

DÁIL ÉIREANN

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

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

Dé Céadaoin, 2 Meitheamh 2021

Wednesday, 2 June 2021

Tháinig an Comhchoiste le chéile ag 12.30 p.m.

The Joint Committee met at 12.30 p.m.

Comhaltaí a bhí i láthair / Members present:

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

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

Business of Joint Committee

Chairman: Members and our guests are very welcome to this virtual meeting. We are delighted to have them with us. I ask our guests to bear with us as we have some housekeeping matters to get through. We will then proceed to hear the presentations.

Will members ratify the minutes of the private committee meeting on 26 May 2021 and the public committee meeting on 27 May 2021? Are there any matters arising and are they formally agreed? Agreed.

General Scheme of the Online Safety and Media Regulation Bill 2020: Discussion (Resumed)

Chairman: We will move on to our session today, which is a continuation of our pre-legislative scrutiny of the online safety and media regulation Bill. I welcome witnesses to the meeting. They are joining us remotely through Microsoft Teams. I welcome Ms Kathryn Walsh, policy manager with the Irish Heart Foundation. I know Ms Walsh well and I am delighted to see her here. I welcome Ms Orla Twomey, chief executive of the Advertisement Standards Authority for Ireland, ASAI; Mr. Paddy McGeoghegan, advocacy and communications manager at Epilepsy Ireland; and Dr. Norah Campbell, associate professor of marketing at Trinity Business School, TCD. I will call on our witnesses to make their statements in that order. Before that, I have some formalities to go through.

The format of the meeting is such that I will invite witnesses to make statements, followed by questions from our committee members. Witnesses will also be aware that the committee may publish their opening statements on its website following the meeting. Before I call on them to deliver their opening statements, which are limited three minutes each, I would advise them of the following in relation to parliamentary privilege. Witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name, or in such a way as to make him, her or it identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to the identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. As witnesses are attending remotely from outside of the Leinster House campus, they should note that there are limitations to parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present does.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House, or an official, either by name or in such a way as to make him or her identifiable. I remind members again of the constitutional requirements that they must be physically present in the confines Leinster House or the Convention Centre Dublin to participate in the public meeting. If they are not, I will have to ask them to leave. I would also ask members to make themselves identifiable when contributing for the benefit of the Debates Office staff who are preparing the Official Report. I would also ask them to mute their microphone when not contributing in order to reduce background noise and feedback. I would ask our guests and members to use the raise hand function on their screen if they want to contribute, and to turn off their mobile phones.

I first invite Ms Kathryn Walsh to make her opening statement on behalf of the Irish Heart Foundation.

Ms Kathryn Walsh: Good afternoon. We are here, as the Irish Heart Foundation, because Irish research shows that 85,000 children across this island will die prematurely because of childhood obesity. The crisis in children's diet-related health is linked to unhealthy food environments, which are omnipresent in every aspect of their lives. We are here because of this growth in the obesogenic environment, but more specifically, the digital obesogenic environment. We are concerned with junk food marketing to children and how it is harming children's health. For the purposes of this Bill, we are concerned with how digital marketing, and the mechanisms that fuel it, are a real and significant threat to children's health.

We are members of the Children's Rights Alliance. We support its submission to this committee. However, today specifically, I wish to address the need for online safety and online harm to include concerns related to digital marketing and data protection and privacy. Moreover, harmful digital marketing should be identified as a safety risk for children. Children should be effectively protected from all exposure to all forms of digital commercial advertising and marketing which negatively affects many Convention on the Rights of the Child rights.

"Thumbs up", "like", "share", "subscribe", "tag a friend" and "comment below" - a chorus that is familiar to children across social media platforms. It is nudge, nudge, nudge. With social media, we see persuasive technology in action where psychological levers are nudged, often without our conscious awareness. We do not click randomly. We do not see posts at random. Technology is shaping where we place our attention and it is influencing what we believe is true, our relationships, and the development of our children. It is commercialising childhood and capitalising on their status as digital natives. Far from being neutral spaces for social interaction, entertainment and expression, digital platforms are structured to optimise engagement, foster habitual behaviours and maximise the impact of marketing messages on brand loyalty and product sales. Already, we see that children as young as 18 months old know junk food brands to see.

Constant immersion in digital culture has exposed children to a steady flow of marketing for fast foods, soft drinks and other unhealthy products, much of it under the radar of parents and teachers. Digital media is now ground zero for advertising and junk food, employing a growing spectrum of new strategies and high-tech tools to penetrate every aspect of young peoples' lives.

Every child has the right to grow up free from the undue influence of advertising of products likely to be detrimental to their health and well-being. However, this is not happening. As a result, we are at risk of losing a generation of children to obesity-related disease. Canadian research, for example, shows that Canadian kids are exposed to nearly 6,000 food adverts a year on apps such as Facebook, Instagram, Snapchat, Twitter and YouTube. That is 15 per day. Some 97% of those were for high in fat, sugar or salt foods. In 2018, research found that exposure to just 4.4 minutes of food advertising would increase a child's food consumption by 60 calories on average, while placing advergames with food cues for five minutes increased consumption by 53.4 on average. This is just a small snapshot of the research that is out there.

Unlike television, where ads can be monitored and analysed, native advertising, influencer marketing, machine learning and many other techniques enable brand promotion and marketing to be woven seamlessly into young peoples' digital ecologies and everyday experiences. Big data-driven digital food marketing relies on operations that make it impossible for a parent to

control the processes, such as use of machine learning, artificial intelligence, AI, and algorithmic decision-making. Personalised recommendations use data not just to predict but also to influence actions, turning children into easy prey. The threats posed to young people's health, privacy and autonomy are real and they must be addressed. Some 85,000 lives across this island, 55,000 of those on this side of the Border, depend on it.

While legislation cannot fix everything, it can bring about systemic change. Tackling the marketing and advertising of junk food and harmful products is part of that. It cannot be neglected in this Bill. If we hope to significantly improve children's prospects for a healthy, safe life, policymakers will need to assert responsibility to regulate these sectors. We should be demanding a ban on junk food marketing. We should dismantle the digital obesogenic environment.

Chairman: I thank Ms Walsh. That was very informative and enlightening. I am sure members will have lots of questions. I ask Ms Twomey to address the committee on behalf of Advertising Standards Authority for Ireland, ASAI.

Ms Orla Twomey: On behalf of the ASAI, I thank the Chair and members of the committee for the opportunity to meet with them to discuss the online safety and media regulation Bill. ASAI, the advertising regulator, with 40 years experience, covers the advertising on radio, linear and non-linear broadcast, anything digital, which includes social, in-game ads, influencer marketing, as well as print, outdoor and other traditional media. We go where advertising goes.

Advertisements and user-generated material show the evolving remit of ASAI. We work hard with social media influencers so that ads are legal, decent, honest and truthful. ASAI covers most of the areas mentioned in the audiovisual media services directive, including protection of minors, recognisability, human dignity, discriminatory content, health and safety, environmental concerns, control of alcohol advertising and more. These are all addressed by the 18 sections of the ASAI code.

As part of our approach on synergies across rules we will be incorporating rules relating to marketing communications for high-fat, salt and sugar foods into our code this month. The objective of the ASAI code is to ensure the highest standards in advertising are accepted by the main stakeholders in the Irish advertising industry. In addition, the ASAI approach is to collaborate with other stakeholders like State agencies and Departments.

Advertising self-regulatory codes in 28 European countries cover the areas set out in the AVMSD, providing independent assessment, investigation and adjudication of complaints. In Ireland, we have nominees from both the Broadcasting Authority of Ireland - the deputy chief executive - and the Competition and Consumer Protection Commission - the senior consumer protection manager. The scale of advertising and the multiplicity of languages across the European Union is such that no single advertising regulator could operate an effective complaints handling mechanism. We are engaged with the European Advertising Standards Alliance on how the network can support the implementation of the AVMSD so EU citizens can continue to have complaints addressed by the local advertising self-regulatory body in the local language. Allied to this, we will be working with the EASA to develop tools for widescale monitoring of advertising content online.

We welcome that the Bill provides latitude for the commission to enter into co-operation agreements with other bodies as it sees fit. In line with this collaborative approach we have several suggestions. The AVMSD explicitly encourages the use of self-regulation, an area in

which the ASAI is a subject matter expert. We believe the Bill should also encompass that the commission may co-operate with or give assistance to an existing self-regulatory system. We believe the commission should be required to take account of established non-statutory mechanisms as part of the regulatory framework. Head 40 of the legislation relates to funding. The Bill should provide for the commission to direct funds to systems that it supports. I thank the members for their time and look forward to answering any questions.

Chairman: Thank you, Ms Twomey, for that insightful presentation. I imagine our members will have many questions on that. I now call on Mr. McGeoghegan, who will make an opening statement on behalf of Epilepsy Ireland.

Mr. Paddy McGeoghegan: My thanks to all members for the opportunity to address the committee on this Bill, the welcome aim of which is to protect people in an ever more complex online environment. I will comment on who I am representing today. Epilepsy Ireland is the national organisation representing people with epilepsy and advocating for their needs. We provide services and supports for people with epilepsy and their families. We do this through our 11 community resource officers and nine regional offices throughout Ireland. Our vision is to achieve a society where no person's life is limited by epilepsy.

What is epilepsy? Epilepsy can be defined as the tendency to have repeated seizures in the brain. It is often described as an electrical storm in the brain. It is an individual and often misunderstood condition. Each person's journey with the condition is different but, generally speaking, almost 70% of those living with the condition will go on to become seizure-free through the right combination of medication or further treatment.

I will specifically reference photosensitive epilepsy. This is a reflex epilepsy in which sensitivity to flickering lights, such as strobes, some LEDs or other visual stimuli may provoke a seizure in a person.

Before I address our key point on the Bill there are two matters that I want to make clear with members. The first is that not all people with epilepsy are photosensitive. In fact between 3% and 5% of the overall epilepsy community live with photosensitive epilepsy. The issue which I am about to outline is one that, as far as we are aware, has not maliciously presented in Ireland as of yet. The key work is "yet". Unfortunately, we have seen in other countries how a particularly disgusting form of online trolling has targeted people with photosensitive epilepsy. This typically involves the deliberate targeting of people with photosensitive epilepsy with graphics interchange format or GIF images or videos designed to trigger a seizure in that person. The most infamous example involved a child in the UK who had set up a fundraising challenge event page in support of a UK-based epilepsy charity. When the event was shared on social media it was targeted with hundreds of flashing images by online trolls.

We note that head 49A of the general scheme, aims to define "online harmful content" and takes an enumerating approach. As currently listed it would be a criminal offence to disseminate cyberbullying materials, material promoting self-harm and material promoting eating disorders. From our consideration of the Bill one thing that does not appear to be included under the proposed definitions is the dissemination of materials which are themselves designed to cause direct harm. We are talking about flashing videos or images designed to cause seizures in a person with photosensitive epilepsy. It may or may not be the case that the use of materials in such a way is potentially already illegal under existing laws, but we believe that provision in this legislation can and should be made to add greater clarity and protect those with photosensitive epilepsy who could be seriously harmed by this type of material.

The impact these kinds of attacks can have cannot be underestimated. I emphasise to the members that seizures can be life-threatening and to target a person in such a way is a truly heinous act. We believe the definition of “online harmful content” needs to be expanded to protect people with photosensitive epilepsy when they go online. We hope committee members agree that this is a modest ask. We believe our ask fits within the ethos of what this legislation is trying to achieve. Let us ensure that targeted attacks, like the one I referenced earlier, never become an issue in Ireland. If a person does choose to engage in such behaviour, then they should be criminally liable. Thank you for the opportunity to address the committee. I look forward to the upcoming discussion on this.

Chairman: Thank you, Mr. McGeoghegan. It is a fair ask in the presentation and we will get into the detail further with members when we get to our questions. Finally, I call on Professor Nora Campbell to make a presentation today on behalf of Trinity College Dublin.

Dr. Norah Campbell: I know the committee members have had a busy morning already so I am thankful for the time to contribute. I am an associate professor of marketing in Trinity College Dublin. I am here to tell committee members that foods with high levels of sugar, saturated fats and salt pose a physical threat to all children in Ireland.

Since 1992, Ireland has created strategies to mitigate the shift in weight of the entire population. Over that timeframe we have had five programmes for Government with obesity as a key challenge; four obesity national taskforces; four national frameworks, two ten-year national action plans; 13 reports on recommendations and progress; four national nutrition surveys; five sets of national nutrition guidelines; three policies; and four healthy eating strategies.

In that window of time, the prevalence of overweight and obesity in the country has increased. The reason for this is a category mistake. This food is now known to be a neurophysiological threat to children. The marketing of this food online bypasses conscious choice and we need regulation to ban it entirely. I know the immediate thoughts of committee members. Is this not an excessive idea that will have a significant impact on employment? Surely, it is regressive? She cannot expect us to think that junk food is on a par with the horrific threats of child sex abuse or cyberbullying. Let me address each in turn briefly.

First, producers of junk food routinely invoke the threat of job losses or production relocation to delay policy intervention or dilute measures into voluntary codes or self-regulation, which categorically do not work. International research on the economic impact of sugar taxes show there is no evidence to support these claims. The seeming threat of revenue loss needs to be balanced against the economic reality of obesity, which is estimated to cost €1.13 billion a year.

That we should have choice and liberty is a seductive argument. We all want a choice and liberty. The evidence is that parents want the ban on junk food marketing online to their children. Civil society wants it. I am here to tell the committee that a ban would actually be a relief to those working within the industry. It would relieve them of the strain of finding ways to circumvent vague, voluntary and self-regulated codes. We need to remember that every day these people are presented with an impossible job, to maximise shareholder value and reduce the propensity to eat. Removing online junk food advertising is not a closing down of choice; it stimulates innovation and makes room for genuinely new pathways of choice.

Cyberbullying and child sex abuse pose direct threats to individual children that are worse than the threat of food advertising online. However, the former affect a small number of in-

dividual children; the latter affects every child in Ireland. One in four children in Ireland is already suffering from obesity or is overweight. When something is happening to an entire population, we need what is called population-level intervention. This means basically changing the supply of food and the communication of this food. It is both the most difficult and the most effective policy solution.

Addressing obesity needs a whole-of-government approach, but what does that actually mean? Fundamentally, it means not giving with one hand, as with the brilliant sugar taxation that was introduced a few years ago, and taking away with the other, as with the entirely unregulated digital media landscape facing us today.

Deputy Christopher O’Sullivan: I thank the witnesses for their eye-opening and informative contributions. Some of the statistics on childhood obesity are startling. I ask Dr. Campbell to clarify that the €1.13 billion is the cost to the State of childhood obesity. It is very hard to argue with the statistics the witnesses have presented to us on how the targeted digital marketing of junk food impacts children’s mental and physical health. Are the witnesses seeking an outright ban on the digital marketing of junk food for all age cohorts or would they suggest limiting it to a certain age group?

My next question is for the ASAI and other witnesses can jump in if they wish. Influencers have a great way of earning a living, living a great life and sharing it with the world. If people are interested that is fantastic. When influencers have a certain following, there are opportunities to advertise, which is also great. Does Ms Twomey believe we have enough regulation over the advertising techniques employed by influencers? What I mean is that the people doing an advertising post need to use the hashtag #ad or on Facebook it may say “sponsored”.

Quite often filters are used to portray a certain look or to look a certain way. Given that some influencers have more than 50,000 followers, it can have quite an impact, particularly on young people. When a filter is used, it may portray a look that is not attainable in real life. Is there any regulation on that at the moment? If not, should we have regulation for it? If someone is using a filter in an image, even though they may not be sponsoring a particular product, should they be required to declare that they have used a filter?

Senator Malcolm Byrne: I am in a rush because I am getting my vaccination this afternoon and that is why I need to leave. I thank the witnesses for their presentations. I have a general question on targeting advertising at children. There has been a suggestion of having Instagram for kids. Should we consider having a code that would ban advertising targeted specifically at children? Ms Twomey or Ms Walsh may wish to reply to that. I agree with Mr. McGeoghegan’s points about the definition of online harm.

Ms Walsh spoke about algorithmic decision-making and the impact algorithms are having on children. We are looking for a code to make that transparent. I would be grateful to hear her views on that.

Dr. Norah Campbell: There is a lot in those amazing questions; the Deputy and Senator can come and do my job here if they wish. We need to look historically at this and ask if anything less than a ban has worked to reduce or even stabilise obesity and overweight figures. We need to use the evidence over 30 years to come to the sad and difficult conclusion that any other way outside an outright ban has not worked. The obesity figures have gone up by one third over the 30 years that successive Governments have been trying to grapple with the issue.

I do not want to take up too much of other people's time, but it is important to understand that advertising online is not information. Advertising online is not about telling people about how much fat a particular bag of crisps contains or how many grams of sugar are in something else. Advertising is used as a social glue to bring young people together. It is entertaining, interactive and immersive. The terms the Advertising Standards Authority for Ireland has just used that those ads need to be decent, honest, legal and truthful are the wrong terms to describe something completely different today, which is entertainment.

The British regulatory authority, Ofcom, found that children were exposed to 15.1 billion impressions of unhealthy food online in 2019. I do not believe we would ever be able to create a monitoring service that would be able to encompass even a fraction of 15.1 billion impressions. The only way I could envisage doing it would be through an outright ban of this entire food type online.

Chairman: I know Dr. Campbell has much more to say on it, but we will come back to her.

Ms Kathryn Walsh: There are some really interesting questions there, particularly regarding algorithmic decision-making of the digital marketing to children. Algorithmic decision-making and profiling are key considerations for junk food marketing. It is not just junk food marketing; we also need to consider other harmful products because this food marketing sits at the intersection of multiple harms, infringing on children's privacy and their right to health. That has been recognised only recently. In this regard, I refer members to paragraphs 41 and 42 of general comment 25 of the Committee on the Rights of the Child, published this year. It relates to the rights of the child in the digital environment. We believe there should be a ban on digital marketing to children. We have the children's commercial communications code of the Broadcasting Authority of Ireland, BAI, and we are aware the BAI will be sitting on the newly-established media commission. The BAI itself has not reviewed the code even though it was supposed to have been reviewed recognising that so much advertising has migrated to online services. I refer to the engaging, interactive type of advertising or user-generated influencer marketing that Dr. Campbell spoke about.

When talking about junk food marketing online, it would be remiss of me not to mention that, only a few weeks ago, the UK reaffirmed its commitment to a ban on online junk food marketing during the Queen's speech. It was thought that it would be rowed back on but Boris Johnson has committed to it. It is going to happen in the UK. In Ireland, the online safety Bill is a key way to achieve that.

On algorithms, it is very hard not to stress the importance of how profiling is used to target children. The Data Protection Commission is developing fundamentals for how to process children's data. It is very explicit in its draft in that there has to be a zero-interference principle when the best interests of the child have to be considered. That is important.

Let me give a statistic from 2017, bearing in mind that we are four years on from then and there has been a global pandemic, meaning children have migrated online for more learning. It is estimated that by the time a child reaches the age of 13, ad-tech companies will have collected over 72 million data points on him or her, that is, 12,000 pieces of data for each hour spent online. That figure is likely to be an underestimation as it excludes many of the trackers currently used by many of the social media giants. They hold so much data on children and use it to profile them and target advertisements. To nip a point in the bud before we go there, it is easy for the companies to prevent their advertisements from being seen by children. It is not just a case of whether the child has said he or she is 18 or 16; the fact is that the companies can

infer a person's age based on what they are doing and their browsing history. They can very easily, through due diligence, prevent children from seeing those advertisements.

Senator Malcolm Byrne: I am sorry to interrupt. Could Ms Walsh tell us what she would like to see us do?

Ms Kathryn Walsh: As I said in my opening presentation, I have circulated the Irish Heart Foundation's submission on the online safety Bill. We need to examine undue commercial exploitation and recognise children's right in the digital environment, specifically referring to paragraphs 41 and 42 of comment 25 of the Committee on the Rights of the Child, making sure that profiling and the targeting of children for any commercial purpose based on their digital record is prohibited. We need to prevent children from seeing these advertisements. It is not just a case of banner advertisements but also of product placement. We must remember that product placement happens on children's sites, not just on the main adult sites. It happens very easily on the children's sites. I have seen it myself as I have a young child. We need to make sure companies adhere to due diligence.

Specifically, on data protection, I would like to reinforce the recommendation of the Data Protection Commission in that the online safety commissioner should also consider online harm related to personal data.

Chairman: I am sorry to interrupt. We will have many more opportunities. We have gone way over the allotted time. There was a question posed to Dr. Campbell but she will get to contribute again and perhaps respond to it. I have to allow other members to contribute. I call Deputy Munster.

Deputy Imelda Munster: I welcome our guests. My first couple of questions are for Dr. Campbell and the others are for Ms Kathryn Walsh. I will ask all the questions and then allow the witnesses time to respond.

In her opening statement, Dr. Campbell covered the past 30 years. There has been campaign after campaign. None of them have been successful by any stretch of the imagination, it is safe to say. Looking at this Bill in its current form, is Dr. Campbell confident we will be able to tackle the issue? What are the key changes we should ensure are encompassed in this Bill?

Dr. Campbell referred to a proposal for a pilot programme in Ireland — a pilot moratorium on material. Could she talk us through that? She is seeking an outright ban. With regard to food profiles included in the definition of "harmful content for children", the WHO has a nutrient profile. What is Dr. Campbell's opinion on that?

Ms Walsh mentioned the current code. It is clearly insufficient. I was going to ask whether it could be used for us as a standard with which to regulate online platforms and advertising for children but, from what she is saying, I would imagine it is not fit for purpose. Since most of the media companies have headquarters based in Ireland, has Ireland not a duty to lead the way with regulation and legislation in particular?

Could Ms Walsh talk a little about the need for a definition of "undue commercial exploitation" in the Bill? Does she believe it is an important tool in regulating different types of advertising that can be harmful, such as the advertising of alcohol or gambling?

Dr. Norah Campbell: I thank Deputy Munster. I will start at the end and go through the questions as expeditiously as possible. With regard to the nutrient profile model, I am not an

epidemiologist or nutritionist but I would say that several civic society and public bodies are in favour of the WHO nutrient profile model. It was favoured by the Joint Committee on Children and Youth Affairs in 2018. I am not an expert but believe we should be using a profiling system that is endorsed by independent nutrition experts and not sponsored by the food industry. We need to get our best scientific version of it. This seems to be the WHO nutrient profile model.

Let me talk about the concept of a moratorium as a pilot. I mentioned this in my submission but I did not have time to address it in my opening statement. Again, I am not a professor of jurisprudence but believe that having a ban on all junk food advertising online could be seen by many to be excessive. A trial would mean that there would be a time-bound approach, involving a period of five years, for example, whereby we would effect a ban and determine the consequences. If we do not believe in trying other approaches, we will be stuck in a policy loop in which we are constantly delayed in what we do. I note, and the Deputy and many of her colleagues will probably note, that we have voluntary codes on online junk food marketing to children. These started to be developed in multi-stakeholder working groups in 2016 or at the end of 2015. They were lodged in February 2018. Owing to one delay after the next, they have still not been enacted. We need to be able to trial things first; otherwise, we will be stuck in a constant loop. I note there was an interim report on the Government's obesity action plan a couple of months ago. It shows that the figures have not changed so there is going to be another report and a review of that report. My proposal, therefore, is to ban first and then use the ban as a natural experiment to determine the results economically and for the physical health of children, etc.

Maybe I have taken up a lot of time. Therefore, I will leave the last question unless I am encouraged to go on.

Chairman: There is a question for Ms Walsh. I ask her to be brief because I do not want to leave Ms Twomey out. I know that she has indicated she wants to speak.

Ms Kathryn Walsh: I will address Deputy Munster's questions. The code for regulation is the BAI's Children's Commercial Communications Code from 2013. It is the only statutory regulation that we have on junk food marketing and it is only for broadcast and radio. It has been effective. We would like to see the watershed extended but some lessons from that could be brought across to online issues. Since the BAI will be subsumed into the media commission, we do not want to see the existing statutory regulations lost. We want to see it brought to online issues and learn there. We could lead the way with regulation on that.

To address how advertising technology is being used, much online marketing happens because of how data and advertising technology are used. It is used to surveil people and follow them across their Internet and social media experience. Regarding undue commercial exploitation, we need to look at it through a lens of children's rights. We do that by looking at the UN Convention on the Rights of the Child and at Article 36, which states: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare." When we are looking at commercial exploitation, we need to look at how welfare is impacted, including health and psychological development. This advertising has a detrimental effect on children's health. As I pointed out at the beginning, State-funded research shows that 85,000 children on this island will die prematurely because of being obese and overweight. An obesogenic environment is contributing to that and we must deal with it. That is why I think that issue of undue commercial exploitation needs to be teased out further, recognising that advertising, surveillance, and the identity resolution processes need to be looked at in detail and recognised.

Ms Orla Twomey: Regarding the voluntary codes of practice launched in 2018, the Advertising Standards Authority for Ireland, ASAI, had undertaken to Government in 2015 to look at developing high fat, sugar or salt rules. That was overtaken by the Government decision to set up the working group to look at voluntary codes of practice on a multi-stakeholder basis. We participated and supported that. The codes were launched in 2018. Since then, there has been no progress on their implementation. That progress required a monitoring body and guidance notes to be set up by the Department of Health. Since there is no progress, we have decided that we will bring the rules about marketing communication into the ASAI code. That process should be completed this month. We recognise that there are issues and concerns about the advertising of high fat, sugar or salt foods to children, especially online. Given that there were no specific rules for non-broadcast media, including online, our board felt that we should introduce those rules. We will do that.

There are concerns about how advertisers reach consumers online, through the use of tech tools, algorithms and artificial intelligence machine learning. The ASAI, with our European association, will look at how we can build on what is happening in other markets to use tools for widespread monitoring. We will use the same tools that the market uses to make sure that advertising is not directed where it should not be directed or that it does not have content that it should not contain. We will look at that. Do I have time to answer the question about influencers?

Chairman: Yes. I ask Ms Twomey to be brief.

Ms Orla Twomey: Influencer marketing is a growing area. A disparate range of people is involved. There are rules about disclosure in the ASAI code and consumer protection legislation. Self-regulation and statutory regulation are complementary. I can only answer about when filters are used for advertising. Our remit is advertising. It is not about when someone is just commenting on their own life. If someone is advertising, if filters or tools on the camera are used in a way that is misleading, that is a breach of the code. There was one case where a filter was used to make someone's skin look better. A cosmetic product was involved. That was misleading because the implication was that the cosmetic product had had the effect. It is a key area in the ASAI code which requires advertising to be honest and not to exploit the lack of knowledge or the credulity of consumers and the public.

Chairman: I thank the witnesses for their responses to Deputy Munster.

Deputy Brendan Griffin: I thank the witnesses. I have one for Mr. McGeoghegan about photosensitive epilepsy. When I think about the idea of trolls deliberately trying to trigger seizures, I ask who these people are. Besides deliberate targeting of people, is online content that may unintentionally target and inadvertently trigger seizures in people a factor in regular social media or organised news outlets something that more needs to be done about? Do there need to be more warnings?

I thank Dr. Campbell for her contribution. She gave some staggering figures about the amount of content about junk food targeted at young people. Has she any data about what impact this has on consumer behaviour? Further to what Deputy O'Sullivan and Ms Twomey said about influencers, will the witnesses speak on influencers who are targeting children? Have we more information on that? Does there need to be separate treatment for influencers who are targeting minors specifically?

Mr. Paddy McGeoghegan: I will address the Deputy's question on regulation of this type

of content. Photosensitive content that could potentially trigger a seizure is very much a self-regulated area in that content creators, video makers and programmes potentially have their own rules and policies in place to test whether someone is photosensitive. Since photosensitive epilepsy is arguably the most known aspect of epilepsy, the majority of content creators are aware of it. We are all familiar with RTE News stating that a report may contain flashing images. The Deputy's question is quite poignant since this self-regulation has led to problems in the past because towards the end of last year, a highly-anticipated game was released which was littered with photosensitive content. It shows how self-regulation can be a problem. It was pointed out by a journalist who had got an advance copy and was testing the game who had photosensitive epilepsy. She likened the scene in this game to the medical procedure to test whether a person has photosensitive epilepsy. That shows where problems can arise.

Regarding people potentially being unintentionally targeted, we feel that there is a clear distinction. One person might share a video of a nightclub where he or she might go with friends and it might come up in the news feed of a person with photosensitive epilepsy. Compare that with a faceless, nameless person on Twitter, who is purposefully just pushing out these images and videos either directly tagging a person or putting him or her within a hashtag so they can try to potentially induce a seizure in that person. That will also be down to investigation but we feel there should be a clear distinction in that investigation as to what the person's intent was. I hope that clarifies the point for the Deputy.

Dr. Norah Campbell: I love Deputy Griffin's question because it is impossible to answer. We will not find information on the spending of junk food brands online in the marketplace, and we will not find conversion rates, information on their growth in this country or information on the number of impressions they make to children online. We will simply not get information from the industry to understand the extent to which children are exposed to this online. That is the reason self-regulation is never going to work. Until we have comprehensive access to that marketing intelligence, we will never be able to make informed decisions about self-regulation and whether it is permissible or possible.

Because public health has been knocking at the door for so long and not receiving any data whatsoever, it has turned to experimental studies and to large quantitative studies in order to prime children and then see behavioural actions afterwards. I will give the Deputy two examples from last year. First, a survey that looked at children in Australia showed that children who engaged with videos of junk food online were more likely to consume unhealthy food afterwards. Second, a very famous experimental study on influencer promotion of unhealthy food showed that if children eat snacks after viewing influencer food marketing, they will eat more compared with children who watch the same influencer marketing non-food items or healthy food items. Therefore, there is a direct experimental correlation between the exposure to this and the subsequent behaviour, and that has been shown in international peer-reviewed journals. However, we will not get access to the online industry for this type of data.

Ms Orla Twomey: With regard to influencers targeting children in Ireland, we have not had any complaints specifically in regard to food but, in other areas, we would take the view that if an influencer has a significant under-18 following, he or she should not be advertising certain types of content, for example, alcohol or gambling products. We currently do not have the HFSS – high fat, sugar, salt - rules in our code but when we do, that will certainly be an element there as well. Obviously, influencers have wide audiences so part of the issue for us is examining who their audience is to see whether or not they are appropriate for certain product categories.

Ms Kathryn Walsh: I want to support Ms Twomey. The research that has been done is just those experimental pieces of research but I also mentioned some statistics in my opening presentation. For example, exposure to just 4.4 minutes of food advertising will increase a child's food consumption by 60 calories on average and playing advergames with food cues for five minutes increased consumption by 53.4 calories on average. The 2018 research from Cancer Research UK showed that each additional hour children spent using the Internet is associated with a 33% increased likelihood of buying junk food and drink. Children who use the Internet for over three hours per day are almost four times more likely to buy junk food products than children who use the Internet for little or no time. That is critical when we consider there has been a growth in online learning because of the pandemic. We know there is a link between food promotion and children's food preferences, what they buy and what they eat, and that has been proven since the 2003 Hastings review. That data is there in terms of the research that has been done by a number of universities and organisations.

Deputy Brendan Griffin: I thank the witnesses.

Chairman: I thank Deputy Griffin for his questions. I call Senator Shane Cassells.

Senator Shane Cassells: I will pose my questions together and then let the witnesses respond. I thank them for their presentations. I agree with Deputy Griffin's comments to Mr. McGeoghegan. We have been dealing in recent weeks with the issue of online abuse. To think there would be a new form, an even more twisted and vicious scenario where people would target those with photosensitive epilepsy to cause them physical harm, is beyond comprehension. It shows the importance of this Bill and the importance of Mr. McGeoghegan's presence here today to seek the inclusion of that amendment. From Mr. McGeoghegan speaking with his colleagues in the UK and the US, where this has been picked up, is it very extensive or is it still at a preliminary stage where those incidents have happened? Does Mr. McGeoghegan have a fear that such scenarios could happen in Ireland?

I thank Dr. Campbell and Ms Walsh for their presentations and for the data on the harm to children from junk food companies. I wrote down Dr. Campbell's comment on advertising from these companies suggesting food is the social glue that brings people together. That was quite insightful and it leads to my question in regard to her call for an outright ban. Advertising companies, because they have very talented people, will try to make sure they circumvent what is happening. We notice that many of these companies no longer actually market the product - the food. What they do is they market the brand, they market the coming together of people at a location, and it becomes a question of social status in the schoolyard, for example, "Did you go to McDonald's at the weekend?" The advertising will not actually advertise the Big Mac or the happy meal, and it is advertising the coming together at a place. That has been quite prevalent in very recent ads, which is what they are about.

As I said, ad companies are very creative. Back in the 1990s, when we had a Formula One team in this country with Jordan, it was sponsored by Benson & Hedges. Many countries banned advertising involving cigarettes so what did they do? They just rebranded the car, painted it gold and called it Buzzin Hornets. It actually made it more popular and they got more bang for their buck out of it.

In terms of Dr. Campbell's proposal, effectively, we are getting into a legal quagmire because it is calling for a ban on the company rather than a ban on the product, and because the company will circumvent any of those measures. I would like to hear her thoughts on that.

I thank Ms Twomey for the overall submission she made in respect of the Bill. At section 1.9 of her submission, she referred to protections concerning marketing communications related to gambling. A number of weeks ago, Professor Conor O'Mahony, the special rapporteur on children's affairs, came before the committee. He was adamant on the harm done to children from the age of 12 to 17, given three quarters of that age cohort in the country are gambling at present. The prevalence of online social media from an advertising point of view allows these companies to target such people. It is far better than newspapers or anything else we have dealt with heretofore because once people open an online betting account, the companies can then target those people's social media accounts as well. I would be very interested to hear Ms Twomey's thoughts on that whole sphere because Professor O'Mahony has called specifically for an amendment on the definitions of online harm and suggested that financially harmful content should be included in that whole sphere as well.

Dr. Norah Campbell: I am a bit scared of Senator Cassells because I think he would make an amazing junk food marketer. He is absolutely right. I teach food marketing in Trinity College Dublin and the very first thing I ask students is to write down what their definition of food is. When 99% of them say that food is fuel or food is nutrition, I say to them they are not thinking like a marketer. For a marketer, food is not nutrition, food is not fuel. Food is a psychosocial glue that holds people together. It is a set of symbols that allows people to be with each other. I recognise that the brands that are able to communicate online without foregrounding the product creates a massive loophole. We can have a model similar to that proposed by the UK Government where there is a 9 p.m. watershed so none of the brands associated with HSSF foods is allowed to use its own initiated social media until then which would reduce the incredible exposure of children to it. Alternatively, all marketing communications must show the product. If that product is past a certain nutritional content, then it should not have a social media presence. I teach executives in this. Business works like a hydraulic model: cut one thing off and the energy and innovation will flow to another. It is the way capitalism works. The thing we should cut off is the exposure of unhealthy food online so that companies will reformulate, and do so far faster than they have done to date. Therefore, I propose a watershed or regulation that compels the companies to foreground the product, and that the product would have to be reformulated. Those are the only two practical ways I see.

Chairman: Senator Cassells made some direct observations on Mr. McGeoghegan's presentation. Does he wish to add anything?

Mr. Paddy McGeoghegan: The short answer to the Senator's question about the fear of this happening in Ireland is "yes". I am sure that other organisations never expected this would be an issue in their countries but it shows the psyche of these people and what they are prepared to do. I referred to the case in the UK and will go into more detail. That case was particularly disgusting. It involved a child of eight years, who lived with two long-term health conditions, epilepsy and cerebral palsy. As part of a fundraising challenge he aimed to walk 130 laps of the back garden unaided to raise funds for the Epilepsy Society in the UK. Efforts to promote it were targeted by not one or two but hundreds of flashing images, trying to induce seizures in people. You could not find words for it, it was a truly heinous act. Thankfully the wee fellow did not have a seizure but a number of people who followed the epilepsy charity had seizures when they saw it.

On other countries, the UK is in a very similar position. It has what is essentially the same Bill to come before the Commons. The Epilepsy Society there is campaigning for the same definition as ourselves. We want to get it in now rather than have to discuss it after it might

happen as we are aware that it is an issue in other countries and these things tend to ripple across and reach our shores eventually. We want to classify it as online harmful content now and stop it before it even starts.

Ms Orla Twomey: The ASAI code is very clear that gambling advertising should not be targeted at those under 18 years. To open an account with a gambling provider, it is required that people are 18 years or over. Presumably there is an ability to get around those controls. It is an area that I am very concerned about and I will take it away and look at it further. Gambling among teenagers has become a concern in society in the last couple of years. It is something we take seriously.

Senator Shane Cassells: The controls that are not in place which allow those under 18 years to open accounts are not on Ms Twomey's shoulders. However, once they do so, the issue of advertising arises. This is an industry worth €10 billion in this country. The spend and reach it has is enormous. The online advertising it engages in dwarfs every other section online. Online media advertising by these companies must be taken extremely seriously. Self regulation will not be adequate. I am only reflecting what the special rapporteur on children's affairs has said, who pointed out that three-quarters of those aged 12 to 17 years now gamble. Ms Walsh and Dr. Campbell have spoken on the impact of childhood obesity. One can see the physical impact of that but one cannot see the mental destruction caused by young children gambling until it has become too late.

Ms Orla Twomey: I fully understand the Senator's concerns and those of the children's rapporteur. It is very serious to learn that so many children are gambling. From the ASAI's perspective, all I can do relates to the ads being placed before them and address that, which is what I will do.

Deputy Shane Cassells: Does Ms Twomey think the free coupons for race bets, for instance, should be banned from those product placements?

Ms Orla Twomey: Advertising to those under 18 years should not occur, regardless of the offer. I do not know if there is a harm there if a free coupon is being offered to an adult who is making a conscious decision about what they want to do but advertising to under-18 year olds should not be happening regardless of the mechanics or the promotion.

Deputy Johnny Mythen: Ms Twomey's opening statement mentioned self-regulation. I can understand the benefit of the industry playing a role; there is concern that if industry leads the regulation, it also sets the agenda rather than those who are impacted by the potential harms that we want to prevent. How does she ensure that any self regulation is not unduly influenced by the motivations of private corporations over public good?

My next question is for Ms Walsh. At present there are BAI regulations on the advertising of junk food, such as the watershed provision. Do these need to be included in the digital advertising arena? Does she recommend any changes? What additional standards would she like to see copperfastened into the Bill itself?

We have talked a lot about children. Can Dr. Campbell speak about the adolescent brain and how it might be susceptible to advertisements? Is there data on this which the Bill should be aware of?

Mr. McGeoghegan's opening statement asked that flashing videos which are designed to induce seizures in people with photosensitive epilepsy be included under harmful content in

this Bill. Is there a more technical definition to further clarify what should be included, such as brightness or the speed of flashing light? Many videos now contain a warning that they contain flashing imagery. How is this currently regulated, and does it work?

Chairman: Who would like to come in first? Mr. McGeoghegan, I will give you the floor first this time.

Mr. Paddy McGeoghegan: I thank Deputy Mythen for the questions. He asked what defines photosensitive content. For flashing it is anything between three to 30 flashes per second, commonly known as hertz. That is what experts agree is potentially triggering content. However, in my opening statement I made reference to the individual nature of epilepsy. Someone might be triggered by something over 30 or below three flashes per second. In addition, you need to bear in mind that in respect of photosensitive content, patterns and transitions between colours that are moving can potentially trigger a seizure as well. Harking back to the individual nature of epilepsy, what triggers one person would not necessarily trigger another. Everyone's epilepsy is different.

As to what is currently in place, in my answer to Deputy Griffin I made reference to how this is very much a self-regulated area where broadcasters and content creators test their content before releasing it and have procedures in place. Commonly, they use two methods called the Harding flash and pattern analyser, FPA, and photosensitive epilepsy analysis tool, PEAT, analysis. As part of that, they upload their content and the analysis will show where content is potentially photosensitive. That is potentially where a lot of the warnings to which Deputy Mythen referred come from. The content has been tested. What we are talking about is a bit different because these are videos that are being distributed and manipulated intentionally to cause a seizure in a person. I repeat the point that it is hard to put words on what the thought process behind that is. Those videos are a bit different from the content that is self-regulated through the testing methods. The definition we have put forward refers to something which is likely to stimulate a medical emergency in a person and where it is reasonable to assume that was the intention. Going back to the reference to a person sharing a video from a nightclub, that is a lot different from a person maliciously throwing out pieces of content one after the other into the endless world of the Internet, actually targeting people and trying to trigger a seizure in a person. I hope that answers the Deputy's questions. If not, he can come back to me.

Chairman: I ask any other of our guests to indicate if they would like to comment further on Deputy Mythen's questions.

Ms Kathryn Walsh: I will try to run through some of the issues Deputy Mythen brought up. As I said earlier, the BAI had the first role in Ireland in regulating food marketing from a statutory perspective. While the review did not happen, there are good things. We would like to see the watershed extended. Because the BAI has been subsumed into the media commission, we hope that its remit in respect of unhealthy food marketing is not lost. Again, it should be brought forward in making sure that online marketing is strengthened and that there is a statutory scheme. It is very important we have a statutory regulatory scheme. We would be very much opposed to the self-regulation scheme.

As for some of the other things we would like, in our submission we have a number of recommendations. I will not go through them individually but I will highlight the recommendations raised by other children's rights organisations. The individual complaints mechanism with the online safety commissioner is particularly critical for us because we have lodged a number of complaints about junk food marketing and commercial communications, for ex-

ample, with the ASAI, and we found that process very long and very arduous. Parents had been lodging these complaints and then finding that it could take four to 12 months for a resolution to be met. Given the fluctuating nature of how advertising works, by the time a complaint is adjudicated upon, the ad in question is not being run any more. If a complaint is upheld, we find that the recommendation will be that the post might be removed or not run again. That is not sufficient given the situation in which we find ourselves. Again, we would like an independent complaints mechanism with the online safety commissioner, strong statutory regulation and a move away from self-regulation of this sphere.

Chairman: I ask Dr. Campbell to respond as briefly as possible.

Dr. Norah Campbell: A Chathaoirligh, I know you do not have an easy job trying to keep everyone to the time but I really want to say this because I feel it is the most important contribution I could give today and is directed at the question under discussion. Most people believe deep down that you are free to choose your own weight. People think that if you have enough willpower, you will be able to keep from overeating and maintain a balanced body weight. In fact, studies have shown that such a conception of consumption is very dominant among policy-makers and politicians - no offence - even though it is not the case. Leanness or being naturally quite lean is very likely hereditary. Your regulation of how hungry you feel or whether you feel full takes place in a subcortical region of the brain that is unconscious. You therefore do not make conscious decisions like "I feel full now". If you are in an environment with constant prompts to eat, you will keep eating such that you will trip a switch in your brain and that appetite regulation system will break down. That is the emergence of a disease called obesity. It is not something that will ever be fixed in any real way with health promotion messages. In fact, we now know that about two in every ten people will be positively affected by health promotion messages. Everybody else is susceptible to the obesogenic food environment. What I am saying to Deputy Mythen is that if we want to prevent the six out of ten of the rest of our children who have not tripped that switch from doing so, we need to change the environment. Otherwise, we will have tripped the switch big-time and we will have a runaway change in the entire shift of the childhood population.

Chairman: Very scary stuff, Dr. Campbell. I think Ms Twomey is also indicating to come in on this.

Ms Orla Twomey: I thank Deputy Mythen for his questions. As for how the ASAI ensures we take account of general and societal concerns, we have, as I said, been in existence for 40 years. We are on the seventh edition of our code. When we review our code we consult widely and write to industry associations, NGOs, advocacy groups and Government Departments across the whole gamut of the code. We also advertise publicly, looking for the public to submit their views on the code. We thoroughly examine every single aspect of the submissions made to us. As I said in 2015 when we introduced the previous code, we undertook to the Department of Health that we would consult on HFSS rules but we got overtaken by the Department process.

It is also important to note that in the type of self-regulation that the ASAI and the EASA practise, we have a code that is consulted on. We have a separate body, the ASAI executive, which does the investigation, the assessment and the bringing of cases to our complaints committee. That is separate from the industry and from the board. Then we have the ASAI complaints committee, who are the ones who adjudicate on complaints. That is made up of a mixture of independent people and people from the industry with a majority who are independent, led by an independent chairperson. There is therefore lots of independence and controls built into the system to ensure the decisions we come to are fair and in line with the code rather than

taking account of a particular industry sector.

I will point to one other important element of the Bill. It is not envisaged, to the best of my knowledge, that the media commission will have an individual complaints mechanism. The Bill recognises they will be looking at it on a systemic basis, that there will be a super complaints scheme for notified bodies, and they will require the platforms to have a complaints mechanism in place to which people can make complaints directly. In the ASAI, we think it is important people have an opportunity to make a complaint other than to the platforms carrying the ads. They should have the opportunity to make complaints to an outside independent body that has an independent adjudication process.

Chairman: I thank Ms Twomey and the Deputy for that line of questioning. Is Deputy McGrath linked into the call? I will move to Senator Warfield and come back to Deputy McGrath if he is available to join us later.

Senator Fintan Warfield: I thank all our guests for their contributions. They have been very informative and helpful. I know the Connemara film-maker Bob Quinn always fought against ads during children's programming while he was on the RTÉ Authority. Are any of the guests aware of the breakdown of time during which children and young people see these ads when we compare online and traditional media? If it is weighted more towards traditional media that these ads are seen, at least for now should we strengthen those laws in traditional media, as has been proposed we do online? Should more weight be given in this conversation to that traditional media space? Has any other country introduced a ban on digital ads targeted at children?

During the repeal of the eighth referendum, Facebook banned foreign political ads and a few days later, almost immediately, Google had a complete ban on ads during that campaign. There are precedents for a comprehensive ban on a type of advertising. We should not forget those companies did that.

I welcome Ms Twomey's comment on having a complaints mechanism. One of the questions I had concerned the ASAI's recommendation on an individual complaints mechanism. I read her submission and appreciate her reference to that. That clears it up for me.

I have one further question on photo editing. It has become an issue in the political space. France is examining it. It has tried to deal with photo editing, proposing a compulsory edited photo symbol on edited photos used for marketing. A Private Members' Bill is being taken in Westminster on the issue. From an industry perspective, Ms Twomey or Dr. Campbell might be able to comment on that. Is it necessary to have a code of regulations or do we need to manage photo editing online or make it clear an image has been altered or edited?

Chairman: Senator Warfield first mentioned Ms Walsh. I will bring in Ms Walsh first and then the other guests might indicate if they wish to respond.

Ms Kathryn Walsh: I will respond to the some of the Senator's initial comments on broadcasting regulations. The BAI did a review of the general children's commercial communications code - that is quite a mouthful. It was laid before the Houses of the Oireachtas earlier this year. There are some viewership figures in it for broadcasting. I have some of headline figures. Between 2011 and 2018 there was a 60% drop in 30 second TV ratings for four to 17 years olds. Children are seeing fewer advertisements on television. The BAI stated it will not update the review until such time as a media commission has been established. There has been so much

migration of advertising to online media that one cannot be considered without considering the other. That was a very comprehensive review. It examined what was happening in other jurisdictions. I recommend that the committee looks at it. However, there are no such viewership figures for online programming. I do not have access to them. In terms of TV exposure online, younger age groups are not seeing as many television ratings, TVRs, but there has been an increase in advertising spots. I am not sure of the language used on that. We cannot drop the ball on broadcasting. The current regulations provide a watershed up to 6 p.m., but children and young people watch many television programmes between 6 p.m and 9 p.m. Family programmes, popular singing shows, skating shows and family movies are all broadcast within that period. We cannot drop the ball on regulation either. That needs to be carried through. We also need to consider the make-up of audience profiles within that programming period and not only at programming targeted at children but programming that children realistically see.

The Senator referenced the repeal campaign. It is possible for these social media companies to implement these bans. Some of these companies curate a list of topics that they think one is interested in, they show it to the person and allow them to turn off different advertisements if they want. The same is true for other advertisements. That should be the default if the person is an adult. The capacity is there to do these things. A person I know who works in the tech industry used an analogy to illustrate these companies' capabilities, which I will share with the committee. If they can have AI examining images to get text descriptions for blind people and they can build a prototype censorship system for the Chinese, they can stop showing harmful ads to children. They have the technical expertise and can do it; it is just a matter of will and due diligence.

Ms Orla Twomey: On the Senator's question on photo editing, I am aware of the potential developments in France. One of the challenges we need to be aware of is that photo editing in all cases is not necessarily harmful nor misleading; it depends on context. It is something we will examine. For example, if someone has a photograph of themselves on a sunny day but there is a cloud they do not like and they remove it, is that misleading even if it is an ad? Will it mislead somebody to buy food or whatever the product may be? It is about what the photo editing is trying to do. Is it trying to exploit a lack of knowledge among the consumers who are seeing it?

Senator Fintan Warfield: Body image would be one of the main ones.

Ms Orla Twomey: Absolutely. The ASAI met with Bodywhys last year and I presented to that association previously. We discussed the problem of whether people are editing their bodies to make them look like what they consider to be a more favourable body image. Part of our challenge with respect to advertising content is we are asking for examples of where this is something that is happening and causing a problem. We are in discussions with Bodywhys on how we can look at that. For example, if one is talking about a slimming product, one cannot use any type of editing tool to either make the before image of the person look larger and the after image of the person look smaller. That would be misleading. That is nothing to do with whether it is online or offline. That would be dishonest. It would not be allowed. We have upheld complaints on that issue in the past. The issue of body image goes beyond advertising. It is in everyday social media content that sometimes people create in terms of curating their own lives. That is beyond where the ASAI can have an impact.

Chairman: Dr. Campbell also indicated.

Dr. Norah Campbell: I will only take a minute to respond to one of the Senator's com-

ments. Marketing is enchantment. The whole point in teaching marketing 101 is magic. It is about making things look, feel and seem better than they are in reality. That is, quintessentially, what every marketer has to do, whether they are selling window insulation or Ugg boots. When we start breaking it down, as my colleague in the ASAI is doing, what we will end up doing is chasing our tails the whole time. We will become completely stuck in red tape of in terms of asking what the context is for various issues and whether different things are permitted. What would end up happening is that, inadvertently, the Government and the regulator would become Big Brother and the ones towards which invective and frustration permeate. Ironically, a ban stops that and allows the Government and regulators to step back in the full knowledge that these are rules rather than conventions that have been simultaneously agreed upon and not agreed upon.

A significant amount of research has shown that if “Enjoy alcohol sensibly” is written on a product, what the consumer reads is “Enjoy alcohol”. When the consumer is advertised a product that states it is 0.0% alcohol, the consumer does not see the product but, rather, sees the brand. What that does is it increases relevancy. Relevancy and saliency are the two big psychological terms marketers want to achieve. That is why they advertise everywhere and it is why we do not think about Foster’s beer or Levis’ jeans as they simply do not advertise anymore. When something is in the ether, it is constantly in one’s mind and it becomes a top-of-mind, available choice set. I will be clear that this is so systemic that it cannot be corrected by appeal to certain aspects of advertising. It has to be a full ban if we listen to the science and believe it.

Senator Fintan Warfield: In the context of children’s advertising, are we talking about advertising that relates to clothing and school necessities as well as toys?

Dr. Norah Campbell: A colleague who works in TU Dublin is an expert in marketing to children and she says the child consumer is variously referred to either as a fragile angel, with the need to protect children and wrap them in cotton wool, or as an enlightened enthusiast, which is the viewpoint that these kids are literate and can engage and want to learn through these fun ways using these types of toys, clothes, etc. Knowing what I know now about children’s cognitive development and the pervasiveness of marketing towards them, they are definitely more in the fragile angel category than the enlightened enthusiast one. Certainly the enlightened enthusiast is the frame in which all of these industries wish policymakers would view children but it patently is not the case.

Ms Orla Twomey: With regard to assessing how children view advertising and how it impacts on them, the ASAI code recognises that children are not a homogenous group from the age of zero to just under 18. We take into account that children under 12 have a certain approach, while children under six do not have an understanding of marketing communication or that they are being advertised to. All the evidence shows that to be the case. We take into account that there are various cohorts. The ASAI would not support an absolute ban of high in fat, salt or sugar, HFSS, foods. We will introduce rules that will put controls on them, where they are advertised to and how they are advertised. Part of the challenge in terms of junk food is how one determines what it is. Reference was made to the WHO nutrient profile modelling but, from the point of view of the ASAI, we will adopt the model that the statutory regulator in Ireland, namely, the BAI, has taken on. We will apply the same rules as that body. This will determine what is a HFSS food and this is where the controls will be.

Senator Micheál Carrigy: I welcome our guests. I was delighted to meet a group of parents and kids at the front gates of Leinster House a couple of hours ago. They were there as part of the Irish Heart Foundation campaign to protect children from digital junk food market-

ing. I compliment the foundation on that campaign and say “Well done” to the parents and kids involved.

I met Ms Walsh some months ago at an event during which I made the point as part of my presentation that children are a vulnerable group who have the right to protection from advertising due to their limited capacity to critically understand advertising and marketing practices. It is our responsibility to ensure the Bill protects vulnerable children. I refer to a presentation entitled “Who is feeding the kids online?”, which involved the first ever research carried out in Europe on the tactics used by junk food marketers. It was endorsed by the WHO and exposed that micro-targeting and profiling methods similar to those that were subsequently shown to have been used by Cambridge Analytica are being used to target kids across a range of products, whether it is junk food or other products. In this case, it is junk food.

There is a responsibility on us to react to this. A couple of weeks ago, I asked the representatives of Twitter, Facebook and TikTok about bullying and whether they would fund, through the Department of Education, a promotional campaign in schools in the context of online bullying. Would the witnesses like to see those companies contribute towards health promotion in schools in the context of a lot of this advertising that is going on?

Senator Cassells referred to free bets. I agree with him 100% in that regard. They should be banned. Any sort of free bet or free burger or whatever it may be should not be allowed. Ms Twomey referred to adults but it is easy for a 12-year-old to buy a paper for €1 to get a free bet worth €10 or €5 or whatever it may be. I would fully support that practice being banned.

I welcome her comments with regard to complaints not being made only to the platforms. There has to be an independent board or independent people through the media commission who will take complaints as well.

Ms Walsh referred to the watershed ban and the fact that the BAI will be subsumed into the media commission. Will she look for that ban to be extended to 9 p.m.? Children’s time is up until 6 p.m. but family time is between 6 p.m. and 9 p.m. and that is where marketers are targeting many of their advertisements. A report compiled in respect of a 30-minute period showed there were nine junk food advertisements on television during family time but only 1% of adverts promoted fruit and vegetables. The facts are there and we need to take action.

Ms Kathryn Walsh: I welcome the comments of the Senator and his support for our Stop Targeting Kids campaign and for the parents who are outside Leinster House today. It is an issue that is very important to them as they see first-hand the advertisements that children are seeing.

As regards the funding of health promotion, I do not want to see industry taking part in health promotion activities in schools. It might be seen as a good co-operative political activity but health promotion should be undertaken by health promotion professionals. That is very important because if we were beholden to industry to undertake actions, that would leave us in an ominous position. Those actions should have been taken by the State and should be part and parcel of the education given to children. In terms of media literacy, it is important we have that type of education, but it is important that while delivering that media literacy, we recognise media literacy will never offset advertising practices and the harm done from advertising practices. I touched on this earlier. It is such an emotive issue. Toddlers know their brands before they know their ABCs. That is a fact of life. They recognise these brands before they can speak or know their ABCs. These advertising practices are linked to emotion, fun and love, so we will

never offset that emotional connection.

It is similar to when we ask if we can mount a campaign for healthy food. That will never work. If one says “have a break, have a broccoli”, it does not twinge with a person. Nor does “because the lady loves mangetout”. It will never work, because those brands have an emotional connection with people.

In terms of the watershed, we very much want to see that extended to 9 p.m. The Senator mentioned some brilliant statistics which have been conducted. Children are seeing junk food advertisements during that family time when they are sitting down with their families, but because of current audience profiles, it is not considered to be advertising for children. However, they are seeing it and it is advertisements for pizzas and high-sugar foods they are seeing. That broadcast watershed needs to be extended, as a minimum, from 6 p.m. to 9 p.m.

Dr. Norah Campbell: I do not think one will find any serious scholar in the social sciences who would support some sort of co-creative effort with these industries in schools for health promotion reasons. That is definitely not something any serious person would support. The other thing which is important to say is junk food companies make a defensive argument which states children just need literacy, in that they simply need to be more media literate. This argument has been overblown and overused. Just because one understands content, it does not mean to say one is able to resist it.

Much research, in terms of long ethnographies in schools starting in the early 1990s showed when kids liked a brand, they would come in and use the same jokes or character by imitating the character in the brand. They are not interested in the nutritional content. They are interested in how this thing can enable them to be together, so it is not about literacy. I know the planet is on fire. Does it stop me driving a car? No, it does not. I know junk food is bad for me, but I was looking at TikTok For Business website a couple of days ago and I saw Cadbury with 203.5 million views. A campaign TikTok has launched for Pringles business account says:

when Pringles came to TikTok to generate mass brand awareness with a new audience of digital natives, it certainly encouraged playful engagement. Over a billion TikTok users engaged with Pringles, generating an unstoppable creative force truly reserved for the most viral moments.

Again and again, it is these media platforms which are saying to their clients they can promise them the very thing we are all here to say will not happen or the happening of which we are in denial about. When I am on the TikTok For Business website and I am looking at the OREO campaigns, I cannot stop watching them because I am fascinated by them and want to eat OREOs as a result of it. If I am a marketing scholar who knows the exact process of how this is happening, how come it is affecting me? I would be really cautious of the fallacy of literacy.

Chairman: Do any of the rest of our guests want to respond to Senator Carrigy’s questions?

Ms Orla Twomey: Senator Carrigy makes an interesting point on free bets. It is something we will take away, but we have to be careful we are proportionate in the rules we apply on promotions which are made to adults and not made to children. We also have a right to expect companies which are engaged in gambling to have protections in place to ensure children do not gamble.

Chairman: We have gone through all of our speakers. I have some questions myself, but I

appreciate Deputy Munster wants to come in.

Deputy Imelda Munster: Ms Twomey said the Advertising Standards Authority for Ireland would incorporate rules on online junk food. What is the ASAI's complaints mechanism? What sanctions will it use? How many complaints would it normally get? If it is only just considering it now, why now? Why put it on the long finger? Why has it not been done prior to that?

Ms Orla Twomey: In 2015, we were considering this and were at the end of a strenuous code review. We undertook to the Department of Health that, once our code was published, we would start looking at incorporating the high in fat, salt and sugar, HFSS, rules into the code. Within weeks of that, the Department had announced it was setting up a multi-stakeholder working group to look at rules for HFSS in non-broadcast media and it invited us to be part of that. Rather than have a parallel process, we chose to go into the Department process. We worked on that with them.

Deputy Imelda Munster: Why would the Advertising Standards Authority for Ireland choose to do something such as that, knowing it could prolong bringing in such rules, when it knows the seriousness of obesity in Irish society? Why would it not go ahead as an authority in its own right?

Ms Orla Twomey: To be honest, we did not think it would take that long. We thought the rules would be brought in. We saw it was being led by the Department of Health and we thought that was probably an appropriate thing for us to do.

Deputy Imelda Munster: I am curious about this because it is such a serious issue. It is okay if the Advertising Standards Authority for Ireland did not foresee it taking that length of time. However, as time elapsed, surely the authority would have put more of a priority on it and thought we are concerned and the Department is dragging its heels, or for want of a better word, not moving quickly enough to our satisfaction, so we will go ahead ourselves. Why was there no sense of urgency whatsoever?

Ms Orla Twomey: I do not think there was no sense of urgency. The working group went through a process and codes were launched in February 2018. On behalf of the ASAI, I made a number of inquiries to the Department over the subsequent time, about the monitoring system it would set up and the guidance note. Information was not coming back on that, so we started looking at bringing them into our own code. We talked to industry about it. It was supportive of us doing it. We have been working on it.

When one is incorporating rules into a code, one has to make sure there are no unintended consequences, which we have been working through. I appreciate it is some time since the rules were launched by the Department, but as a self-regulatory organisation, these were-----

Deputy Imelda Munster: One would imagine there is an onus on the Advertising Standards Authority for Ireland, as a self-regulatory organisation, to put priority on this.

Ms Orla Twomey: Yes and working with the Department on them, we are conscious these were the Department's rules on what it sets. I know that many of the major brands are operating to the rules in any event on a voluntary basis. We have decided that we cannot wait any longer so we are bringing them into our code.

Deputy Imelda Munster: Some might say that the ASAI waited until the eleventh hour.

Ms Orla Twomey: I do not think so.

Deputy Imelda Munster: In fairness it looks like this at the latter stage. Can Ms Twomey tell me what sanctions the ASAI will use?

Ms Orla Twomey: I will set out our sanctions. Advertising that is found in breach of the code must be withdrawn. We publicise our rulings as part of a “name and shame” approach, so it is a reputational issue. We are aware that there are issues around the scale of online advertising. We will be working with the EASA to develop tools to build on what has been done in other countries so that we can monitor at scale and address issues before they become complaints.

Deputy Imelda Munster: Does the ASAI feel that it will be sufficient just to remove items?

Ms Orla Twomey: Yes, we certainly do.

Deputy Imelda Munster: Does the ASAI feel that this approach has worked thus far, particularly on junk food? Is it still working on the sanctions? Is that what Ms Twomey is saying?

Ms Orla Twomey: The sanctions that we have are the existing sanctions for all advertising that is found in breach of the code. The development of more online, structured, wide-scale monitoring is something new. It has worked in other jurisdictions and we will be working to implement it here. We know it has worked because it has identified advertising that is not compliant with rules and it has the ability to have it removed.

Deputy Imelda Munster: The ASAI knows it has worked in other jurisdictions but it has not got round to implementing it here yet.

Ms Orla Twomey: Essentially, the HFSS rules will be incorporated into the code. We are working on the tech development at the moment. We have not yet developed our own tech monitoring. We will be working on a project with the EASA. The whole area of tech monitoring of online advertising is something that has happened in a number of other jurisdictions but it is still relatively new. Our plan is to learn from how others have done it.

Deputy Imelda Munster: Given the importance of the issue and the urgency we have heard from our other witnesses today, it is quite disappointing that the ASAI gives the impression that it has adopted a lackadaisical approach to this. There is certainly no sense of urgency involved, which is quite worrying. When we are addressing matters in this Bill, it is important that we listen strenuously to what our other witnesses have said because they represent the health interests of children and the protection of children’s health.

Chairman: I can see that Dr. Campbell is indicating, but we have only five minutes left. I have some final questions. I will not talk too much. I want to give the final word to the witnesses. I thank them for their powerful and passionate presentations. They have been most enlightening and insightful for me and for my colleagues. I have two questions for each of our witnesses. They might answer them as succinctly as possible. They have raised issues of concern and challenges relating to how our young people are exposed in various ways. Issues have been raised by Epilepsy Ireland. We have heard about junk food advertising and so on. Have our witnesses tried to engage with Facebook Ireland, Twitter or TikTok on these issues? If so, how have these companies responded to their concerns? I am looking for succinct responses. Have the witnesses tried to engage the social media companies? Have the companies engaged with them? What has the response been? I ask Ms Walsh from the Irish Heart Foundation to tell us whether there has been any such engagement.

Ms Kathryn Walsh: We have not engaged with social media companies. We have engaged with the organisations involved in monitoring and logging complaints and with that process. We believe it is the role of the legislators to make policy and then to enforce the regulations. We have not engaged with them but they are very aware of our position. We have our Stop Targeting Kids campaign on our own social media platforms but we do not engage with the companies. We work within the current statutory and self-regulatory systems to try to have the advertising removed. It is up to the policymakers, including the committee members as legislators, to bring about the change and to tell these organisations what needs to be done. They will not listen to NGOs but they will have to listen to the State, the regulators and policymakers.

Chairman: In the absence of such regulation, and in light of the urgency in this regard, I was curious to see if the avenue of direct engagement had been attempted. Ms Walsh has answered that very clearly and I thank her for that. I ask Ms Twomey to answer the same question.

Ms Orla Twomey: We have regular contact with Facebook and Google, but not with Twitter. TikTok is an organisation we will be engaging with. If we find that advertising is in breach of the code, Facebook and Google will ensure that if it is not withdrawn by the advertiser, they will withdraw it and take it down. It is about having that backstop to ensure there is a mechanism to have advertising that is in breach of the code withdrawn. Generally speaking, that is how we interact with Facebook and Google.

Chairman: The ASAI has found these companies to be compliant with any issues that it may have had in terms of breaches.

Ms Orla Twomey: Facebook and Google will be the backstop to ensure non-compliant advertising is withdrawn.

Chairman: Could Mr. McGeoghegan from Epilepsy Ireland comment on this question?

Mr. Paddy McGeoghegan: I thank the Chair for her question. Our position echoes that of the Irish Heart Foundation. While social media companies have a role to play in this regard, from our point of view the definition of “harmful online content” should put it firmly into legislation that this will be a criminal offence. That is why we are so keen to highlight that issue through this Bill. We are aware that measures have been taken. TikTok engaged with us on some measures it was introducing, rather than the other way around. I refer, for example, to its introduction of warnings on photosensitive content and to its opt-out process that allows one to block seeing future photosensitive content. Because of the attacks that have happened overseas, Twitter has also taken actions in that the GIF images that were within a tweet have been blocked. One can search “epilepsy”, “epileptic” and “photosensitive” to ensure that a suite of resources is not there to target a person. These are some of the actions that have been taken. I come back to the point that while social media companies have a role to play, it is important to get this reference in legislation to protect people with photosensitive epilepsy.

Chairman: I thank Mr. McGeoghegan again very much. Does Dr. Campbell have any observations to make on this particular question?

Dr. Norah Campbell: No, I do not. I have many colleagues and friends who work in digital marketing, but I have not engaged directly with those companies.

Chairman: Ms Campbell indicated earlier that she wished to reply to a question that was asked. Is there anything she would like to say in that regard?

Dr. Norah Campbell: I cannot remember.

Chairman: Perhaps not. I have a good feeling that Dr. Campbell got to make everything in her presentation vivid in the minds of our members. That concludes our meeting today. I thank our witnesses for their very impressive statements and, more importantly, the robust discussion we have had since then. All of their points will be taken on board. It has been a most helpful engagement in the context of our pre-legislative scrutiny work on this Bill, which is very important, as our witnesses have stated. That concludes our business for today. On 16 June, we will have a private meeting via Teams at 11.30 a.m. and, following a short suspension, we will meet in public session at 12:30 p.m. Go dté sibh ar fad slán.

The joint committee adjourned at 2.29 p.m. until 12.30 p.m. on Wednesday, 16 June 2021.