**(i) Forthcoming European Law:**

2.2 In my written submission, I placed strong emphasis on the fact that the legislative timing of the OSMR Bill and its passage through the Houses of the Oireachtas will almost mirror the passage of two very significant pieces of European Law the Digital Services Act (“**DSA**”) and Digital Markets Act (“**DMA**”).

2.3 The focus of those two legal instruments when they are finally settled, will have a strong bearing on the OSMR legislation regardless of what way that eventually emerges as a final Act, or piece of legislation. My main intention is to ensure that you hear evidence to the extent that those European instruments are due, that they will require legislative scrutiny, very significant legislative review work, as well as causing a possible legislative ‘*unpicking*’ of aspects of the OSMR Bill when it is finally passed.

**(ii) Establishing a New Media Commission:**

2.4 Given the Committee’s clear position, I am able to say the following. I support the establishment of a Media Commission and in particular bringing the regulation of traditional broadcast services, on-demand services, and video sharing platform services together under a single regulator.

2.5 In my view this this makes sense given that the AVMSD explicitly seeks to

ensure a level playing field between all media players in the market. Though I have certain reservations about aspects of transnational interworking under the AVMSD and ensuring that the new Media Commission is properly resourced to copy with the job it is given.

**(iii) Online safety:**

2.6 The new focus on online safety in the OSMR Bill, particularly the proposed introduction of online safety codes, underpinned by statute is welcome. Without statutory backed frameworks, including sanctions for non-compliance, there are no guarantees that sufficient companies sign up to any voluntary codes of conduct, or that signatories actually abide by their terms.

2.7 That said, I have made a submission on issues surrounding senior management liability arising at Head 54B. Furthermore, I think it is necessary to recall that criminal justice matters shall always remain outside the remit of a Media Commission, a point made quite clearly by the Government and successive Governments in relation to this area.

**(iv) Civil versus Criminal Matters:**

2.8 Efforts by the Minister for Justice and Garda Commissioner to enhance resources and re-train the Gardai at rank-and-file level should continue and not be subject to “*that’s a civil matter*” rationale, which is often a hook on which serious issues and crimes go to perish. Or, indeed result in some form of criminal civil “*where does this issue belong? ping-pong*” between the Gardai and the New Media Commission.

2.9 In passing, I note the passing of the Harassment, Harmful Communications and Related Offences Act 2020, or so-called “*Coco’s law*”. However, as a nation we

have still some way to go before fully enabling the police as they should be to handling more sophisticated crimes and those falling between criminal and civil law dynamics.

**(v) Levies:**

- 2.10 I was asked by the Committee to consider a possible future content levy. I provided information concerning a levy model which works within the telecommunications markets. However, such a model may not be easily overlaid in the audio-visual media space.
- 2.11 The establishment and functioning of any content levy scheme is likely to be highly complex and may result in unintended consequences, and the Media Commission should first carry out a review of its viability.
- 2.12 I note that most other EU member states have not introduced a levy scheme and in those that have, no two member states have opted for the same approach, thereby demonstrating the complexity of issue. Member states that have introduced levies typically allow media service providers to fulfil certain investment obligations in lieu of paying the levy and this is also recognised by the AVMSD.

**3. Summary**

- 3.1 I have considered the written submissions made by Dr TJ McIntyre of Digital Rights Ireland, and Professor Conor O'Mahony the Special Rapporteur in Child Protection and their evidence to the Committee and I would associate myself with those submissions.
- 3.2 I share the concerns expressed by Professor O'Mahony on the UNCRC points and indeed his submissions on compliance with the UNCRC principles.
- 3.3 I also share the same concerns expressed by Digital Rights Ireland relating to:

- (i) Head 49A – Defining restrictions on Freedom of Expression;
- (ii) Head 49B – Censorship without democratic legitimacy; and
- (iii) Head 53 – Appearance of inadequate procedural safeguards when censorship arises.

3.4 I am happy to address the Committee on any matter arising either based on this Opening Statement, my written submission, or those submissions with which I associate myself.

**Ronan Lupton**

**5<sup>th</sup> of July 2021**