Question 1:
- What system should be put in place to require the removal of harmful content from online platforms? For example, the direct involvement of the regulator in a notice and take down system where it would have a role in deciding whether individual pieces of content should or should not be removed on receipt of an appeal from a user who is dissatisfied with the response they have received to a complaint submitted to the service provider. [Sections 2, 4, & 8 of the explanatory note]
Not applicable

Question 2:
- If the regulator is to be involved in deciding whether individual pieces of content should or should not be removed, should a statutory test be put in place before an appeal can be escalated to the regulator? Please describe any statutory test which you consider would be appropriate.
[Sections 2, 4 & 8 of the explanatory note]
Not applicable

Question 3:
- Which online platforms, either individual services or categories of services should be included within the scope of a regulatory or legislative scheme?
[Sections 2, 5 & 6 of the explanatory note]
Not applicable

Question 4:
- How should harmful online content be defined in national legislation? Should the following categories be considered as harmful content? Online platforms are already required to remove content which it is a criminal offence under Irish and EU law to disseminate, such as material containing incitement to violence or hatred, content containing public provocation to commit a terrorist offence, offences concerning child sexual abuse material or concerning racism and xenophobia. Are there other clearly defined categories which should be considered?
For example:
- Serious Cyber bullying of a child (i.e. content which is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating)
- Material which promotes self-harm or suicide
- Material designed to encourage prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health
9 - Question 6:
The revised Directive takes a principles based approach to harmful online content and requires Video Sharing Platform Services to take appropriate measures to protect minors from potentially harmful video content, the general public from video containing incitement to violence or hatred and certain criminal video content. It also requires that Ireland designate a regulator to oversee the ongoing implementation of these measures.

Given this, what kind of regulatory relationship should there be between a Video Sharing Platform Service established in Ireland and the Regulator?

[Section 3, 4, 5, 6 & 8 of the explanatory note]

The ASAI is an experienced regulator in the areas of marketing communications and has extensive experience in regulating commercial marketing communications. The Directive provides that a number of articles that member states should encourage the use of co-regulation and foster self-regulation through codes of conduct adopted at national level. The ASAI system that ad self-regulation is widely accepted by government, civil society, advertising industry and consumers. We are strongly of the view that a new legislative proposal should provide a role for effective advertising self-regulation in the areas covered by the directive including the protection of minors, advertising of specific product categories should as foods defined as HFSS and video sharing platforms. ASAI through its own work and that as part of global and European advertising self-regulatory orgs is experienced not only in the provision of pre-publication copy advice and complaints handling services but also in monitoring compliance with advertising rules against a number of Codes. While it is unclear what the regulatory structure will be, we would be encourage that recognition of and a role for be given in the legislation for a self-regulatory approach, as envisaged by the Directive.

10 Question 7:
- On what basis should the Irish regulator monitor and review the measures that a Video Sharing Platform Service has in place, and on what basis should the regulator seek improvements or an increase in the measures the services have in place?

[Section 3, 4, 5, 6 & 8 of the explanatory note]

Any system with processes should be open to review and it would be reasonable that there should be consultation on what those processes should be. in addition, The ASAI is an experienced regulator in the areas of marketing communications and has extensive experience in regulating commercial marketing communications. The Directive provides that a number of articles that member states should encourage the use of co-regulation and foster self-regulation through codes of conduct adopted at national level. The ASAI system that ad self-regulation is widely accepted by government, civil society, advertising industry and consumers. We are strongly of the view that a new legislative proposal should provide a role for effective advertising self-regulation in the areas covered by the
directive including the protection of minors, advertising of specific product categories should as foods defined as HFSS and video sharing platforms. ASAI through its own work and that as part of global and European advertising self-regulatory orgs is experienced not only in the provision of pre-publication copy advice and complaints handling services but also in monitoring compliance with advertising rules against a number of Codes. While it is unclear what the regulatory structure will be, we would be encourage that recognition of and a role for be given in the legislation for a self-regulatory approach, as envisaged by the Directive.

Page 5

11 Question 8:
- The revised Directive closely aligns the rules and requirements for television broadcasting services and on-demand audiovisual media services. Given this, what kind of regulatory relationship should there be between an on-demand audiovisual media service established in Ireland and the relevant Irish regulator? In addition, should the same content rules apply to both television broadcasting services and on-demand audiovisual media services?

[Section 4 of the explanatory note]

ASAI has been part of the ODAS process, the to date there hasn’t been a significant development to commercial communications for solely on demand. Not all on demand services based in Ireland are at the same scale as the broadcasters (while of course some are). Regulation should be proportionate and recognised the extent to which internal resources impact on such providers. The ASAI is an experienced regulator in the areas of marketing communications and has extensive experience in regulating commercial marketing communications. The Directive provides that a number of articles that member states should encourage the use of co-regulation and foster self –regulation through codes of conduct adopted at national level. The ASAI system that ad self-regulation is widely accepted by government, civil society, advertising industry and consumers. We are strongly of the view that a new legislative proposal should provide a role for effective advertising self-regulation in the areas covered by the directive including the protection of minors, advertising of specific product categories should as foods defined as HFSS and video sharing platforms. ASAI through its own work and that as part of global and European advertising self-regulatory orgs is experienced not only in the provision of pre-publication copy advice and complaints handling services but also in monitoring compliance with advertising rules against a number of Codes. While it is unclear what the regulatory structure will be, we would be encourage that recognition of and a role for be given in the legislation for a self-regulatory approach, as envisaged by the Directive.

12 Question 9:
- Should Ireland update its current content production fund (Sound & Vision fund currently administered by the BAI from licence fee receipts) to allow non-linear services to access this fund? Should Ireland seek to apply levies to services which are regulated in another EU Member State but target Ireland in order to fund or part-fund an updated content production fund?

[Section 4 of the explanatory note]
Question 10:
- The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has previously raised concerns regarding the National Legislative Proposals under Strand 1. How can Ireland balance the fundamental rights of all users, e.g. the right to freedom of expression, including those affected by potentially harmful online content and those creating said content, in pursuing the further regulation of harmful online content?

[Section 2, 4, 5, 7, & 8 of the explanatory note]

Not applicable

Question 12:
- Potential options for regulatory structures to progress the regulation of the four streams are identified in the explanatory note accompanying these questions. These options include:

  - Restructuring the Broadcasting Authority of Ireland as a Media Commission responsible for the four strands

  - Two regulatory bodies. Assigning the responsibility for editorial services, e.g. on-demand audiovisual media services, to a restructured BAI and creating another regulatory body with responsibility for non-editorial online services, e.g. Video Sharing Platform Services.

Is one of these options most appropriate, or is there another option which should be considered?

[Section 5 of the explanatory note]

Not applicable

Question 13:
- How should the chosen regulatory structure or structures be funded given the various categories of services which are to be regulated?

[Section 5 of the explanatory note]

The ASAI is an experienced regulator in the areas of marketing communications and has extensive experience in regulating commercial marketing communications. The Directive provides that a number of articles that member states should encourage the use of co-regulation and foster self-regulation through codes of conduct adopted at national level. The ASAI system that ad self-regulation is widely accepted by government, civil society, advertising industry and consumers. We are strongly of the view that a new legislative proposal should provide a role for effective advertising self-regulation in the areas covered by the directive including the protection of minors, advertising of specific product categories should as foods defined as HFSS and video sharing platforms. ASAI through its own work and that as part of global and European advertising self-regulatory orgs is experienced not only in the provision of pre-publication copy advice and complaints handling services but also in monitoring compliance with advertising rules against a number of Codes. Should the final regulatory approach, in line with the directive provisions to encourage and foster co and self
regulation, utilise and provide space for the involvement of the effective advertising self-regulatory system (as practised by the ASAI, there should be a requirement on providers to fund all parts of the regulatory value chain.

Page 8

19 Question 16:
- Given that the revised Directive envisages that a Video Sharing Platform Service will be regulated in the country where it is established for the entirety of the EU it does not envisage that the relevant regulator would assess individual complaints. However, the revised Directive requires Ireland to put in place a system of mediation between users and Video Sharing Platform Services. Given that such a system would be in place on an EU-wide basis should thresholds apply before an issue could be brought before this system? If so, then what thresholds would be most appropriate?

[Sections 2, 4, 6, 7 & 8 of the explanatory note]

Re thresholds, the challenge as ASAI would see it is that it is important that consumers have access to a system to voice their concerns, but for a mediator to deal with their concerns, however triaged, from all of EU would appear to present serious challenges. It may be that a system such as utilising national advertising self-regulatory bodies, in a coordinated manner could provide an initial step for consumers to raise their concerns, after they have been addressed to the VSPs. The ASAI is an experienced regulator in the areas of marketing communications and has extensive experience in regulating commercial marketing communications. The Directive provides that a number of articles that member states should encourage the use of co-regulation and foster self – regulation through codes of conduct adopted at national level. The ASAI system that ad self-regulation is widely accepted by government, civil society, advertising industry and consumers. We are strongly of the view that a new legislative proposal should provide a role for effective advertising self-regulation in the areas covered by the directive including the protection of minors, advertising of specific product categories should as foods defined as HFSS and video sharing platforms. ASAI through its own work and that as part of global and European advertising self-regulatory orgs is experienced not only in the provision of pre-publication copy advice and complaints handling services but also in monitoring compliance with advertising rules against a number of Codes. While it is unclear what the regulatory structure will be, we would be encourage that recognition of and a role for be be given in the legislation for a self-regulatory approach, as envisaged by the Directive.