

Laura Pathe
Clerk to the Committee
Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht

By email

9 March 2021

Dear Laura,

Thank you for the opportunity to make a written submission on the General Scheme of the Online Safety and Media Regulation Bill.

The implementation of the Audiovisual Media Services Directive (AVMSD), which the Government of Ireland is transposing into law via this Bill, marks an important step in the regulation of audiovisual content across Europe. The scope of the Directive has rightly broadened to cover recent technological developments and advances, with the aim of ensuring similar rules and protections for similar services irrespective of the medium.

Snap Inc. has no business establishment, nor any business operations, based in Ireland. It does, however, operate subsidiaries in the UK and several EU member states, one of which will be our place of establishment for compliance with any applicable rules under the AVMSD.

Given the interconnected nature of online services in Europe, and differing approaches taken by European regulators to implementing the AVMSD, we hope that contributing our perspective on the proposed Bill may be helpful to the Joint Committee as it conducts its pre-legislative scrutiny.

Introduction

Snap Inc. is a camera and technology company that, as well as designing wearable video technology and augmented reality software, owns and operates the video messaging application, Snapchat. The company is small but growing, with over 265 million people globally using Snapchat every day.

Snapchat was built as an antidote to traditional social media: the app does not offer an open news feed where unvetted publishers or individuals have an opportunity to broadcast hate or misinformation, and we don't offer comments or likes that may amplify harmful behavior. Snapchat is at heart a visual messaging application, designed for private communications (either 1:1 or in small groups), with the aim of encouraging users to interact with their real friends, not strangers. Snapchat users' friends lists are only visible to themselves, by default you cannot receive a message from someone who you haven't accepted as a friend, and you can never share your location with someone who isn't your friend. Public areas of Snapchat - our Discover page for news and entertainment, and our Spotlight tab for the community's best Snaps - are curated and pre-moderated, ensuring harmful content is not surfaced here. Much of our user generated content is designed to be ephemeral - default settings for messages and

Snaps are to disappear after reading, and Stories last a maximum of 24 hours - another safety feature that limits how broadly content can be shared.

These Snapchat features help ensure users' safety and protect their privacy. As such we consider Snap to be in a good place in terms of compliance with the key applicable safety requirements and objectives of the AVMSD. We look to continually adapt and improve our products by listening to user feedback, seeking guidance from online safety experts and working constructively with Governments and regulators around the world.

Online safety and the protection of children

We welcome the focus in the proposed Bill on ensuring online safety and protecting children online. Snap has long been an advocate of effective regulation that improves user safety, but that also is proportionate and practical for the huge variety of different platforms and online services that exist. On the whole, we consider that the key proposed measures here represent a good approach to implementing the main safety objectives of the AVMSD while also representing an effective model of regulation for those entities established in Ireland.

Defining harmful and age-inappropriate content

A key objective of the AVMSD is to protect children from content that may impair their physical, mental or moral development, and all citizens from content that incites hate, violence or terrorism. These definitions, such as they are, are broad: inevitably there is a degree of subjectivity that could be applied by those interpreting the Directive and its obligations as a result. We therefore welcome the attempts in the Bill to provide further clarity in specifying what content should be prohibited, by defining both "harmful online content" (including material which it is a criminal offence to disseminate under Irish law; material likely to have the effect of intimidating, threatening or persecuting a person; material likely to promote eating disorders, self-harm or suicide); and "age inappropriate online content" (including material containing gross or gratuitous violence; material containing cruelty such as torture to humans and animals; and material containing or comprising pornography).

Setting clear policies and Community Guidelines which set out what kind of content and activity is prohibited online is a crucial part of ensuring user safety. In order to use Snapchat, all users agree to abide by our [Community Guidelines](#). The high standards of these Guidelines form the basis for our action against harmful content and those attempting to post it. Clearly defining harmful and age-inappropriate content in legislation will help platforms ensure that their own policies reflect such content, and thus help enforce against them.

The Bill also proposes that the Media Commission be able to propose to include or exclude further categories of material from the definition of harmful online content, and recommend that they be adopted by the Government. Given the rapidly evolving nature of use of the internet and harmful online activity, it is right that this definition should not remain static. However we would counsel that the definition should only be reviewed on a regular, time-limited basis (perhaps once every 18 months or two years). Constantly changing definitions, rules and requirements will only make setting expectations and enforcing against guidelines on online platforms more difficult.

Online safety codes of practice

The Bill proposes that the Media Commission should develop online safety codes governing the standards and practices of online platforms. This approach is in keeping with regulatory models proposed elsewhere in Europe, including the UK's proposed online harms legislation.

We welcome the Government's proposals that the codes would be "high level" and "principle based," and that designated platforms would be required "to meet the principles set out in the high level codes that apply to them." In our view, online regulation is at its most effective when it focuses on the overall outcomes that platforms should deliver in respect to user safety, while avoiding being prescriptive on the methods, tools or tech that platforms should deploy to achieve these. Given the enormous variety of online platforms and the rapidly evolving nature of the internet, certain solutions may not be practical, relevant or appropriate depending on the service, the size of the platform, other safety measures they have in place. Setting overall objectives and outcomes, and enabling an independent regulator to assess platforms' compliance with these as appropriate for their services and circumstances, represents a practical, scalable and effective model of online regulation.

We also welcome the Bill specifying that the Media Commission should have regard to the legal liability regime for online services provided for by the EU eCommerce Directive when drafting its codes. The intermediary liability provisions of the eCommerce Directive have formed the bedrock of a regime which has successfully and enduringly balanced the protection of citizens and consumers with the acknowledgement that Internet hosting providers cannot know in advance from a practical perspective the legality, or otherwise, of all the content that is on their platforms. The new Digital Services Act proposal from the EU Commission sensibly develops the regime further, while respecting the underlying principles. The AVMSD's existing and new provisions are explicitly without prejudice to these key provisions of the eCommerce Directive, and it is welcome to see that reflected in the Government's proposal.

We would, however, advocate for as much rationalisation of codes of practice as possible. In other countries we have seen proposals for multiple, specific codes of practice covering individual types of harmful content: terrorist content, child sexual abuse and exploitation, hate speech etc. This has led to a lot of confusion among stakeholders. Complying with multiple, possibly competing codes represents a real challenge even for mid-sized companies; for smaller companies and start-ups it would simply not be possible. Such an approach would risk further entrenching the advantages already enjoyed by the largest and most dominant platforms at the expense of smaller challengers. A better approach would be to produce one, high-level and principles-based code of practice which would cover all harmful and age-inappropriate content, and which could be adapted to individual company circumstances and risk levels.

Application of the content levy

The Bill proposes a content production levy on "media service providers established in the State and [which] target audiences in the State" for the purposes of providing financial contributions to the production of European works. This approach is in keeping with approaches to implementing the Directive elsewhere in Europe. Given Snap has no business establishment nor any business operations based in Ireland, we do not expect to be in scope of any levy paid by audiovisual media service providers in Ireland. We note that the Media Commission will be carrying out a review of the establishment of a content levy, and of course are happy to engage with that process on a principles only level, if helpful.

Conclusion

Broadly, we consider that the regulatory model proposed in this Bill represents a reasonable and effective approach at implementing the key objectives of the AVMSD and developing a lasting framework for online safety regulation in Ireland. We urge the Government of Ireland to ensure the internal market provisions of the Directive are implemented in the spirit in which they were agreed in Brussels.

Thanks again for the opportunity to make a written submission on the General Scheme of the Online Safety and Media Regulation Bill. We hope this contribution is useful as the Joint Committee conducts its pre-legislative scrutiny.

Yours sincerely,

Henry Turnbull
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