



## **Written Submission**

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

**General Scheme of the Online Safety  
and Media Regulation Bill**

**8<sup>th</sup> March 2021**

## Executive Summary

SpunOut.ie offers the following recommendations regarding the General Scheme of the Online Safety and Media Regulation Bill:

- Explore the inclusion of private messaging services within the Bill's definition of Media (Head 2)
- Amend the Committee's objective to include reference to the importance as well as the dangers of online services for children and young people (Head 9)
- Expand the Media Commission's remit to include regulation of online safety education programmes in schools and other settings (Head 10)
- Create a permanent Online Safety Commissioner role within the Media Commission (Head 19) and a permanent Online Safety Committee to advise them in carrying out their role (Head 32)
- Clarify that no individual holding employment or interest in any organisation under the Media Commission's remit, including social media companies, may become a Commissioner (Head 22)
- Clearly set out how the Media Commission can cooperate with the Gardaí to protect the interests of young people online (Head 29)
- Consider re-establishing the existing National Advisory Council on Online Safety within the Media Commission (Heads 29 and 32)
- Empower the Media Commission to act on individual complaints against social media platforms and online service providers where other options have been exhausted (Head 52A)

## Introduction

SpunOut.ie is Ireland's youth information platform by young people, for young people. SpunOut.ie's mission is to provide young people throughout Ireland with information, tools, resources and opportunities to enable them to make informed decisions and be a positive force in their own lives and in their communities. Over 180,000 young people access resources created by SpunOut.ie each month, with a further 5,000 reaching out to SpunOut.ie's 24/7 texting support service 50808 on average each month.

SpunOut.ie strongly welcomes the publication of the General Scheme of the Online Safety and Media Regulation Bill and appreciates the invitation from the Joint Committee to offer feedback on its contents. Our major observations are set out below on a head-by-head basis.

We are happy to discuss or clarify any points further at any stage of the Joint Committee's deliberations.

## Head 2 | Interpretation

We note that private messaging platforms are currently excluded from the definition of media covered by the General Scheme of the Bill. Given the Bill's otherwise broad mandate across online media, on-demand audio-visual services and video platforms, the exclusion of private messaging services appears to be a missed opportunity and a significant gap in the responsibilities of the Media Commission.

Private messaging platforms, such as WhatsApp and Facebook Messenger, are a major part of how most individuals engage online. All such platforms allow for the quick and easy dissemination of media between individuals and groups, creating spaces where harmful content of all kinds can be shared and re-shared outside of the proposed remit of the Media Commission.

This is particularly relevant in terms of abusive interpersonal messaging and cyberbullying, which may be carried out through a private messaging service, and which could easily satisfy any of the four existing grounds constituting "harmful online content" within the current General Scheme. Proceeding with the Bill as currently laid out in the General Scheme risks the creation of a two-tier approach to protection from online harm; where "harmful online content" posted to public platforms such as Facebook or Twitter is considered within the remit of the Commission to take action upon, but not where the same material appears on a private messaging platform.

To be clear, SpunOut.ie recognises the important distinction between materials posted publicly and those shared privately between individuals. However, it must be noted that the "private" aspect of private messaging platforms can be undercut in two specific scenarios:

- When a private messaging platform is used to share harmful online content with or about an individual or group against their will, such as in cases of image-based sexual abuse;
- Where material which would be considered harmful on a public platform is shared to a group or groups on a private channel which may constitute up to 250 people (in the case of WhatsApp) and where this material is re-shared across groups to a potential enormous audience.

We accept that, due to the encrypted nature of the services, there may be technological limitations as to what extent platforms such as WhatsApp can be effectively regulated within the context of this Bill. However, it seems counterintuitive to proceed with a system of regulation which would cover online services such as Facebook without even attempting to cover other popular platforms such as Messenger and WhatsApp, which are owned and operated by the same company.

**We therefore recommend that the inclusion of private messaging services within the definition of "Media" be considered.**

## Head 9 | Objectives

SpunOut.ie welcomes the General Scheme's stated interest in protecting the interests of children "taking into account the vulnerability of children to harmful content and undue commercial exploitation".

However, as an online service run by young people, for young people; we understand the vital importance of online services for young people and children in accessing and affirming their rights. This is particularly true in communities such as LGBTI+ young people, rurally isolated young people and young people from ethnic or linguistic minority backgrounds.

We therefore believe it would be useful for the Bill's objective to set out not only the unique exposure to risk felt by young people online, but also the significant importance of the internet and online services to their wellbeing in many cases.

**We therefore recommend that Head 9, Section 4 be extended to read as follows:**  
***"Protect the interests of children and young people taking into account the vulnerability of children and young people to harmful content and undue commercial exploitation, and taking into account the importance of internet access and online services to many children and young people for the realisation and enjoyment of their rights".***

## Head 10 | Functions

SpunOut.ie welcomes the empowerment of the Commission under the General Scheme of this Bill to promote public awareness, information campaigns and educational initiatives relating to online safety. We also welcome the Commission's stated role in reviewing existing and proposed online safety legislation.

However, in addition to these functions, we believe that the remit of the Commission should also be extended to include the evaluation and/or certification of non-state educational programmes relating to online safety. This would correct the current situation where online educational programmes are largely unregulated and exist outside of the function of any one body to fully regulate.

It would follow that, if the Media Commission is to have a significant role in public education and the shaping of legislative standards in the area of online safety, then it would be the perfect body to monitor and regulate the provision of online safety information within schools and other educational settings. This could be achieved both through the creation of public guidelines for online safety educational programmes and through inspection and evaluation of such programmes in practice, as has been carried out in Australia by the eSafety Commission.

**We therefore recommend that the remit of the Media Commission be extended to include regulation of educational programmes relating to online safety.**

## **Heads 19 and 32 | Membership of the Commission / Committees**

SpunOut.ie strongly welcomes the Bill's proposed establishment of a Media Commission. However, we are concerned at the lack of clear definition as to the makeup of the Commission.

In particular, the General Scheme does not explicitly prescribe the role of a Digital Safety Commissioner; a role of fundamental importance in an effective regulatory regime. This appears to us as a glaring omission and we believe the decision deserves further scrutiny given the considerable powers of sanction afforded to the Commission as a whole in an area where many different rights must be carefully balanced.

We understand the current intention of the Bill to establish the Commission as a corporate body and entrust its members to delegate the online safety function appropriately. We also appreciate the stated need to provide flexibility in the Commission's work, allowing for rapid responses to a changing media landscape.

However, we cannot envisage a scenario arising in the foreseeable future where the existence of a Commissioner exercising a full-time mandate over the area of online safety will not be required. Moreover, while it may well be necessary to divide responsibility for online safety between multiple Commissioners, we cannot reasonably foresee any scenario where responsibility for online safety would be appropriately combined with another area of the Commission's work under the remit of a single Commissioner.

In addition to the above, we must stress that the expertise and experience necessary for effective oversight of online communications would almost certainly require the Commissioner responsible to have a relevant history in this area. Under the current scheme, there is no specific requirement for any one Commissioner to have an in-depth knowledge of the online safety space and we believe this would be a mistake.

Overall, it seems wiser to establish a permanent Online Safety Commissioner within the Media Commission, acting as a co-equal member of the Commission but with a specific responsibility for online safety.

In addition to the establishment of an Online Safety Commission, we believe that the role should also be supported on a permanent basis by a Committee established under the provisions of Head 32. Following the same logic as that set out for an Online Safety Commissioner, a permanent Online Safety Committee within the Media Commission would be able to provide informed advice to the Commissioner and the rest of the Commission on this vital area of their collective functions.

**We therefore recommend that the General Scheme be amended to establish a permanent Online Safety Commissioner within the Media Commission. We further recommend that Head 32 be amended to provide for a permanent Online Safety Committee to assist and advise the Online Safety Commissioner in the exercise of their functions.**

## **Head 22 | Exclusions from membership of the Commission**

SpunOut.ie strongly welcomes the proposed provision which would disbar any person from serving on the Media Commission who holds employment or an interest in a media undertaking (linear broadcasting and newspapers).

However, as identified in the Explanatory Note of Head 22, it is essential that a similar provision is introduced regarding social media and related tech companies.

We propose that, at a minimum, social media and relevant tech companies be held to the same standards as broadcasting and newspaper interests. This will be essential to ensure that the Commission can conduct its functions regarding online safety in an impartial manner. It is especially vital given the significant market concentration in the social media space and the dominance of a small number of large multinational corporations with significant economic and cultural influence.

Simply put, we believe that no individual who holds employment or an interest in such a company should be eligible to serve on the Media Commission. Furthermore, to uphold the ability of the Commission to act beyond any accusation of partiality, we believe that a minimum “cooling off” period should be introduced whereby no individual who has held employment with or had an interest in a broadcasting, newspaper, social media, or relevant organisation should be eligible to serve on the Commission for a number of years after their that employment or interest has ceased.

**We therefore recommend that no individual holding employment or an interest in any organisation subject to the Media Commission’s oversight be eligible to join the Commission.**

## Heads 29 | Cooperation with other bodies

SpunOut.ie welcomes the provision under Head 29 establishing that the Media Commission “in the interests of the effective discharge of its functions, may enter into cooperation agreements with other bodies as it sees fit”.

In particular, we wish to use this opportunity to raise two specific bodies with which the Media Commission is likely to cooperate significantly, and how they might be better set up to ensure effective achievement of their shared goals.

First, if the overall aims of the online safety aspects of this Bill are to be met and the vulnerability of young people to harmful content truly acted upon; it is essential that An Garda Síochana are appropriately facilitated in this regard. The Gardaí must be adequately trained to receive reports of harmful online content from young people in a youth-friendly way. They must then have sufficient training and support to act upon such complaints, including being able to link in with the work of the Media Commission.

A permanent system of cooperation and partnership between the Gardaí and the Commission could create an invaluable synergy in the tackling of online harm and the vindication of the rights of young people.

Furthermore, we would ask for the Joint Committee to consider the future of the National Advisory Council on Online Safety as part of their evaluation of this current Bill.

The Council is an already-existing and theoretically valuable institution, bringing together expert opinion within the NGO sector to advise Government on policy and practice in this area. However, up to this point the Council has been inadequately resourced to perform its function to satisfaction. The long gaps between meetings and the lack of a robust agenda have undermined the Council’s capacity to be an effective and worthwhile resource.

We would suggest that the current Bill be amended to transfer the existing structure of the National Advisory Council on Online Safety to the supervision of the Media Commission, potentially in the form of a Committee as envisioned under Head 32. This revised group must then be properly funded, with a clear agenda and purpose, in order to provide the Commission with an adequate and appropriate level of advice in the execution of its mandate.

**We therefore recommend that consideration be given to detail how the Media Commission can effectively work together with An Garda Síochana to safeguard the interests and experiences of young people online. We further recommend that the existing National Advisory Council on Online Safety be integrated into the Media Commission to advise on online safety and related matters.**



## Head 52A | Auditing complaints handling

SpunOut.ie notes with concern that the General Scheme of the Bill seemingly does not allow for individuals to escalate complaints directly to the regulator in cases of non-responsiveness or inaction by digital platforms. This is despite an implied existence of an individualised complaints mechanism in relation to media service providers under Head 61. This could potentially create a situation where complaints relating to broadcast or on-demand media receive disproportionate attention compared to instances of harmful online content.

While we understand the clear need to ensure the Commission is not swamped with individual complaints and queries, it nevertheless seems ill-advised not to create a mechanism by which ordinary citizens and smaller organisations can highlight issues directly with the body responsible for safeguarding their interests. Any individual complaints mechanisms would have to be heavily triaged to ensure that the Commission's time was well spent. While this would no doubt represent a challenge, the Law Reform Commission has recommended a potentially viable model ("*Report on Harmful Communications and Digital Safety*", 2016).

Under this approach, and similar to the process set out for broadcasting complaints under Head 61, the Commission would establish codes of practice for social media and online service providers, as under Head 13, including a clear procedure for removal of harmful content. Where this procedure was not followed, members of the public would then have recourse to complain to the Media Commission directly. This model has the potential to significantly reduce the number of complaints by establishing a two-step process whereby individuals must exhaust their options with the platform in question first, only contacting the Commission when the platform provider has manifestly failed to meet its obligations.

It would also be important for the Commission to ensure clear guidelines for individuals explaining how and under what circumstances they would be entitled to lodge a complaint. This should include guidance as to when an individual can be considered to have exhausted their options with an online platform.

Another workable solution may be found in adapting the practice of the Ombudsman for Children, whereby the Commission is not obliged to follow-up on each individual complaint, but may choose to open an investigation if it deems a concern or complaint meets a necessary threshold (either in terms of volume of complaints received, a vulnerable demographic is affected or the impact of the concern/complaint is significant).

This would ensure a healthy link between the experiences and concerns of ordinary citizens and the practice of the regulator, without mandating action in situations which would not merit direct regulatory involvement, and while preserving the overall intention of regulating chiefly through a system of codes of practice.

**We therefore recommend that the Media Commission be empowered to act on individual complaints against social media platforms and online service providers where other avenues have been exhausted, and that the Commission can choose to open investigations to general complaints where it deems they meet a necessary threshold.**