We welcome the opportunity to provide comments to the Department of Communications Climate Action and Environment’s public consultation on online platforms and the implementation of the Revised Audiovisual Media Services Directive (“AVMS Directive”).

This submission is intended to explain Apple’s video services (“Apple Video Services”) and present some general views and recommendations on regulating over-the-top (OTT) video on demand services (VOD) within the Irish and European legal framework on audiovisual media services.

It is important to note that Apple Video Services are distinct from video-sharing platforms as they do not give individual users the opportunity to upload content for distribution to the general public. Appropriate content is offered by Apple to customers on a curated basis. As such, undesirable content may not be disseminated by users. Therefore for the purposes of this submission we are not providing comments on video sharing platforms (VSPs) and issues around harmful content.

About Apple Video Services

• Apple Video Services are delivered in Europe by Apple Distribution International (“ADI”), an indirect subsidiary of Apple Inc. established in Cork. For the sale or rental of movies and TV content via the iTunes Store, ADI acts as a distributor, obtaining the rights in digital content from third party content owners. We therefore consider Ireland to be Apple’s country of origin within the understanding of the AVMS Directive.

• The iTunes Movie Store is Apple’s platform for consumers to buy or rent over 100,000 comedies, romances, classics, indies, and thrillers. The goal is to create a seamless experience for consumers to enjoy the richest possible content, made by creatives all over the world, in the highest audio-visual quality, via a simple and accessible service across all their Apple devices.

• The new Apple TV app (available in May) brings together all the different ways to discover and watch shows, movies, sports, news and more in one app across iPhone, iPad, Apple TV, Mac, smart TVs and streaming devices. Users can subscribe to and watch new Apple TV channels including Apple TV+, Apple’s original video subscription service — paying for only services they want — enjoy sports news and network TV from cable and satellite providers as well as purchase or rent iTunes movies and TV shows all within the new app. Beginning in May customers can subscribe to Apple TV channels à la carte and watch them in the Apple TV app.

• Customers access Apple Video Services via the internet, and content is delivered via an internet connection. It also provides the ability to download content and consume it offline. The content is delivered specifically to subscribers who choose to access and connect to the services via Apple websites or apps, rather than being “broadcast” to the general public at large; spectrum or related local telecommunications resources is not used for the delivery and consumption by end users.

Comments on selected questions

What type of regulatory relationship should exist between an on-demand service established in Ireland and the Regulator?

We understand that the implementation of the AVMS Directive may entail a greater level of regulatory oversight for on-demand services than has previously existed. However, we would caution against using some traditional broadcasting regulatory models as a reference framework as they do not fit well with on-demand services. A broadcast licence, for instance, has been
appropriate in the context of broadcasters who use scarce resources (e.g., spectrum, network infrastructure or EPG placement). This is not the case for on-demand services which operate in a different environment, over the Internet.

The current notification procedure, in which the service provider issues identification and contact details and a brief description of the type of services it is offering locally and in the EU, has proven to work well and should be maintained. The notification should be built upon with an ongoing conversation as it is in the interests of everyone, including consumers, that the regulatory authority knows about, and understands, developments in the technology and the audio-visual market. Some elements which would be conducive to such a conversation would be:

- Clear jurisdiction, especially for services using Ireland as a base to offer cross-border services in the EU;
- A mechanism that allows for trust and confidentiality for any information exchange;
- Avoidance of unnecessary regulatory or operational burdens that bring little added value;
- An established appeal mechanism in case of disagreements.

Should the same content rules apply to both linear and on-demand services?

Already today linear and non-linear services are largely subject to similar baseline content standards, in particular in regard to issues such content ratings, protection of minors, advertising, content that incites hatred discrimination, etc. These rules are set in EU and national legislation and applied through a mix of self-regulatory codes and more formalised initiatives such as the BAI code of programme standards. We would argue that this approach has worked well and there is little evidence to suggest any fundamental reform is required. The current rules have provided enough flexibility to allow non-linear service providers to implement solutions that fit the nature of the service whilst meeting important public policy goals on areas such as protection of minors, accessibility, data protection, etc.

Should Ireland update its current content production fund (Sound & Vision fund currently administered by the BAI from licence fee receipts) to include non-linear services as well as applying levies to services which are regulated in another EU Member State but target Ireland?

Whilst we fully understand the need to support the production of local or important cultural value content, we do not believe that a levy system or subsidised system is the most efficient way of achieving this goal. These types of subsidised models do not necessarily lead to better quality outputs and connection with the audience, but instead can lead to market distortion and reduced innovation in the sector. We would instead encourage a framework that incentives market driven solutions and private investment into local content.