



Submission to the Joint Committee on
Media, Tourism, Arts, Culture, Sport and
the Gaeltacht on the General Scheme of
the Online Safety and Media Regulation Bill

March 2021





Introduction

1. Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence¹ against women and children since 1974. In this time, the organisation has built up a huge body of experience and expertise on the issue, enabling us to best support women and share this knowledge with other agencies responding to women experiencing domestic violence. More information on Women's Aid is available on womensaid.ie.

2. Women's Aid welcomes the publishing of the General Scheme of the Online Safety and Media Regulation Bill and appreciates the opportunity to make this submission to the Joint Oireachtas Committee. As our interest is on online abuse in intimate relationships and specifically image-based sexual abuse, we will only comment on Part 4 of the General Scheme.

Online Abuse and Violence Against Women

3. Cyber violence against women is an increasing problem worldwide. It includes a range of behaviours, such as cyber stalking, image-based sexual abuse, gender-based slurs and harassment, 'slut-shaming', unsolicited pornography, 'sextortion', rape and death threats, 'doxing', and electronically enabled trafficking.

4. Of particular relevance to this Bill is online harmful content and more specifically for many women the threat or actual sharing of intimate images without consent.

5. While image-based sexual abuse also happens to men, the majority of victims are women and in many cases the perpetrators are partners and ex-partners:

- The European Union Fundamental Rights Agency survey on violence against women found² that in Ireland 5% of women have experienced **cyber-stalking** since age 15, and 2% in the 12 months before the survey, with young women being particularly vulnerable³. In the survey, this term includes offensive or threatening emails and messages; offensive comments posted on the internet and non-consensual sharing of intimate images. In 50% of the cases, the woman's partner (current or previous) was the perpetrator of the stalking.⁴

1 While recognising that the legal term in Ireland is 'domestic violence' we acknowledge that many victims/survivors identify more with the term 'domestic abuse' or 'intimate partner violence'. Women's Aid uses these terms interchangeably in this submission to refer to the same set of abusive behaviors perpetrated by current or former intimate partners (including emotional, physical, sexual and financial abuse and coercive control).

2 FRA gender-based violence against women survey explorer 2012 available at: <http://fra.europa.eu/DVS/DVT/vaw.php>

3 Data from the FRA survey data explorer available on <http://fra.europa.eu/DVS/DVT/vaw.php>

4 This data includes both perpetrators of cyber stalking and "traditional" stalking



- In the UK, conviction data for image-based sexual abuse shows that out of the 376 prosecutions for this offence recorded in the year ending March 2019, 83% (313) were flagged as being domestic abuse-related.⁵
- In 2019, Women's Aid Direct Services heard 539 disclosures of digital abuse and stalking⁶ as one of the tactics of abuse carried out against women by intimate partners.
- 1 in 5 young women experience intimate relationship abuse in Ireland, nearly half (49%) of whom experience online abuse by their partners and ex-partners. Of these, 20% had images or videos taken of them without their permission with 15% having been threatened with sharing sexually explicit intimate photos and or videos and 17% having actually had sexually explicit or intimate videos or images shared without their consent.⁷

6. In our work, we regularly hear that abusers post (or threaten to post) intimate images of the woman without her consent to intimidate, blackmail and humiliate her, especially if she has already left him. In other cases, he uses the images for his financial gain without the woman's knowledge or consent by uploading them onto commercial websites. In some cases, her contact details (including phone number, address, social profiles) are also published, for example on escort websites.

Importance of Takedown Orders

7. Regardless of the motive, this type of abuse has a huge impact on the woman and it causes immense and irreversible harm. Women are humiliated online, their self-esteem is eroded, they may be forced to change jobs or schools or have to change all of their social media accounts. Sometimes image-based sexual abuse can lead to self-harm and suicide.

8. The longer such harmful content is online and the more it gets viewed, shared and downloaded, the worse the harm to the victim. It is therefore essential that this content is removed quickly before it goes viral. However, the scarce civil remedies currently available are not readily accessible nor effective and are also potentially very costly.

9. We appreciate that the Harassment, Harmful Communications and Related Offences Act 2020 has criminalised image-based sexual abuse, however criminal prosecutions take time and, for a variety of reasons, do not always go ahead.

10. Moreover, for many women the most pressing concern is to have content removed before it goes viral and causes significant and permanent damage.

5 <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/onlinesafety/>

6 Women's Aid, Annual Impact Report 2019, available here:

https://www.womensaid.ie/assets/files/pdf/womens_aid_annual_impact_report_2019_-_embargoed_29820.pdf

7 Women's Aid, 2020 One in five young women suffer intimate relationship abuse in Ireland. Available here:

<https://www.womensaid.ie/about/policy/publications/one-in-five-women-report-experience-intimate-relationship-abuse-womens-aid-2020/>



11. A fast, free and effective way to remove harmful content, especially but not only in relation to image-based sexual abuse, is needed. Other forms of cyber-abuse can also be devastating: Coco's law is named as such because this young woman tragically died by suicide due to other forms of online abuse.

12. Such a mechanism already exists in relation to child sexual abuse material, which ensures that most content is removed within 24 hours if hosted in Ireland and 72 hours if hosted overseas⁸.

13. **Women's Aid's main concern in relation to the General Scheme of the Online Safety and Media Regulation Bill is that there is no clear provision for takedown orders on foot of an individual complaint.**

Specific points on the General Scheme of the Bill

Head 49A – Categories of Harmful Online Content

14. Head 49A lists 4 categories of what is to be considered harmful online content. Women's Aid suggests that image-based sexual abuse or non-consensual sharing of intimate images should also be included in the list.

15. The enactment of the Harassment, Harmful Communications and Related Offences Act 2020 means that the distribution of intimate images without consent would automatically be included as illegal content under *Head 49A (a) material which it is a criminal offence to distribute under Irish law.*

16. However, Women's Aid believes that the Online Safety Commissioner should also have a role in creating awareness and promoting online safety (as per Head 10 (1) (xiii)(a) and Head 10 (1) (xiv)). Image-based sexual abuse is a huge part of harmful online content, with young people being particularly vulnerable. Research carried out by Women's Aid on intimate relationship against young people found that young people were reluctant to raise online abuse issues and seek support and that more awareness of online abuse is needed⁹.

17. In order to create awareness of non-consensual sharing of intimate images as harmful content, it is important that image-based sexual abuse is named and made visible in the legislation and in any online safety codes and it is not "hidden" in the category of illegal content.

18. Recommendation 1

In Head 49A include image-based sexual abuse and/or non-consensual sharing of intimate images in the list of harmful content

8 ISPAI briefing - Joint Oireachtas Committee on Justice and Equality - 9 October 2019

9 Women's Aid, 2020 One in five young women suffer intimate relationship abuse in Ireland, op. cit.



Head 50A Online Safety Codes

19. This Head provides for the Media Commission to issue and revise online safety codes for designated online services. Head 50A (2) also outlines the range of matters that these codes should address, including measures to be taken by designated online services in relation to harmful online content and user complaints (Head 50A (2)(c)).

20. Women's Aid strongly agrees with the development of online safety codes. However, we are concerned that takedown procedures or similar measures are not listed in the measures in Head 50A (2).

21. As discussed above, having harmful content removed before it goes viral is essential, especially in regards to non-consensual intimate images.

22. The list in Head 50A (2) does include user's complaints and/or issues handling mechanisms as one of the matters to be addressed in the code. While content removal could be included under this heading, it is not specifically mentioned.

23. Where content removal is mentioned in the General Scheme it is always as a result of a very long process looking at general compliance or systemic issues and not as a **fast** remedy for individual complaints to have a **specific** piece of content removed¹⁰ within set timeframes.

24. The Law Reform Commission's (hereafter LRC) Report on Harmful Communications and Digital Safety¹¹ suggested that the Digital Safety Commissioner would oversee a system of takedown orders including the issuing of a **code of practice on takedown procedures**.

25. This code of practice would include practical guidance on the takedown procedure of harmful content, require that the takedown procedure is made available to all affected individual persons by online service providers free of charge and include timelines for response and for takedown. Accordingly, the draft Bill in Appendix A of the LRC Report includes the below section:

Code of practice on take down procedure for harmful communications

20 (1) The Commissioner shall, as soon as is practicable after his or her appointment, prepare, and publish in a form that is easily accessible, a code of practice on take down procedure for harmful communications (in this section referred to as the code of practice) that shall, inter alia—

(a) describe in detail, and provide practical guidance on, the take down procedure of digital service undertakings for harmful digital communications, including the harmful communications referred to in sections 4 to 8,

¹⁰ Removal of content is mentioned as a possible result of compliance assessment in Head 50B (6), as a result of user complaints audit in Head 52A, and in Head 53 in relation to compliance and warning notices. All these processes are very long and do not require a fast takedown while they are being determined.

¹¹ Law Reform Commission, 2016, Report on Harmful Communications and Digital Safety Paragraphs 3.74 3.75 3.85, 3.86, 4.21 and 4.22. This was also included in the Digital Safety Commissioner Bill 2017.



(b) require that the take down procedure is made available to all affected individual persons by digital service undertakings free of charge,

(c) describe the steps required by a digital service undertaking to meet the national digital safety standards referred to in section 21, and

(d) contain time lines within which a digital service undertaking shall respond to complaints about different categories of harmful digital communications, including the harmful communications referred to in sections 4 to 8, and, in the event that such a complaint is upheld, the time lines within which the digital service undertaking is to take down each category

26. Women's Aid believes that a similar **code of practice on takedown procedures would be invaluable to make sure that all relevant online services offer accessible, fast, free takedown procedures to all users and that such procedures are consistent among services.** Therefore, a code of practice on takedown procedures should be specifically added to the list of matters that online safety codes should provide for in Head 50A (2).

27. Recommendation 2

In Head 50A (2) after (e) include a new paragraph to specifically require that the online safety codes shall include detailed procedures for taking down harmful content. Such procedures must be accessible, free and fast. Timelines for taking down content needs to be specified in the codes.

Head 52C Obligation to Consider Mediation

28. Head 52C provides for an obligation to consider mediation when there is a dispute between a user and an online service provider.

29. Women's Aid is concerned that in a dispute related to intimate images being shared without consent, that this obligation may prolong proceedings further while harmful content remains available online and can be accessed, shared and downloaded.

30. Women's Aid believes that during mediation and indeed during any dispute proceedings regarding intimate images shared without consent, such images should be taken down within a fixed time frame while the dispute is resolved as a precaution against further sharing, while the status of the images is determined. The same should apply to other forms of harmful/illegal content.

Gaps in the General Scheme

31. Women's Aid believes there are two important issues that are not addressed in the General Scheme of the Bill as follows:



32. Recommendation 3

That when there is a dispute in relation to intimate images shared without consent or other allegedly illegal/harmful content, there should be a positive obligation on online services to take down such images/content within strict time lines while their status is being determined.

1. Role of the Online Safety Commissioner in Relation to Takedown Procedures

33. The General Scheme in Head 50B to Head 56 provides for the Media Commission to regulate harmful online content, including assessing compliance with codes, issuing warnings, auditing complaints handling, establishing a systemic complaint scheme and ensuring compliance with online safety codes.

34. However, there is no role for the Online Safety Commissioner in regards to **individual** complaints and crucially in relation to **assisting in or at least overseeing** the takedown of image-based sexual abuse/harmful content on the basis of individual complaints. In fact, supporting material to the General Scheme states clearly that the “proposed regulatory framework for online safety is systemic in nature and, as such, it does not contain a mechanism solely designed for an individual person to report individual pieces of potentially harmful online content to the Online Safety Commissioner for assessment and potential action.”¹²

35. According to the same document an individual can however bring information to the Commissioner’s attention that may trigger an audit or investigation; or report illegal content to An Garda Síochána. Of course both of these valuable processes would take a long time whereas when it comes to removing non-consensual intimate images, time is of the essence.

36. The Law Reform Commission Report envisaged a model whereby the Digital Commissioner (as it is called in the LRC report) would have the role of overseeing a system of takedown orders by the online services. Part of this role would be developing the takedown code of practice and assessing compliance with it (as already discussed). This role would also include a **function as an “appeal body”** when a request to take down harmful content from a user to an online service provider is not agreed to. The LRC Report suggested that the user would initially make a complaint/ takedown request to the relevant service, and only when they did not reply or did not consent to taking down content within the code time frame could the user appeal to the Commissioner¹³.

37. An even better model in Women’s Aid opinion is represented by the eSafety Commissioner in Australia, which provides users with assistance to remove image based abuse content.

38. The Australian eSafety Commissioner has a number of roles, including education and guidance, research, coordination, responding to complaints of cyber-bullying against children, responding to complaints about illegal and harmful content, and responding to complaints about image-based abuse¹⁴. This includes

12 Online Safety and Media Regulation Bill Summary of the virtual workshop on the regulatory framework for online safety, 18 June 2020 page 19

13 Law Reform Commission, op cit. paragraph 3.77 and 3.90. This was also included in the Digital Safety Commissioner Bill 2017

14 <https://www.esafety.gov.au/about-us/what-we-do>



providing users with the option of making a report online to eSafety¹⁵ and crucially **facilitating rapid removal of the images**.

39. In the reporting year 2019-2020 the eSafety Commissioner¹⁶:

- handled 2,702 reports of image-based abuse
- responded to 326 enquiries about image-based abuse
- gave seven removal notices to websites and hosting service providers, all based overseas. Five of the notices were complied with (where eSafety is unable to effect removal of intimate content, it takes steps to limit the discoverability of the content, typically by removing the content from search engine results)
- issued four formal warnings to persons responsible for image-based abuse
- **sought removal of image-based abuse material from over 4,000 locations (generally URLs) where the material was available across 248 different platforms. eSafety was successful in having image-based abuse material removed in 82 per cent of cases where removal was requested, despite the material invariably being hosted overseas.** The majority of the material was posted on exposé or pornography sites—only a small portion of reports concerned material posted on social media sites. (emphasis added)
- alerted social media services to almost 970 accounts that were being misused to share or threaten to share intimate content, or to elicit intimate content from minors (sexual exploitation). Typically, this resulted in deletion of the accounts that had been misused in this way.

40. It is noticeable that in 82% of the removals, an informal request from eSafety was enough, without the need for a removal notice, demonstrating the “soft power” of the agency.

41. The individual user only has to make a report to eSafety about intimate images shared without consent and does not have to deal with the online services where the harmful content is posted, which can be very distressing. The user can also opt to make a complaint to the relevant online services themselves, if they prefer.

42. Women’s Aid believes that the Online Safety Commissioner in Ireland should also have an active role in having image-based abuse/other harmful content removed, or at least have an appeal role as envisaged in the LRC Report.

15 <https://forms.esafety.gov.au/Infiniti/Produce/wizard/de0b7c64-140a-4796-9846-3c7a3b4e5426/?portal=1>

16 Australian government, ACMA and eSafety Annual reports 2019-2020 pages 214-216



43. Recommendation 4

That the role of the Online Safety Commissioner is expanded to include responding to individual complaints of image-based abuse and other harmful content and facilitating their removal.

Failing that, that the Online Safety Commissioner would at least have an appeal role in relation to takedown requests, as in the Law Reform Commission report

2. Image Removal or Delete Orders Aimed at End Users

44. The proposed legislation does not seem to provide for measures to order end users (as opposed to service providers) to remove intimate images or other harmful content from their online accounts and/or delete them from their devices, such as computers and mobile phones, when there was no consent in relation to the taking or sharing of the images.

45. While taking and sharing intimate images without consent is now an offence under the Harassment, Harmful Communications and Related Offences Act 2020, criminal proceedings are very protracted and in the meantime the images may still be accessible.

46. In Australia, the eSafety Commissioner has the power to issue removal notices to the **person** who has shared the images without consent (as well as to the relevant online service provider). This has to be complied with **within 48 hours**¹⁷.

47. Women's Aid recommends that similar powers to order the removal of intimate images shared non-consensually and other harmful content should be available as a fast and free civil remedy in Ireland.

48. Recommendation 5

The Bill should include civil measures to order end users to remove from the Internet or personal devices intimate images / other harmful content that were taken and/or shared without consent within a very fast time-frame.

End.

¹⁷ Enhancing Online Safety Act 2015, Part5A, Division 3, 44E
<https://www.legislation.gov.au/Details/C2018C00356>