



## **Belong To Submission to Coimisiún na Meán on the draft Online Safety Code and Statutory Guidance Material**

**31<sup>st</sup> January 2024**

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## Introduction

Belong To, LGBTQ+ Youth Ireland is a national organisation supporting lesbian, gay, bisexual, transgender and queer (LGBTQ+) young people. Since 2003, Belong To has worked with LGBTQ+ youth to create a world where they are equal, safe and thriving in the diversity of their identities and experiences.

The organisation advocates and campaigns with and on behalf of LGBTQ+ young people and offers specialised LGBTQ+ youth services in Dublin, including crisis counselling with Pieta, and supports a network of LGBTQ+ youth groups across Ireland. Belong To also supports educators and other professionals working with LGBTQ+ youth with training, capacity building and policy development.

We strongly welcome the opportunity to contribute to the meaningful work of Coimisiún na Meán on developing Ireland’s first binding Online Safety Code for video-sharing platform services.

## Belong To’s Online Safety Work

Online safety is a key strategic priority for Belong To. In relation to policy, Belong To is proud to have staff and youth representatives as members of Coimisiún na Meán’s Youth Advisory Committee, and the organisation is a member of the Children’s Rights Alliance Online Safety Advisory Group. The importance of digital literacy, and empowering young people with the information needed to navigate online spaces safely, were key elements of our submission to the National Council on Curriculum and Assessment (NCCA) as part of the review of the Social Personal and Health Education (SPHE) curriculum for Junior Cycle and Senior Cycle students.<sup>1</sup> We were pleased to see a number of recommendations relating to online safety, digital literacy and the rights of young people online included in the final curriculum.

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<sup>1</sup> Belong To (2022) ‘Draft Specification for Junior Cycle SPHE – NCCA Consultation’. [Available here](#).

Since 2022, Belong To has run 'It's Our Social Media', an annual digital media campaign combatting online hate speech experienced by LGBTQ+ youth, while empowering young people to take back social media, protect themselves online, and to hold social media companies accountable as we work to make spaces safe for users. Another key component of this campaign was our microsite, [itsoursocialmedia.com](https://itsoursocialmedia.com), which acted as an online hub that housed resources on how to stay safe online, digital self-care tips and much more. This year, the campaign theme is tackling disinformation and misinformation, with information on how to recognise, verify and report online misinformation and disinformation.

## Research Background: LGBTQ+ Youth and Social Media

### Online Harms and LGBTQ+ Youth

Internationally, LGBTQ+ youth are found to be more likely to experience bullying or harassment online than their non-LGBTQ+ peers, and less likely to feel safe while using social media.<sup>2</sup> Research shows that anti-LGBTQ+ online hate leads to LGBTQ+ youth feeling inferior and shameful about their identity, therefore developing an internalised sense of blame for the hateful content they witnessed.<sup>3</sup> In response, LGBTQ+ young people were found to have developed the long-term coping strategies of isolating themselves socially, or repressing the visibility of their LGBTQ+ identity in public and community spaces.

In 2023, Belong To released findings relating to the experiences of LGBTQ+ young people living in Ireland and their social media use.<sup>4</sup> A shocking 87% of LGBTQ+ youth had seen or experienced anti-LGBTQ+ hate and harassment on social media in the past year. 65% of LGBTQ+ young people surveyed had reported this content to a social media platform. Among young people who reported this content, only 21% saw action from the relevant social media platform; anti-LGBTQ+ content was removed in 12% of cases, 4% saw the offending user temporarily suspended, and

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<sup>2</sup> GLSEN (2013) *Out Online: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth on the Internet*. GLSEN: New York. [Available here](#).

<sup>3</sup> Keighley, R. (2022) 'Hate Hurts: Exploring the Impact of Online Hate on LGBTQ+ Young People', *Women & Criminal Justice*, 32:1-2, 29-48. [Available here](#).

<sup>4</sup> Pizmony-Levy, O. (2022) *The 2022 Irish School Climate Survey*. Research Report. Global Observatory of LGBTQ+ Education and Advocacy. Dublin and New York: Belong To and Teachers College, Columbia University. [Available here](#).

5% of reports resulted in the offending account being banned. The remaining 79% of LGBTQ+ young people were either informed that no violation of community guidelines was found or received no response from the platform.

Published in 2016, the *LGBT Ireland Report* found that 23% of LGBTQ+ participants reported having hurtful things written about them on social media.<sup>5</sup> This was proportionately higher among trans people, at 34%, and among LGBTQ+ participants aged 14-25, at 32%.

An increase in the far-right movement globally has mapped a wide-scale increase in anti-LGBTQ+ hate, harassment and discrimination, both online and offline. Social media algorithms have served to facilitate and promote this proliferation of hateful content and disinformation. As documented by organisations such as Hate Aid, social media platforms have allowed for the convergence of far-right, right-wing, radical right, religious extremist, anti-LGBTQ+ and Covid-sceptic actors, fuelled by an algorithmic business model that understands the mass engagement with and dissemination of this content as profitable.<sup>6</sup> This has increasingly resulted in real-world, hate-motivated violence, particularly against LGBTQ+ people.<sup>7</sup>

The European Digital Media Observatory (EDMO), an international organisation that seeks to analyse disinformation, reported in May of this year that “mis- and disinformation targeting the LGBTQ+ community is one of the most present and consistent in the European Union”.<sup>8</sup> Research conducted in 2021 found that LGBTQ+ people experience 50% more online hate and harassment than any other minority group.<sup>9</sup>

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<sup>5</sup> Higgins A. et al. (2016) *The LGBT Ireland Report: national study of the mental health and wellbeing of lesbian, gay, bisexual, transgender and intersex people in Ireland*. Dublin: GLEN and Belong To. [Available here](#).

<sup>6</sup> Hate Aid (2023) ‘Small changes – big effect: how hate on the internet can be reduced’. [Available here](#).

<sup>7</sup> Squirrell, T. and Davey, J. (2023) *A Year of Hate: Understanding Threats and Harassment Targeting Drag Shows and the LGBTQ+ Community*. Institute of Strategic Dialogue: London. [Available here](#).

<sup>8</sup> Panizio, E. and Canetta, T. (2023) ‘Rights in the time of conspiracies and fake news: disinformation against LGBTQ+ in the EU’. European Digital Media Observatory: Italy. [Available here](#).

<sup>9</sup> ADL Centre for Technology & Society (2021) *Online Hate and Harassment: The American Experience*. ADL: New York. [Available here](#).

## Benefits of Online Spaces for the LGBTQ+ Community

Despite the above outlined harms, it is important to highlight the importance of social media and online spaces for LGBTQ+ young people, and to ensure their continued access to content that is informative, entertaining and inclusive.

International research shows that LGBTQ+ young people use social media at much higher rates than non-LGBTQ+ youth, often to seek community and to look for the safe spaces and information they may not have access to in real life.<sup>10</sup> In an Irish context, this source of community and support is particularly important for LGBTQ+ youth, 56% of whom live in home environments that are not supportive of their LGBTQ+ identity.<sup>11</sup>

As part of the *LGBT Ireland Report*, participants were asked about their experiences of coming out, and finding support and information relating to this.<sup>12</sup> The internet, social media and traditional media were identified as the most significant practical elements in helping participants to come out. Social media was named as useful in finding out about LGBTQ+ identities, getting advice on approaches to coming out, and exploring one's own identity. Relating to this submission in particular, several participants named accessing others' experiences of identifying as LGBTQ+ and coming out through YouTube videos as an important source of hope, inspiration and advice. One participant shared:

*"Hearing people's stories and experiences on YouTube was invaluable to me. YouTube was also extremely helpful to see people living their lives happily while out of the closet. (Gay male, 19)"*

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<sup>10</sup> Steinke, J. Root-Bowman, M. Estabrook, S. Levine, D. Kantor, L. (2017) 'Meeting the Needs of Sexual and Gender Minority Youth: Formative Research on Potential Digital Health Interventions', *Journal of Adolescent Health* 60(5). [Available here](#).

<sup>11</sup> Belong To (2021) *LGBTI+ Life in Lockdown: One Year Later*. Dublin: Belong To. [Available here](#).

<sup>12</sup> Higgins A. et al. (2016) *The LGBTIreland Report: national study of the mental health and wellbeing of lesbian, gay, bisexual, transgender and intersex people in Ireland*. Dublin: GLEN and Belong To. [Available here](#).

## Responses to Consultation Questions

### Question 1: Comments on sections 1-9

#### **Do you have any comments on sections 1 - 9 of the draft Code?**

##### Section 4.2

##### **Recommendation:**

- Consider including the UN Convention on the Rights of the Child, the Equal Status Acts 2000-2018 and the Irish Human Rights and Equality Commission Act 2014 among the rights with which the Commission must act in accordance.
- The purpose of these inclusions is to ensure that the Code is rooted in a children's rights framework, that it names the protected characteristics under both EU and Irish equality law, and that it acknowledges the Public Sector Equality and Human Rights Duty as applies to Coimisiún na Meán.

##### Section 4.8

##### **Recommendation:**

- Suggested rewording to incorporate Irish equality law:  
“that contain incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in either Article 21 of the Charter or the Equal Status Acts 2000-2018.”
- The purpose of this amendment is to ensure that gender, in addition to sex, is considered to be a protected characteristic. It also provides protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter.

##### **Recommendation:**

- Suggested rewording to incorporate national criminal law:  
“which is a criminal offence under European Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/54, offences concerning child pornography within the meaning given to the term in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council, and offences concerning racism and

xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA, or an activity which constitutes a criminal offence under national law.”

- The purpose of this amendment is to ensure that complementary legislation such as the Harassment, Harmful Communications and Related Offences Act 2020, and the incoming Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 are fully incorporated into the Code.

#### Section 4.13

##### **Recommendation:**

- Suggested rewording to incorporate Irish equality law:  
“The Commission is required to act in accordance with the Constitution, the Charter, the ECHR and the Equal Status Acts 2000-2018.”
- The purpose of this amendment is to ensure that gender, in addition to sex, is considered to be a protected characteristic. It also provides protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter.

#### **Question 2: Comments on user-generated content**

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

#### Section 10

- This is very welcome, and we strongly encourage that the Code retain this approach.
- In 2023, Belong To made the decision to remove the organisation’s account from the social media platform X/Twitter due to ongoing harassment, graphic and hateful commentary, and the spread of misinformation about LGBTQ+ lives.<sup>13</sup> Much of this harmful content took the format of replies to and reposts of the organisation’s content, which comes within the scope of “user-generated content that is indissociable from user-generated videos”.
- LGBTQ+ young people consulted in advance of this submission also shared that the majority of harmful anti-LGBTQ+ content they witness comes in the

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<sup>13</sup> For further details on Belong To’s decision to leave X/Twitter, [read our full statement here](#).

form of responses and comments to content generated by or about members of the LGBTQ+ community. Blocking users who generate anti-LGBTQ+ content will remove this content from their social media feeds, however, it remains prevalent in the comment sections of videos made by or for LGBTQ+ young people.

### **Question 3: Comments on definitions of illegal and harmful content**

**What is your view on the definitions of “illegal content harmful to children” and “regulated content harmful to children”?**

#### **Section 10**

- We support these inclusions, and especially welcome the naming of bullying and humiliation within the definition of “regulated content harmful to children”.

### **Question 4: Comments on other definitions of illegal and regulated content**

**What is your view on the other definitions of illegal content and regulated content?**

#### **Section 10**

##### **Recommendation:**

- Consider including the following, which are listed within the definition of “regulated content harmful to children”, within the definition of “regulated content”:
  - (a) content by which a person bullies or humiliates another person,
  - (b) content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder,
  - (c) content by which a person promotes or encourages self-harm or suicide,
  - (d) content by which a person makes available knowledge of methods of self-harm or suicide.
- The purpose of this amendment is to safeguard the mental health and wellbeing of all VSPS users, not just those under the age of 18. This is particularly important for members of the LGBTQ+ community, who report high rates of harassment, suicide ideation and self-harm.



- Published in 2016, the *LGBT Ireland Report* found that 23% of LGBTQ+ participants across age groups reported having hurtful things written about them on social media.<sup>14</sup> This was proportionately higher among trans people, at 34%, and among LGBTQ+ participants aged 14-25, at 32%.
- The same report found that, among LGBTQ+ participants of all ages, 60% had seriously thought of ending their own life and 21% had attempted suicide. Also across age groups, 34% of LGBTQ+ participants had self-harmed, rising to 43% among LGBTQ+ people aged 19-25.

**Recommendation:**

- Suggested rewording of the definition of “regulated content harmful to the general public” to incorporate Irish equality law:  
 “content containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union and/or the Equal Status Acts 2000-2018, namely gender, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, family status, marital status, and membership of the Traveller community.”
- The purpose of this amendment is to ensure that gender, in addition to sex, is considered to be a protected characteristic. It also provides protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter.

**Recommendation:**

- With respect to the Code being reviewed “from time to time”, it is recommended that the Code be scheduled for review upon the passage of relevant legislation, for example upon the enactment of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022.

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<sup>14</sup> Higgins A. et al. (2016) *The LGBTIreland Report: national study of the mental health and wellbeing of lesbian, gay, bisexual, transgender and intersex people in Ireland*. Dublin: GLEN and Belong To. [Available here](#).

## **Question 5: Comments on remaining definitions**

### **Do you have any comments on any other definitions in the draft Code?**

#### **Section 10**

##### **Recommendation:**

- It is very welcome that live-streaming is defined as a form of user-generated content. This content must be stored by a VSPS, in a manner compliant with privacy and GDPR, to allow for investigation, for example where content in the live-stream is alleged to amount to incitement to hatred.

#### **Section 10**

##### **Recommendation:**

- Review the definition of “commercial communications” and update The Guidance accordingly to ensure that the Code sufficiently accounts for the provision of a good or service for free, with the expectation of user-generated promotion, where there is no explicit requirement of the same.
- LGBTQ+ young people consulted in advance of this submission raised the issue of commercial communications spanning a broad range of promotional content, with various forms of payment or benefits in kind, produced by a significant number of users with varying audience sizes.
- The group highlighted the issue of users who may not be considered ‘influencers’ or ‘content creators’ being gifted goods, invited to restaurants or provided with services for free, without direct payment or partnership by the brand involved. Young people expressed that these users are motivated to create content that positively reviews these goods and services, in the hope that this may lead to future ‘gifting’, brand partnerships or sponsored content.
- However, young people felt there was a lack of clarity as to whether users are required to state that they had been directly contacted by the company or service, and that much of the user-generated content appeared organic.

## Section 10

### **Recommendation:**

- Suggested rewording of the definition of “audiovisual commercial communications harmful to the general public” to incorporate Irish equality law:  
“audiovisual commercial communications which include or promote any discrimination based on: gender, sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation family status, marital status, or membership of the Traveller community.”
- The purpose of this amendment is to ensure that gender, in addition to sex, is considered to be a protected characteristic. It also provides protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter.

### **Question 6: Comments on terms and conditions**

**What is your view on the obligations in the draft Code that relate to what a VSPS provider must include in its terms and conditions?**

## Section 11

### **Recommendation:**

- The Code should specify that terms and conditions should be written in plain, accessible language that can be easily understood by all users, and children and young people in particular.
- As detailed by the 5Rights Foundation, it is vital that terms and conditions:
  - use simple language.
  - aid comprehension.
  - be concise.
  - be presented in multiple formats for different age ranges.
  - be prominent and easy to find.
  - be presented at the right moments in a user journey.
  - consider the diverse needs of young people.
  - not assume adult involvement.
  - cater for children with accessibility needs.

- ensure that consent must be obtained and sought, not assumed.
- ensure users are given meaningful choices.<sup>15</sup>

### Sections 11.6 and 11.7

#### **Recommendation:**

- Consider including additional requirements for the platform to implement measures relating to adult content, so as to ensure that users follow terms and conditions. Currently there appears to be disproportionate onus on the user to flag content that is not suitable for children.
- The 5RightsFoundation recommends that effective content moderation ensures that the burden is not primarily placed on users to address harmful content through flagging mechanisms.<sup>16</sup>

### **Question 7: Comments on suspension or termination of accounts**

#### **What is your view on the requirement in the draft Code for a VSPS provider to suspend or terminate an account in certain circumstances?**

##### Section 11

- This requirement is welcome, and we encourage its retention with minor amendments.

##### Section 11.9

#### **Recommendation:**

- The guidance should contain a benchmark as to what is deemed ‘repeated’ breaches of terms and conditions.
- Similarly, the Guidance should detail specific benchmarks for the number of breaches of terms and conditions which will lead to suspension for each of the following categories: “illegal content harmful to the general public”; “illegal content harmful to children”; “regulated content harmful to the general public” and “regulated content harmful to children”.

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<sup>15</sup> 5Rights Foundation, Tick to Agree Age appropriate presentation of published terms September 2021, 10-22. [Available here.](#)

<sup>16</sup> 5Rights Foundation, Tick to Agree Age appropriate presentation of published terms September 2021, 34. [Available here.](#)

- The Guidance should also set out parameters for time limits on responding to reported content, handling a user’s report, and suspending or removing an account.

### Section 11.9

#### **Recommendation:**

- Consider whether the Guidance should advise that breaches of terms of conditions on the basis of “illegal content harmful to the general public” and “illegal content harmful to children” should lead to the immediate suspension of a user’s account.
- The purpose of this amendment is to acknowledge the difference in the severity of harm caused by “illegal content harmful to the general public” and “illegal content harmful to children” as compared to “regulated content harmful to the general public” and “regulated content harmful to children”.

### **Question 8: Comments on reporting and flagging content**

#### **What is your view on the requirements in the draft Code in relation to reporting and flagging of content?**

### Section 11

- We are concerned about platforms placing disproportionate onus on users to report or flag content, and whether these reports will be effectively addressed.
- In 2023, Belong To released findings relating to the experiences of LGBTQ+ young people living in Ireland and their social media use.<sup>17</sup> 87% of LGBTQ+ youth had seen or experienced anti-LGBTQ+ hate and harassment on social media in the past year. 65% of LGBTQ+ young people surveyed had reported this content to a social media platform.
- Among young people who reported this content, only 21% saw action from the relevant social media platform: anti-LGBTQ+ content was removed in 12% of cases, 4% saw the offending user temporarily suspended, and 5% of reports resulted in the offending account being band. The remaining 79% of LGBTQ+

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<sup>17</sup> Pizmony-Levy, O. (2022) *The 2022 Irish School Climate Survey*. Research Report. Global Observatory of LGBTQ+ Education and Advocacy. Dublin and New York: Belong To and Teachers College, Columbia University. [Available here](#).

young people were either informed that no violation of community guidelines was found, or received no response from the platform.

- While a user flagging mechanism is important, it should not be the primary means relied upon to address harmful content.
- VSPSs should be bound by a duty of care towards their users, meaning that the onus should be on social media platforms to address this harmful content before it reaches a critical mass of users. This could be achieved by proactively monitoring content produced by users who have previously been reported for violations of community guidelines for potential further breaches.
- For user flagging mechanism to be effective, there must be consistent application of community guidelines / platform terms and conditions. The research cited above highlights current inconsistencies in the application of community guideline. LGBTQ+ young people consulted for this submission reported that such ineffective applications had led them to 'give up' on reporting harmful content.

#### Section 11.13, 11.14

##### **Recommendation:**

- Consider whether the Guidance should advise as to maximum timeframes for informing a notifier of a decision following a report or flagged content.

#### **Question 9: Comments on age verification**

**What is your view on the requirements in the draft Code in relation to age verification?**

#### Section 11.16

##### **Recommendation:**

- Consideration should be given to age verification measures which require the input and/or consent of a parent, carer or guardian, balanced against rights enshrined under the UN Convention on the Rights of the Child to freedom of expression (article 13); freedom of thought, conscience and religion (article 14); freedom of association (article 15); and access to appropriate information (article 17), where the child has reached the age of digital consent (age 16).

## Section 11.16

### **Recommendation:**

- Age verification measures should be cognisant of trans, non-binary and gender non-conforming young people, whose usernames and gender may not reflect that which is stated on government-issued documents such as a passport or drivers licence. Where this is the case, alternate means of age verification as detailed in the Guidance should be made available to the young person.

## **Question 10: Comments on content rating**

### **What is your view on the requirements in the draft Code in relation to content rating?**

## Section 11.22

### **Recommendation:**

- It would be beneficial for the Guidance to include a requirement for content rating to be sensitive to LGBTQ+ topics, to ensure that age-appropriate content that covers LGBTQ+ topics is not incorrectly rated as suitable for an adult audience only.
- Experts in the area of online disinformation and misinformation have warned about the deliberate conflation of age-appropriate information relating to LGBTQ+ people and identities, and use of the anti-LGBTQ+ “groomer” slur.<sup>18</sup> As such, it is vital that content-rating processes, particularly in a case where it is determined algorithmically, do not automatically deem LGBTQ+-related content to be inappropriate for children and young people.

## Section 11.23

### **Recommendation:**

- Following from the above, platforms should engage with the LGBTQ+ sector when developing a content rating system to ensure that it does not inadvertently miscategorise LGBTQ+-related content that would be suitable for people under the age of 18.

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<sup>18</sup> Gallagher, A., O’Connor, C. and Visser, F. (2023) ‘Uisce Faoi Thalamh: An Investigation Into the Online Mis- and Disinformation Ecosystem in Ireland’. *Institute for Strategic Dialogue*. [Available here](#).

## Section 11.23

### **Recommendation:**

- Consideration of a consistent means of content rating is noted in the Guidance, this is welcome and should be prioritised in the interest of user-friendliness and accessibility of these mechanisms.

## **Question 11: Comments on parental controls**

### **What is your view on the requirements in the draft Code in relation to parental controls?**

## Section 11.27

### **Recommendation:**

- Consider whether a child has the right to be informed as to the operation of parental controls on their user account, the nature of these controls, and what information a parent can be alerted to relating to their activity on the VSPS, in the context of a child's right to privacy in line with Article 16 of the United Nations Convention on the Rights of the Child and the digital age of consent being age 16.
- The right to privacy is an important concern for all children, but is particularly important for LGBTQ+ young people. In Ireland, 56% of LGBTQ+ youth live in home environments that are not supportive of their LGBTQ+ identity.<sup>19</sup> The same research, involving 2,279 LGBTQ+ young people aged 14-24, found that 119 or 6% of participants had experienced homelessness in the past year, 13% of whom were at some point forced to sleep outdoors. A leading cause of homelessness in this research was being forced out of home by family members who did not accept their LGBTQ+ identity. This finding is supported by other research into LGBTQ+ youth homelessness in Ireland.<sup>20</sup> Ireland's national *Youth Homelessness Strategy 2023-2025* names LGBTQ+ young people as a cohort vulnerable to youth homelessness on account of family rejection among other factors.<sup>21</sup>

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<sup>19</sup> Belong To (2021) *LGBTI+ Life in Lockdown: One Year Later*. Dublin: Belong To. [Available here](#).

<sup>20</sup> Quilty, A. & Norris, M. (2020). A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland. Dublin: Focus Ireland/BeLong To. [Available here](#).

<sup>21</sup> (2023) *Housing for All: Youth Homelessness Strategy 2023-2025*. Department of Housing. [Available here](#).



## Section 11.27

### **Recommendation:**

- Taking into account a child's right to privacy in line with Article 16 of the United Nations Convention on the Rights of the Child and the digital age of consent being 16 years old, explore whether children aged 16 and 17 should have the right to opt-out of certain parental control features detailed in the Guidance and how this could be represented in the Code.

## **Question 12: Comments on complaints**

### **What is your view on the requirements in the draft Code in relation to complaints?**

## Section 11.27

### **Recommendation:**

- The guidance document should detail what is considered timely and effective with respect to complaints and decision-making. This guidance should clearly state that providing notification of a decision in a timely manner, but failing to consistently apply terms and conditions or community guidelines, cannot be considered effective.
- The information contained in the guidance document should be modelled on the UN General Comment on children's rights in the digital environment, detailed below.
- In its 2021 General Comment on children's rights in relation to the digital environment, the UN Committee on the Rights of the Child set out a number of recommendations relating to complaint handling and resolution.<sup>22</sup> It recommended that judicial and non-judicial remedial mechanisms be made available for children in relation to digital rights violations, and that these mechanisms be "widely known and readily available to all children". Additionally, the Committee recommended that complaint handling be "swift", and that these mechanisms be "free of charge, safe, confidential, responsive, child-friendly and available in accessible formats".

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<sup>22</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 44-46. [Available here.](#)

## **Question 14: Comments on non-marketed commercial communications**

**What is your view on the requirements in the draft Code in relation to audiovisual commercial communications which are not marketed, sold or arranged by the VSPS provider?**

### **Section 12.1**

#### **Recommendation:**

- A labelling system used consistently across platforms to indicate the presence of commercial communications, as mentioned in the draft guidance, should be prioritised for inclusion in the Code.
- For this labelling system to be effective for all forms of commercial communications, including both those involving direct payment and those which provide goods and services free of charge with the expectation of promotion by the user, the definition of ‘commercial communications’ under the Code should be reviewed.

### **Section 12.5**

#### **Recommendation:**

- The guidance document should contain a benchmark as to what is deemed ‘repeated’ breaches of terms and conditions by users who engage in commercial communications, as distinct from users who do not.
- Similarly, the guidance document should consider whether the threshold for suspension of users engaged in commercial communications, in terms of the number of breaches of terms and conditions required, should be lower than for other users. This is to reflect the fact that users who produce commercial communications will, on average, have a larger audience than the average user. As a result, the capacity for harm done by breaches of terms of conditions by these users may be higher.

### **Question 15: Comments on marketed commercial communications**

**What is your view on the requirements in the draft Code in relation to audiovisual commercial communications which are marketed, sold or arranged by the VSPS provider?**

#### **Section 12.6**

##### **Recommendation:**

- A labelling system used consistently across platforms to indicate the presence of commercial communications, as mentioned in the draft guidance, should be prioritised for inclusion in the Code.
- Consider specific penalties for a VSPS where the platform fails comply with the requirement for commercial communications marketed, sold or arranged by a VSPS to be readily recognisable as such.

#### **Section 12.8**

##### **Recommendation:**

- The guidance document should contain details as to the penalty for a VSPS which markets, sells or arranges commercial communications harmful to children and/or the general public.

### **Question 16: Comments on declaration of commercial communication**

**What is your view on the requirements in the draft Code in relation to user declarations that user-generated content contains an audiovisual commercial communication?**

#### **Section 12.11**

##### **Recommendation:**

- The process for identifying user-generated content that contains commercial communication should be consistent with the labelling system for marketed, sold and arranged commercial communications, in the interest of transparency and user-friendliness.

- For this labelling system to be effective for all forms of commercial communications, including both those involving direct payment and those which provide goods and services free of charge with the expectation of promotion by the user, the definition of ‘commercial communications’ under the Code should be reviewed.

### **Question 18: Comments on media literacy measures**

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

#### **Section 13.1**

**Recommendation:**

- Suggested rewording of the below to include plain English, accessibility and the provision of materials and resources in a range of languages:  
“Video-sharing platform service providers shall provide effective media literacy measures and tools and shall take steps to raise users’ awareness of those measures and tools, ensuring associated resources and materials use plain English and are provided in a range of languages.”

#### **Section 13.2**

**Recommendation:**

- In the Guidance, consider including the recommendation that research into media literacy and participation into forums and campaigns to promote media literacy are funded in part by the VSPS.

### **Question 19: Comments on processing of personal data**

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

#### **Section 13.3**

##### **Recommendation:**

- This measure is strongly encouraged.
- Consider specifying that personal data collected by other apps and services should not be used by a VSPS in marketing, profiling or targeting of children.

### **Question 20: Comments on reporting in relation to complaints**

**What is your view on the requirements in the draft Code in relation to reporting in relation to complaints?**

#### **Section 13.4**

##### **Recommendation:**

- Consider including a requirement for these reports to be made publicly available, including in plain English format, in the interest of research and identification of recurring trends by civil society organisations, policymakers and other stakeholders.

#### **Section 13.4**

##### **Recommendation:**

- Consider specifying that these reports should include details as to the number and outcome of complaints and other matters where the content at the subject of the complaint relates to one of the protected characteristics named in the code.

#### **Section 13.4**

##### **Recommendation:**

- Consider including a provision that a VSPS which fails to comply with this requirement, does not fulfil the requirement in full, or is suspected of misrepresenting information in relation to complaints will be subject to external auditing as per section 139P of the Act.

### **Question 23: Comments on Annex**

**Do you have any comments on the Annex?**

#### **Table B**

##### **Recommendation:**

- Ensure that the Annex is regularly updated as new, relevant legislation is enacted, such as the incoming Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022.

### **Question 25: Comments on draft Guidance**

**Do you have any comments on this draft Guidance, including in relation to the matters required to be considered by the Commission at section 139ZA of the Act?**

#### **General Guidance**

##### **Recommendation:**

- Within the explanation of 'safe', consider making explicit reference to ensuring the protection of users with protected characteristics.

#### **Terms and Conditions**

##### **Recommendation:**

- With respect to best practice, it may not be sufficient to allow providers to decide what this constitutes. Consider including minimum requirements for best practice within the Guidance.

#### **User-Friendly Reporting and Flagging**

##### **Recommendation:**

- Consider the recommendation that staff involved in content moderation decisions undergo cultural awareness and sensitivity training, to ensure that there is a clear understanding of the context within which content can be considered harmful, in particular with regard to LGBTQ+ topics, race, ethnicity and membership of the Traveller community.

## Parental Controls

### **Recommendation:**

- As noted under the response to Question 11, it is recommended that provisions relating to parental controls are reviewed with regard to the digital age of consent (age 16) to ensure that they are compliant with children's rights, as set out by the UN Convention on the Rights of the Child.

## Complaints

### **Recommendation:**

- Consider including the requirement that details as to making a complaint are available in plain English and in a range of languages other than English.
- The provision regarding trusted flaggers and nominated bodies is very welcome, and we strongly encourage its retention.

## Commercial Communications

### **Recommendation:**

- As noted previously, it is strongly recommended that the definition and explanatory note for commercial communications include the provision of goods and services free of charge, where the individual uploads user-generated content about the good or service but was not explicitly/contractually obliged to do so.

## Safety by Design

### **Recommendation:**

- As noted previously, it is strongly recommended that the list of protected characteristics include those detailed in both the EU Charter and Equal Status Acts 2000-2018, namely gender, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, family status, marital status, and membership of the Traveller community.

## Recommender Systems

**Recommendation:**

- The measures detailed under this section are very welcome. This is a highly important area, and the effectiveness and implementation of this guidance should be reviewed regularly in close collaboration with stakeholders and service providers.
- Consider including a recommendation that the service providers engage with the National Counter Disinformation Strategy Working Group<sup>23</sup> upon developing a recommender system safety plan.

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<sup>23</sup> The development of a National Counter Disinformation Strategy is a key recommendation from the Future of Media Commission (FoMC) which called for a more coordinated and strategic approach to combat the damaging impact of disinformation on Irish society and democracy. The new strategy will be informed by Ireland's existing media literacy initiatives, domestic legislation such as the Online Safety and Media Regulation Act and European regulatory measures including the Digital Services Act (link to press release, available here). [Further details available here.](#)