

By Gerard Cunningham

A regular feature of the American legislative process every year or so, was that a seemingly innocuous bill, unlikely to attract too much opposition no matter who held power in either the Capitol or the White House, would begin to attract unrelated amendments.

A small legal provision to approve funding for new postage stamp designs would suddenly find itself enacting a tax cut for oil miners; increased military spending in a prairie state where many of the voters worked for defence contractors; or subsidies for pumpkin farmers in New England. Such a bill became known as a ‘Christmas Tree bill’, as Senators and representatives each attached their own shiny bauble to it to please the good folks back home.

In Ireland the Online Safety and Media Regulation bill shows all the symptoms of being a Christmas Tree bill. Even the name, welding together the internet and broadcasting, betrays its roots as a Frankenstein’s creature, bolted together from disparate elements. It’s as if someone in the department decided that the internet (social media) and broadcasting (news media) belonged together because they both had ‘media’ in their names.

The bill — or at least one part of it — began life as the European Audio-Visual Services Directive. The last such directive was issued in 2010, when smartphones were still a recent innovation, and traditional broadcast services still ruled the airwaves. Some futurists were predicting that more people would move away from television and cinema screens to watch programmes on their phones, tablets and computer screens, but the rise of the internet streaming giants, from Amazon to Netflix and Disney, was still in the future.

The directive itself is also something of a christmas tree, covering areas from how many minutes of advertising are permitted in an hour or a day; rules on product placement and sponsorship; the protection of minors; and how much content must come from European sources.

In Ireland, the directive was not simply transposed, but instead the proposed media bill attracted several domestic amendments on issues such as cyberbullying, in addition to integrating measures from a planned



At risk: Podcasts

Umbrella needed not Christmas Tree

The Online Safety and Media Regulation bill is a confusing hotchpotch which expands the BAI’s remit, and poses dangers for podcasters

Broadcasting Bill from 2019 which had fallen by the wayside following the 2020 general election.

The end result is a clunking behemoth, lunging through the Oireachtas and towards Áras an Uachtaráin to be signed.

The bill proposes a new commission, to replace the Broadcasting Authority of Ireland (BAI), but with a much broader remit. The BAI itself has become a Christmas-tree regulator in the last decade, given roles in everything from assessing the competition impacts of media mergers to ruling on how to ensure balanced coverage of elections and referendum votes. The new law could compound this, as “audio-visual services” extend far beyond what RTÉ, TG4 or Virgin broadcast, and could theoretically encompass everything from YouTube channels and podcasts to Instagram and TikTok video shorts.


An explanatory note in the proposed legislation does state that while there will be a “system of registration”, and the power to prosecute for non-registration, this provision is

“not intended to penalise individuals who unwittingly create small scale On-Demand Audiovisual Media Services (ODAVMS) where the risk of harm from such services remains low”.

However, that simply invites the question of where such a risk threshold lies, and once the principle of such registration is introduced, it can be moved by subsequent primary legislation, or even a statutory instrument. Does it cover major podcasters, or does the degree of harm make a difference? Is a comic book reviewer with 10,000 subscribers more or less of a public menace than a far-right conspiracy theorist with a tenth that many followers spreading anti-Semitic hatred or disinformation about vaccines?

Martin McMahon, known for the Echo Chamber podcast, the flagship programme produced by the Tortoise Shack hub, believes the proposals may be “unpoliceable”. A typical episode of his podcast attracts an average of 30,000 downloads, an audience many smaller local radio stations would envy. “It’s a bit of a pig in a poke really, you don’t know what you’re going to get or what obligations will be put on you”.

“I’m not adverse to coming under an umbrella”, McMahon says. “What I am adverse to is coming under an umbrella which stops us doing what we’re already doing”.

“Then again”, he adds, “if I do come under an umbrella, can I have a share of the licence fee please?”. 

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