

ICCL submission to Pre-legislative scrutiny of the General Scheme of the Online Safety and Media Regulation Bill

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

26 MAY 2021

Opening Statement delivered by Liam Herrick, Executive Director of ICCL

The Irish Council for Civil Liberties is an independent NGO which works to promote and protect human rights in Ireland. ICCL does not represent particular groups but rather works to ensure that the Government fulfils its human rights obligations in all relevant law and policy.

In our submission to the Committee, we analysed the General Scheme of the Online Safety and Media Regulation Bill in light of Ireland's human rights obligations. We specifically considered this bill in respect of the right to freedom of expression, the right to send and receive information, and the right to privacy.

Having analysed the scheme of this bill, ICCL is concerned that aspects of this bill are overly vague and poorly defined to the point that it is wholly unclear who can expect to be regulated by the proposed Media Commission and when. We have the following main concerns:

1. There is a troubling vagueness in respect of the definition of harmful online content, under Head 49 A. ICCL is concerned about what this vagueness will mean for legal accessibility, foreseeability, the safeguarding of the right to freedom of expression and communication, and the potential chilling effect resulting from this vagueness due to self-censorship and prior restraint. ICCL accepts that there is an intention to reduce the hurt that children and adults feel on account of material online. But passing legislation to allow for the issuing of notices for the removal of content which, for example, could be deemed *likely* to cause someone to feel humiliated, is a threshold so low that it could seriously damage individuals' constitutional rights to freedom of expression and to communicate.

2. Similarly, there is troubling vagueness around what online services will be deemed a "designated online service" by the Commission and, by extension, which operators of services will be subjected to its as-yet-unwritten regulatory codes. What we do know is that these designated services will be chosen at will by the Commission from a plethora of services which have one thing in common: they facilitate the dissemination of or access to user-generated content. The scheme tells us that the pool of online services, from which the Commission will designate a service includes, but is not limited to, social media services; public boards and forums; online gaming services; e-commerce services; private communication services; private online (cloud) storage services; press publications; online search engines; and internet service providers. This is a vast list.

3. The bill fails to provide for the actual role of the Online Safety Commissioner and, as a consequence, also fails to specify the functions of the Commissioner.

4. As it stands, this bill will provide for the regulation of conversations that are had online. It will see words written by members of the public subjected to codes, via service operators, even though members of the public do not themselves make up a licensed body. The enforcement of State codes of conduct against members of the public, who are not

licensed, for non-illegal behaviour creates serious problems with respect to fundamental rights.

5. Finally, it's wholly unclear to ICCL how the Commission intends to regulate *private* communications for criminal content in a manner that respects the principles of legality, necessity, and proportionality.

ICCL is supportive of mechanisms that will provide supplementary routes of redress for victims of crimes perpetrated online. But ICCL is concerned about the human rights impact of a system designed to restrict non-illegal speech in the online context. Thank you.

Please find here ICCL's full submission to the Oireachtas Committee: <https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-submission-on-Online-Safety-Media-Regulation-Bill.pdf>

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights. ICCL has worked on data protection for decades.