

**Submission on the Consultation of the Draft Media Service
Code and Media Service Rules Audiovisual On-demand
Media Service Providers**

August 2024



Founded in 1995, the Children's Rights Alliance unites 150 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies, and services.

A.S.S.C Accompaniment Support Services for Children
Alcohol Action Ireland
Amber Women's Refuge
Amnesty International Ireland
An Cosán
Anew
Anne Sullivan Foundation
Aoibhneas
Archways
AsIAm
Association of Occupational Therapists of Ireland (AOTI)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown
Bedford Row Family Project
BeLonG To Youth Services
Bodywhys
Breaking Through CLG
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
ChildVision
Citywise Education
Clarecare
COPE Galway
Cork Life Centre
Cork Migrant Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Early Learning Initiative (National College of Ireland)
Educate Together
Empowerment Plus
EPIC
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaeleideachas
Galway Traveller Movement
GIY Ireland
Good Shepherd Cork
Helium Arts

Humanist Association of Ireland
Immigrant Council of Ireland
Inclusion Ireland
Inner City Organisations Network (ICON)
Institute of Guidance Counsellors
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
iScoil
Jigsaw
Katharine Howard Foundation
Kerry Diocesan Youth Service (KDYS)
Kids' Own Publishing Partnership
Kinship Care
Laois Domestic Abuse Services
Leap Ireland
Let's Grow Together
LGBT Ireland
Meath Women's Refuge & Support Services
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
Move Ireland
Museum of Childhood Ireland
Music Generation
My Mind
My Project Minding You
National Childhood Network
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
New Directions
Novas
One Family
One in Four
Our Lady of Lourdes Community Services Group
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond
SAFE Ireland

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Saoirse Domestic Violence Services
SAOL Project
School of Education UCD
Scouting Ireland
Sexual Violence Centre Cork
Simon Communities of Ireland
SIPTU
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
StartBright Early Learning Centres
TASC
Teachers' Union of Ireland
Teach Tearmainn

Terenure College Rugby Football Club
The Ark, A Cultural Centre for Children
The Irish Red Cross
The Jack and Jill Children's Foundation
The UNESCO Child and Family Research Centre, NUI Galway
The Wheel
Transgender Equality Network Ireland
Traveller Visibility Group Ltd
Troiir
UNICEF Ireland
Variety – the Children's Charity of Ireland
Vision Ireland
Women's Aid
YMCA Dublin
Young Ballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

1. Introduction

The Children’s Rights Alliance unites over 150 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights. The Children’s Rights Alliance is also a member and National Partner of Eurochild, the largest network of organisations and individuals working with and for children in Europe. Eurochild works closely with the European Union, as protecting children’s rights is among the EU’s aims and values.

The Children’s Rights Alliance welcomes the publication of the consultation document for the Draft Media Service Code and Media Service Rules on Audiovisual On-demand Media Service Providers.¹

The risks to children posed by on-demand services are a critical area of concern, particularly as these services become more prevalent and accessible to children and young people. As such, the Alliance is pleased to have the opportunity to make a written submission to Coimisiún na Meán (the “Coimisiún”), in which we focus on the areas that relate to children and young people specifically. Before turning to consider the relevant questions below, it is worth noting our concern that the Code on regulating aspects of functionality of on-demand media service providers, including. On-demand services can contribute to excessive screen time and addiction, which can impact physical health, sleep patterns, and academic performance.² For this reason, the Alliance is of the view that the Code must set out clear obligations requiring on-demand media services to put in place measure that prohibit or limit features that may negatively impact the health or wellbeing of children and young people.

The Media Services Code and Rules for On-demand Service Providers must be guided and fully reflect rights under the UN Convention on the Rights of the Child (UNCRC)³. In particular, Article 17 emphasises the role of media in ensuring children’s access to diverse information that promotes their well-being. Article 16 protects children's right to privacy, highlighting the need for safeguards against unlawful interference in their personal data. Article 13 supports children's right to seek and receive information through any media, though this must be balanced with protection from harmful content. Article 3 underscores that the best interests of the child must be a primary consideration in all actions, including those by private companies such as media providers. Additionally, Article 19 requires that children be protected from all forms of physical or mental violence and abuse, necessitating safeguards against harmful content, while Article 34 mandates protection from sexual exploitation and abuse.

¹ Publication date 4 July 2024, https://www.cnam.ie/wp-content/uploads/2024/07/4_OnDemand_ConsultationDoc-1.pdf

² The design of these services often encourages prolonged use through features like auto-play. Maurya, C., Muhammad, T., Maurya, P. *et al.* The association of smartphone screen time with sleep problems among adolescents and young adults: cross-sectional findings from India. *BMC Public Health* 22, 1686 (2022). <https://doi.org/10.1186/s12889-022-14076-x>; Przybylski, A.K., and Weinstein, N., 'A Large-Scale Test of the Goldilocks Hypothesis: Quantifying the Relations Between Digital-Screen Use and the Mental Well-Being of Adolescents' (2017) *2 Psychol. Sci.* 1563, 1568.

³ UN General Assembly, *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990)

2. Sections 1 – 8 of the Draft Code and Rules

Section 4: Regulatory Principles Relevant to the Code and Rules

The Alliance welcome the Coimisiún’s commitment to ‘ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children’,⁴ and ‘in performing its functions... shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth...’.⁵ The Alliance also notes, and welcomes the references in the draft Code to the obligation in Article 6a of the Audiovisual Media Services Directive (“AVMS Directive”), which requires that Member States takes measures to ensure that media services that may impair the physical, mental or moral development of children are only made available in such a way as to ensure that children will not normally see them. While these are of course welcome, as it recognises the special duty owed to children. To further support this approach, the Code should also include explicit reference to other core human rights treaties and obligations as a way of further grounding the Code in human rights, especially children’s rights. These could include, the European Convention on Human Rights,⁶ the UN Convention on the Rights of the Child,⁷ and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly called the Istanbul Convention.⁸ In line with the views of the UN Committee on the Rights of the Child, the Code would strengthen the commitment to the rights of children and young people if it explicitly acknowledged that the digital environment ‘affords new opportunities for the realization of children’s rights, but also poses the risks of their violation or abuse’.⁹

In relation to Irish law, the Commission, as a public body, has a public sector duty¹⁰ to have regard for the need to eliminate discrimination, promote equality of opportunity, and protect the human rights of public sector staff and users. Those who engage with the Commission in relation to children’s rights, such as the Alliance and children themselves, constitute users. Consideration should be given to specifically including the public sector duty in this section of the Code.

Recommendation

- Expand section 4 to include all relevant international human rights treaties, in particular UN and Council of Europe treaties relating to the rights of the child
- Expand section 4 to include the Public Sector Duty

⁴ Part 4.3 Draft Code

⁵ Part 4.6 Draft Code

⁶ Transposed into Irish law through the Convention on Human Rights Act 2003

⁷ UN Convention on the Rights of the Child A/RES/44/25 (20 November 1989)

⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)

⁹ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, para 3

¹⁰ Section 42 Irish Human Rights & Equality Commission Act 2014

Sections 7 and 8: Compliance, Enforcement and Complaints

While part 7, Compliance and Enforcement requires on-demand media service to ‘prepare and implement a code of practice for the handling of complaints relating to the failure of the media service provider to comply with a media service code or media service rules’, the complaints mechanism set out in part 8 appears to be overly vague.

Audiences may make a complaint if they believe a media service provider providing an audiovisual on-demand media service has not complied with this Code and Rules. According to the draft Code, ‘Coimisiún na Meán advises complainants to make their complaint to the audiovisual on-demand media service provider in the first instance as this is the quickest way to have a complaint considered and responded to.’¹¹ The draft Code then goes on to state that ‘information on the complaints handling process, including Coimisiún na Meán’s process, ‘is available on the Coimisiún’s website’ and provides an email address. While the Alliance acknowledges that a complaint in the first instance should be made to the on-demand media service provider there appears to be very little information available on what the Coimisiún’s process for handling such complaints will be. As part of its oversight function, it is essential the Coimisiún requires on-demand media service providers to establish, operate and maintain clear, prominent, and age-appropriate complaints procedures.

It is vital to ensure that children and young people whose rights are not respected by the on-demand service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.¹² This should also align with the clear description of a child-friendly remedy outlined in the Council of Europe Guidelines¹³ while also complying with the UN Committee on the Rights of the Child’s guidance.¹⁴ Therefore, it is essential that the Coimisiún operate a clear, prominent, and age-appropriate complaints handling process to ensure that children and young people have access to an effective remedy.

Recommendation

- The Code must require that on-demand media service providers establish, operate age-appropriate and easy-to-use by children and young people complaints procedures.
- The Coimisiún must also ensure their complaints system is age-appropriate and easy-to-use by children and young people to ensure that children, young people, and their caregivers have access to remedies.

¹¹ 8.1 Draft Code

¹² European Convention of Human Rights Arts 6 and 13

¹³ Council of Europe, ‘Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment’ (COE 2018).

¹⁴ Council of Europe, ‘Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment’ (COE 2018), para 44

2. Harmful content provided for under Section 10 of the Draft Code and Rules

The draft Code only specifically references two types of content that ‘may impair the physical, mental, or moral development of children’,¹⁵ pornography and gratuitous violence.¹⁶ This categorisation is both limited and vague, especially since pornography is left undefined. Additionally, other content that may be harmful to children and young people is absent in the draft Code. Section 139a of the Broadcasting Act 2009 includes other harms that are equally relevant to on-demand media services. such as, content which promotes or encourages behaviour that characterises or glamourises a feeding or eating disorders, content which promotes or encourages self-harm or suicide, and content that makes available knowledge of methods of self-harm or suicide. At a minimum these harms should also be included in the draft Code to protect children and young people from a broader category of content that could impair mental, physical or moral their development.

Suicide is the leading cause of death cause of death among young people aged 15-19 years at global level.¹⁷ There are also staggeringly high levels of self-harm amongst children and young people in Ireland. The My World Survey in 2019 found that 22 per cent of adolescents reported having engaged in self-harm at some point in their lives.¹⁸ There has also been growing concern about the rates of eating disorders among Irish children and young people. Between 2018 and 2021, admission rose from 33 to 116 for anorexia nervosa among adolescents, with females accounting for 96 per cent of admissions for this diagnosis.¹⁹ These statistics highlight the increasing prevalence and seriousness of mental health. This requires that every effort must be made across all spheres of society to tackle these issues. One such way is the recognition in the Code of these harms and the recognition that content containing these topics may negatively impact children and young people. Evidence shows that exposure to media representations of harms and age-inappropriate content may negatively impact the mental and moral development of children; this is especially true for children and young people who have other psychological or social risk factors.²⁰ Extending the appropriate measure of prior content warnings, parental controls (which may include restricted modes and PIN access) age verification tools, and other technical measure outlined in 10.4 would go some way in ensuring that children and young people are not negatively impacted by media representation of harms and age-inappropriate content. Such measures would also be subject to the proportionality test set out in 10.5 which would not mean that such content cannot be accessed by children and young people, but that the service provider would be required to take measures to

¹⁵ Part10.3 draft Code

¹⁶ Part 10.3 draft Code

¹⁷ WHO, 2020

¹⁸ The survey involved over 10,000 young people, providing a broad overview of mental health issues, including self-harm see Dooley, B., et al., My World Survey 2: The National Study of Youth Mental Health in Ireland (University College Dublin and Jigsaw 2019) 47

¹⁹ Health Research Board, 'HRB Reports a Continued Rise in Psychiatric Admissions Related to Eating Disorders among Young People' (HRB, 17 April 2023) <https://www.hrb.ie/press-releases/hrb-reports-a-continued-rise-in-psychiatric-admissions-related-to-eating-disorders-among-young-people/>

²⁰Social Learning Theory and Violence: Social Learning Theory suggests that children learn behaviours through observation and imitation. Research supports this theory, showing that exposure to violent media content increases the likelihood of aggressive behaviour in children, establishing a causal relationship between media violence and real-life aggression see Bandura, A., 'Social Cognitive Theory of Mass Communication' (2001) 3(3) Media Psychol. 265, 268. A meta-analysis reviewed the impact of media on self-harm and found that exposure to media depicting self-harm is associated with increased self-harming behaviour in adolescents. The study concluded that media could serve as both a trigger and a model for self-harming behaviours see Mars, B., et al., 'Exposure to, and Searching for, Information About Suicide and Self-Harm on the Internet: Prevalence and Predictors in a Population-Based Cohort of Young Adults' (2015) 45(4) J. Affect. Disord. 123, 125Coyne SM, Ehrenreich SE, Holmgren HG, Underwood MK. (2019) "We're not gonna be friends anymore": Associations between viewing relational aggression on television and relational aggression in text messaging during adolescence. *Aggress Behav.* 2019 May;45(3):319-326. doi: 10.1002/ab.21821. Epub 2019 Feb 2. PMID: 30710456; PMCID: PMC6445721.

protect children and young people. Expanding part 10.3 to include other harmful content is a balanced and reasonable approach that reflects the rights and needs of children and young people.

Recommendation

- Expand part 10.3 to explicitly include content which promotes or encourages behaviors that characterises or glamourizes a feeding or eating disorders, content which promotes or encourages self-harm or suicide, and content that makes available knowledge of methods of self-harm or suicide.

3. Requirements relating to commercial communications provided for under Section 12, sponsorship under Section 13, and product placement requirements under Section 14 of the Draft Code and Rules

The Alliance welcomes that the draft Code includes ‘commercial communications harmful to children’ in 12.4. Although, this child-specific approach is limited to this one section. The 2020 WHO UNICEF-Lancet Commission on the future for the world’s children noted that ‘commercial marketing of products that are harmful to children represents one of the most underappreciated risks to their health and wellbeing’.²¹ The Council of Europe recommends²² that States should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. The UN Committee on the Rights of the Child has reiterated this in their recent General Comment and has recommended that:

‘States parties should make the best interests of the child a primary consideration when regulating advertising and marketing addressed to and accessible to children. Sponsorship, product placement and all other forms of commercially driven content should be clearly distinguished from all other content and should not perpetuate gender or racial stereotypes.’²³

Aligned to this, the Committee have recommended that there is a need to ensure that the profiling or targeting of children for commercial purposes is prohibited, including practices that ‘rely on neuromarketing, emotional analytics, immersive advertising and advertising in virtual and augmented reality environments to promote products, applications and services’.²⁴ As such, the Code should detail a list of child-specific protections in parts 13 ‘Sponsorship’ and 14 ‘Product Placement’, in addition to those set out in 12. This would ensure a consistent approach and recognition of child-specific requirements required to protect children from the full ambit of commercial communications.

We welcome the inclusion in the draft Code of restrictions on audiovisual commercial communications for alcohol,²⁵ and the prohibition of on-demand and media services from providing commercial communication harmful to children, which includes for alcoholic beverages aimed ‘specifically at children’.²⁶ We remain concerned by the limited scope of this provision as it appears to fall far shorter than the prohibitions set out in the Public Health (Alcohol) Act 2018 which prohibits alcohol advertising in locations where children are likely to be present, such as near schools, playgrounds, and public parks. To align the Code with existing laws, the Code should clearly prohibit all commercial advertising of alcohol that may be seen by children.

In line with s.36N(7) of the Broadcasting Act 2009, which explicitly provides for the inclusion of a prohibition or restriction on commercial communications relating to foods or beverages considered ‘by the Commission to be the subject of public concern in respect of the general public health

²¹ Clark, H., Coll-Seck, A.M., Banerjee, A., Peterson, S., Dalglish, S.L., Ameratunga, S. et al. (2020). A future for the world’s children? A WHO–UNICEF–Lancet Commission. *Lancet* 2020; 395: 605–58. accessed 4 September 2023.

²² Council of Europe, Guidelines to respect, protect and fulfil the rights of the child in the digital environment (2018) Recommendation CM/Rec(2018)7 of the Committee of Ministers, 20

²³ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, para 41

²⁴ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, para 42.

²⁵ 12.3 and 12.5 draft Code

²⁶ 12.4(v) draft Code

interests of children, in particular infant formula...or foods or beverages that contain fat, trans-fatty acids, salts or sugars' in a Media Code. At present, the Code does not include any provisions prohibiting or restricting these commercial communications that may harm the health or physical wellbeing of children and young people.

Recommendation

- Sections 13 and 14 could be strengthened to include child-specific obligations to regulate sponsorship and product placement that are aimed at children and young people.
- The Code must go further to protect children from alcohol advertising by requiring that audiovisual commercial communications for alcoholic beverages 'shall not be seen by minors'.
- Consideration should be given to prohibiting or restricting the commercial communications of infant formula, follow-on formula, and foods or beverages which contain fat, trans-fatty acids, salts or sugars.

6. Conclusion



The risks associated with on-demand services for children and young people are multifaceted, involving exposure to harmful content, privacy issues, and negative behavioural impacts. To address these potential risks effectively, it is essential that the Code fully reflects the obligations and principles contained in the UNCRC. In particular, Article 17, which emphasises the child's right to access information from diverse sources, while also safeguarding them from harmful materials. A combination of regulatory measures and industry accountability is required to ensure a safer digital environment that respects children's rights. On-demand service providers must fulfil their obligations under the UNCRC to ensure that children, young people, and their parents or caregivers are provided with the necessary information and resources to develop and enhance digital literacies, in line with their right to education and protection²⁷

²⁷ Articles 28 and 19 UNCRC