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to me, Catherine ▾

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Hi Conor,
Please find below response to your recent query.

All the best,
Kevin

Online Safety

Status of the Online Safety and Media Regulation Bill

- The General Scheme of the Online Safety and Media Regulation Bill was approved by Government on 9 January. The enactment of the proposed Online Safety and Media Regulation Bill is a commitment in the Programme for Government.
- On 8 December 2020, the Government approved the finalisation of General Scheme of the proposed Bill through the addition to the provisions relating to the funding of the Media Commission, the regulation of audiovisual media services, the maximum amount for financial sanctions for non-compliance and other matters.
- Detailed legal drafting by the Office of the Attorney General is ongoing, having commenced in late October 2020. Pre-legislative scrutiny by the relevant Joint Oireachtas Committee has begun through a targeted call for submissions from stakeholders.
- The proposed Bill will establish a multi-person Media Commission, including an Online Safety Commissioner, dissolve the Broadcasting Authority of Ireland, establish regulatory frameworks for online safety and the regulation of audiovisual media services, and transpose the revised Audiovisual Media Services Directive.
- The regulatory framework for online safety will be overseen by the Online Safety Commissioner. The Commissioner will have the power to designate online services for regulation and to create and enforce binding online safety codes. These will seek to minimise the availability of defined categories of harmful online content through oversight of the systems that online services used to deliver and moderate content. The regulator will have the power to sanction non-compliant online services, including financially.
- These defined categories of harmful online content are criminal material, serious cyberbullying material, material promoting eating disorders and material promoting self-harm or suicide.

Questions

1. Requiring social media sites to mediate or de-platform instigators of violent events or protests in breach of public health regulations.

The General Scheme of the Online Safety and Media Regulation Bill provides for a category of harmful online content concerning material by which a criminal offence is committed. Incitement to violence engages a number of criminal offences and, therefore, will be covered by the OSMR Bill.

Organising a mass gathering in breach of Covid-19 public health regulations is a criminal offence, regardless of whether this organisation takes places online or offline and regardless of the purpose of the gathering. Those Covid-19 public health restrictions which have legal effect, including the ban on mass gatherings, are made by the Minister for Health by statutory instrument. The power to make these S.I.'s is provided for by s. 31A of the Health Act, 1947. Therefore, as long as these regulations remain in effect they would be covered by the OSMR Bill.

It is the law that an online service, upon becoming aware of illegal content on their service, must act expeditiously to remove or disable access to that material. If they do not do so then the online service will become liable for that content. This obligation on online services is provided for by Article 15 of the eCommerce Directive, 2000. That same article also prohibits Member States from obliging online services to proactively identify and remove illegal content from their services. The reason for this is that it would be tantamount to obliging an online service to monitor all user-generated content on its platform, which has been held to be an illegitimate restriction on the rights to freedom of expression and privacy.

In relation to criminal content, the regulatory framework for online safety under the OSMR Bill will provide for democratic oversight and, where appropriate, direction over how online services engage with their obligations under Article 15 of the eCommerce Directive and in relation to safety-by-design. This will be done through online safety codes, which will cover issues such as risk and impact assessments, reporting requirements, measures taken by online services to minimise the availability of harmful online content and complaints mechanisms operated by online services.

2. Banning of the social media accounts of political figures

It would not be appropriate to require that a social media platform continue to provide accounts to political figures, just like other types of account holders, who are in breach of the platform's terms and conditions.

However, the OSMR Bill will provide for democratic oversight over, and ensure consistency through online safety codes, the application of any processes by which a person is banned from accessing a designated online platform in relation to any issues arising regarding the categories of harmful online content.