



Coimisiún  
na Meán

# Copy of Submissions: Consultation on Draft Audiovisual On-Demand Media Service Code & Rules

Publication date: November 2024

## Table of Contents

- Advertising Standards Authority
- Alcohol Action Ireland
- Apple Distribution International Limited
- Children's Rights Alliance
- Chime
- Conradh na Gaeilge
- Drinks Ireland
- National Disability Alliance
- NewsBrands Ireland
- On-Demand Audiovisual Media Services Group (“**ODAS Group**”)
- RTÉ
- Senator Rónán Mullen
- Technology Ireland
- TG4
- Virgin Media
- Warner Bros Discovery / Discovery Broadcasting Ireland Limited



<b>Consultation title</b>	Consultation on Codes & Rules for Audiovisual on-demand media services
<b>Representing</b>	Advertising Standards Authority

**Introduction**

The Advertising Standards Authority is the independent Irish advertising regulator established in 1981. The Code of Standards for Advertising and Marketing Communications (ASA Code), now in its 7<sup>th</sup> Edition, covers advertising in all media of communication in Ireland, including advertising carried on audio visual media services, audio visual media on demand services and video sharing platforms. Our philosophy is that the Code goes where advertising goes and so we strive to continually evolve its remit.

We have a long-standing relationship with Coimisiún Na Meán’s (the Commission) predecessor, the Broadcasting Authority of Ireland and have proactively built on that relationship with the Commission.

We note that the draft Media Service Code and Media Service Rules for Audiovisual On-demand Media Service Providers (draft Code) states that the draft Code gives effect to Articles 5, 6(1), 6a(1) to (3), 7, 8, 9, 10, and 11 of the Audiovisual Media Services Directive in Ireland, in so far as they relate to audiovisual on demand media services.

We also note that Article 4a of the Audiovisual Media Services Directive states that Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. The ASA Code falls within the parameters set out in Article 4a.

We consider that Coimisiún Na Meán should encourage media service providers to engage with the ASA as a complementary measure to the requirements of the draft Code, so that there is an enhanced system of audience protection.

**Code Implementation:** In addition to our complaints handling mechanism (see below), ASA provides a copy advice service to advertisers, agencies and media on whether a proposed advertisement is in compliance with the ASA Code. Whilst not binding on either the requestor or the ASA, it is an informed expert opinion and helps prevent the publication of non-compliant advertising. ASA also carries out monitoring on advertising, engaging with advertisers and in relation to influencer marketing, with influencers, to bring advertising that is not compliant with the ASA Code into compliance.

**Section 8: Complaints Handling Mechanism**

Section 8 refers to Complaints, and that audiences may make a complaint if they believe that a media services provider providing an on-demand service does not comply with the draft Code.

The ASA has a well developed, robust and free complaints service which is accepted by the advertising eco-system; advertisers (brands), agencies and media.

As a cross-media industry regulator, the decisions of our Independent Complaints Committee have impact across all media, where appropriate. While we can and do take account of the specificities of media, for example, an advertisement that is not appropriate for an outdoor site may be acceptable for a high fashion magazine, the fact is that we can make a finding that an advertisement is in breach of our Code, and have that applied to a) all executions of that advertisement across all media and b) all similar advertisements

across all product sectors across all media. This ensures that there is a level of consistency across media in the requirements for the advertisements they publish.

As part of the advertising regulatory framework in Ireland, we suggest that the draft Code should refer to alternative complaints handling processes which audiences may avail of, with the ASA process being one such. Alternatively, and/or in addition, we request that such reference is made in the area on the Coimisiún Na Meán’s website which outlines how members of an audience may make a complaint.

### **Section 9. Definitions**

The definition of “*audiovisual on-demand media service (on-demand service)*” refers to ‘.. at his individual request ...’ in the third line.

While we note this accurately reflects the language in the Audiovisual Media Services Directive, we would suggest either ‘his/her’ or ‘their’ is used instead as it is more inclusive language and does not impact the meaning of the definition.

### **Section 12. Audiovisual Commercial Communications**

Section 12 relates to Audiovisual Commercial Communications. An analysis of the provisions of Section 12 against the provisions of the ASA Code demonstrates that the provisions in the ASA Code reflect those in the Section 12. (Analysis at Appendix I). In addition, the ASA Code goes further. It has detailed rules in areas such as

Misleading (Truthfulness, Honesty and Substantiation)	Slimming
Promotional Marketing Practices, Distance Selling, Children	Financial Services and Products
Food and Non-Alcoholic Beverages, including HFSS and infant formula	Employment and Business Opportunities
Alcoholic Drinks	Environmental Claims
Gambling	Occasional Trading
Health and Beauty (includes medicines and medical treatments)	E-Cigarettes
	Online Behavioural Advertising

We believe that it would be in the interests of audiences and consumers generally that media service providers have regard to the provisions of the ASA Code.

Appendix 1

<b>12. Audiovisual Commercial Communications</b>	
<p>12.1 Media service providers of on-demand services shall ensure that audiovisual commercial communications they provide shall be readily recognisable as such.</p>	<p><b>3.31</b> A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication.</p> <p><b>3.32</b> Marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research, consumer surveys, user-generated content, private blogs, or independent reviews if their purpose is marketing, i.e. the promotion of a product.</p> <p><b>3.33</b> Advertorials should be clearly identified, should be distinguished from editorial matter and should comply with the Code.</p> <p><b>3.34</b> The identity of the advertiser, product or service should be apparent. This does not apply to marketing communications with the sole purpose of attracting attention to communication activities to follow (so called “teaser advertisements”).</p> <p><b>3.35</b> Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the advertiser without difficulty.</p> <p><b>3.36</b> Marketing communications that solicit a response constituting an order for which payment will be required should make the fact that payment will be required clear.</p> <p><b>3.37</b> Marketing communications soliciting orders should not be presented in a form which might be mistaken for an invoice, or otherwise suggest that payment is due when this is not the case.</p>
<p>12.2 Media service providers of on-demand services shall not include in or alongside programmes any surreptitious audiovisual commercial communications or audiovisual commercial communications that use subliminal techniques.</p>	<p><b>4.5</b> The design and presentation of marketing communications should allow them to be easily and clearly understood.</p>
<p>12.3 Media service providers of on-demand services shall not provide audiovisual commercial communications that are harmful to the general public, namely:-</p>	
<p>i. audiovisual commercial communications which prejudice respect for human dignity.</p>	<p><b>3.3</b> Marketing communications should be prepared with a sense of responsibility to consumers and to society.</p> <p><b>3.17</b> Marketing communications should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital or civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.</p>
<p>ii. audiovisual commercial communications which include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, or sexual orientation.</p>	<p><b>3.17</b> Marketing communications should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital or civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.</p> <p><b>3.18</b> Marketing communications should respect the principle of equality of men and women. They should avoid gender stereotyping and any exploitation or demeaning of men or women. Where appropriate, marketing communications should use generic terms that include</p>

	<p>both the masculine and feminine gender; for example, the term “business executive” can be used to refer to both men and women.</p> <p><b>3.19</b> To avoid causing offence, marketing communications should be responsive to the diversity in Irish society and marketing communications which portray or refer to minority groups or vulnerable people should:</p> <p><b>(a)</b> Respect the principle of equality in any depiction of these groups.</p> <p><b>(b)</b> Fully respect their dignity and not subject them to ridicule or offensive humour.</p> <p><b>(c)</b> Avoid stereotyping and negative or hurtful images.</p> <p><b>(d)</b> Not exploit them for unrelated marketing purposes.</p> <p><b>(e)</b> Not ridicule or exploit religious beliefs, symbols, rites or practices.</p>
iii. audiovisual commercial communications which encourage behaviour prejudicial to health or safety.	<p><b>3.3</b> Marketing communications should be prepared with a sense of responsibility to consumers and to society.</p> <p><b>3.24(a)</b> A marketing communication should not encourage or condone dangerous behaviour or unsafe practices.</p>
iv. audiovisual commercial communications which encourage behaviour grossly prejudicial to the protection of the environment.	<p><b>3.3</b> Marketing communications should be prepared with a sense of responsibility to consumers and to society.</p>
v. audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers.	<p><b>3.7</b> Marketing communications should not glamorise products that are otherwise not permitted, by law, to be advertised.</p> <p><b>3.14</b> Advertisers have primary responsibility for ensuring that their marketing communications are in conformity with the law. A marketing communication should not contain anything that breaks the law or incites anyone to break it, nor omit anything that the law requires. The determination as to whether or not a marketing communication is legal is a matter for the courts or other appropriate regulatory authorities.</p> <p><b>3.15</b> Advertisers should not state or imply that a product can legally be sold if it cannot. It is not a matter, however, for the ASAI to determine whether a product can or cannot be legally sold in Ireland.</p>
vi. audiovisual commercial communications which encourage immoderate consumption of alcoholic beverages.	<p><b>9.8</b> In the interests of health and safety:</p> <p><b>(a)</b> Marketing communications should only depict or imply the responsible and moderate consumption of alcoholic drinks.</p> <p><b>(b)</b> Marketing communications should not show, imply or encourage immoderate or irresponsible drinking or regular solitary drinking. This applies to the amount of alcohol, the numbers drinking or the way drinking is portrayed. The buying of a large round of drinks should not be depicted or implied.</p> <p><b>(c)</b> Marketing communications for alcohol should not portray drinking games or sessions, or show or imply pub or club crawls.</p> <p><b>(d)</b> Abstinence or moderation should not be presented in a negative light.</p>

	<p><b>(e)</b> Marketing communications should not attempt to influence nondrinkers of any age to drink or to purchase alcoholic drinks.</p> <p><b>(f)</b> Marketing communications may not suggest, or commend, or make fun of over-indulgence in respect of alcohol or its after-effects.</p> <p><b>(g)</b> Marketing communications should not claim that alcohol has therapeutic qualities or that it is a stimulant, a mood-changer or a sedative, or that it is or can be transformative of an individual or a situation or that it is a means of boosting confidence or resolving personal conflict.</p> <p><b>(h)</b> Marketing communications should not depict any direct association with the consumption of alcoholic drinks and activities or locations where drinking alcohol would be unsafe, unwise or unacceptable. Where consumption is shown or implied it should not be represented as having taken place before or during engagement of the activity in question.</p> <p><b>(i)</b> Marketing communications should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely.</p> <p><b>(j)</b> Factual information can be given about the alcoholic strength of a particular drink. However, with the exception of low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) it should not be the principal theme of any marketing communication. Drinks should not be promoted as being more intoxicating or presented as preferable because of their higher alcohol content.</p> <p><b>(k)</b> Advertisers should ensure that low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) are not promoted in a way that encourages inappropriate consumption.</p>
vii. audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the State.	<p><b>11.16</b> Prescription-only medicines may not be advertised to the public. (Note: includes medical treatments)</p>
12.4 Media service providers of on-demand services shall not provide audiovisual commercial communications harmful to children, namely:	
i. audiovisual commercial communications that directly exhort children to buy or hire a product or service by exploiting their inexperience or credulity.	<p><b>7.5</b> Marketing communications addressed to children should not exploit the loyalty, credulity, vulnerability or lack of experience of children. For example:</p>
ii. audiovisual commercial communications that directly encourage children to persuade their parents or others to purchase the goods or services being advertised.	<p><b>(a)</b> Children or their family should not be made to feel inferior or unpopular for not buying an advertised product.</p> <p><b>(b)</b> Children or their family should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product.</p> <p><b>(c)</b> Marketing communications should not undermine the authority, responsibility or judgement of parents, guardians or other appropriate authority figures.</p> <p>Marketing communications should not include any appeal</p>

	to children to persuade their parents or other adults to buy advertised products for them.
iii. audiovisual commercial communications which exploit the special trust children place in parents, teachers or other persons.	<b>7.5 (c)</b> Marketing communications should not undermine the authority, responsibility or judgement of parents, guardians or other appropriate authority figures. Marketing communications should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.
iv. audiovisual commercial communications which unreasonably show children in dangerous situations.	<b>7.4</b> Marketing communications should contain nothing that is likely to result in physical, mental or moral harm to children or that is likely to frighten or disturb them, except to promote safety or in the public interest. In principle and subject to the qualifications above, the following rules apply. <b>(b)</b> Children should not be encouraged to enter into unsafe situations or strange places or talk to strangers, including, for example, for the purpose of making collections or accumulating labels, wrappers or coupons. <b>(c)</b> Children should not be shown in morally or physically dangerous situations or behaving dangerously in the home or outside. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety. <b>(f)</b> Younger children in particular should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, gas, medicines and certain household substances, as well as certain electrical appliances and machinery, including agricultural equipment. <b>(h)</b> Given that children may imitate what they see in marketing communications, they should not be encouraged, whether directly or indirectly, to copy any practice that might be unsafe.
v. audiovisual commercial communications for alcoholic beverages aimed specifically at children.	<b>9.7</b> Marketing communications should not be directed at children or in any way encourage them to start drinking. <b>(a)</b> Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25. <b>(b)</b> Aspects of youth culture and treatments that are likely to appeal to children should not be used. Treatments should not portray adolescent, juvenile, childish or immature behaviour. <b>(c)</b> Marketing communications should not use or refer to identifiable heroes or heroines of the young. See Guidance Note on Alcohol Marketing Communications at <a href="http://www.asai.ie">www.asai.ie</a> . <b>(d)</b> Marketing communications should not feature personalities or characters (real or fictitious) that would have a particular appeal to children. <b>(e)</b> Alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take account of the audience's age profile so that marketing communications are communicated, so far as is possible, to adults.



<p>12.5 Media service providers of on-demand services shall ensure that audiovisual commercial communications for alcoholic beverages they provide, with the exception of sponsorship and product placement, comply with the following requirements:</p>	
<p>i. audiovisual commercial communications shall not be aimed specifically at minors or, in particular, depict minors consuming these beverages.</p>	<p><b>9.7</b> Marketing communications should not be directed at children or in any way encourage them to start drinking.</p> <p><b>(a)</b> Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25.</p> <p><b>(i)</b> The preceding rule may not apply if the marketing communication shows an image of people attending an over 18s ticketed event which appears either on the advertiser’s owned media (such as, for example, an advertiser’s own website) or on an advertiser’s social media page provided such media are accessed through a secure and appropriate Age Verification System and provided the person depicted:</p> <ul style="list-style-type: none"> <li>• appears to be clearly over 18 years of age</li> <li>• is not playing a significant role</li> <li>• cannot be seen consuming alcohol</li> <li>• does not appear to be under the influence of, or have consumed, alcohol prior to the events depicted in the marketing communication.</li> </ul> <p><b>(b)</b> Aspects of youth culture and treatments that are likely to appeal to children should not be used. Treatments should not portray adolescent, juvenile, childish or immature behaviour.</p> <p><b>(c)</b> Marketing communications should not use or refer to identifiable heroes or heroines of the young. See Guidance Note on Alcohol Marketing Communications at <a href="http://www.asai.ie">www.asai.ie</a>.</p> <p><b>(d)</b> Marketing communications should not feature personalities or characters (real or fictitious) that would have a particular appeal to children.</p> <p><b>(e)</b> Alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take account of the audience’s age profile so that marketing communications are communicated, so far as is possible, to adults. In this context the ASAI will have regard to the Alcohol Marketing, Communication and Sponsorship Codes of Practice, agreed by the Department of Health, the drinks industry, and the media as detailed under Other Requirements at <a href="#">9.12</a>.</p> <p><b>(f)</b> Digital media, including apps, that primarily promote an alcohol brand should be age gated through a secure and appropriate Age Verification System. See Guidance Note on Alcohol Marketing Communications at <a href="http://www.asai.ie">www.asai.ie</a>.</p>
<p>ii. audiovisual commercial communications shall not link the consumption of alcohol to enhanced physical performance or to driving.</p>	<p><b>9.5</b> Marketing communications may refer to the social dimension or refreshing attributes of a drink, but:</p> <p><b>(a)</b> Should not state, depict or imply that the presence or consumption of alcohol can improve physical performance or personal qualities or capabilities.</p>
<p>iii. audiovisual commercial communications shall not create the impression that the consumption of alcohol contributes towards social or sexual success.</p>	<p><b>9.5</b> Marketing communications may refer to the social dimension or refreshing attributes of a drink, but:</p> <p><b>(b)</b> Should not state, depict or imply that the presence or</p>

	<p>consumption of alcohol can contribute to social, sporting or business success or distinction or that those who do not drink are less likely to be acceptable or successful than those who do.</p> <p><b>(c)</b> Should not state, depict or suggest, by word or allusion that the presence or consumption of alcohol can contribute towards sexual success or make the drinker more attractive. Advertisers should take account of public sensitivities regarding coarseness and sexual innuendo in marketing communications for alcohol.</p>
iv. audiovisual commercial communications shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts.	<p><b>9.8</b> In the interests of health and safety:</p> <p><b>(g)</b> Marketing communications should not claim that alcohol has therapeutic qualities or that it is a stimulant, a mood-changer or a sedative, or that it is or can be transformative of an individual or a situation or that it is a means of boosting confidence or resolving personal conflict.</p>
v. audiovisual commercial communications shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.	<p><b>9.8</b> In the interests of health and safety:</p> <p><b>(a)</b> Marketing communications should only depict or imply the responsible and moderate consumption of alcoholic drinks.</p> <p><b>(b)</b> Marketing communications should not show, imply or encourage immoderate or irresponsible drinking or regular solitary drinking. This applies to the amount of alcohol, the numbers drinking or the way drinking is portrayed. The buying of a large round of drinks should not be depicted or implied.</p> <p><b>(c)</b> Marketing communications for alcohol should not portray drinking games or sessions, or show or imply pub or club crawls.</p> <p><b>(d)</b> Abstinence or moderation should not be presented in a negative light.</p> <p><b>(f)</b> Marketing communications may not suggest, or commend, or make fun of over-indulgence in respect of alcohol or its after-effects.</p>
vi. audiovisual commercial communications shall not place emphasis on high alcoholic content as being a positive quality of the beverages	<p><b>9.8</b> In the interests of health and safety:</p> <p><b>(j)</b> Factual information can be given about the alcoholic strength of a particular drink. However, with the exception of low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) it should not be the principal theme of any marketing communication. Drinks should not be promoted as being more intoxicating or presented as preferable because of their higher alcohol content.</p> <p><b>(k)</b> Advertisers should ensure that low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) are not promoted in a way that encourages inappropriate consumption.</p>

**ALCOHOL  
ACTION  
IRELAND**  
SUBMISSION

Consultation:  
online safety code for  
audiovisual on-demand  
media service providers  
**July 2024**

Alcohol Action Ireland (AAI) was established in 2003 and is the national independent advocate for reducing alcohol harm. We campaign for the burden of alcohol harm to be lifted from the individual, community and State, and have a strong track record in campaigning, advocacy, research and information provision.

Our work involves providing information on alcohol-related issues, creating awareness of alcohol-related harm and offering policy solutions with the potential to reduce that harm, with a particular emphasis on the implementation of the Public Health (Alcohol) Act 2018. Our overarching goal is to achieve a reduction in consumption of alcohol and the consequent health and social harms which alcohol causes in society.

**Alcohol Action Ireland Directors:** Prof. Frank Murray (Chair), Catherine Brogan, Pat Cahill, Aidan Connaughton, Paddy Creedon, Michael Foy, Dr Jo-Hanna Ivers, Dr Mary O'Mahony, Dr Colin O'Driscoll, Dr Bobby Smyth, Anita Whyte

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Alcohol Action Ireland (AAI) welcomes the Draft Online Safety Code as prepared by Coimisiún na Meán, which is intended to ensure that Video Sharing Platform Services (VSPS) providers take appropriate measures to protect children from harmful content, including illegal content and adult-only video content.

Examples of well-known audiovisual on-demand media service providers based in Ireland include platforms such as RTÉ Player, Apple TV, and Virgin Media Player.

## 1.0 Audiovisual commercial communications

It is very welcome that the code states that “commercial communications must not harm children” and that it “prohibits certain types of advertising, including communications that encourage direct purchasing through exploitation or the targeting of children with alcohol advertisements.”

This sends a strong message that children need to be protected from [alcohol marketing practices](#). However, we also know that the alcohol industry claims it does not target children with alcohol adverts. Major alcohol producers, such as Diageo, claim that they do not target children with their ads. However, the Broadcasting Authority of Ireland in its 2021 [report](#) on the operation of the Children’s Communications Code found that Diageo was the number 4 broadcast advertiser to children in traditional media. More stringent measures must be in place to protect children and other vulnerable groups.

**AAI recommends that the code should state that audiovisual commercial communications for alcoholic beverages shall not be seen by minors.**

## 2.0 Section 12 - responsible advertising practices

This section gives effect to Article 9 of the Audiovisual Media Services Directive (AVMSD) and aims to ensure responsible advertising practices regarding content potentially harmful to children and public health.

Section 12 states:

“Specific rules relating to the advertising of alcoholic beverages are also provided for and advertisements for alcohol must not:

- Target or feature children.
- Associate alcohol with improved physical performance or driving.
- Imply alcohol contributes to social or sexual success.
- Attribute alcohol with therapeutic benefits or as a means to overcome personal conflicts.
- Encourage excessive drinking or negatively depict moderation.
- Highlight high alcoholic content as positive.”

Given what we know about alcohol marketing, it is clear that in the real world, already many of these codes are being breached.

The global alcohol producer, Diageo, has said it is starting to use AI to “understand behaviour” as a marketing tool. This is a very worrying signal of where the marketing world is going. In this landscape, regulators also need to be using AI to monitor what is going on. Researchers in Australia have proven that this works by building an AI tool to carry out their study in relation to harmful marketing practices.

In addition, alcohol adverts are reaching children like never before because of the proliferation of ‘zero alcohol’ adverts, which use identical branding to the master brand. The rise of these ads in Ireland came at a time when modest restrictions under the Public Health (Alcohol) Act 2018 started coming into force.

Since then, the alcohol industry has replaced alcohol ads with ads for zero alcohol products. This means that children are still being bombarded by advertising from alcohol brands, perhaps

even more so than prior to the proliferation of zero alcohol adverts. Zero alcohol adverts clearly breach the rules set out above and pose a real danger to children who grow up not fully understanding the difference between what kind of activities are appropriate when drinking alcohol – because of how the parent brand advertises its zero products.

**AAI recommends that alcohol brands (including zero alcohol products) should not be allowed to sponsor programmes.**



### 3.0 Sponsorship and product placement

Product placement and sponsorship of popular programmes are strategies the alcohol industry is using to normalise alcohol use in society and to drive sales. A study analysing UK TV shows in 2015 found very high levels of prevalence of alcohol product placement on the popular shows. An analysis of almost 3,000 minutes of national TV revealed that just one in 20 characters' drinks were a glass of water, while more than a third were alcoholic beverages.

Over two one-week periods, soap operas were found to dedicate 39% of "drinks screen time" to alcohol, with sitcoms giving 25%, dramas 34%, and The Archers radio show 44%. It is likely that research in an Irish context would yield similar results.

In respect of sponsorship, it is concerning that our national broadcaster RTE allows alcohol brands to sponsor programmes and create marketing campaigns that sees alcohol brands expand their sponsorship reach across other RTE platforms, i.e. the RTE guide and website.

The Cassillero Del Diablo sponsorship of the Normal People was particularly insidious, ie increasing wine ads during COVID when lockdown was at its height and home drinking and domestic abuse was spiking, as evidenced by the words of the brand itself: "In the early days of Covid 19, TV played a hugely important role in keeping people informed and entertained. With TV being the most trusted medium we identified the opportunity to bring forward our plans and maximise TV's potential during the lockdown."

**AAI recommends alcohol brands should not be allowed to use sponsored content campaigns to advertise across platforms, allowing it to normalise the visibility of a harmful product and drive consumption of alcohol.**

## 4.0 Monitoring and enforcement

AAI recognises that audiovisual media service providers will have systems and controls in place to demonstrate compliance with the obligations contained in the code. The code advises that complainants in the first instance get in touch with service provider.

Given the ever-changing media and advertising landscape, the commission should be proactive and carry out periodic research on the advertising landscape. For example, as already highlighted in this submission, alcohol brands are increasingly using zero alcohol products to advertise in areas where children should be protected from such marketing.

AAI is of the view that the commission has scope to probe issues such as this and be proactive rather than reactive. For example, the code talks about “subliminal techniques” in respect of commercial communications. Marketing zero alcohol products with the same branding as full strength products could arguably fall under this clause. The commission could also carry out research on issues such as product placement and sponsorship to ensure that children and vulnerable groups are not being negatively impacted.

**AAI recommends that the commission takes a proactive approach to monitoring the activities of the commercial communications of audiovisual media service providers and commits to oversight and research of activities.**



**AlcoholAction**  
Ireland

**Organisation Name: Apple Distribution International Limited**

**CNAM VOD Code & Rules (Public Consultation) - Comments**

**Consultation Questions**

**Question 1:** Do you have any comments on **Sections 1 – 8** of the Draft Code and Rules?

**No comments.**

**Question 2:** Do you have any comments on the **proposed definitions** contained under Section 9 of the Draft Code and Rules?

**No comments.**

**Question 3:** Do you have any comments on the requirements relating to **harmful content** provided for under **Section 10** of the Draft Code and Rules?

**Section 10.1(a) & (b)** – We would recommend that CnaM clarify in the Draft Code and Rules that certain depictions and dialogue (i.e., depictions of terrorism or use of discriminatory dialogue) within fictional and non-fictional content are not subject to blanket restrictions. The same should apply to depictions and dialogue within non-fictional content which are fundamental to the content narrative / purely informative and are not intended to offend or cause harm to the viewer. CnaM should consider including the following language at **Section 10.1** of the Draft Code and Rules, carving out these typical entertainment depictions:

*“The provisions of Section 10.1 will not apply to depictions or dialogue in fictional content or which is essential to the creative context of the content made available by the media service provider.”*

**Section 10.2** – CnaM should provide, given the practical product concerns for content deemed ‘harmful’, the following in the Draft Code and Rules:

- (i) a clear definition of content that would *“impair the physical, mental or moral development of children”*; and
- (ii) a clarification that the requirement that information about such harmful content must be presented at the start of a programme does not apply to transactional video-on-demand services, given such information would be provided prior to the transaction.

**Section 10.3** – Strict measures targeting the most harmful types of content require surgical precision, since excessively broad restrictions would result in practical product concerns. Thus, *“gratuitous violence”* and *“pornography”* should be clearly defined by CnaM under the Draft Code and Rules.

**Section 10.4 - 10.6** – We suggest that the CNAM:

- (i) provides clarification on whether the display of local and appropriate age ratings / descriptors and effective parental controls qualify as “*prior content warnings*” under the Draft Code and Rules; and
- (ii) confirms that overly burdensome age assurance methods based on, for instance, e-certificates are not required, such that methods that partially rely on self-declaration may suffice. The age assurance method should be appropriate to the risk and nature of the content available on the VOD service. We therefore caution against a general prohibition of a self-declaratory age assurance system for VOD services. It is recognized that age assurance tools can have a severe impact on the data protection rights of all users of a service. Any such use needs to take account of the requirement for proportionality in the GDPR. The need to strike a balance in this area was explicitly recognized in the UK where Ofcom and the UK data protection regulator the ICO have worked together to produce joint guidance and research in this space<sup>1</sup>. It is equally important that CnaM ensures that it works closely with the Data Protection Commission on these matters. Further, Irish and EU legislation under which the Draft Code and Rules was implemented does not explicitly ban the use of self-declaration. Given the general market practice in Europe and internationally, including AVMS providers throughout Europe that continue to rely on self-declaration for general entertainment content, we do not believe it is feasible under the Draft Code and Rules to generally prohibit self-declaration as a mechanism for age verification. Other mechanisms, including carefully designed parental controls, should be deemed sufficient.

**Question 4:** Do you have any comments on the requirement under **Section 11** of the Draft Code and Rules not to transmit cinematographic works outside periods agreed with the **rights holders**?

**No comments.**

**Question 5:** Do you have any comments on the requirements relating to **commercial communications** provided for under **Section 12** of the Draft Code and Rules?

**Section 12.5** – Some of the requirements in subsections i to vi allow for interpretation. The provision should thus be reframed as an efforts obligation rather than an obligation of results so as to include reasonable parameters on commercial communication requirements.

**Question 6:** Do you have any comments on the requirements relating to **sponsorship** provided for under **Section 13** of the Draft Code and Rules?

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<sup>1</sup> <https://ico.org.uk/media/about-the-ico/documents/4029425/joint-statement-ofcom.pdf>

**Section 13 / Section 9** –The definition of “*sponsorship*” under Section 9 of the Draft Code and Rules should clarify that parents, subsidiaries and related entities within a media service provider’s group structure are not considered sponsors per se.

**Section 13.1** – The requirement that on-demand services or programmes must not directly encourage the purchase or rental of goods or services by making special promotional references to those goods or services within programmes is very far-reaching. The requirement should be qualified to apply only to undisclosed sponsorships. Alternatively, it should be clarified that such a requirement does not prevent the inclusion of product placement, to the extent the rules on product placement are observed.

**Question 7:** Do you have any comments on the **product placement** requirements under **Section 14** of the Draft Code and Rules?

**Section 14.2(iv)** – We would recommend the following:

- (i) The requirement that audiences must be informed of the existence of product placement at the start and end of the programme and when a programme resumes after an advertising break should be simplified, since a single, clear indication at the start of the programme or in the programme description would achieve the same goal.
- (ii) The above mentioned requirement should only apply to programmes that are produced or commissioned by the media service provider, not for programmes simply licensed by the media service provider, as such a requirement would create an undue burden on media service providers.
- (iii) Disclosure and other requirements should only apply to ‘product placement’ for which significant monetary value is exchanged, and not to placement of products that merely offset production costs.
- (iv) CnaM should clarify in the Draft Code and Rules whether the requirement that there is no product placement in “*children’s programmes*” is applicable to transactional video-on-demand services.

**Question 8:** Do you have any comments on the requirements relating to **accessibility** as set out in **Section 15** of the Draft Code and Rules?

**Section 15.1 - 15.6** – Media service providers need flexibility to address viewers accessibility requirements in an effective way across the full catalogue. However, they also need certainty as to what measures will be required from them in the mid-term. CnaM should thus clarify what it means by media service providers taking measures to ensure that programmes made available are “*continuously and progressively more accessible to persons with disabilities...*”. A broad and flexible approach would be

preferred to factor in all efforts taken by the provider throughout its services, products and ecosystem, rather than a less effective content-based approach.

**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.<sup>1</sup>

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.<sup>2</sup> 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 measures 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)<sup>3</sup>. 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.

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<sup>1</sup> Publication date 4 July 2024, [https://www.cnam.ie/wp-content/uploads/2024/07/4\\_OnDemand\\_ConsultationDoc-1.pdf](https://www.cnam.ie/wp-content/uploads/2024/07/4_OnDemand_ConsultationDoc-1.pdf)

<sup>2</sup> 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.

<sup>3</sup> 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’,<sup>4</sup> 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...’.<sup>5</sup> 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,<sup>6</sup> the UN Convention on the Rights of the Child,<sup>7</sup> and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly called the Istanbul Convention.<sup>8</sup> 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’.<sup>9</sup>

In relation to Irish law, the Commission, as a public body, has a public sector duty<sup>10</sup> 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

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<sup>4</sup> Part 4.3 Draft Code

<sup>5</sup> Part 4.6 Draft Code

<sup>6</sup> Transposed into Irish law through the Convention on Human Rights Act 2003

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

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

<sup>9</sup> 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

<sup>10</sup> 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.’<sup>11</sup> 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.<sup>12</sup> This should also align with the clear description of a child-friendly remedy outlined in the Council of Europe Guidelines<sup>13</sup> while also complying with the UN Committee on the Rights of the Child’s guidance.<sup>14</sup> 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.

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<sup>11</sup> 8.1 Draft Code

<sup>12</sup> European Convention of Human Rights Arts 6 and 13

<sup>13</sup> 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).

<sup>14</sup> 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’,<sup>15</sup> pornography and gratuitous violence.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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

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<sup>15</sup> Part10.3 draft Code

<sup>16</sup> Part 10.3 draft Code

<sup>17</sup> WHO, 2020

<sup>18</sup> 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

<sup>19</sup> 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/>

<sup>20</sup>Social 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’.<sup>21</sup> The Council of Europe recommends<sup>22</sup> 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.’<sup>23</sup>

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’.<sup>24</sup> 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,<sup>25</sup> 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’.<sup>26</sup> 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

<sup>21</sup> 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.

<sup>22</sup> 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

<sup>23</sup> 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

<sup>24</sup> 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.

<sup>25</sup> 12.3 and 12.5 draft Code

<sup>26</sup> 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 protection.<sup>27</sup>

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<sup>27</sup> Articles 28 and 19 UNCRC

<b>Consultation title</b>	Consultation on Codes & Rules for Audiovisual on-demand media services
<b>Organisation name</b>	<b>Chime</b>

## Your response:

Please insert your response under each of the respective questions below.

**1. Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?**

**Yes. Chime is positively disposed to the draft Media Service Code and Media Service Rules with one significant reservation. We note that the draft is generally consistent with the EU Directive 2018/1808, with the exception of arrangements in relation to complaints handling.**

**We note and favour the EU Directive contained in Article 7, Section 4, that ‘each Member State shall designate a single, easily accessible, including by people with disabilities, and publicly available online point of contact for providing information and receiving complaints...’**

**The Comisiún’s draft code, Section 7.3, requires media service providers to ‘prepare and implement a code of practice for the handling of complaints’, and Section 8.1 encourages audiences to make their complaints ‘in the first instance’ to service providers ‘as this is the quickest way to have a complaint considered and responded to.’**

**We don’t accept the view that this is the quickest way. In the past we and other stakeholders have highlighted to the former BAI on many occasions the frustrations of members in making complaints to various service providers, the complexity of doing so, and the lack of any response to complaints from service providers.**

**Based on experience, we are strongly of the view that there should be a single ‘State led’ complaints process. This will enable all complaints to be tracked, identify patterns and trends, and most importantly help ensure that individual service providers respond to complainants in a timely and appropriate manner.**

<p>2. Do you have any comments on the proposed definitions contained in Section 9 of the Draft Code and Rules?</p> <p>No</p>
<p>3. Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?</p> <p>No</p>
<p>4. Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders as set out in Section 11 of the Draft Code and Rules</p> <p>No</p>
<p>5. Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?</p> <p>No</p>
<p>6. Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?</p> <p>No</p>
<p>7. Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?</p> <p>No</p>
<p>8. Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?</p> <p>We note the draft Code's proposal in Section 15.5 (vi) in relation to service providers putting in place 'an accessible mechanism for dealing with complaints and queries' with respect to the provision of access services.</p>



**We would ask that the Comisiún take account of our comments in relation to complaints processes outlined in Section 1 of this consultation response when considering the issue of a mechanism for dealing with complaints and queries with respect to the provision of access services**



**Aighneacht Chonradh na Gaeilge**

**do**

**Choimisiúin na Meán**

**maidir lena**

**Dréacht-Chód nua Sheirbhís na Meán Ciosamhairc ar  
Éileamh (Fís-ar-éileamh) chomh maith  
le Dréacht-Rialacha nua**

**2 Lúnasa 2024**

## CÚLRA

Cuireann Conradh na Gaeilge fáilte roimh an deis seo aighneacht a chur isteach maidir le Dréacht-Chód nua Sheirbhís na Meán Closamhairc ar Éileamh (Fís-ar-éileamh) chomh maith le Dréacht-Rialacha nua.

Is é Conradh na Gaeilge fóram daonlathach phobal na Gaeilge agus saothraíonn an eagraíocht ar son na teanga ar fud na hÉireann agus timpeall na cruinne. Is í príomhaidhm na heagraíochta an Ghaeilge a athréimniú mar ghnáth-theanga na hÉireann. Ó bunaíodh é ar 31 Iúil 1893 tá baill an Chonartha gníomhach ag cur chun cinn na Gaeilge i ngach gné de shaol na tíre, ó chúrsaí dlí agus oideachais go forbairt meán cumarsáide agus seirbhísí Gaeilge.

Tá Conradh na Gaeilge roghnaithe ag Foras na Gaeilge, an foras uile oileánda ag feidhmiú ar son an dá Rialtas thuaidh agus theas leis an nGaeilge a chur chun cinn, mar cheann de na sé cheanneagraíocht atá maoinithe acu leis an nGaeilge a fhorbairt ar oileán na hÉireann. Go príomha, tá Conradh na Gaeilge roghnaithe le tabhairt faoi chosaint teanga, ionadaíocht agus ardú feasachta ar an Ghaeilge. Tá 180 craobh agus iomaí ball aonair ag Conradh na Gaeilge, agus bíonn baill uile an Chonartha ag saothrú go dian díograiseach chun úsáid na Gaeilge a chur chun cinn ina gceantair féin. Tá breis eolais faoi obair an Chonartha le fáil ag [www.cnag.ie](http://www.cnag.ie).

## MOLTAÍ:

Maidir leis an Dréacht-Chód nua Sheirbhís na Meán Closamhairc ar Éileamh (Fís-ar-éileamh) chomh maith le Dréacht-Rialacha nua, ba mhaith linn na moltaí a leanas a dhéanamh:

### - Céad cháipéis

#### Freagra 1:

- 2.2. Roinn a 8: Molann an Conradh go gcuirfear san áireamh gur féidir le saoránach gearán a chur isteach i nGaeilge nó i mBéarla

#### Freagra 3:

- 2.4. Roinn a 10: Is maith é go bhfuil an Chairt um Chearta Bunúsacha an Aontais Eorpaigh luaite anseo ach ba chóir a thógáil san áireamh go gcuirtear cearta 'teanga' san áireamh sa Chairt seo ach ní luaitear cearta 'teanga' i Roinn a 12 i 2.6.
- 2.4. Roinn a 10: Ba chóir go mbeadh an córas luaite sa dara líne deireanach ag cinntiú go mbeidh ar na soláthróirí an t-eolas a chur ar fáil as Gaeilge agus as Béarla

#### Freagra: 5

- 2.6. Roinn a 12: Tá 'teanga' fágtha ar lár sa liosta nár chóir leatrom a dhéanamh bunaithe orthu

### - Dara cháipéis

- 8.1.: Molann an Conradh go gcuirfear san áireamh gur féidir le saoránach gearán a chur isteach i nGaeilge nó i mBéarla
- 10.1.(b): Is maith é go bhfuil an Chairt um Chearta Bunúsacha an Aontais Eorpaigh luaite anseo agus go bhfuil 'teanga' san áireamh anseo
- 10.4.: Tá 'content warnings', etc. luaite anseo. Ba chóir go mbeidh rabhaidh don phobal curtha ar fáil as Gaeilge agus as Béarla le cinntiú nach mbeidh pobal na Gaeltachta agus Gaeilge thíos leis
- 12.3.ii. Cé go bhfuil 'teanga' luaite i 10.1.(b), níl 'teanga' curtha san áireamh anseo agus níl cosaint ann mar sin don phobal Gaeilge nó Gaeltachta. Ba chóir 'teanga' a chur san áireamh anseo



**Conradh na Gaeilge's Submission**

**to**

**Coimisiún na Meán**

**regarding its**

**New draft Code for Audiovisual on Demand Media Service  
(Video-on-Demand), as well as  
new Draft Rules**

**2nd August 2024**



## BACKGROUND

Conradh na Gaeilge welcomes this opportunity to put forward a submission on the new Draft Code for Audiovisual Media Service on Demand (Video-on-Demand) as well as new Draft Rules.

Conradh na Gaeilge is the Irish-speaking community's democratic forum, and the organisation works on behalf of the language throughout Ireland and around the world. The organisation's principal aim is the renewal of Irish as the common language of Ireland. Since its establishment on the 31st July 1893, members of Conradh na Gaeilge have been actively promoting the Irish language in all aspects of life in the country, from legal and educational matters to the development of Irish language media and services.

Conradh na Gaeilge is chosen by Foras na Gaeilge, the all-island institution for the working for both the northern and southern Governments to promote Irish, as one of the six lead organisations funded by them to develop the Irish language on the island of Ireland. Primarily, Conradh na Gaeilge have been chosen to tackle the protection, representation and to raise awareness of the Irish language. Conradh na Gaeilge has 180 branches and many individual members, and all members of Conradh work very diligently to promote the use of the Irish language in their own areas. Additional information on the work of Conradh is available on [www.cnag.ie](http://www.cnag.ie).

## RECOMMENDATIONS:

In relation to the new Draft Code on Audiovisual on Demand Media Service (Video-on-Demand) as well as new Draft Rules, we would like to make the following recommendations:

### - First document

#### Answer 1:

- 2.2. Section 8: Conradh recommends that account be taken of the fact that a citizen can submit a complaint in Irish or English

#### Answer 3:

- 2.4. Section 10: It is good that the European Union Charter of Fundamental Rights is mentioned here but it should be taken into account that 'language' rights are included in this Charter, however Section 12 in 2.6 does not mention 'language' rights.
- 2.4. Section 10: The system mentioned in the second last line should ensure that suppliers will be required to provide the information in both Irish and English

#### Answer: 5

- 2.6. Section 12: 'Language' is missing from the list of items that should not be discriminated against

### - Second document

- 8.1.: Conradh recommends that account be taken of the fact that a citizen can submit a complaint in Irish or English
- 10.1.(b): It is good that the European Union Charter of Fundamental Rights is mentioned here and that 'language' is included in this section
- 10.4.: 'Content warnings', etc. are mentioned here. Warnings to the public should be made available in Irish and English to ensure that the Gaeltacht and Irish-speaking community will not be affected
- 12.3.ii. Whilst 'language' is mentioned in 10.1.(b), 'language' is not included here and there is therefore no protection for the Irish or Gaeltacht community. 'Language' should be included here



## **Drinks Ireland submission to the Coimisiún na Meán Consultation on codes and rules for audiovisual on-demand media services**

**August 2024**

Drinks Ireland is the Ibec sector that represents the interests of alcohol drinks manufacturers and suppliers on the island of Ireland. Drinks Ireland represents all categories of alcohol products in one umbrella organisation through its various trade associations.

Drinks Ireland | Beer

Drinks Ireland | Cider

Drinks Ireland | Spirits

Drinks Ireland | Wine

Irish Whiskey Association

We welcome the opportunity to respond to Coimisiún na Meán's (CnaM) consultation on a draft Code and Rules for Video on Demand (VOD) Services and in particular, section 12 on Audiovisual Commercial Communications. We strongly believe it is crucial that any further regulation introduced for audiovisual commercial communications complements existing EU frameworks and avoids the creation of new and potentially contradictory requirements. Thus, CnaM must ensure that the implementation of the AVMS imposed VOD rules does not go beyond the scope or purpose of the AVMS Directive itself in order to protect the integrity of the EU single market and ensure a streamlined and practical approach across the EU for business.

The Primary Act states that Member States should be encouraged to ensure that self- and co-regulatory codes of conduct are used to effectively reduce the exposure of children and minors to audiovisual commercial communications for alcoholic beverages. We support this approach. We also remind that the drinks industry in Ireland is already subject to some of the strictest advertising and marketing regulations in the world. Drinks manufacturers and suppliers follow the prohibitions and restrictions on advertising, marketing and sponsorship already legislated for under the Public Health (Alcohol) Act 2018.

In addition, the Advertising Standards Authority for Ireland (ASAI) Code of Standards for Advertising and Marketing Communications in Ireland applies to all commercial marketing communications, including the alcohol-specific rules in section 9 of the ASAI Code which contains rules protecting children from advertising and marketing communications for alcohol. These Codes are also complemented by Codes of Practice that exist to reduce the exposure of young people to alcohol advertising and marketing and are based on the principle of audience profiling across all media and sponsorships whereby alcohol advertising/marketing is not permitted unless the relevant medium has an adult audience profile of 75% or greater. The industry has shown very high compliance with these detailed code requirements. Successive annual reports from the Alcohol Marketing Communications Monitoring Board (AMCMB) have demonstrated the industry's cooperation with and adherence to existing restrictions. The latest report from the AMCMB which monitors adherence to voluntary codes aimed to limit exposure of young people to alcohol advertising calls out the industry's good compliance levels with advertising measures.

CopyClear is an independent service charged with vetting advertising and promotion of alcohol advertising in Ireland, to ensure it complies with all relevant codes of practice. No alcohol advertisement can appear in Irish print or broadcast without a CopyClear pre-clearance number, and in effect, CopyClear pre-clearance is mandatory for the Irish market. This pre-clearance has been acknowledged as making a positive difference to advertising content and, consequently, has a positive effect on ensuring compliance with the relevant content Codes.

Drinks Ireland members accept the provisions outlined in Section 12 and the specific requirements in section 12.5 that call for audiovisual commercial communications for alcoholic beverages to comply with the following requirements:

- i. audiovisual commercial communications shall not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
- ii. audiovisual commercial communications shall not link the consumption of alcohol to enhanced physical performance or to driving.
- iii. audiovisual commercial communications shall not create the impression that the consumption of alcohol contributes towards social or sexual success.
- iv. audiovisual commercial communications shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts.
- v. audiovisual commercial communications shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
- vi. audiovisual commercial communications shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Finally, it is worthwhile noting that the advertising of the non-alcohol products is also covered by an ASAI guidance note which is currently under review. The current guidance issued in 2019 stipulates that non-alcoholic products should clearly be aimed at those aged 18+; that anyone in marketing for non-alcoholic products should be, and appear to be, over 25; and that marketing communications for non-alcoholic products should clearly be for non-alcoholic products. The drinks industry fully complies with these guidelines.

Non-alcoholic alternatives are the fastest growing category in Ireland, and an increasing number of companies have been innovating and investing heavily in growing the non-alcohol alternative category to encourage moderation and meet increasing consumer demand for these products. While this market in Ireland is at a very early stage of its development, it is primed for significant growth if supported by business and government. These non-alcohol alternatives offer consumers choice, a choice that supports moderation. Consumer research shows that the vast majority of those who consume these products are drinkers, therefore underlining the role of these products in supporting reducing alcohol consumption. Recent research undertaken by Opinions for Drinks Ireland showed that 57% of those that drink alcohol agree that the availability of non-alcoholic alternatives and their advertising is encouraging more responsible drinking. In addition to expanding the offering for non-alcohol alternatives, companies are also investing in augmenting availability and building consumer awareness for these choices.



As an industry, we are committed to the effective implementation and compliance with advertising regulations and codes and have proudly adhered to some of the strictest advertising codes in the world for content, placement and volume of alcohol advertising.



Údarás Náisiúnta Míchumais  
National Disability Authority

**August 2024**

## **NDA Submission to Coimisiún na Meán concerning the Draft Audiovisual On-Demand Media Service Code & Rules**

### **Introduction**

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán's ('the Commission') consultation concerning the Draft Audiovisual On-Demand Media Service Code & Rules ('Draft Code and Rules').

The NDA's contribution is limited to Questions 1 and 8 of the Consultation Questions, focusing primarily on the accessibility of audiovisual on-demand media services for persons with disabilities. We have also provided a detailed submission to Coimisiún na Meán concerning the Draft Access Rules for Television Broadcasting Services and some of the advice we have provided therein will have relevance for the development of this Draft Code and Rules.

In particular, and as outlined in our submission concerning the Draft Access Rules, the NDA underscores the importance of the monitoring of the quality of access services<sup>1</sup> for all audiovisual media services, including audiovisual on-

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<sup>1</sup> "Access services" means subtitling, captioning, Irish Sign Language and audio description as defined within the Draft Code and Rules.

demand media services, through enhanced qualitative monitoring by Coimisiún na Meán, with the participation of access users.

## **Responses to Consultation Questions**

### **Question 1: Do you have any comments on Sections 1–8 of the Draft Code and Rules?**

#### **UN Convention on the Rights of Persons with Disabilities**

The NDA notes the absence of a reference requiring the Commission to act in a manner consistent with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in Section 4.2 and advises that this be remedied. Ireland ratified the UNCRPD in 2018, and the NDA advises that the Commission should be guided by and adhere to the Convention in matters concerning the Draft Code and Rules.

Article 30 of the UNCRPD specifically obliges States Parties, including Ireland, to recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and to take all appropriate measures to ensure that persons with disabilities enjoy access to television programmes in accessible formats.<sup>2</sup> In addition, Article 21 of the Convention enshrines the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Furthermore, a key objective of the Commission in introducing regulatory rules for on-demand providers is to fully transpose the Audiovisual Media Services Directive into Irish law.<sup>3</sup> The European Union has ratified the UNCRPD and accordingly all EU law, including the Audiovisual Media Services Directive, must

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<sup>2</sup> The NDA's 2024 annual conference, taking place on 24 October 2024, will consider Article 30 of the Convention. We are liaising with colleagues within the Commission regarding participation at the event to ensure a focus on accessible television and broadcasting services.

<sup>3</sup> Ireland has failed to meet the deadline of 19 September 2020 for transposition of the Audiovisual Media Services Directive. While commencement of the Online Safety and Media Regulation Act 2022 in March 2023 marked partial transposition of the Audiovisual Media Services Directive, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has noted that full transposition will only be achieved once Coimisiún na Meán adopts relevant online safety and media services codes (including the Audiovisual On-Demand Media Service Code and Rules). The right of persons with disabilities to participate and be integrated in the social and cultural life of the EU is linked to the provision of accessible audio-visual media services. The NDA therefore underscores the importance of full, effective and timely transposition of the Audiovisual Media Services Directive.

be interpreted in a manner consistent with the Convention. Recital 22 of the Directive also explicitly states the following: ‘Ensuring the accessibility of audiovisual content is an essential requirement in the context of the commitments taken under the United Nations Convention on the Rights of Persons with Disabilities.’

### **European Accessibility Act**

The NDA also notes that there is no reference to the European Accessibility Act in Section 1.1 and advises that this be remedied. The European Accessibility Act (EAA) (Directive EU 2019/882) is a directive that aims to improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States. These products include equipment related to digital television services and access to audio-visual media services such as on-demand audiovisual media services. The EAA was transposed into Irish law via Statutory Instrument (S.I.) 636/2023.

The NDA considers the EAA and the Audiovisual Media Services Directive to be complementary, a view echoed in the European Commission report examining the application of the Audiovisual Media Services Directive during the period between 2019 and 2022. The definition of ‘audiovisual services’ (which includes on-demand audiovisual media services) is the same in both Directives, further reinforcing this alignment.

As outlined in S.I. 636/2023, accessibility requirements for services providing access to an audiovisual media service, including on-demand audiovisual media services, must be achieved by ‘providing EPGs [Electronic Programming Guides] which are perceivable, operable, understandable and robust and provide information about the availability of accessibility’ (Schedule I, Section 4, (b)(i)); and ‘ensuring that the accessibility components (access services) of the audiovisual media services, such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation, are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.’ (Schedule I, Section 4, (b)(ii)).

As the designated compliance authority for services providing access to audiovisual media services under S.I. 636/2023, the Commission must ensure that the services provided by on-demand audiovisual media services meet the accessibility requirements detailed in Schedule I of S.I. 636.

### **Accessible Complaints Mechanism**

The NDA notes that Section 8 deals with complaints, including complaints that an on-demand services failed to take proportionate measures to ensure that programmes available on their on-demand services are made continuously and

progressively more accessible to persons with disabilities through the provision of access services.

Complaints processes are an essential part of service provision, business improvement and quality assurance. In 2021, the NDA undertook a statutory review of the Irish Sign Language Act 2017, which concluded that the absence of an accessible complaint mechanism for ISL users should be remedied promptly by providing a two-way mechanism where ISL users can make a complaint or submit feedback in ISL on any matter, and receive appropriate responses through ISL.

While the NDA notes that the Irish Sign Language Act 2017 (via the Access Rules) only applies to broadcast content and not to online on-demand players or other non-broadcast mediums, it is nonetheless important that the Commission considers ways of making their complaints and information services accessible to ISL users, particularly given the low literacy levels of some ISL users.

### **Question 8: Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?**

The NDA has consistently advised that access requirements should be met through a progressive and continuous process, while considering the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time. Our approach is akin to that required by the Audiovisual Media Services Directive, which requires EU Member States, including Ireland, to ensure that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

### **Accessibility Action Plans**

The NDA welcomes the proposal to require media service providers of on-demand services to develop accessibility action plans detailing how they will continuously and progressively make their on-demand services more accessible to persons with disabilities through the provision of access services. We further welcome the need for such plans to be agreed with the Commission.

In addition, the NDA welcomes the list of six criteria which must be addressed in the accessibility action plans. We note that Section 15.5(v) states that the accessibility action plans must outline proposals to consult with users of access services on the provision by the media services provider of access services on the on-demand media services that it provides. While we agree that this is important, the NDA further recommends that media service providers of on-demand services also be required to detail the extent to which users of access services have been consulted in the development of the accessibility action plans.



We would further recommend that there is a specific reference to consultation with Disabled Persons' Organisations (DPOs) in Section 15.5(v). The UNCRPD is clear that DPOs, as representative organisations of disabled people, must be closely consulted with and actively involved in decision making processes concerning issues related to people with disabilities. The NDA has developed guidance, entitled Participation Matters, for public officials on how to meaningfully consult with and actively involve disabled people and their representative organisations in policy development processes in line with the UNCRPD, which may be of assistance to the Commission in this regard.<sup>4</sup>

Furthermore, the NDA advises that Section 15 be amended to expressly state that the annual accessibility action plans should be made publicly available in accessible formats. Likewise, reports on the implementation of accessibility action plans (as referenced in Section 15.9) should be made publicly available.

### **Emergency Information**

The NDA welcomes the provision in Section 15.8 which provides that where an on-demand service transmits emergency information, including public communications and announcements in natural disaster situations, the provider of that service shall ensure that this information is provided in a manner which is accessible to persons with disabilities. However, the NDA suggests that Section 15.8 should be more explicit and specify that such providers must provide subtitling and Irish Sign Language for emergency information transmissions, to mirror the approach proposed in the Draft Access Rules for Television Broadcasting Services.

### **Monitoring**

As outlined in Section 15, accessibility action plans must detail the measures to be taken to adhere to the quality standards developed by the Commission. In addition, media service providers of on-demand services must provide an annual report to the Commission on the implementation of these plans.

However, similar to the advice we provided in respect of the Draft Access Rules for Television Broadcasting Services, the NDA advises that the Commission outline the steps it will take itself to monitor compliance with the accessibility action plans, including monitoring adherence to the quality standards for ISL, Audio Description and subtitling.

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<sup>4</sup> The guidelines are available at the following link: [Participation Matters: Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision making - National Disability Authority \(nda.ie\)](https://www.nda.ie/publications/participation-matters-guidelines-on-implementing-the-obligation-to-meaningfully-engage-with-disabled-people-in-public-decision-making)

## **Conclusion**

The NDA welcomes Coimisiún na Meán's consultation on the Draft Audiovisual On-Demand Media Service Code and Rules. We would be happy to engage with the Commission on any of the points raised in this submission.

[REDACTED]

Comisiún na Meán  
1 Shelbourne Buildings  
Shelbourne Road  
Dublin 4

23<sup>rd</sup> August 2024

[REDACTED]

Thank you for agreeing to an extension of time for NewsBrands to review the Draft Codes and Rules for Video-On-Demand Services and to facilitate the making of any submissions.

On review of the Draft Code, I note that it is intended to apply to media service providers providing audiovisual on-demand media services. Both NewsBrands and its members are firmly of the view that independent news publishers do not come within the definition of a relevant media service provider and that as such, the Draft Code will not be applicable to our members.

Best wishes,



Ann Marie Lenihan  
CEO

**On-Demand Audiovisual Services (ODAS) Group submission to Coimisiún na Meán  
consultation on codes and rules for audiovisual on-demand media services**

**20 August 2024**

The On-Demand Audiovisual Services (ODAS) Group would like to make the following submission to the Coimisiún na Meán (the Coimisiún) consultation on codes and rules for audiovisual on-demand media services.

The ODAS Group wishes first to provide the background to the existing code before making specific comments and proposals.

**Background**

Following on the enactment of the Audiovisual Media Service Directive 2010/13 the then Minister for Communications, in line with the provisions of the Directive, issued a Statutory Instrument requiring:

- a) that the providers of on-demand services should regulate the sector.
- b) that the providers should draw up a code of standards for both editorial and commercial content.
- c) that the code must have the approval of the Broadcasting Authority of Ireland and subsequently the Coimisiún.

This co-regulatory structure was put in place thirteen years ago and remains the Code of Practice for on-demand services.

The Audiovisual Media Service Directive as amended 2018/1808 contains the same recognition of co-regulation. It encourages Member States to foster co and self-regulation in many of its articles. It recognises that the experience and expertise of industry can play a positive role in the regulatory process.

**Specific comments**

The Coimisiún's proposed code is largely based on the code developed by the ODAS Group of which the Coimisiún remains an active member. The introductory comments, the scope or the section on the preparation of the code and rules make no reference to this background or to the part played by industry through the ODAS Group for well over a decade. The ODAS Group finds this lack of recognition both surprising and disappointing. The ODAS members, in light of the role played over this period and the provisions of the Directive, request that a mechanism is put in place to ensure active engagement and regular consultation with wider industry by the Coimisiún. They request that such a mechanism be agreed prior to the code becoming active in view of the fact that regular structured discussions over the last 13 years have been mutually informative, something it is hoped can continue.

Such a mechanism would provide a forum for stakeholders to raise issues of concern and to input into the ongoing regulation of the sector. It would provide clarity on aspects of the code to service providers and provide the Coimisiún with feedback on the practical application of the code and issues arising.

In relation to services providers, clarity is required in areas such as:

- a) what in practical terms is meant by "sufficient information to audience about content..." in the section on Harmful Content. (Section 10.2)
- b) "age verification" requires to be further teased out.

- c) how could the Coimisiún practically support the development of a central commercial clearance body?
- d) the area of accessibility needs further clarification, especially in light of terms such as “to continuously and progressively” provide accessibility. How is this to be measured?
- e) the ODAS Group is concerned that the codes developed for alcohol products advertising on broadcast media are not reflected in the proposed on demand code. This will cause confusion and could result in abuse. It would also seem to fly in the face of stated government policy. This inconsistency should also be removed from advertising, sponsorship and product placement rules. Without alignment with the existing codes, specifically on broadcast, there is a risk of a divergence of regulatory standards by media platform. There should be a consistent approach to the delivery of similar content regardless of media platform.
- f) clarity is also required as to what is meant by encouraging “behaviour grossly prejudicial to the protection of the environment”. (Section 12.3 iv)

Additional issues requiring clarification will no doubt arise in the future, which demonstrates the need for a forum. Other stakeholders within the industry may wish to be able to use the forum to appraise the Coimisiún on the application of the code and conformity in its application by service providers.

The ODAS Group can provide detailed examples on the above points to the Coimisiún and is available to discuss this or any other any aspect of its submission.

## Your response:

Please insert your response under each of the respective questions below.

**1. Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?**

**We would concur with the principles and suggested processes outlined in Sections 1-8.**

**2. Do you have any comments on the proposed definitions contained in Section 9 of the Draft Code and Rules?**

**The proposed definitions appear to align with the provisions of the Broadcasting Act, 2009 as amended by the Online Safety and Media Regulation Act 2022 which implements the provisions of the AVMS Directive into Irish law. They also appear to reflect and articulate the legislative basis which enables the Commission to make rules and codes with application to on-demand audiovisual media services.**

**3. Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?**

**RTÉ is supportive of regulation which seeks to ensure that children are not exposed to harmful content in an on-demand (or online) context. RTÉ as a public service media provider, is supportive of regulatory measures required to achieve the adequate protection of minors. RTÉ would also welcome the aspiration to ensure that protection measures are commensurate with the potential risk.**

**RTÉ also notes the proposed restrictions regarding the usage of personal data and its own plans regarding universal sign in to digital services, do not include any data retention from minors.**

**4. Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders as set out in Section 11 of the Draft Code and Rules**

**RTÉ recognises the importance of copyright and other contractual restrictions in terms of transmission on linear and digital services, and would therefore support any clarity around restrictions regarding same.**

**5. Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?**

**RTÉ recognises the value of robust commercial codes which align with its own editorial standards and would be supportive of greater clarity regarding any analogous codes applicable in the on-demand audiovisual environment. Codes of this nature are already well established and adhered to by RTÉ in the context of its linear transmission services, and on a voluntary basis in the context of its on-demand service.**

**RTÉ would point out that a consistency in approach as between linear and on-demand services is crucial to ensure that similar standards apply to content whether accessed by way of linear transmission or within an on-demand setting.**

**6. Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?**

See above. RTÉ would re-iterate that consistency in regulatory approach in relation to proposed codes and rules applicable in a linear and in an on-demand context is important.

**7. Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?**

See above in terms of the importance of consistency in approach as between linear and on-demand.

**8. Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?**

**RTÉ will develop an accessibility action plan, to be agreed with the Commission, in respect of the obligation set out under section 15.1. RTÉ observes that the principles and standards suggested in this draft code would appear to be comprehensive and correct.**

<b>Consultation title</b>	Consultation on Codes & Rules for Audiovisual on-demand media services
<b>Full name</b>	<b>Senator Rónán Mullen</b>

## Your response:

Please insert your response under each of the respective questions below.

<p><b>1. Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?</b></p>
<p><b>2. Do you have any comments on the proposed definitions contained in Section 9 of the Draft Code and Rules?</b></p>
<p><b>3. Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?</b></p> <p>As per a letter I sent separately, I am of the view that there is not sufficient specificity in Section 10 of the Draft Code in relation to Harmful Content. Section 10 provides that ‘the most harmful content’, including pornography, be ‘subject to the strictest measures’. These include ‘age assurance tools’. However, other than the setting down of a minimum standard providing that mere self-declaration of age shall not be an effective measure for age assurance, ‘age assurance tools’ are not defined and there is no mention of the stronger phrase, ‘age verification’.</p> <p>Further, from two references within Section 10, it is clear that the use of ‘age assurance tools’ are not obligatory. In Section 10.4 it provides that ‘appropriate measures’ ‘may entail’ their use. Further, at Section 10.6, ‘age assurance tools’ are listed within an apparent list of options for media service providers including ‘parental controls’ and ‘other effective measures’.</p> <p>I submit that this will not be effective because it gives unnecessary and undeserved choice to media service providers. There needs, in my view, to be a clear obligation in all circumstances on media service providers to ensure strict age verification so that persons under the age of majority are not normally exposed to adult content. Age verification should be defined so as to require the provision</p>





of documentation and relevant photographs in line with standards that apply in relation to accessing other services online (specifically financial services) or audio-visually.

**4. Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders as set out in Section 11 of the Draft Code and Rules**

**5. Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?**

**6. Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?**

**7. Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?**

**8. Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?**



[Technology Ireland response to Coimisiún na Meán's \(CnaM\) consultation on a new draft Audiovisual On-Demand Media \(Video-on-demand\) Service Code and new draft Rules](#)

## **Introduction**

Technology Ireland, the Ibec group representing the technology industry, welcomes the opportunity to respond to Coimisiún na Meán's (**CnaM**) consultation on a new draft Audiovisual On-Demand Media (Video-on-demand) Service Code and new draft Rules.

Technology Ireland is an association within Ibec, which represents the ICT, Digital and Software Technology Sector. Technology Ireland is committed to promoting trust in our industry, particularly as the online world has accelerated in its importance to our lives.

As a sector we strongly voice our support for the co-regulatory approach encouraged by the AVMSD, to achieve protection of all users, including children and young people, from harmful online content. Our members are committed to working closely with regulators and civil society to address evolving harms and to operating within a code that reflects the intentions of the AVMSD, which clearly defines the objectives which our sector must meet to achieve these goals. Technology Ireland and its members support the promotion of European media content and cultural diversity, contributing to making the EU audiovisual industry more competitive.

As with other consultations applicable to services in scope of the AVMS-D, it is important that CnaM reflect the need for Codes that fit the parameters and risk – profiles of specific services. With Codes published thus far, it should be recognized that there are differences in the offerings of Video Sharing Platform Services (VSPS) and video-on-demand (VOD).

### **Question 1: Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?**

Technology Ireland and its members support the creation of the draft Code by CnaM pursuant to the Broadcasting Act (2009) (Sections 46N(1), 46O(1) and (5)) and as amended in the Online Safety and Media Regulation Act 2022 and as set out in the AVMS-D.

As the purpose of the Code and Rules is to ensure media providers comply with requirements of Articles 5,6(1),6a(1) to (3), 7, 8,9,10,and 11 of the AVMS-D, Technology Ireland supports a Code that is in line with requirements and provisions already in place at the European level. Any Code introduced by CnaM must not disturb the careful balance struck through the creation of the AVMS-D to ensure harmonisation across the Member States.

### **Question 3: Do you have any comments on the requirements relating to harmful content provided for under Section 10?**

Regarding Section 10.4 - 10.6, Technology Ireland and its members strongly advise CnaM to consider the negative implications of a general prohibition on media service providers using age assurance tools on a self-declaratory basis. In relation to this point, the Irish and EU legislation under which the Draft Code and Rules was implemented does not explicitly ban the use of self-declaration. Equally, given general market practice, it is not feasible under the Draft Code and

Rules to prohibit self-declaration as a mechanism for age verification and we ask that CnaM provide a clarification on the possible intent to prohibit media service providers from using age assurance tools on a self-declaratory basis, particularly given the fact that the Draft Code and Rules does not provide any information on alternative age-assurance methods which could be used. Under 10.4 clarification should be provided on the intent for requirements to be general or targeted and if listed options are alternative or cumulative.

As an overall comment and suggestion, based on previous European Union case law, CnaM must ensure that the implementation of the AVMS imposed VOD rules aligns with the scope or purpose of the AVMS Directive itself. A level-playing field for VOD providers across Europe means that Member States, including Ireland, should refrain from additional obligations beyond the AVMS Directive. Such an approach would lead to significant differences with how the AVMS Directive is implemented in other Member States and reduce the level of harmonisation across EU Member States which is contrary to the EU directive framework. These principles are enshrined in EU and Irish law and, as CnaM is aware, there has been several cases in which Member States (and regulators) have been brought before the European Courts for non-compliance with EU directives including the following examples:

- **Case C-55/12 European Commission v Ireland**, Ireland continued to apply an exemption from excise duty of fuel used by disabled persons for motor vehicles, following the implementation of Directive 2003/96. This action was contrary to Directive 2003/96 which establishes minimum levels of taxation applicable by Member States to energy products and electricity. The European Court of Justice held that this Irish legislation in respect of excise duty on fuel was contrary to the terms of Directive 2003/96 and that it cannot be accepted that a Member State may unilaterally circumvent the requirement to comply with the obligations laid down in a directive.
- **Case C-582/14 Patrick Breyer v Bundesrepublik Deutschland** concerned the interpretation of Article 7(f) of Directive 95/46/EC regarding the registration and storage of internet protocol addresses (IP addresses) by online media services providers without the data subject's consent. The Court determined that the Directive must be interpreted as precluding the legislation of a Member State, in this case the German Telemediengesetz (Law on telemedia) of 26 February 2007, from limiting the ability to consider the legitimate interests pursued by the controller. The European Court held that Article 7 of Directive 95/46 sets out an exhaustive and restrictive list of cases in which the processing of personal data can be regarded as being lawful and that the Member States cannot add new principles relating to the lawfulness of the processing of personal data or impose additional requirements that have the effect of amending the scope of one of the principles provided for in that article.
- **Case C 160/11 Bawaria Motors sp. z o.o. v Minister Finansów** involved the Polish Law on VAT which applied a special margin scheme for taxable dealers in relation to the resale of second-hand passenger vehicles and other motor vehicles purchased from taxable persons who, upon the acquisition of those vehicles, exercised a right to deduct part of the input tax on the purchase. The European Court held that this went beyond the scope

of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The exemption found no support in the VAT Directive which sets out an exhaustive list of activities exempted from VAT.

- **Case 158/89 Rewe v Hauptzollamt Kiel**, deals with a preliminary Reference in respect of Directive No 69/169. The directive provides that an exemption from taxes levied on importation is applicable, within the framework of travel between non-member countries and the Community, to goods contained in the personal luggage of travellers and not exceeding certain limits as to value. The European Court asked, inter alia, if the directive contained definitive rules for the exemption from turnover tax and excise duty of goods in travellers' personal luggage or whether Member States can independently grant goods in travellers' personal luggage exemption from turnover tax and excise duty going beyond the scope of the directive. The European Court found that in adopting the directives the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage and consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

**Question 4: Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders?**

Technology Ireland and its members advocate for harmonised approach on specific national sub-quotas (e.g., in cinematographic movies, local language and independent productions). In agreements with rights holders, and to ensure global attractiveness and competitiveness, VoD providers require sufficient guarantees of regulatory stability, predictable business environments and legal certainty provided by the provisions set out in the AVMS-D. We do not support the requirement being a regulatory requirement. This seems both unnecessary and interferes with the commercial arrangements between platforms and licence-holders. If a platform or service provider transmits a work outside the period of the licence terms, this should be a contractual matter for the parties to deal with.

The AVMS-D provides a legal definition of 'European works' and enshrines key concepts which, at the EU level, prevent Member States from interpreting or modifying them, ensuring legibility of the EU legal framework. Significant efforts have already been made at the European level to reduce the fragmentation of the European internal audiovisual landscape and advocates for a common European audiovisual industry.

**Question 5: Do you have any comments on the requirements relating to commercial communications provided for under Section 12?**

Technology Ireland supports the Code's requirements set out in Sections 12.1 to 12.4. As regards Section 2.5, whilst Technology Ireland supports the overall purpose of the provision, it also considers that reframing the provision as an efforts obligation rather than an obligation of results would be preferable in order to include reasonable parameters on commercial communication requirements. In this vein, CnaM may consider the addition of the following language in Section



12.5 of the Draft Code and Rules (emphasis added): *“Media service providers of on-demand services shall strive to ensure that audiovisual commercial communications for alcoholic beverages they provide, with the exception of sponsorship and product placement, comply with the following requirements:...”*

Other than the above, requirements should be in alignment with the AVMSD and the DSA, which harmonises the rules around intermediary service’s terms and conditions.

Technology Ireland’s position on commercial communications in relation to Video Sharing Platform Services (VSPs) was outlined in our submission to the CnaM Draft Online Safety Code consultation. Points raised in both consultations reflect the need for bespoke codes for services that are sufficiently different to merit a different approach.

**Question 6: Do you have any comments on the requirements relating to sponsorship provided for under Section 13?**

Technology Ireland and its members consider that the provisions on sponsorship have room for certain clarification and improvement.

On the one hand, Technology Ireland respectfully suggests that CnaM clarify in more detail the definition of “sponsorship” under Section 9 of the Draft Code and Rules, as it relates to Section 13. The language used in the definition of “sponsorship” should be clearer to ensure that parents, subsidiaries and related entities within a media service provider’s group structure are not incorrectly considered sponsors. A more precise definition would avoid ambiguity and ensure that media service providers understand the scope, obligations and expectations of sponsorship arrangements under the Draft Code and Rules. Similarly, Technology Ireland considers that the term “special promotional references” under Section 13.1(ii) (and repeated in Section 14.2) should be clarified in more detail in the Draft Code and Rules.

On the other hand, Technology Ireland suggests that CnaM should consider the implications of the requirement in the Draft Code and Rules that on-demand services or programmes must not directly encourage the purchase or rental of goods or services by making special promotional reference to those goods or services within programmes, if programmes are sponsored. This requirement is very far-reaching. For example, an on-demand programme that is sponsored could also include product placement in that programme, the inclusion of which is clearly outside the control of the media service provider. Technology Ireland further respectfully recommends that CnaM also consider the addition of the following language in at Section 13.1(ii) of the Draft Code and Rules (emphasis added): *“...the on-demand services or programmes they provide shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional reference to those goods or services, without disclosing the existence of a sponsorship agreement/relationship beforehand.”*

**Question 7: Do you have any comments on the product placement requirements under Section 14?**

Technology Ireland and its members advocate for more flexible requirements on product placements and would suggest CnaM the following:

- (i) Consider the implications of the requirement in the Draft Code and Rules that audiences must be informed of the existence of product placement at the start and end of the programme and when a programme resumes after an advertising break. The AVMS-D provides that Member States may waive this requirement “except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider”. CnaM has chosen not to do this. This requirement as currently drafted creates an undue burden on media service providers and does not reflect the practicalities of on-demand media distribution. Technology Ireland suggest the inclusion in the Code a similar exemption to that which was included in the ODAS Code, and which AVMSD [Art. 11(3)(d)] leaves to Member States discretion to waive, namely: *the requirement to ensure disclosure of product placements appearing within programmes should only apply to the On-demand service provider where it has produced or commissioned the programme*. Equally, repeatedly informing viewers of product placement is unnecessary, particularly after advertising breaks, as the objective of this requirement to inform the audience can be achieved with a single, clear indication at the start of the programme. As such, Technology Ireland would recommend that CnaM consider the following, alternative language at Section 14.2(iv) of the Draft Code and Rules, in line with AVMS provisions (emphasis added):

*“audiences shall be clearly informed of the existence of product placement by an appropriate identification at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer; provided that media service providers shall not be required to include such identification if the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.”*

- (ii) Consider the implications of the very far-reaching applicability of the language used under Section 14.2(iv) of the Draft Code and Rules. Disclosures should only be required for programmes that are produced or commissioned by the media service provider, not for programmes simply licensed by the media service provider (e.g., library content).
- (iii) More clearly distinguish between ‘product placement’ and ‘prop placement’, by defining ‘prop placement’ in the Draft Code and Rules and specifying clearly whether it is to be governed by these rules or whether there are exemptions to ‘prop placement’ use under the Draft Code and Rules. Technology Ireland would respectfully suggest that ‘prop placement’ should not trigger a disclosure given that it is provided for free or at a discount to programme production. Disclosure should

only apply to ‘product placement’ of significant monetary value (not cost savings) to the programme.

- (iv) CnaM should clarify that the restriction on product placement in children’s programmes should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider.

**Question 8:** Do you have any comments on the requirements relating to accessibility as set out in Section 15?

Technology Ireland and its members welcome the approach taken by CnaM that the ‘Accessibility Action Plan’ will be formulated with broad scope, to ensure such plans can cover a broad selection of programme types. This approach gives media service providers the flexibility needed to address viewers accessibility requirements in an effective way, not only across the full catalogue, but also across the service. The accessibility requirements should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider. Technology Ireland would respectfully suggest that CnaM clarify what it means by media service providers taking measures to ensure that programmes made available are “continuously and progressively more accessible to persons with disabilities...” A more precise definition would avoid ambiguity and ensure that media service providers understand the scope, obligations and expectations of their accessibility obligations under the Draft Code and Rules.





13/08/24

**Aighneacht** : Draft Code and Rules for Video On-demand services

TG4 welcomes the opportunity to give feedback on the draft Code and Rules.

TG4 has the following comments on the draft Media Service Code and Media Service Rules Audiovisual On-Demand Media Service Providers dated 4 July 2024:

**Question 1: Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?**

- (1) TG4 comment: Section 6.1 and Section 6.2: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted. If this language is retained it should at a minimum exclude the Accessibility Action Plan which is agreed by the Regulator under section 15.2.

**Question 2: Do you have any comments on the proposed definitions contained in the Draft Code and Rules?**

No comments.

**Question 3: Do you have any comments on the requirements relating to harmful content provided for under Section 10?**

- (2) TG4 Comment: Please clarify the meaning of *sufficient* in section 10(2):

“Media service providers of on-demand services shall provide sufficient information to audiences about content which may impair the physical, mental or moral development of children” - (10)(2)

- (3) TG4 Comment: is there a list of suggestions / further guidance as to what will be determined to be effective re age verification in the following requirement?

“Age assurance measure based solely on self-declaration of age by users of the service shall not be an effective measure for the purposes of Section 10.4” - (10)(4)

**Question 4:** Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders?

No comments.

## **Section 12: Audiovisual Commercial Communicatiosn**

**Question 5:** Do you have any comments on the requirements relating to commercial communications provided for under Section 12?

A central clearing house for all compliance on commercial communications would be beneficial to avoid uplication of compliance on same Adverts across channels.

**Question 6:** Do you have any comments on the requirements relating to sponsorship provided for under Section 13?

No comments.

**Question 7:** Do you have any comments on the product placement requirements under Section 14?

No comments.

## Section 15: Accessibility

**Question 8: Do you have any comments on the requirements relating to accessibility as set out in Section 15?**

(5) TG4 Comment:

Much of the content in an on-demand schedule will have been produced before the introduction of these Rules and the Rules need to take account of this fact. The following sentence should be included in Section 15.1 as is the case with section 14:

“Section 15.1 shall apply only to programmes produced after 19 December 2009.”

(6) TG4 comment: Section 15.1: It will not be practicable to provide each form of access detailed in the definition of Access Services in respect of each programme in an on-demand service. Section 15.1 imposes an obligation in relation to each form of access in the definition of Access Services.

A sentence is required as follows in section 15.1: “Failure by a media service provider of on-demand services to provide each element of the access services as described in the definition of Access Services will not constitute a breach of Section 15.1.”

(7) TG4 comment: Section 15.1: this section imposes a “continuously and progressively” more accessible requirement.

If a media service provider provides a very substantial level of access, under this form of language it is required to do more and the media service provider could be in breach of the Code for failure to do so, exposing it to the possibility of a substantial fine, notwithstanding a very substantial level of access. This is unreasonable.

Section 4.4 of the Code provides: “In addition, the Commission must endeavour to ensure that its regulatory arrangements .... (iii) operate proportionately, consistently and fairly. “

The “continuously and progressively” language is not consistent with the principle of fairness referenced in section 4.4 of the Code. One media service provider could be providing far greater access than another but if it does not “continuously and progressively” improve the access it could be in breach of this requirement. This is unfair and unreasonable. The words “continuously and progressively” in section 15.1 create uncertainty, the obligation is unreasonable and unfair and the words should be removed.

(8) TG4 comment: Section 15.4: the Accessibility Action Plan is agreed with the Regulator and in the interests of certainty, compliance with this Plan must constitute compliance with the access obligations in the Code.

A new section 15.4 is required as follows. ” Compliance with the Accessibility Action Plan constitutes compliance by the media service provider of on-demand services with section 15.1 of the Code.”

(9) TG4 comment: Guidance (iv): this provides guidance in relation to influencing factors as follows: “... the type of programming in the catalogue has an influence on the cost, technical

facilities, personnel and ability to provide access services.” Additional language is required as follows to acknowledge the reality that media service providers will include content in the on demand schedule which has been created by third parties and as such will not have access services: “ It is acknowledged that access services may not be possible for certain acquired programming and certain co-produced programming”.



## **Virgin Media Television response to:**

Consultation Document: Draft Audiovisual On- Demand Service Code and Rules.

Non-Confidential

20 August 2024



## Introduction

Virgin Media Television welcomes the opportunity to respond to the consultation on the draft media service codes and draft media services rules to apply to on-demand providers (the “Draft Code and Rules”). Please find below Virgin Media Television’s response to the questions.

Virgin Media Television looks forward to future collaborative engagement with Coimisiún na Meán and to providing input on the regulatory rules for on-demand media services. Please do not hesitate to contact us should you require clarification on any of our responses.

## Virgin Media Television Response to Consultation on the Draft Audiovisual On-Demand Media Service Code & Rules

*1. Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?*

Virgin Media Television response to Q1. Virgin Media Television has no further comments on introductory Sections 1-8 of the Draft Code Rules.

*2. Do you have any comments on the proposed definitions contained in Section 9 of the Draft Code and Rules?*

Virgin Media Television response to Q2. Virgin Media Television has no further comment on the proposed definitions contained on Section 9 of the Draft Code Rules.

*3. Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?*

Virgin Media Television response to Q3. Virgin Media Television already protects minors and implements a banner/age verification for content with mature themes.

Content on Virgin Media Player mirrors content that is broadcast on our channels. Linear broadcasting for Virgin Media Television follows traditional watershed guidelines for when content can be aired. Content on Virgin Media Television’s streaming platform is available on demand any time, in line with all known streaming services. Content deemed to be “post



watershed” or only suitable for older audiences is delivered with warnings and a requirement for viewers to confirm they are of age.

Virgin Media Television has some comments regarding the protection mechanisms in Section 10.4 such as the provision of parental controls, restricted modes and a PIN access facility as follows:

- The requirements are simply too onerous and costly for a Public Service Broadcaster who receives no direct public funding, unlike (i) RTÉ who is in receipt of both licence fee and exchequer funding and will receive €225m in public funding next year, €725 million over the next three years; and (ii) dominant streaming providers with millions of paying subscribers.
- We believe that the introduction of these protection mechanisms would require implementing a registration/sign in procedure to include control mechanisms/functionality for the facility to choose bespoke/personalise control options. These measures are not currently commonly adopted for example, mature themed television programming requires confirmation/verification of age.
- Virgin Media Television would be concerned that implementing such a registration/sign in procedure to gain access to Television Media Players/ television streaming would be very challenging and significantly diminish the direct level of access to television programming that viewers enjoy today.
- Any changes to how current services can be accessed would require significant IT development works, resourcing, costs and effective customer communication/information management planning.
- To ensure compliance with data protection obligations, data controllers need an established legal basis under Article 6 of the General Data Protection Regulation to ensure processing is lawful. Virgin Media Television must always consider its data protection obligations, including key data protection principles such as data minimisation. Virgin Media Television therefore believes that Coimisiún na Meán should undertake consultation with the Data Protection Commission before finalising the Guidelines, particularly in relation to the use of ‘age assurance tools’

*4. Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders as set out in Section 11 of the Draft Code and Rules?*

Virgin Media Television response to Q4. Virgin Media Television has no further comments on the requirements not to transmit cinematographic works outside agreed periods under Section 11 of the Draft Code and Rules.



5. *Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?*

Virgin Media Television response to Q5. It is important that the requirements under Section 12 relating to commercial communications/advertising mirror the Broadcasting Codes and Standards for linear broadcast to ensure that the requirements/standards are consistent and do not conflict.

6. *Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?*

Virgin Media Television response to Q6. Virgin Media Television has no further comment on the requirements relating to sponsorship provided under Section 13 of the Draft Code Rules.

7. *Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?*

Virgin Media response to Q7. Virgin Media Television has no further comment on the product placement requirements provided under Section 14 of the Draft Code Rules.

8. *Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?*

Virgin Media Television response to Q8. Virgin Media Television recognises the importance of accessibility of its service.

We note that the current Access rules for Television broadcasting give clear guidance and that these are subject consultation and that the Draft Access Rules for Television Broadcasting includes clear requirements and targets for 2025-2027.

In relation to accessibility for audiovisual on-demand in service providers around subtitling, ISL and Audio Description it is vital to have clarity. Virgin Media Television welcomes that the Commission intends to consult separately on the topic of Accessibility for audiovisual on-demand in service providers.



<b>Consultation title</b>	Consultation on Codes & Rules for Audiovisual on-demand media services
<b>Organisation name</b>	Warner Bros. Discovery

## Your response:

Please insert your response under each of the respective questions below.

<p><b>1. Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?</b></p> <p>No comments</p>
<p><b>2. Do you have any comments on the proposed definitions contained in Section 9 of the Draft Code and Rules?</b></p> <p>WBD welcomes the introduction by the draft Code of a general responsibility on media service providers (“MSPs”) to provide more accessible content to people with disabilities.</p> <p>Whilst WBD recognises the objective of increased accessibility, <u>it is not clear</u> from the Draft Code exactly what obligations MSPs will be under (and how they make the service ‘continuously and progressively more accessible’. It is also not clear whether <i>all</i> forms of content must be accompanied by the <i>full</i> extent of access services (i.e. captions, subtitles, sign language, audio description) or whether the provision of one (or some) of these access services is sufficient, depending on the relevant context. Of particular concern is the potential responsibilities the Draft Code imposes as regards Irish Sign Language.</p> <p>Under section 9 of the Draft Code, “access services” are defined as including the provision of Irish Sign Language if the service is “<i>targeting Irish audiences</i>”. WBD submit that the meaning of the phrase ‘targeting Irish audiences’ is not clear and, consequently, the scope of any responsibilities, in particularly regarding Irish Sign Language requires clarification. Clarification is especially necessary in circumstances where the content may be available to Irish audiences (who are a tiny proportion of overall viewers) and the technical and practical costs associated with the provision of Irish Sign Language services may be significant.</p> <p>WBD is aware of the growing developments in AI, and recommend that CnaM investigates the research various projects around how far AI could be a partial solution to providing Irish Sign Language. (see for example <a href="https://migam.ai/">https://migam.ai/</a>)</p>
<p><b>3. Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?</b></p> <p><b><i>Sections 10.3, 10.4, 10.6</i></b></p>

WBD submits that further clarification is needed in relation to child protection provisions in the draft Code, which appear to go beyond AVMSD and OSMR Act 2022 and be prescriptive on what the various terms mean under the Code e.g. what constitutes ‘pornography’, ‘gratuitous violence’, ‘prior content warnings’ etc.

Sections 10.3 and 10.4 of the draft Code set out requirements for MSP to ensure that content which may impair the physical, mental or moral development of children is only available in such a way that children would not normally hear or see them by means of prior content warnings, provision or parental controls such as restricted modes and PIN access, and age assurance tools. Under section 10.6, MSPs must apply the strictest measures to content consisting of pornography and gratuitous violence.

Firstly, besides from pornographic and gratuitous violence content, the type of content which may ‘*impair the physical, mental or moral development of children*’ is left wholly undefined by the draft Code. The scope of content covered by such a phrase may be excessively broad and impose disproportionate costs on media service providers (i.e., costs stemming from the review and classification of entire libraries of pre-existing works). Therefore, WBD asks that, the Code should further specify the particular types of content which may ‘impair the physical, mental or moral development of children’.

Secondly, WBD note that, under section 10.4, the use of age verification tools “*based solely on self-declaration of age by users of the service shall not be an effective measure for the purposes of section 10.4*”. The draft Code, does not specify what other types of age assurance tools would constitute an effective measure (and what ‘technical measures’ would meet this requirement) such as requiring credit / debit cards or another system.

WBD respectfully submits that age verification tools which do not rely on self-declaration require complex and burdensome technical mechanisms and may have serious implications for the data protection / privacy rights of viewers. Thus, WBD submit that the Code should provide further clarity on the forms of age verification which are permissible under section 10.4. It should also be noted that Irish and EU legislation in this area do not explicitly prohibit the use of self-declaration as an age verification tool, and WBD welcomes more information on CnaM’s decision to adopt a more restrictive practice.

Thirdly, echoing the concerns in relation to access services, it is not clear whether the Code requires *all* content which may impair children’s physical, mental or moral development to be subject to the *full* extent of protection mechanisms referenced in section 10<sub>1</sub> or whether the provision of one (or some) of these protection mechanisms is sufficient, depending on the relevant context. WBD welcomes further clarification on this point.

**4. Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders as set out in Section 11 of the Draft Code and Rules**

No comments

**5. Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?**

**Sections 12.2, 12.5**

WBD submits that the definition of surreptitious audiovisual commercial communications (“**ACCs**”) under section 9 should be expressly stated not to include product placements. Section 12.2 prohibits the display of any surreptitious ACCs, which are defined as representations of goods / services “*intended by media service providers to serve as advertisements and might mislead the public as to its nature*”. WBD submits that the phrasing of this definition may also encompass inadequately identified product placements (prohibited under section 13.4). This could potentially result in media service providers receiving censure from CNAM under two different sections of the Code, for only one infringing act.

WBD note that drafting provided in the Code around consumption of alcohol is excessively broad and should allow for more flexibility in terms of content. Section 12.5.iii provides that ACCs shall not create the impression that the consumption of alcohol contributes towards social or sexual success. However, this definition would appear to inadvertently include the portrayal of alcohol consumption within convivial social contexts (i.e. friends gathering for the purposes of celebration or for the purpose of viewing a sporting event). More specific language or drafting to the effect that enhanced social success would exclude the portrayal of social situations but instead concern illusory claims that alcohol consumption would directly benefit the consumer. Therefore, WBD submits that section 12.5.iii of the Code should expressly clarify the prohibition and not inadvertently cover normal social activities in which alcohol may be consumed.

**6. Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?**

No comments

**7. Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?**

**Section 14.2**

WBD respectfully submits that the inclusion of certain provisions in the draft Code in relation to product placement appear more suited to a linear broadcasting model than on-demand services, which involves a direct and continuous requirement from the viewer to watch the broadcast.

Section 14.2 requires media service providers to inform audiences of the existence of product placement at the *start and end of the programme* and when a programme resumes *after an advertising break*. WBD queries the relevance and application of this provision to an on-demand context, in circumstances where there are less advertising breaks and the viewer continuously chooses what content they wish to view, therefore a repeated warning would not appear necessary in the current context.

WBD note that the stated objective of the requirement to inform is to “avoid any confusion on the part of the viewer”. However, given the particular phrasing, it is not clear what *form* of viewer confusion is contemplated by section 14.2. It is difficult for media service providers such as WBD to appropriately tailor product placement identifiers if it is not apparent what form of confusion the product placement identifier should prevent. Therefore, WBD submits that, in the interests of greater clarity, section 14.2 should include indicative examples of the forms of viewer confusion which product placement identifiers are supposed to prevent.

Further, WBD note that the provisions made by CnaM in the draft VOD Code go further than the legislative origin of this requirement in the AVMS Directive, whereby the Directive allows for a derogation from this requirement “*except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider*”. Similarly, the AVMS provides that Member States may choose whether to prohibit the use of sponsorship logo during certain programmes (children programmes, documentaries, religious programmes), this is something that CnaM has stated should be done automatically in the draft Code. WBD welcomes further clarity on the necessity for CnaM to go beyond the current regulatory framework in terms of the obligations placed on media service providers, and note that there may be reason to consider the *form* that product placement may take and the differences between prop and product placement, as these involve different cost and benefit considerations in the industry.

**8. Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?**

**Section 15.1**

WBD note that section 15.1 of the Code requires that MSPs provide access services via “*proportionate measures*” which ensure that programmes are “*continuously and progressively more accessible*”. See our comment above in relation to Section 9 as well.

Further, the text included under '*Guidance: Influencing Factors*' sets out a number of considerations which are relevant when determining whether a media service's accessibility measures are proportionate. In particular, the Code notes that CnaM will consider the current status of a MPS' accessibility when assessing whether its existing measures are proportionate. Whilst the concept of proportionality is typically helpful, WBD respectfully submit that its application in the context of accessibility services is not adapted and unclear. This is because media service providers such as WBD cannot easily or precisely pre-estimate the level of audience demand for particular access services or gain feedback about the impact of such services on audience experience. Therefore, WBD submit that it would be preferable for section 15.1 to refer to the concept of '*suitable measures*' which may be defined with the use of some examples, rather than the concept of 'proportionate measures'.