

DÁIL ÉIREANN

AN COMHCHOISTE UM NA MEÁIN, TURASÓIREACHT, EALAÍONA, CULTÚR, SPÓRT AGUS GAELTACHT

JOINT COMMITTEE ON MEDIA, TOURISM, ARTS, CULTURE, SPORT AND THE GAELTACHT

Dé Máirt, 13 Aibreán 2021

Tuesday, 13 April 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Alan Dillon,	Malcolm Byrne,
Brendan Griffin,	Micheál Carrigy,
Imelda Munster,	Shane Cassells,
Johnny Mythen,	Annie Hoey,
Christopher O'Sullivan.	Fintan Warfield.

* In éagmais / In the absence of Deputies Peter Fitzpatrick and Mattie McGrath.

Teachta / Deputy Niamh Smyth sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: We have one item of committee business to address before I call our witnesses to present. Can I take it the draft minutes of our last public and private committee meetings of Tuesday, 30 March are formally agreed and that there are no matters arising? Is that agreed? Agreed.

Pre-legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill

Chairman: I welcome Mr. Shanley and Ms Quill who are joining us for the meeting. We look forward to hearing from them. The meeting has been convened with the officials from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media to commence-----

(Interruptions).

Chairman: Bear with us a second. We are having a technical issue which we hope to overcome very soon.

(Interruptions).

Chairman: We are delighted to have the officials from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media with us to commence the committee's pre-legislative scrutiny of the online safety and media regulation Bill. It is a hugely important piece of work we are endeavouring to do, perhaps one of the most important of this Dáil term.

I thank the officials from the broadcasting and media division of the Department for joining us today in committee room 2. We are meeting remotely and adhering to restrictions of level 5. I welcome Ms Triona Quill, principal officer, and her colleague, Mr. Ciarán Shanley, assistant principal officer from the Department.

The format of the meeting is such that I will invite the officials attending on behalf of the Department to make their opening statement, which will be followed by questions from members of the committee. Members are reminded of the fact they have been given a speaking slot and have five minutes for questions and answers. I ask them to stick to that as tightly as possible as we have a very definite time slot of two hours for this meeting. The secretariat has circulated the time slot for speaking and we will go with that as closely as we can.

Members must be in the precincts of Leinster House to participate in this meeting. If a member is not physically in the precincts of Leinster House, I will have to ask him or her to leave the meeting, but I do not believe that pertains to anybody participating today.

Witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against any person or entity by name or in such a way as to make him or her identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of a person or entity. If witnesses' statements are potentially defamatory in relation to any identifiable person or entity, the witness will be directed to discontinue his or her remarks. It is imperative that witnesses comply with any such direction. As our witnesses today are attending remotely from outside the Leinster House campus, they should note that

there are some limitations on parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness physically present does. I again remind members of the constitutional requirement that they must be physically present within the confines of Leinster House in order to participate in public meetings. I will not permit a member to participate where they are not adhering to that constitutional requirement. I ask members and witnesses to identify themselves when contributing for the benefit of Debates Office staff preparing the Official Report. Please keep microphones on mute when not contributing to reduce background noise and feedback. I ask members to use the button to raise their hands if they wish to make a contribution. I remind those joining the meeting to ensure that their mobile phones are on silent mode or, better again, switched off.

On that note, and with all the boring housekeeping rules and regulations put to one side, we will get to the real crux of the meeting. I again welcome Ms Quill and Mr. Shanley and thank them for taking the time to appear before the committee. I ask Ms Quill to proceed with her presentation. We will then move to questions from members.

Ms Triona Quill: I thank the Chair and members of the committee for the invitation to participate in this meeting. The online safety and media regulation Bill is important legislation and I hope today's exchange will be of assistance to the committee in its scrutiny of the Bill.

The primary purpose of the Bill is to transpose the revised audiovisual media services directive and to establish a new regulator, a multi-person media commission, which will include an online safety commissioner. The general scheme of the Bill was drafted following a public consultation that concluded in April 2019 and a subsequent period of in-depth legal and policy analysis. This work is reflected in the regulatory impact analysis that has been supplied to the committee which extends to more than 500 pages. In addition, there has been extensive and ongoing stakeholder engagement.

In January 2020, the general scheme was approved by Government. However, the unusual circumstances of 2020, including the general election, the Government formation period, a re-organisation of ministerial responsibilities and the subsequent transfer of the broadcasting and media policy brief to the new Department, together with the disruption caused by the Covid-19 pandemic, has delayed the progress of the Bill. On 8 December 2020, the Government added further heads to the general scheme regarding the funding of the regulator, the regulation of audiovisual media services, the upper limit for financial sanctions and other matters.

In order to ensure the swift progress of the Bill, Government decided that the detailed drafting of the Bill by the Office of the Attorney General and pre-legislative scrutiny of the general scheme by the committee, would take place concurrently. Detailed drafting of the Bill is progressing well. The Department also welcomes the progress made by the committee on pre-legislative scrutiny and the commencement of oral hearings.

As mentioned, one of the main purposes of the Bill is to transpose the revised audiovisual media services directive. In short, the directive sets down the minimum rules and requirements member states must ensure are complied with by services established within their territory. This includes: the regulation of editorially controlled audiovisual services, namely, broadcasting and video on demand, which are dealt with in Parts 5 and 6 of the general scheme; the regulation of video sharing platform services which are being regulated for online safety purposes for the first time, together with a broader regulatory framework in order to give practical effect to those provisions, as set out in Part 4 of the general scheme; and heads providing for the establishment of a new regulator, a multi-person media commission, in order to oversee the compliance of

services with these regulations as set out in Parts 2 and 3 of the general scheme.

Under the directive, where services are established in Ireland, the Irish regulator will oversee them for the whole of Europe. The revised directive was formally published in December 2018 with a transposition deadline of 19 September 2020. As the Bill is yet to be enacted, this deadline has been missed. In light of this, on 20 November 2020, the European Commission initiated infringement proceedings against Ireland along with 22 other member states. While the Minister has informed the Commission of certain extenuating circumstances, it remains likely that the infringement proceedings process will continue. This should serve to underline the importance of urgently progressing the Bill toward enactment.

The media landscape is changing rapidly. Further legislation will be required in the not too distant future to take on board the recommendations of the Future of Media Commission, further reform of the Broadcasting Act 2009 and additional EU regulation of digital services. The enactment of this Bill will enable the establishment of the new regulator and the transposition of the directive as vital building blocks for those further reforms.

I reiterate my hope that today's meeting will assist in the committee's consideration of the general scheme of the Bill. I look forward to answering members' questions.

Chairman: Does Mr. Shanley want to make a contribution at this point?

Mr. Ciarán Shanley: No, thank you.

Chairman: We will begin with Deputy Griffin, if he is on the call. He is not. We move on to Deputy Munster.

Deputy Imelda Munster: I have several questions and, as we are very time-limited, I will ask all of them at once and then get the answers. Our understanding is that the Bill will dissolve the Broadcasting Authority of Ireland, BAI, and transfer the functions to the new media commission. Can the witnesses clarify whether any current functions of the BAI will be done away with and what additional functions the new media commission will have?

I understand the online safety commissioner will operate as part of the media commission. What sort of resourcing will the office of the online commissioner have? How many staff, for example? Do the witnesses have any estimates for the media commission itself regarding resources and staff numbers, given it will have a much wider remit? How many commissioners will be needed?

My understanding from the briefing documents is that it is recommended that the chair of the media commission will be answerable to the Committee of Public Accounts. Can the witnesses confirm if this will be the case and if the commission will be audited by the Comptroller and Auditor General?

Will the Bill ban the advertising of junk food on these platforms on content that is aimed at children to bring it in line with other regulations regarding children's television?

What other legislation is being drafted by other Departments that will have an impact on this legislation? For example, I think the Department of Justice is looking at hate speech legislation. What impact will this have on this new commission and this legislation?

Is it correct to say the designation of online platforms and services will be decided by the media commission once it is set up? At present, we are not clear exactly what types of platform

are covered and regulated under the Bill.

Ms Triona Quill: I thank the Deputy. The Deputy is correct that the Bill will dissolve the BAI. The current functions of the BAI will all fold into the new commission. What will be different is the governance structure. The BAI has a board and statutory committees under it and those functions will instead be exercised by the commissioners appointed to the media commission. Those functions will all fold into the new commission and there will be additional functions. At present, the BAI does not have responsibility in respect of on-demand services, other than providing a backstop to the current complaints system operated by the On-Demand Audio-visual Services Group, ODAS, under the aegis of IBEC in regard to on-demand services. We are moving from a situation of self-regulation, effectively, with some element of co-regulation, to direct regulation by the media commission in respect of on-demand services. In addition, the BAI at present has no function in regard to video sharing platform services or other online services of that nature, and the media commission, through the online safety commissioner, will have responsibility in respect of those services. Those are the key additional functions that will transfer. In addition, obviously, the media commission will have some functions that the BAI currently has in respect of, say, media literacy, where there will be a research in education function and so on. Those are the three core functions that the new media commission will have.

In respect of the sort of resources that it might be expected the new media commission would have, we are currently working on a business case which will underpin our negotiations and discussions with our colleagues in the Department of Public Expenditure and Reform in this regard. We envisage that the media commission will need to grow quickly to approximately the size of the Data Protection Commission. We recognise that the new regulator will have substantial and important functions, and it needs to be resourced accordingly. My understanding is that, at present, the Data Protection Commission is growing towards 180 members of staff, so while the current staffing of the BAI will obviously be included, there will need to be very substantial additional staffing of the office to fulfil the functions.

In respect of the chair of the media commission, the Deputy is correct that the chair will be responsible to the Committee of Public Accounts. We recognise it is important to have that corporate accountability by the commission overall to the Committee of Public Accounts. In addition, individual commissioners will be responsible to committees such as this in respect of their functional areas.

In terms of other legislation by other Departments, the way the media commission will operate in terms of the online safety framework is that one of the categories will be in respect of criminal content. Where legislation is to be put in place by, say, the Department of Justice in respect of child sexual abuse material, terrorism content or harmful online communications, or the forthcoming legislation in respect of hate crime or incitement to hatred, as those pieces of legislation are enacted, they will come within the scope of our legislation. We are not aiming to start from scratch or to duplicate the expertise of the Department of Justice with regard to criminal legislation, but such legislation will be within the scope of our Online Safety and Media Regulation Bill. It is important to distinguish that whereas the legislation put in place by the Department of Justice enables the Garda to investigate and bring forward prosecutions, where appropriate, in respect of individuals who have breached those pieces of legislation, our legislation is targeted at the online services and platforms.

Chairman: I ask Ms Quill to draw her contribution to a close. I am sure we will cover everything and there will be an opportunity at the end to bring in as much as possible in the wrap-up. I have to move on to ensure all members get their opportunity. I call Senator Mal-

colm Byrne.

Senator Malcolm Byrne: I thank the witnesses for their presentation. I do not think we should underestimate the importance of this legislation. I see its purpose as slightly different from that outlined by Ms Quill. What we must do is ensure that citizens and persons resident in Ireland can engage with the media, including social media, in a safe manner and that their individual human rights are protected. We must also ensure that this legislation sets out to guarantee a free media that is pluralist and balanced because that is one of the cornerstones of our democracy. Our approach must be about keeping those facts in mind. We, as legislators, the Future of Media Commission, and the online safety commissioner will be judged by how we manage those objectives. We will have big debates over the next period on freedom of speech and opinion versus individual human rights and the rights to reputation and privacy. It is important, therefore, that we see this legislation as broader than simply the transposition of a directive.

Before I ask my questions, I will follow up briefly on Deputy Munster's point. I am glad there is discussion about the new media commission needing to scale up very quickly to at least the size of the Office of the Data Protection Commissioner. Given that the Data Protection Commissioner is regulating for much of the European Union and the new media commission will regulate the tech sector for much of the European Union, I am concerned that the Office of the Data Protection Commission currently does not have a sufficient number of staff or level of expertise. We need to flag that.

Will the new online safety commissioner define what is meant by harmful content, including serious cyberbullying material? There will also be the question of how we deal with that which is lawful but awful. This will be one of the challenges around cyberbullying and how it is defined.

Online services that are regulated have a responsibility to manage and remove harmful content. One of the biggest complaints we have about Facebook, Twitter and other such companies is the speed at which they remove such content. The witnesses will be aware that under German legislation, social media providers must handle complaints and remove offensive content within 24 hours. I favour that position. Could it be done by the online safety and media commission?

As part of the provisions, will social media companies require individuals who are opening accounts to identify themselves, either through using a passport or driver's licence or through trusted digital identity intermediaries? If we open a bank account, we must use a passport. Why can we not impose the same requirement on Facebook and Twitter? Will the media commission be able to do that? Will it have powers to take down and block certain websites such as those involved in phishing, spreading malware, criminal activity or defamatory material?

Will the media commission have the power to examine algorithmic and machine learning models that are used by the social media companies? If a determination is made that they are driving people towards sites with disinformation or misinformation, or if we see algorithmic bias, will the media commission have power in those areas? I am conscious that I have raised many issues.

Chairman: The Senator asked a long list of important questions and the officials have only one minute to answer. I will allow a little latitude, as I did with previous speakers.

Ms Triona Quill: On defining the "lawful but awful" content, as the Senator put it, this is

set out in the legislation. One of the categories is criminal content where something is criminal in nature, such as online harassment. There is also a category on cyberbullying that sets out parameters for material that would not reach the test of criminal content but nevertheless is cyberbullying in nature. That is set out in the legislation. It will not be for the media commission to set the parameters for that but obviously the codes it puts in place will draw on the definition in the legislation.

It is important to note that the German law deals only with criminal-type content. It does not deal with content such as cyberbullying or the other categories in this legislation. We would not see this as being parallel to that German legislation or that the measures in place in Germany are appropriate here. Requiring individuals to identify themselves is a significant issue that goes beyond the parameters of this legislation and it could have significant data protection implications. It is a serious issue that would need to be examined in depth but it is not appropriate for this legislation, given the urgency with which we are required to put it in place. There will be a need for rolling legislation in the coming years to deal with the many issues arising in digital services.

The powers to block websites are provided for in the legislation as an ultimate sanction where needed. It would be done under court supervision to ensure appropriate checks and balances are addressed. Defamatory material is not included as one of the harmful categories in this legislation. That is being looked at separately by the Department of Justice. There is provision in the Bill to examine algorithmic or automated decision-making processes and to require, for example, impact assessments in that regard.

Deputy Johnny Mythen: I thank Ms Quill and Mr. Shanley. I want to ask a few quick questions that the punter and the ordinary guy on the street will ask. What way will the levy apply to each individual media outlet company? Will it be proportionate to the outlet's turnover or how will it be calculated or collected? Will the original television licence be affected by this legislation and if so, how? Will local news outlets in my area such as South East Radio, *wexfordtoday.com* and *wexfordweekly.com* that have some digital podcasts and blogs be subject to the levy? Is there a mechanism for tracing or policing new social media platforms under this Bill? There are a lot of these platforms popping up and they are very serious with a lot of hate speech in them. What way will the Bill affect these pop-up social media platforms?

Ms Triona Quill: The levy will be based on turnover and there will be separate provisions. For example, broadcasters are already subject to a levy and that will continue and be incorporated within the new media commission. On-demand services will pay for the cost of their regulation and online services, such as video sharing platforms, will pay for the cost of their regulation. It will take account of the nature of the service being regulated and the turnover of those relevant services. There will not be any cross-subsidisation across the different types of services. Broadcasters will not have to cover the costs of regulating online services and *vice versa*.

The TV licence is not affected. Issues such as the TV licence are being looked at by the Future of Media Commission that is in place under the chairmanship of Professor Brian MacCraith. It is not being addressed in this legislation, though it is likely that the Future of Media Commission will report at the end of July this year on issues under its remit.

On who pays the levy, it depends on whether a service is designated by the media commission. That will be done on a risk assessment basis. The media commission will take account of criteria set out in the legislation such as the size and scale of the service, the number of users,

the nature of the content that is on the service and how risky that is and so on. It does not mean that not every online service will be designated. There will be a risk-based approach to that. As new services become available, they will potentially come within the scope of this legislation. Again, the media commission will see how risky those services are, how many users are impacted and so on. We are aiming to future-proof it in that regard and we designed the legislation with that in mind.

Deputy Johnny Mythen: Will a local news radio station be subject to the levy if it uses podcasts or blogs, for example?

Ms Triona Quill: Podcasts are not covered in this legislation. A local radio service already pays a levy. It will be done on the basis of what needs to be regulated. If the radio station provides a blog service in relation to a service which is not designated, it will not be a video sharing platform and unless it is highly problematic, it is not likely to be designated as an online service if it is on a small scale. I expect such services are unlikely, from a risk perspective, to be designated by the media commission.

Deputy Johnny Mythen: What about tracing or policing new social media platforms that pop up?

Ms Triona Quill: The media commission will have an ongoing role in taking a risk-based approach. It will consider the landscape, engage with other regulators across Europe and services in Ireland, and reassess what poses the highest level of risk in light of what is out there. It will be in a position to designate new services as they come on stream, on the basis of the risk they pose to the public.

Deputy Johnny Mythen: Would any updated codes need to be approved by the Oireachtas before changes are implemented?

Ms Triona Quill: I ask my colleague, Mr. Shanley, to comment in that regard.

Mr. Ciarán Shanley: The media commission will make online safety codes, media codes and media rules in accordance with the provisions set out in the legislation. The codes and rules will then be laid before the Oireachtas, which will have an opportunity to use a negative resolution procedure to vote down the codes if it believes them to exceed the competence of the media commission. As the media commission will be an independent regulator, the exact nature of the codes will be a matter for the commission, as required by European law.

Senator Shane Cassells: I will focus on some of the aspects Ms Quill addressed in her opening statement, such as the issue pertaining to the upper limit for financial sanctions. Under head 16a of the Bill, the upper sanction is €20 million or 10% of the relevant turnover. Can Ms Quill expand on the sanctions?

While much of the debate has been on the social media platforms, the mainstream media are moving into this space more because their survival will be in this space. I am sure the National Union of Journalists, NUJ, has strong views on this.

Screen Producers Ireland is interested in head 76, on the content levy. In particular, it believes the commencement date for the collection of the levy should be required to be set out in the legislation. It is also interested in the reassessment of the levy rate, the distribution of the levy revenues and the need for an increase to go to the independent production sector. The current contribution, or statutory spend, by RTÉ is €40 million and an increase to €80 million has

been sought in the area of independent production funding.

I ask for an assessment by Ms Quill and Mr. Shanley in respect of the financial sanctions, the content levy and an increase to the independent production sector.

Ms Triona Quill: I thank the Deputy. In regard to the administrative financial sanctions, we looked at what was in place in regard to other regulators, such as the Central Bank, the Data Protection Commission and so on. Therefore, the upper limits put in place of €20 million or 10% of relevant turnover drew from the experience of other regulators. I emphasise that they are upper limits, so the actual financial sanction the media commission might consider would need to be proportionate to the nature of the contravention of codes that are in place. They have to be large upper limits given the scale of some of the online platforms, but nevertheless it does not mean that every financial sanction would be anywhere near that amount. It depends on the nature of the contravention, the size of the service and so on. It is important there is no reward for contravening codes, so it is important to have robust sanctions in place, but the media commission would need to take a proportionate approach in that regard. Obviously, they are all subject to court oversight also.

In regard to the content levy, it would not be normal to put a commencement date within the legislation. We have provided for the principle of a content levy to be included in the legislation, but we are very conscious a content levy needs to be robust and proportionate. What is provided for is that the media commission will carry out further research, and it is in the best position to do so, and draw up proposals which the Minister would then commence. We believe that is the best way to ensure there is a robust, proportionate and effective approach to a content levy in Ireland. The media commission will have the capacity to reassess the rate as time progresses. For example, we expect the level of revenue from on-demand services will grow over time, so some reassessment may be required.

In regard to the point on the independent production sector, the Deputy is correct that the current level of €40 million that RTÉ must provide towards independent production is set out in the Broadcasting Act 2009. This is an area the Future of Media Commission is looking at in terms of the funding of media services in Ireland. On that particular aspect, we would await the findings and recommendations of the Future of Media Commission to see what is recommended in that regard.

Deputy Brendan Griffin: On independent production, will there be any provision to increase the minimum statutory spend, which at present is €40 million? Will Ms Quill elaborate on that area?

Ms Triona Quill: Is the Deputy referring to the minimum statutory spend of €40 million provided for in the Broadcasting Act?

Deputy Brendan Griffin: Yes.

Ms Triona Quill: That is a matter the Future of Media Commission will be examining in the context of its overall review to ensure media are put on a sustainable basis in Ireland over the coming decade. The Future of Media Commission will be reporting in July. I expect a number of the recommendations coming forward from the Future of Media Commission will need separate legislation to bring them into effect. We will await the findings of that commission.

Deputy Brendan Griffin: A number of the questions I had hoped to ask have been covered by colleagues. I want to delve further into the area of online safety, in particular the protection

of younger children. How does Ms Quill envisage we will protect children from platforms that are quite obviously being targeted towards younger children? From what I see, there seems to be a drive to get as many people as possible on to these platforms from as early an age as possible. What is the optimum that can be done in that regard and does the current legislation go far enough?

Ms Triona Quill: The framework that will be put in place by this legislation will be effective in dealing with online safety matters both for adults and children. It is important to say that the basic approach taken in the legislation is about systemic regulation. It is recognising that to be really effective and to get bang for one's buck in terms of regulation one needs to have the powers and capacity to change the way the platforms do their business. That will be implemented through the codes that are put in place by the online safety commissioner and through investigations, reviews, audits and so on to ensure the platforms and other services that are designated are fulfilling their obligations under the codes. The media commission will have extensive powers to carry out investigations and audits, enforcement powers to issue compliance and warning notices, through which directions can be issued to the platforms, and powers to investigate the kind of complaints processes that platforms have in place to ascertain if they are adequate to meet the requirements for online safety set out in the codes. It will be a serious regulator with substantial powers and it will be effective in ensuring greater safety for all citizens in that regard.

Chairman: I thank Ms Quill and Deputy Griffin. I call Deputy Cannon.

Deputy Ciarán Cannon: I will contribute later, if I may.

Chairman: That is fine. I call Senator Carrigy.

Senator Micheál Carrigy: I have been caught slightly unawares. I thank our witnesses for their presentations. Many of the points have already been covered. Can the recommendations of the Future of Media Commission recommendations, which are due in July, be included in this Bill to avoid having to introduce further legislation and delaying this matter going forward?

The regulatory framework refers to defined categories of harmful online content and serious cyberbullying material. What is defined as serious material or should all cyberbullying material be categorised as such?

On the powers of the commissioner to investigate and impose sanctions and its compliance powers, what sanctions are being recommended by the Department? It is important that they are very strong.

Ms Triona Quill: I thank the Senator for his questions. On the timescale for the Future of Media Commission, we have a tight timescale for this legislation because of the transposition of the audiovisual media services directive. It is important to get the new regulator up and running because whatever other recommendations are brought forward at European level for digital regulation or by the Future of Media Commission in respect of services in Ireland, it is important to have a robust and substantial regulator in place which can handle that. There is a real urgency around getting this legislation enacted. The Senator is correct that it will be important to introduce timely legislation to implement the recommendations of the Future of Media Commission. I would see that legislation as separate from this Bill.

On the regulatory framework, we are going through the detailed drafting with the Office of the Attorney General on the definitions in the Bill. As a result, we want to make those as

watertight and functional as possible. A rights balancing approach needs to be in place. It is important that the nature of any harms that are provided for in the Bill are such that other rights are protected. It is about striking that balance between allowing people to express their views online and protecting the rights of other individuals not to be subjected to serious abuse. It is a tricky balance to strike. We are working through the process in that regard with the Office of the Attorney General at the moment. We recognise the importance of this issue.

In terms of the sanctions on powers, there are a number of key sanctions that can ultimately be taken. As we mentioned earlier, one of these involves administrative financial sanctions up to €20 million or 10% of turnover. These are substantial fines. The Future of Media Commission will, however, have the power to issue both warning notices and compliance notices to services directing them to take certain actions, be it to remove certain material or change the way they operate their complaints processes. It will also be able to direct them to take other actions to bring them into compliance with the codes. Ultimately, if the Future of Media Commission is in a position to order the blocking of a particular service, all of these will be subject to court oversight to ensure that referral procedures will be in place for all sides. They are serious sanctions which will give extensive powers to the regulator.

Senator Micheál Carrigy: I come back to cyberbullying. We are trying to instil into kids that bullying should not be tolerated at all. The phrase used is “serious cyberbullying”. I am of the view that we should just use the term “bullying”. All forms of cyberbullying material should be categorised as harmful online content.

Ms Triona Quill: We will be working through that with the Office of the Attorney General. The important thing is to have in place something robust and effective that stands up to scrutiny. I hear what the Senator is saying, however.

Chairman: I thank Senator Carrigy and Ms Quill. I will now invite Senator Warfield to speak. The floor is his, or I should say the screen is his.

Senator Fintan Warfield: I thank Senator Carrigy and Ms Quill. I commend the Department on its engagement with the sector and with various organisations and companies. It has been involved in an awful lot of consultation.

In one of her first contributions, Ms Quill informed Deputy Munster that the Future of Media Commission would need to grow quickly in size and mentioned the Data Protection Commission’s 180 staff. As it stands, the BAI does not have a fundamental understanding of this space. Why would it? Could it be hiring staff now? Perhaps someone could begin working on the levy, for example, to ensure that we get money into local content as quickly as possible when the legislation is passed.

Has there been any doubt or confusion on the part of companies about where they might be positioned in terms of the pool of dedicated services?

The European Commission developed detailed guidance notes about how to implement the quota and in respect of the prominence of local content on platforms. Is there any reason that guidance is not contemplated in the Bill? Why is responsibility in this regard being left to the regulator or the media commission? Does Ms Quill think that the nature of the person who takes on the job will have a bearing on the Future of Media Commission? Are we leaving the media commissioner and the commission an awful lot to do following the establishment of the commission?

Ms Triona Quill: I thank the Senator. As I said, we are preparing a business case and engaging with the Department of Public Expenditure and Reform. Our intention, if at all possible, is to start the recruitment of staff even before the legislation is enacted in order that the media commission can come up to speed as quickly as possible once it comes into force. We recognise the urgency of getting the commission up and running, and effective, at as early a date as possible. We will do all we can to progress that.

On the designation of services, we have tried to keep as much of an open door as possible with stakeholders and to assist if people are confused in any way. It is important to say that it will be up to the media commission to designate the specific services. Video-sharing platforms will automatically come within the scope of the legislation. Any other services are potentially subject to designation but will not automatically be designated. I see this as probably being a gradual process. I expect that the media commission will focus first on video-sharing platforms and deciding who is in scope in that regard before looking, over time, at other services and taking the risk-based approach I mentioned. It is something that will unfold over a period.

In regard to the guidance from the European Commission, it will be set out in the legislation that the media commission will have regard to that guidance in respect of the relevant aspects. The Commission's guidance is not in any way being ignored; the media commission must have regard to it.

On the question of the nature of the person who takes on the job, there were a number of reasons that we considered a multi-person commission, with an executive chairperson and three commissioners reporting to him or her, and colleagues and peers with each other, was the most appropriate framework. We recognise, first of all, that media are converging and often a single entity can have both on-demand and broadcasting services within its remit. It is important to have a single regulator looking at all of that. Similarly, there might be a video-sharing platform that also has an on-demand service. It is our view that this model, whereby commissioners will have functions delegated to them but will also act as a college in taking collective decisions on, for example, sanctions that are to be put in place, provides a good framework for ensuring that there is both clarity of purpose and also a level of support for the commissioners within the overall regulator. That was part of our thinking in designing the framework.

Deputy Christopher O'Sullivan: I thank Ms Quill and Mr. Shanley for their engagement with the committee. I have a question on a specific aspect of the Bill that will be coming before us, namely, the defined categories of harmful content. The items in those categories include criminal materials, cyberbullying, material promoting eating disorders and material promoting self-harm or suicide. Can the scope of the defined categories be extended to include other aspects of what many would consider to be harmful material? There is a major focus at this time on the prevalent issue of consistent messaging that is clearly set out to undermine public health measures. There do not seem to be any checks and balances in that regard. We have to be very careful about this because, as I 100% appreciate, people are completely entitled to have and express concerns about certain public health measures. For example, a vaccine roll-out is a clear, easy example to talk about now. Where a vaccine roll-out is purported to be and described as anything other than a public health measure, since there are many instances on social media platforms where account-holders with many thousands of followers describe it as something other than a public health measure, can the scope of defined categories of harmful material be extended to include that while also protecting the fundamental right of somebody to disagree or have concerns with certain public health measures? I hope the question is clear. I wonder if there is scope to extend that.

Ms Triona Quill: The Bill provides for a mechanism to add additional categories of harmful content. That would involve a defined procedure and extensive consultation, including engagement with the relevant Oireachtas committee. Disinformation of any kind, whether it relates to Covid-19 or other types of disinformation, is difficult to get the balance right with. It is important to note that this issue was not addressed in the audiovisual media services directive. However, at European level, disinformation generally has been looked at in the European Democracy Action Plan and a revised code of practice is being looked at at European level. In the current proposals at European level with regard to the digital services Act, provisions are being looked at to underpin measures that platforms might take with regard to disinformation. It is an area that would need a lot of work to ensure that the correct balance is struck. I ask my colleague, Mr. Shanley, to address the matter.

Mr. Ciarán Shanley: I thank Ms Quill. To underpin a few things that Ms Quill said, the Code of Practice on Disinformation at an EU level goes back a few years and includes signatories from the largest online platforms. It is monitored by the European Commission, including with a recent monitoring exercise that it did on Covid-19 misinformation and disinformation. It has been revised in that context. That code also has to be seen in the context of the digital services Act, which, in a few years, will bring in more stringent regulations on how online platforms might deal with such content on their platforms. Regarding this Bill, as Ms Quill said, much work and research would need to go into getting that important balance correct, as the Deputy said. A procedure is in place, provided by the general scheme, to allow for additional categories of content to be added, following a proposal by the media commission involving extensive consultation, Oireachtas oversight, Government approval and ultimately a positive resolution needs to be made by the Oireachtas. There are significant procedures to ensure democratic oversight and that a proportionate approach is taken to the new categories. These are difficult to balance with the interests of safety, freedom of expression, privacy and other matters.

Chairman: I thank Mr. Shanley and Deputy O'Sullivan. I made notes on some of the information that Ms Quill has given today. Will she expand further on the point about defamatory material not being included?

Ms Triona Quill: We recognise that ensuring safety in the online world is not a matter that can solely be dealt with by the media commission once it is established. There are a range of aspects. For example, data protection will continue to be overseen by the Office of the Data Protection Commissioner while the new gambling regulator, when it is put in place, will oversee online gambling aspects. The Department of Justice is bringing forward a review in respect of defamation that I expect will also look at defamation online. It is responsible for bringing forward the recommendations to the Minister in the first instance in that regard.

It is important to allow this regulator to get up and running. The areas within its remit are already very substantial. There are many areas people could potentially think of that should or could be considered for inclusion, but it is already a very substantial remit. The first step in defamation is for the Department of Justice to report on its review which has been awaited for a while now.

Chairman: Part 4, which relates to online safety and harmful content online, makes this legislation among the most important this Dáil will ever pass. We all know how vulnerable young children and people are on online platforms. Up to this point, there has been no policing of that as such. This committee will be very proud of the fact we will have done something very important for our own generation and, particularly, for generations coming after us. As

Senator Cassells alluded to, print media is moving increasingly into this framework and onto this platform, so this will be so important for own generation and the next, from what we have seen in politics, on restoring democracy and ensuring it is not further eroded away, this will be so important for many different reasons and at many different levels.

Senator Malcolm Byrne: I thank Ms Quill and Mr. Shanley. We are firing many questions at them and I will put a few more. Regarding some of their comments, I welcome Ms Quill's last comment on the relationship the media commission will have with the Office of the Data Protection Commissioner, DPC, with the new gambling commission and, indeed, with the new electoral commission in the area of political advertising. We will probably see a bit of overlap. When the Digital Services Act and the Digital Media Act come down the line, there will be a huge amount of work. I certainly see us coming back to this issue over the course of this Oireachtas to expand the legislation.

If citizens are to have confidence in this media commission, it is important that there will be an effective individual complaints mechanism. If I, as an individual, have a problem, especially with a social media company, and there is a failure to take action, it is important that there is a very clear mechanism by which it can be addressed. Part of the problem with the Data Protection Commission is that it is getting up to 10,000 individual complaints a year and is possibly not resourced to be able to deal with that. I would not like the same to happen with the media commission, particularly if there is a feeling that some of the social media companies are not responding quickly enough.

I welcome and agree with the point that there should be a number of commissioners. It should not be like the DPC. We need to amend the legislation there. I like the idea of a college of commissioners; it makes sense. I notice it is proposed to exclude those involved in linear broadcasting and newspapers as members of the commission, for obvious reasons, and consideration is to be given to excluding those involved in social media and tech companies. Will the officials outline this further? I think commissioners will need to have some knowledge of that area.

I will flag one issue. I do not see a reason in the legislation for precluding a member of a local authority from being a commissioner. I understand why a Member of the Oireachtas or European Parliament should not be a commissioner but I see no reason for excluding members of a local authority from the commission as they do not have a remit in this area. I will seek to remove that requirement from the legislation.

We discussed the content levy in the context of pay TV and streaming services. Has an estimate been done of annual revenue from a content levy in the current market? What research has been done on the viability of such a content levy?

Ms Triona Quill: On an individual complaints mechanism, when audiovisual media services was being discussed at European level, it was very much the view that the approach to regulation had to take account of the scale of some of these online platforms and also the nature of content, which is less straightforward than data protection. When one is trying to balance rights, these are not simple issues to address. There is a strong view that systemic regulation is the way to go because what no one needs is an attempt to introduce an individual complaints mechanism that would be quickly ground down and would build up backlogs and cease to be effective. That would inevitably happen, no matter how large the resources put into a regulator of this kind, because it is the nature of such complaints that they could not be decided quickly. They would have to balance rights and it would not be a process that could be completed

quickly. Furthermore, we could not just put a complaints mechanism in place for Ireland. It would have to extend, in the case of video-sharing platforms, to the 450 million people across the European Union, with all the complexities that would arise there.

To be honest, some online services might prefer an individual complaints mechanism because in some ways it would shift the burden from them to a regulator. The approach we have taken, which was taken at European level, is also being taken in the UK, for example, which is now outside the EU and looking at its own processes. It is also taking a systemic approach because the view is that to really effect change such an approach is necessary.

People can still make complaints to a regulator but it would not be a matter of resolving their individual complaints but of identifying, from a risk perspective, where the problems lie and which areas need to be audited, for example, what particular service or type of content. It will feed in in that way. The legislation also provides that certain services, for instance, NGOs, could be designated to act as what are informally called super-complaints services. If they are seeing an issue arising among users of their service which is consistent and indicative of a systemic problem, there will be a formal mechanism there that they can bring issues forward to the regulator.

We have listened to stakeholders who have put forward their view that there should be an individual complaints mechanism. We respect their views and see where they are coming from. However, having weighed up the issues, we believe such a mechanism would not be effective and would not ultimately serve the needs of the public and that the approach we have taken is the one most likely to be effective.

I am sorry but I did not quite understand the Senator's point about excluding linear services.

Senator Malcolm Byrne: One of the proposals is that linear broadcasters and newspapers would be excluded from membership of the commission. People with extensive experience or who were serving in that capacity could be excluded, if I read the heads correctly. My question is on the types of individuals who are allowed to be involved in the work of the commission. This is about conflicts of interest and so on.

Ms Triona Quill: We are looking at all of those matters, including the issue of being a member of a local authority and so on, in conjunction with the Office of the Attorney General. We are still working through some of those processes to ensure that we have the right balance in place. We are taking what the Senator is saying on board and we can consider it further.

Regarding the content levy, some work has been done by a group of stakeholders, who commissioned Indecon as consultants. It has done some useful research in this space. However, we must recognise that it is from the perspective of a particular group of stakeholders. That is why we believe it is important that the media commission must have a say, given that it will be implementing the levy and have a neutral perspective. We recognise the importance of the audiovisual sector, our broadcasters and other services, but there are other interests involved, for example, ensuring that the needs of citizens are met and a balanced approach is taken. The Indecon report presents a range of possible options in terms of what percentage of a levy could be considered. Across Europe, the norm tends to be towards the lower end of the range. There is a hope or expectation among some stakeholders that revenues arising from a levy could be substantial, but we must be realistic. There is potential, but it is-----

(Interruptions).

Chairman: It seems that Ms Quill's feed has frozen. If it is okay with members, Deputy Mythen has had his hand up for quite some time. I will invite him to speak and ask Mr. Shanley, who is still with us, to respond.

Deputy Johnny Mythen: I will continue on with the issue of governance. Under head 8, the commission shall be independent in the performance of its functions. How will this be governed and monitored? The commission is defined as being multi-personed. Is there a limit on the number of members? As far as I am aware, the Minister of the day can appoint as many as he or she wishes. Can an ex-Oireachtas Member be a member of the commission? What are the criteria for membership?

Mr. Ciarán Shanley: The media commission will be independent in the performance of its functions but it will be accountable for that performance to the Oireachtas. The chair will be accountable to the Committee of Public Accounts while the individual commissioners will be accountable to this committee and perhaps other committees in respect of the exercise of the functions delegated to them. For example, the online safety commissioner in exercising his or her functions could be accountable to this committee and, depending on the issue, the Committee on Justice.

There is a limit of six members on the commission. The Government intends to appoint three initially. There will also be an executive chairperson. The members will be appointed through the Public Appointments Service process and the criteria for a candidate will be set out fully in that process. As other committee members have stated, there is a need for particular commissioners or the executive chairperson to have relevant experience in running an organisation, media experience or technology experience. As far as I recall, a Member of the Oireachtas cannot be a member of the commission because the commission is required to be independent of other State bodies. That is a requirement under the audiovisual media services directive.

Deputy Johnny Mythen: Sorry, I was referring to former Members. I understand that Members of the Oireachtas cannot be members of the commission. I was asking about former Members.

Mr. Ciarán Shanley: There is no bar on a former Member of the Oireachtas being a commissioner and there is no bar on a former commissioner becoming a Member of the Oireachtas.

Chairman: Are any other members offering or have we come to a natural conclusion? I think we may have. It is nice to see Ms Quill back. Mr. Shanley took over eloquently. I believe Senator Warfield wants to come back in.

Senator Fintan Warfield: In her response to Senator Byrne, Ms Quill mentioned the individual complainant mechanism and the burden being placed on the commission rather than on social media companies. She also referred to super-complainants. I know that the online safety commission will establish a scheme to receive super-complaints. As with many things in this Bill, the big companies will assert that they are already ticking the boxes, so to speak. My concern would be that NGOs or organisations of that scale are not in a position to submit such complaints - it is not their job. The burden of responsibility should not be on an NGO to monitor a big social media giant. I am somewhat concerned about that burden of responsibility. I know that it is only just one scheme, but it is problematic on a few levels.

Ms Triona Quill: As the Senator stated, we expect that the media commission will draw on a number of sources in assessing the level of risk posed by particular social media platforms,

including fellow regulators across Europe, who we expect to have input in that regard. That will be an important source of the commission's assessment. However, we do feel that because NGOs have their feet on the ground, as it were, and engage directly with citizens, including children, they have an important role to play in that regard. The intention is not to put a burden on them. Rather, if a particular service feels that it could play a useful role in this regard, there should be a mechanism in place to give it an input into the media commission's considerations beyond just a general advocacy role. It was with that intention in mind that we included provisions in respect of super-complainants. Obviously, we will have to see how it operates in practice. It is, however, a useful mechanism to put in place, not to impose an undue burden but to allow a voice to be heard.

Senator Fintan Warfield: Hopefully, companies will have to hire more online moderators as a result of the legislation coming into force. We know all about how difficult it is to work in the moderating environment. Does Ms Quill think that the Department or we, as legislators, can look at ways to ensure the safety of workers in that field, given that, hopefully, the knock-on effect of the Bill will be that more moderators will be hired by big companies?

Ms Triona Quill: It is an important issue but it is one which perhaps lies with the Tánaiste and Minister for Enterprise, Trade and Employment because it is fundamentally about the conditions of workers. My understanding is that he and the Department have met representatives of various platforms in that regard. The matter would come under the aegis of his Department, given its responsibility in respect of employment rights and related issues rather than it being a matter to be dealt with under this legislation.

Chairman: I thank Ms Quill and Senator Warfield. Given that no other members are offering, I sincerely thank Ms Quill and Mr. Shanley for their very insightful presentation and the scrutiny with which she assisted us in delving into the commission. Their help with that is deeply appreciated by me and the committee members. I thank members for joining us remotely. I know some had to travel a very long distance to be with us. I think of Deputies Christopher O'Sullivan and Brendan Griffin in that regard. It is great to have everybody here and to be able to proceed. The contribution of the witnesses has greatly assisted the committee in the work it has to do.

I will now conclude today's business. We will next meet on Tuesday, 20 April at 3.30 p.m., when we will be joined by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Deputy Catherine Martin, and the Minister of State at her Department, Deputy Jack Chambers. We look forward to having another robust discussion and debate with them on the same topics.

The joint committee adjourned at 4.51 p.m. until 3.30 p.m. on Tuesday, 20 April 2021.