Consultation response: Draft Online Safety Code
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By email: VSPSregulation@cnam.ie

To Media Commission/*Coimisiún na Meán*,
Online Safety Commissioner, Ms. Niamh Hodnett; Digital Services Commissioner, Dr. John Evans

We would like to thank the Commission for the opportunity to provide feedback on the Draft Online Safety Code. As contributors on an earlier submission, we have already provided inputs on the consultation document in preparation for the Draft Online Safety Code.[1] Therefore, in this very brief submission, we only address a handful of questions in order to underscore certain points or provide further evidence and suggestions. Moreover, we highlight those proposed measures in the Draft Online Safety Code that we believe might benefit from further debate and evidence as to their possible implications. Thank you again for the opportunity to provide feedback.

Question 2: What is your view on the proposal to include user-generated content that is indissociable from user-generated videos in the definition of content to be covered by the Code?

Response: In our view, it is essential that user-generated content that is indissociable from user-generated videos be included in the definition of content to be covered by the Code. As

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[1] Feijóo, S., O'Higgins Norman, J., **Milosevic, T**., Reynolds, M., **Verma, K.**, Laffan, D., McCashin, D. (2023). *Developing Ireland's First Binding Online Safety Code for Video-Sharing Platform Services*. Retrieved from: https://www.cnam.ie/publications/

we described in detail in the submission that we contributed to earlier,[2] harmful online content, such as cyberbullying, is often multi-modal in nature. For example, a video could seemingly be benign or even positive, yet accompanied by a caption or comment that contextualises its true intention and message, which could be hurtful and bullying in character.[3] If the code were to cover user-generated videos only, it could risk failing to address the issue effectively.

Question 3: What is your view on the definitions of "illegal content harmful to children" and "regulated content harmful to children"?

With the caveat that we are social and computational and not legal scholars, we find the designation of "regulated content harmful to children" to be helpful in distinguishing between the offence-specific categories and categories of harmful online content under 139A of the Online Safety and Media Regulation Bill. Nonetheless, we would like to draw attention to issues that might arise when attempting to classify individual incidents in practice. For example, threatening a teen with publication of a nude image or publishing a nude image of a teen without their consent, would, in my understanding of the Code, constitute an example of "illegal content harmful to children." At the same time, such an act and content could be merely one component of a larger bullying incident ("regulated content harmful to children"). In as much as the code stipulates different measures that platforms must adhere to in case of regulated vs. illegal content, classification of such incidents could pose additional challenges for code enforcement.

Question 5: Do you have any other comments on any other definitions in the Draft Code?

Harmful Audio-visual Commercial Communications: We understand that the definition provided is derived from the wording in the AVMS Directive and that the word "dignity" is referred to in the text of the Directive, for instance Article 9(c,i): "audio-visual commercial communications shall not prejudice respect for human dignity."[4] Nonetheless, we would like to point to the fact that human dignity is a term that is frequently referred to in legislation without provision of an explicit, specific and pre-defined meaning[5], which could potentially pose difficulties for enforcement when such regulation is applied to audio-visual communications and audio-visual commercial communications.

Media literacy: With respect to definition of media literacy provided on pages 47 and 73 of the consultation document: It would be helpful if the Commission could possibly cite the source of the definition provided in the document for public guidance. We could also recommend considering broadening the scope of the definition of media literacy as currently presented in the consultation document. Placing a stronger emphasis on the digital

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[2] Feijóo et al., 2023.

[3] See e.g. Milosevic, T., Verma, K., Carter, M., Vigil, S., Laffan, D., Davis, B., & O'Higgins Norman, J. (2023). Effectiveness of Artificial Intelligence–Based Cyberbullying Interventions From Youth Perspective. *Social Media+ Society*, *9*(1), 20563051221147325.

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218

[5] See for instance, Milosevic, T., Collier, A., & Norman, J. O. H. (2023). Leveraging dignity theory to understand bullying, cyberbullying, and children's rights. *International journal of bullying prevention*, *5*(2), 108-120.

component of media literacy definition (also referred to as digital media literacy,[6] which is a broader concept than digital skills[7]). Specifically, in our view it is important that such education includes an understanding of commercial interests of (especially large) online platforms and the implications that these have on safety, privacy, inequality, discrimination, disinformation, freedom of expression and democracy. These topics are sometimes covered under digital citizenship[8] education which could also be considered as a component of media literacy education.[9] Furthermore, rapidly developing technologies such as generative Artificial Intelligence and the role of large platforms in funding their development is an increasingly important component of media literacy education.[10] While one could argue that these topics might fall under the scope of other pieces of legislation such as the EU AI Act[11], we would nonetheless like to suggest that these topics are inextricably linked to the concept of media literacy and the remit of the Media Commission.

We acknowledge that platforms may not be realistically expected to teach/provide educational materials with such a broader definition of media literacy that we propose here; nonetheless, we find it important that the Commission facilitates such education, if at all possible.

Question 8: What is your view on the requirements in the draft Code in relation to reporting and flagging of content?

With respect to reporting and flagging provisions (11.11 and 11.12), we wonder if user-friendly needs to be further specified as child-friendly and adapted to the age of the child (as further specified in the supplementary Statutory Guidance Material).

Question 9: What is your view on the requirements in the draft Code in relation to age verification?

Underage use of social media platforms is widespread and it presents a challenge for ensuring children's safety and privacy[12]. If platforms deny actual presence of underage users on their

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[6] See e.g. De Abreu, B. S., Mihailidis, P., Lee, A. Y., Melki, J., & McDougall, J. (Eds.). (2017). *International handbook of media literacy education*. Taylor & Francis

[7] Livingstone, S., Mascheroni, G., & Stoilova, M. (2023). The outcomes of gaining digital skills for young people's lives and wellbeing: A systematic evidence review. *New media & society*, *25*(5), 1176-1202.

[8] Jones, L. M., & Mitchell, K. J. (2016). Defining and measuring youth digital citizenship. *New media & society*, *18*(9), 2063-2079.

[9] Mihailidis, P., & Thevenin, B. (2013). Media literacy as a core competency for engaged citizenship in participatory democracy. *American Behavioral Scientist*, *57*(11), 1611-1622.

[10] Widder, D. G., West, S., & Whittaker, M. (2023). Open (for Business): big tech, concentrated power, and the political economy of open AI. *Concentrated Power, and the Political Economy of Open AI (August 17, 2023)*.

[11] https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai

[12] Montgomery, K. C., Chester, J., & Milosevic, T. (2017). Children's privacy in the big data era: Research opportunities. *Pediatrics*, *140*(Supplement_2), S117-S121.

platforms, then such underage users are rendered invisible for policy and innovation purposes.[13]

We welcome the Commission's requirement in the Draft Online Safety Code for platforms to disclose the age-verification and age-assurance mechanisms that they rely on; and to provide evidence of their effectiveness (11.16-11.18). In light of widespread underage use,[14] greater clarity is needed in terms of effectiveness of companies' age assurance procedures; and also in terms of compliance with Article 8 of the General Data Protection Regulation. At the same time, certain age verification and age assurance techniques themselves can have serious consequences for privacy and freedom of expression of both children and adults.[15] Therefore, while we support the Commission's decision *not* to prescribe or mandate specific age-verification measures, we are also concerned about possible implications of setting a precedent in terms of having a regulatory body that recommends measures such as document-based age-verification.[16]

While we do not have a specific recommendation as to how to mitigate this risk, we wonder if a more robust public debate is necessary as to how these measures should be implemented; if specific technologies are considered to be an industry standard in terms of age assurance[17] and whether document-based verification needs to be re-visited as a possible or recommended approach.

Question 11: What is your view on the requirements in the draft Code in relation to parental controls?

We would just like to underscore the rights of underprivileged children who may not have sufficient parental or caregiver support and who might therefore use social media to find emotional and social support that they are not able to find at home. Such children might be adversely affected when their parents/caregivers use parental controls to restrict their access to social media and their participation rights are curtailed.[18] While we do not have a recommendation as to how to resolve this, an acknowledgement of this issue might be appropriate; such considerations could be contemplated when companies undertake Child Rights Impact Assessments when developing parental controls technologies for their products.

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[13] boyd, d. (2015, December 18). What if social media becomes 16-plus? New battles concerning age of consent emerge in Europe. *The Medium*. Retrieved from https:// medium.com/bright/what-if-social-media-becomes-16-plus-866557878f7#.skvnifxhd;

[14] Department of Tourism, C., Arts, Gaeltacht, Sport and Media. (n.d.). *National Advisory Council for Online Safety (NACOS): Report of a National Survey of Children, Their Parents and Adults Regarding Online Safety*. Retrieved from: https://www.gov.ie/en/publication/ebe58-national-advisory-council-for-online-safety-nacos/

[15] EDRI. (2023, October 4). Online Age Verification and Children's Rights: Position Paper. Retrieved from: https://edri.org/wp-content/uploads/2023/10/Online-age-verification-and-childrens-rights-EDRi-position-paper.pdf; see also with respect to setting a precedent for authoritarian regimes which could abuse such measures: DeNardis, L. (2014). *The global war for internet governance*. Yale University Press.

[16] https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739350/EPRS_ATA(2023)739350_EN.pdf

[17] https://www.yoti.com/blog/post-office-yoti-lead-the-way-in-accessible-identity-checks/; https://euconsent.eu/; https://iabeurope.eu/transparency-consent-framework/

[18] Livingstone, S., & Third, A. (2017). Children and young people's rights in the digital age: An emerging agenda. *New media & society*, *19*(5), 657-670.

Question 18: What is your view on the requirements in the draft Code in relation to media literacy measures?

It is not entirely clear to us from the wording of Section 13 whether the media literacy provisions refer to companies providing educational materials that explain how users can protect themselves on their platforms (such as Safety/Help/Wellbeing Centres that some companies already have). This point is made more clear to us only in the Supplementary Statutory Guidance material. In our view, it would be important to ensure that such provisions are implemented in a meaningful manner by companies, ensuring that the process does not become a box-ticking exercise.[19] Furthermore, in the Guidance materials, The Commission suggests collaboration with key stakeholders who can provide expertise and evaluation. If external stakeholders should provide evaluation, it would be important that the relationship between the advisory body and the industry partner is transparent, to be able to assess the advisory body's independence from the industry partner and ability to provide objective assessment and to voice critical feedback. Media Commission's review/analysis of companies' activities and targets should be helpful in this regard; we also believe that the Commission could take an active role in convening media literacy educational activities, especially with respect to critical media literacy that we refer to above.

Question 19: What is your view on the requirements in the draft Code in relation to ensuring the personal data of children is not processed for commercial purposes?

Specifying in the Code itself that such child data is not to be shared with Third Parties, might be advisable here as well as the Data Protection Commission's Fundamentals for a Child-Oriented Approach to Data Processing,[20] which are referred to only later on, in the Statutory Guidance Material.

Do you have any comments on Draft Supplementary Materials?

Regarding Section 1.1. Safety by Design: It would be helpful if the Commission might be able to provide guidance as to how it will evaluate companies' safety impact assessments; if it plans to facilitate public discussions of safety impact assessments and encourage companies to provide more information and clarifications, if this should be deemed necessary.

It would be particularly important to ensure periodic independent evaluation of popular platforms' recommender systems and effectiveness of reporting/flagging tools and complaints handling schemes from the perspective of end-users, children in particular. Such evaluation could take the form of independent research convened by the Commission, rather than by companies themselves, in order to ensure that companies' impact assessments and transparency reporting are accurate and reflective of their safety measures.

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[19] Milosevic, T. (2018). *Protecting children online?: Cyberbullying policies of social media companies*. The MIT Press.

[20] https://www.dataprotection.ie/sites/default/files/uploads/2021-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing_FINAL_EN.pdf

Having in mind the increasing reliance on Artificial Intelligence in proactive moderation by companies,[21] making an explicit reference to this process in the Code and asking companies to include reports on these in impact assessments, would be important, in our view.

Regarding Section 2.2. Online Safety Supports: Companies are encouraged to develop partnerships with NGOs, schools and institutions. It might be beneficial to highlight that it is important to ensure transparency in terms of what such arrangements entail, especially if partners are asked to evaluate effectiveness of companies' initiatives.[22] We would encourage the Commission to consider taking a more proactive approach in facilitating educational initiatives and funding initiatives (e.g. by levying companies) to support users affected by harmful online content, rather than leaving such initiatives solely at the discretion and judgement of companies.

About the authors

The members of the **UCD Centre for Digital Policy** believe that policy making and evaluation must be deliberative, emergent, and iterative, with sociocultural values at their core. Such an ambitious agenda will require working with stakeholders and beneficiaries to develop effective and evidence-based formal and informal regulation and institutional digital policies, maintain such policies over time, and foreground urgent issues of sustainability, equity, and human rights. The members of the centre draw on interdisciplinary methods from computing, law, design, human rights, and social science to create policy, amplify positive effects on society (especially vulnerable citizens, who may include women, people of colour, the poor, migrants, children, and others), and study policymaking across technologies and sectors.

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[21] Milosevic, T., Van Royen, K., & Davis, B. (2022). Artificial intelligence to address cyberbullying, harassment and abuse: New directions in the midst of complexity. *International journal of bullying prevention*, *4*(1), 1-5.

[22] Milosevic, T. (2018). *Protecting children online?: Cyberbullying policies of social media companies*. The MIT Press.

[23] https://www.cilter.ie/

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