Page 2

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Page 3

4 - Question 1:
What system should be put in place to require the removal of harmful content from online platforms? For example, the direct involvement of the regulator in a notice and take down system where it would have a role in deciding whether individual pieces of content should or should not be removed on receipt of an appeal from a user who is dissatisfied with the response they have received to a complaint submitted to the service provider. **[Sections 2, 4, & 8 of the explanatory note]**
What matters most in this context is that the takedown procedure is simple, accessible, and effective. "Effective" in this context means that the takedown procedure reacts swiftly and broadly enough to prevent as much harm as possible to the person(s) impacted by, or at risk of being impacted by, the harmful online material in question. Takedown procedures run by service providers themselves need to be regulated by an independent regulator/oversight body. Such regulation might take the form of a statutory duty to comply with Codes of Practice on takedown procedures, enforced by the regulator through inspections and reporting requirements, for example. Where takedown procedures are perceived not to be working in an individual case, they should be subject to an independent appeal process which is itself simple, accessible and effective. Whether this independent appeal process is standalone or part of the independent regulator's functions is less important than the necessity to ensure that the appeals process acts on the same principles as those put forward and enforced by the independent regulator in Codes of Practice which must be followed by service providers.

5 - Question 2:
If the regulator is to be involved in deciding whether individual pieces of content should or should not be removed, should a statutory test be put in place before an appeal can be escalated to the regulator? Please describe any statutory test which you consider would be appropriate.
[Sections 2, 4 & 8 of the explanatory note]

It seems to us that as far as online child sexual exploitation and abuse materials are concerned (1) , and as far as sexual cyber-bullying content is concerned (2) (whether or not children or vulnerable persons are its intended or actual victims), a simple takedown request from an actual or prospective victim, an appropriate adult acting on behalf of a minor actual or prospective victim, or a professional or other third party who has been asked to make a takedown request on behalf of any actual or prospective victim, in each case acting in good faith and making reference to material which is illegal or otherwise harmful or potentially harmful - should be enough to trigger an effective takedown procedure. There should not be any requirement to prove actual harm, or serious harm. It should be enough that the material has the potential to cause harm, not least because time is of the essence.

6 - Question 3:

- Which online platforms, either individual services or categories of services should be included within the scope of a regulatory or legislative scheme?
[Sections 2, 5 & 6 of the explanatory note]

RCNI recommends that the approach taken in the UK Government White Paper on Online Harms (published April 2019) is considered very carefully. See this online link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf. The issue of its scope is discussed from p 49 of printed version. Its authors propose that the new Government strategy on online harms will apply to all companies which provide services or tools allowing, enabling or facilitating users to share or discover user-generated content, or interact with each other online. This is far-reaching. However, the authors stress that they do not want to impose heavy administrative etc burdens on small and medium enterprises. Our experience of working to address sexually abusive behaviours, including criminal behaviours, online is that abusers will use every possible means to continue abusing, therefore it is important to cast the regulatory net as widely as possible. This is especially the case when dealing with sexually abusive content online as it always has the potential to cause grave harm, and especially to children and to otherwise vulnerable persons.

7 - Question 4:
How should harmful online content be defined in national legislation? Should the following categories be considered as harmful content? Online platforms are already required to remove content which it is a criminal offence under Irish and EU law to disseminate, such as material containing incitement to violence or hatred, content containing public provocation to commit a terrorist offence, offences concerning child sexual abuse material or concerning racism and xenophobia. Are there other clearly defined categories which should be considered?

For example:

- Serious Cyber bullying of a child (i.e. content which is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating)
- Material which promotes self-harm or suicide

- Material designed to encourage prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health

[Sections 2, 4 & 6 of the explanatory note]

RCNI's view is that the definition of "harmful content" should be drawn widely. This is for two discrete reasons: (1) the early stages of grooming a child for future sexual exploitation can look and sound harmless enough in isolation, nevertheless they are the harbingers of actual or attempted serious sexual crime - indeed such communications often fit the definition of grooming as a criminal offence anyhow; and (2) instances of sexual cyber-bullying of a adult who may not fit any legal definition of a vulnerable person - may also look and sound harmless enough when viewed in isolation. It is the context which determines whether this is an abusive behaviour or not. Sometimes, sexual cyber-bullying may form part of a pattern of harassment or coercive control, both of which are criminal offences. RCNI submits

that a category of harmful online content does not have to be clearly or easily defined, to be capable of inflicting lasting damage on those affected by it, and that therefore, every effort should be made to capture (and have taken down) material which might not at first blush look or sound abusive but in its context, is so or capable of being so. RCNI respectfully suggests that close attention is paid to the preliminary list of online harms at page 31 (printed version) of the UK Government White Paper on Online Harms cited above, and also, to the definition of harmful material in the recently published Children's Digital Protection Bill 2018 (see www.oireachtas.ie)

8 - Question 5:
The revised Directive introduces a definition of Video Sharing Platform Services. Where should the limits of this definition be, i.e. what services should and shouldn't be considered Video Sharing Platform Services? Please include your rationale and give examples.
[Section 3 of the explanatory note]

RCNI cannot supply an exhaustive list of all Video Sharing Platform Services now available to the public. The example most often given is Youtube, over which as we understand it, there is no prior editorial control though that there are contents standards and complaint and takedown procedures. It seems to us that it is appropriate to draw the Irish legislative definition as widely as possible, so that it covers not only such obvious examples as Youtube, but also all social media platforms, messaging and email services, on which or over which any video material may be communicated through the internet or through other electronic means (e g SMS). This is because abusers will use any and all means to carry out abusive behaviours, and to be effective, any definition must encompass as many different forms of VSPS as possible.

9 - Question 6:
The revised Directive takes a principles based approach to harmful online content and requires Video Sharing Platform Services to take appropriate measures to protect minors from potentially harmful video content, the general public from video containing incitement to violence or hatred and certain criminal video content. It also requires that Ireland designate a regulator to oversee the ongoing implementation of these measures.

Given this, what kind of regulatory relationship should there be between a Video Sharing Platform Service established in Ireland and the Regulator?
[Section 3, 4, 5, 6 & 8 of the explanatory note]

RCNI submits that with regard to Child Sexual Exploitation and Abuse material, and to sexual cyber-bullying material (both themselves widely defined) - it is important that the regulatory relationship between any VSPS and the Regulator, be as effective as possible. This is not just a matter of stringent and frequent oversight by the Regulator, but also a matter of having clear Codes of Practice to be followed by VSPS's, backed up by support in the form of information, training and ongoing research in this area by the Regulator. RCNI recommends that the approach of the UK Government in its White Paper on Online Harms is examined closely, especially with regard to its idea of creating a duty of care for all companies to take all reasonable steps to prevent harms to users and others

affected by harmful content (see page 41 inter alia of the printed version of the WP), and its list of possible Actions to be included in a Code of Practice to set out what "reasonable steps" would involve in practice (pages 65/66 of printed version of WP). RCNI also commends the White Paper's concept that any company's response should be proportionate to the level of harm which could be caused by certain material, including but not limited to, child sexual exploitation and abuse material (referred to as CSEA in the document) (See page 62 of printed version). Finally, any compliance regime must be underpinned by effective and where appropriate, stringent sanctions. The White Paper suggests "civil fines", requirements to comply with directions of the Regulator, possible publication of compliance reports, ISP blocking, disruption of business activities, and ultimately at the most serious end of the scale, criminal liability of individual members of senior management in any persistently non-compliant company (see pp 59 et seq of printed version of WP).

10 Question 7:

- On what basis should the Irish regulator monitor and review the measures that a Video Sharing Platform Service has in place, and on what basis should the regulator seek improvements or an increase in the measures the services have in place?
  [Section 3, 4, 5, 6 & 8 of the explanatory note]

  RCNI submits that the Irish regulator should take a proactive approach to monitoring and reviewing measures to safeguard VSPS users and others. The Regulator, in consultation with both VSPS companies and outside experts, should devise Codes of Practice to be followed in order to ensure that all VSPS companies do take all reasonable steps to prevent harms to users or others affected by their service, that all users and others have access to a simple and effective complaints and takedown procedure and to an independent appeals process, and that all VSPS companies educate themselves not only about known on-going risks to users and others from various potential online harms, but also about any possible negative effects of new technology as it develops, so that they can then take steps to counteract them. Monitoring of compliance by the Regulator should be both regular and formal (annual or six monthly reports, for instance) and irregular, more informal and unexpected (spot inspections, perhaps in response to a concern raised by an appeal issue e g). The Regulator should also have powers to gain access on request to information and documents held by the company which are relevant to safety concerns, though not of course to publish either. Where improvements are necessary in the view of the Regulator, s/he must have the powers to give directions and set timetables for compliance, and there must be a scale of escalating sanctions for failure to comply with any of these.

11 Question 8:

- The revised Directive closely aligns the rules and requirements for television broadcasting services and on-demand audiovisual media services. Given this, what kind of regulatory relationship should there be between an on-demand audiovisual media service established in Ireland and the relevant Irish regulator? In addition, should the same content rules apply to both television broadcasting services and on-demand audiovisual media services?

[Section 4 of the explanatory note]

RCNI accepts of course that both television broadcasting and on-demand audio-visual media services (e g Netflix) should be, and are, allowed to address difficult and distressing subjects such as the sexual exploitation and abuse of children, vulnerable people and others. Silence about these horrors does nothing to prevent them or help their victims. It seems to us very important that neither television broadcasting nor on-demand audio-visual services should escape editorial control stringent enough to detect and exclude material which condones, excuses, or advocates for any form of sexual violence or abuse. What matters is the context, the theme and purpose behind any given programme: it is in order to include an interview with an unrepentant sex offender to show how difficult it is for some offenders to change their behaviour, but it is not in order to include the same interview in order to show would be offenders how best to evade detection for the same behaviour. Accordingly, it seems to us that the rules should be broadly the same for television broadcasting services and on-demand audio-visual media services with regard to content. We do not see any reason why the regulatory relationship between either service and the Regulator should not be broadly the same.

12 Question 9:

- Should Ireland update its current content production fund (Sound & Vision fund currently administered by the BAI from licence fee receipts) to allow non-linear services to access this fund? Should Ireland seek to apply levies to services which are regulated in another EU Member State but target Ireland in order to fund or part-fund an updated content production fund?

[Section 4 of the explanatory note]

RCNI does not have a view on this point.

13 Question 10:

- The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has previously raised concerns regarding the National Legislative Proposals under Strand 1. How can Ireland balance the fundamental rights of all users, e.g. the right to freedom of expression, including those affected by potentially harmful online content and those creating said content, in pursuing the further regulation of harmful online content?

[Section 2, 4, 5, 7, & 8 of the explanatory note]

RCNI submits with respect that the right to freedom of opinion and expression must have limits. In fact, it already has, enshrined in our criminal law. It is not lawful, for example, to distribute child pornographic material online or otherwise for purposes of child sexual exploitation. It seems to us that as far as sexual harms are concerned, provided that "harmful content" is comprehensively and clearly defined, only abusers, potential abusers and those who facilitate their proclivities will be restricted in their ability to express themselves and share their opinions and other materials. It seems clear to us that the public interest good of preventing and addressing sexual violence overrides any alleged right of a person to express themselves freely online as well as off-line.

14 Question 11:

- How can Ireland ensure that its implementation of the revised Directive under Strand 2 and any further regulation of harmful online content under Strand 1 fits into the relevant EU framework for the regulation of online services, including the limited liability regime for online services under the eCommerce Directive? **[Section 2, 4, 5, 6, 7, & 8 of the explanatory note]**

  RCNI respectfully submits that the duty of care principle elaborated at length in the UK Government White Paper on Online Harms (see e g page 41 of printed version) facilitates a proactive, preventative approach to combating the scourge of child sexual exploitation and abuse online. It goes beyond the reactive approach which limits itself to take-down policies and measures (where the e-Commerce Directive takes effect). It must be underpinned of course by properly resourced support in the form of high quality on-going research, information and training facilitated by the Regulator, It seems to us that there is nothing in the revised Directive, as described, which would stand in the way of this approach. A concrete example of an innovative development which might be deployed as part of a proactive approach is the UK based Project Arachnid, which is a tool via which the web can be trawled to identify child sexual exploitation and abuse material (see page 39 of the printed version of the White Paper on Online Harms cited above).

15 Question 12:

- Potential options for regulatory structures to progress the regulation of the four streams are identified in the explanatory note accompanying these questions. These options include:

  - Restructuring the Broadcasting Authority of Ireland as a Media Commission responsible for the four strands

  - Two regulatory bodies. Assigning the responsibility for editorial services, e.g. on-demand audiovisual media services, to a restructured BAI and creating another regulatory body with responsibility for non-editorial online services, e.g. Video Sharing Platform Services.

  Is one of these options most appropriate, or is there another option which should be considered?
  [Section 5 of the explanatory note]

  RCNI's view is that this division of labour should be decided on the basis of knowledge as well as resources: whichever organisation has the appropriate knowledge base and the capacity to go on learning more about the area as technology evolves, should be the first one to be considered to regulate a particular stream of work. Beyond that, we do not have a view on the best way forward on this point.

16 Question 13:

- How should the chosen regulatory structure or structures be funded given the various categories of services which are to be regulated?
  [Section 5 of the explanatory note]

  RCNI does not have a view on this point, except to say that if at all possible, the regulatory structure should be funded publicly - ie independently of the

organisations who will be policed by it and on whom the regulator may have to impose sanctions. It will gain more public confidence and acceptance if this is the case.

17 Question 14:

- What functions and powers should be assigned to the relevant regulator to allow them to carry out their monitoring and enforcement role (some examples have been provided in Section 8 of the explanatory note)? In addition, should these functions and powers differ between regulation for Video Sharing Platform Services under the revised Directive under Strand 2 and regulation adopted at a national level under Strand 1? Please include your rationale and give examples. **[Section 2, 4, 5, 7, & 8 of the explanatory note]**

  The Regulator must have powers to find things out through regular inspections, interviews, disclosure of documents, online materials, and explanations of technological phenomena, to require regular (and irregular) reports on compliance, to carry out on the spot checks, "dummy runs" to see whether inappropriate material which could have been identified and blocked, is actually identified and blocked, whether complaints are acted upon, and so on. S/he should also have at their disposal the resources to consult with, advise, support, warn, inform and train, company personnel, and of course the powers to impose any one of a range of sanctions which might be appropriate in a particular case. S/he should have the power to direct changes to existing practices to ensure compliance with the law including any Codes of Practice. It seems to us that the oversight powers needed would be greater in respect of VSPS companies than for television broadcasting or on-demand audio-visual services.

18 Question 15:

- What sanctions should be available to the relevant regulator to apply to a service that does not comply with its obligations? Such sanctions may include

  - The power to publish the fact that a service is not in compliance,

  - The power to issue administrative fines,

  - To issue interim and final notices to services in relation to failures of compliance and the power to seek Court injunctions to enforce the notices of the regulator, and,

  - The power to apply criminal sanctions in the most serious cases.

  Are there any other sanctions which should be considered? please provide your reasoning as to why the regulator should have recourse to a particular sanction. **[Sections 2, 4, 6, 7 & 8 of the explanatory note]**

  RCNI considers that all these measures listed might be used as and when appropriate. In addition, we note that the UK Government White Paper on Online Harms lists a couple more, both we understand measures of last resort: (1) ISP blocking and (2) Disruption of business activities (forbidding company from displaying ads or accepting new ad contracts e g). They are draconian in nature, clearly, but they might have a significant impact e g where even a very large fine

might not, because the company's means are so great. They are also both PR disasters for companies, of whatever size. Further, (3) a real risk of imprisonment for senior management could be a very effective deterrent, in the worst cases of non-compliance. (4) Could we also suggest that where it is clear that a user or other person HAS been harmed by e g failure to take down material when so requested, that a company might be ordered to pay them meaningful compensation?

19 Question 16:

- Given that the revised Directive envisages that a Video Sharing Platform Service will be regulated in the country where it is established for the entirety of the EU it does not envisage that the relevant regulator would assess individual complaints. However, the revised Directive requires Ireland to put in place a system of mediation between users and Video Sharing Platform Services. Given that such a system would be in place on an EU-wide basis should thresholds apply before an issue could be brought before this system? If so, then what thresholds would be most appropriate?
  [Sections 2, 4, 6, 7 & 8 of the explanatory note]

  RCNI suggests that the threshold for bringing a complaint should be as low as possible - it should be enough for the aggrieved person to identify the abusive material or action for action to be taken. This will only work if there is a comprehensive but still, clear and unambiguous definition of "harmful content".