

# **EDMO Policy Monitoring: The Regulation of Online Disinformation**

## **Ireland Country Profile**

John Cian McGrath and Dr Kirsty Park  
Dublin City University

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## Introduction

This country report is part of a monitoring exercise by EDMO to understand the response of different countries to the regulation of online disinformation.

It should be noted that Ireland is in the middle of a significant change in media regulation as the Irish regulator, the Broadcasting Authority of Ireland (BAI), is currently in the middle of a three-year transition which will see it integrated into a new Media Commission as outlined under the Online Safety and Media Regulation (OSMR) Act 2022. Additionally, in September 2020 the government established the Future of Media Commission which developed 50 recommendations relating to the media sector that were published in the Future of Media Commission report in July 2022. The report has been described as “a strategic agenda for transforming Ireland’s media sector”<sup>1</sup>. The Government adopted in principle 49 of the 50 recommendations, some of which directly address disinformation. For this reason, some responses will reference the Future of Media Commission report as it represents a commitment to future policy actions.

### 1. How is disinformation tackled in the country?

There are limited regulatory mechanisms to tackle disinformation in Ireland, although there are some existing policies relating to media literacy as well as planned responses directly addressing disinformation. This section will outline the following:

- The Online Safety and Media Regulation Act which does not directly regulate disinformation but has the potential to.
- The Electoral Reform Act which provides powers to remove content during elections, although these parts of the Act have not been enacted yet.
- The Broadcasting Authority of Ireland’s Media Literacy Policy which has led to the development of Media Literacy Ireland and its work surrounding disinformation.
- The Future of Media Commission Report which addresses disinformation and recommends the development of a National Counter Disinformation Strategy.

#### 1.1 Online Safety and Media Regulation Act 2022

This Act was signed into law on December 12, 2022<sup>2</sup>. It establishes a new media regulator, The Media Commission. This Commission replaces the Broadcasting Authority of Ireland and is responsible for regulating online safety, among other responsibilities. This Act tackles specific instances of online harms, broadly defining such a concept as “harmful online content and age-inappropriate online content”<sup>3</sup>.

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<sup>1</sup> <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>

<sup>2</sup> <https://www.gov.ie/en/press-release/12off-president-higgins-signs-crucial-online-safety-and-media-legislation-into-law/>

<sup>3</sup> <https://www.irishstatutebook.ie/eli/2022/act/41/enacted/en/pdf>

Neither misinformation or disinformation are included under this definition of online harms, but there is a power for the commission to specify other harmful online content. This process involves the commission making a proposal to the Minister to cover “significant risks” which they wish to take action against and that are not addressed by other means, whether it be other regulators or “providers of relevant online services”.

This proposal to the Minister will then be brought towards a Joint Oireachtas (Parliamentary) Committee and considered in light of that or any other consultation. The request may then be accepted or returned to the Commission to reconsider the proposal.

As such, while misinformation and disinformation have not been included under the new Media Commission regulation, there is the potential that it may be included at a later date through application to the Minister. Section 1.4 outlines how such an amendment has been encouraged in the Future of Media Commission Report.

## **1.2 Electoral Reform Act 2022**

The Electoral Reform Act has been passed with the stated aim “to protect the integrity of our electoral and democratic processes against the spread of disinformation and misinformation in the online sphere during electoral periods.” However, while the Act has been passed, Sections 4 and 5 which deal with regulating online advertising and online electoral information have not been commenced. The European Commission issued a detailed opinion that Section 4 of the Act is not compatible with the e-Commerce Directive<sup>4</sup>. The Irish Government has issued a response to the European commission about how it plans to proceed in light of the Commission’s opinion, but this reply has not been made publicly available<sup>5</sup>.

If the Act is fully commenced, the Electoral Commission of Ireland will have the power to issue any or all of the following:

- a take-down notice
- a correction notice
- a labelling order
- an access-blocking order, or
- a notice requiring any operator or host of any online platform to publish a statement informing all affected end-users of the manipulative or inauthentic behaviour or the use of an undisclosed bot

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<sup>4</sup>[https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=184&react=DETAILED\\_OPINION](https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=184&react=DETAILED_OPINION)

<sup>5</sup><https://www.irelandip.com/2022/10/articles/advertisement/update-on-the-electoral-reform-act-2022/>

### 1.3 Media Literacy Policy

The BAI launched a media literacy policy<sup>6</sup> in 2016 and as part of this policy it facilitates Media literacy Ireland (MLI)<sup>7</sup> which was established in 2018. MLI is an informal and voluntary alliance of organisations and individuals that aims to promote media literacy across the country. In 2022 MLI reached 250 members representing different sectors of society, such as academia, education, public service broadcasting and media companies. The network designs and delivers webinars and training sessions and has been responsible for important national awareness campaigns to tackle disinformation such as the Be Media Smart campaign<sup>8</sup>, which aimed to “help people tell the difference between reliable and accurate information and deliberately false or misleading information”<sup>9</sup>. This campaign was distributed “across TV, radio, online and the press supported by free air-time, editorial, online ad-credit, social media activity and events from a very wide range of MLI members”<sup>10</sup>. In a presentation to an Oireachtas (Parliamentary) committee discussing Online Disinformation and Media Literacy, Media Literacy Ireland described its work as “a vital contribution to the empowerment of citizens and enables them to be better able to judge the accuracy and reliability of information they encounter and consume”<sup>11</sup>.

### 1.4 The Future of Media Commission Report

The Future of Media Commission Report mentions the word disinformation 62 times throughout. Section 2.5.2 is titled ‘Countering the rise of misinformation and disinformation’ while Section 8.8 relates to regulating the online space and makes specific recommendations relating to disinformation.

The report acknowledges, *“the absence of disinformation as a category of harmful content”* in the OSMR Bill (now an Act) and states that *“it is clear that provisions on harmful disinformation will be required as part of the new regulatory code of the Digital Services Act”* and *“such amendments will be essential if the new Media Commission is to meet its stated objective of ensuring that appropriate regulatory arrangements and systems are in place to address illegal and harmful online, sound and audiovisual content.”*<sup>12</sup>

The report also recommends the development of a National Counter Disinformation Strategy which would address the following points:

- *Coordinate national efforts to counter organised coordinated campaigns of manipulation of Irish internet users and ensure*

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<sup>6</sup> [https://www.bai.ie/media/sites/2/dlm\\_uploads/2016/12/BAI\\_media\\_literacy\\_policy\\_EN1.pdf](https://www.bai.ie/media/sites/2/dlm_uploads/2016/12/BAI_media_literacy_policy_EN1.pdf)

<sup>7</sup> [www.medialiteracyireland.ie](http://www.medialiteracyireland.ie)

<sup>8</sup> <https://www.bemediasmart.ie>

<sup>9</sup> <https://www.bemediasmart.ie/tips/>

<sup>10</sup> <https://www.medialiteracyireland.ie/mli-participates-in-joint-oireachtas-committee-meeting-on-disinformation-and-media-literacy/>

<sup>11</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_tourism\\_culture\\_arts\\_sport\\_and\\_media/submissions/2022/2022-02-02\\_opening-statement-professor-brian-o-neill-et-al-co-chair-media-literacy-ireland\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/submissions/2022/2022-02-02_opening-statement-professor-brian-o-neill-et-al-co-chair-media-literacy-ireland_en.pdf)

<sup>12</sup> <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>

*transparency about content moderation policies that impact Irish citizens;*

- *Develop effective long-term monitoring of the application of the EU Code of Practice on Disinformation and the Digital Services Act in Ireland;*
- *Be developed in consultation with all relevant Departments and agencies, the Irish EDMO Hub, industry stakeholders, news organisations, civil society groups and Irish fact-checkers and disinformation researchers. The Strategy should also incorporate a role for Irish citizens, potentially seeking oversight of decisions impacting Irish users of content platforms, or complaints filed by them;*
- *Examine other examples of other international best practice;*
- *Build relationships between platforms and academic researchers that facilitate access to data that would inform better interventions to prevent the spread of disinformation;*
- *Identify measures to support innovation in fact-checking and disinformation research and provide support for innovation in areas critical to compliance with the new regulatory environment created by the Digital Services Act;*
- *Review existing media literacy initiatives in Ireland, including an examination of potential for a more joined-up approach between relevant government departments and agencies on the development of media literacy initiatives. Pilot programmes for media literacy emerging from this review should be eligible for direct support under the Media Fund;*
- *Acknowledge the important role that free, independent, high-quality journalism plays in countering disinformation, and align with efforts to protect the supply of public interest information at local and national level.*

Work on developing the strategy began in 2022 led by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and it is expected that the consultative process and work of drafting the strategy will take place in 2023.

## **2. What definitions are used by policymakers/in policies in your country to define disinformation/misinformation/related concepts?**

The Electoral Reform Act gives a narrow definition of misinformation focused solely on it in an electoral context. It defines misinformation in this context as: “any false or misleading online electoral process information that may cause public harm, whether

or not the information was created or disseminated with knowledge of its falsity or misleading nature or with any intention to cause such harm”.

The Irish Council for Civil Liberties (ICCL) published an opinion piece calling for “an urgent need to advance measured policy responses” to disinformation online. The piece calls for a major shift in the discussions surrounding disinformation as a problem, with a particular focus on the failings of the phrase “fake news” as a term, due to its regular misuse by “anti-democratic actors”<sup>13</sup>.

There is a growing concern that use of colloquial language such as ‘fake news’ can detract from misinformation regulation, due to its potential misuse. The ICCL piece described how the term is used to “discredit legitimate media sources and expert advice”. This has also been seen in public debate in Ireland by policymakers and politicians both in opposition and government.

In a back and forth discussion publicly on Twitter on November 7th 2020, Richard Bruton TD said that the opposition, “persist with their fake news in their tribal echo chambers”. In response to this, David Cullinane TD replied “You know Fine Gael are in trouble when they have to revert to Trump style claims of Fake News to deflect”<sup>14</sup>. This conflation of “Trumpism” and “fake news” as an attack has become commonplace in Irish political debate as means of discrediting the opposition.

Further to this point, the phrase “fake news” has been used 40 times by Irish Teachtaí Dála (Members of Parliament) since the General Election in March 2019. Just 10 of these have been related to misinformation regulation, a further 11 are related to correcting incorrect information that is being spread, particularly in relation to Covid-19 lockdowns, vaccines and restrictions, but 9 of these 40 instances involve the use of “fake news” as a means of attack or discrediting of a political opponent.

### **3. Are any powers given to regulators in relation to disinformation or misinformation?**

#### **3.1 Online Safety and Media Regulation Act**

While the OSMR Act does not directly address disinformation or misinformation at the current time, it contains provisions to add novel types of harmful content at any stage.

This act established ‘*Comisiún na Meán*’ (The Media Commission), a new regulatory body. Amongst other powers, this body will have the power to regulate ‘harmful online content’. A list of such content is included in the act. The Commission also has the power to designate a “relevant online service to which online safety codes apply”. This

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<sup>13</sup> <https://www.iccl.ie/opinion/covid-19-highlights-why-disinformation-online-is-a-rights-based-issue/>

<sup>14</sup> <https://twitter.com/davidcullinane/status/1325055778802323456>

can amount to the naming of a service directly, or “all services falling within a category of services described in the designation”. The Commission also holds the power to compel an online service provider to provide information relating to how to designate the service.

From here, the Commission creates ‘online safety codes’ which can be applied to designated online services. This code will ensure that “service providers take appropriate measures to minimise the availability of harmful online content and risks arising from the availability of and exposure to such content”, “that service providers take any other measures that are appropriate to protect users of their services from harmful online content” and “that service providers take any measures in relation to commercial communications on their services that are appropriate to protect the interests of users of their services, and in particular the interests of children.”.

This online safety code will strive to ensure that service providers meet minimum standards for online safety, practices that must be followed and measures that must be taken. As well as this, it will include mandatory assessments that service providers must comply with, and reports that they must make to the Commission.

In short, this online safety code will be binding, and will attempt to ensure that service providers are conscious of, and curb the availability of harmful online content as defined by the Commission. This will be done by addressing the current practices in the context of content moderation, recommendation systems, advertising etc. The Commission will be responsible for the creation of non-binding online safety guidance and advisory notices to further create and support “a safety-first culture of compliance” from online platforms.

### **3.2 Electoral Reform Act 2022**

If fully commenced, this Act will grant the Electoral Commission of Ireland the authority to regulate electoral misinformation. A new function of the Commission is introduced under the Act, allowing it to “to protect the integrity of elections and referendums against the dissemination or publication of online disinformation, online misinformation and manipulative or inauthentic behaviour online”.

The Electoral Commission is also given the function of monitoring and identifying trends in respect of misinformation, disinformation and such manipulative or inauthentic behaviour. Outside of direct regulation of such behaviour, an additional responsibility is given to the Commission to “promote public awareness of misinformation, disinformation and manipulative or inauthentic behaviour”, including the establishment or promotion of educational programmes to combat such material.

A number of obligations are placed on online platforms by the act. Firstly, online platforms must provide information during the Commission if it becomes aware that

the platform is being used to spread disinformation, there may be misinformation present on its service or there has been manipulative or inauthentic behaviours on its service. The communication must be made without undue delay. In respect to larger platforms, any platform with over 1 million unique monthly users in Ireland must prepare and communicate a risk assessment report to the Commission.

This report must specify “any significant risks to the fairness or integrity of an election or referendum posed by disinformation, misinformation, or manipulative or inauthentic behaviour on its services”. This report ought to be communicated “as early as possible in an election campaign period”. Information that must be included relates to the prevalence of misinformation, disinformation or inauthentic behaviour on the platform, or significant risks posed by the operation of any recommender system employed by the online platform in promoting content. The Commission will monitor the compliance of online platforms with these requirements.

In order to ensure that platforms are aware of the presence of misinformation or other unwanted content, they must implement a “notification mechanism” to allow “any individual, entity or person” to notify them of such content on the platform. This mechanism must be “accessible and user-friendly”. Platforms are obliged to “without undue delay, assess, process and determine the validity of the concerns raised”.

In its function to monitor online electoral information, the Commission holds a number of powers to take action against disinformation or misinformation. Where it is believed that such material is present in an online platform, a report will be brought before the Commission. Following the consideration of the report a number of actions may be taken. The Commission may implement a take-down notice, a correction notice, a labelling order or an access-blocking order. Accompanying each of these must be the reasoning of the commission, and an access-blocking order may only be pursued where it is “in relation to a previously identified online location”.

As well as this, if the Commission deems it necessary, it may submit a communication to the public in relation to the spread of misinformation, if it is felt that there is a “public interest to draw attention” to the threat to the integrity of the electoral process. The Communication may include the nature, source and severity of the threat, actions taken by the Commission to date and recommendations to the public on how to respond.

The offence of making or publishing disinformation or misinformation with the intent of influencing the result of an election or referendum can be punished by up to a class A fine or up to 5 years in prison.

#### **4. Does your country have (or plan to introduce policies related to political advertising (targeting and microtargeting) on online platforms?**

Political advertising is regulated by the Electoral Reform Act 2022, although this section of the Act has not yet been commenced. The goals of the Act in relation to political advertising is stated as aiming to;

- “provide a framework for the regulation of online political advertising during election periods by the Commission;
- to provide for the labelling of online political advertisements;
- to provide for transparency notices for online political advertisements;
- to confer on the Commission the power to monitor compliance, carry out investigations and take enforcement action under this Act in so far as it relates to online political advertising.”

The Act defines online political advertisement as “ any form of communication in a digital format for political purposes purchased for placement, display, promotion or dissemination on an online platform during an electoral period and for which a payment or payment in kind is made to the online platform concerned”. In terms of regulating online platforms, the scope for regulation is set in regards to the size of the platform. Online platforms which are to be regulated must had “has not less than 100,000 unique monthly users in the State for a period of not less than 7 months during the 12 months immediately preceding the date of the making of a polling day order” and “receives payment or payment in kind for the placement, display, promotion or dissemination of an online political advertisement.”.

In respect to “targeting” the act defines two types of targeting. Micro-targeting is defined as “a targeting method involving the use of data analysis techniques, tools or other methods to address, transmit or communicate a tailored online political advertisement either to a specific person or group of persons or to increase the circulation, reach or visibility of an online political advertisement”. Look-alike targeting is defined as “means a targeting method involving the use of data from an existing online audience and which applies the use of data analysis techniques, tools or other methods to identify new persons who have similar characteristics or are engaged in similar activities on an online platform”.

The Act places a number of requirements on online platforms in respect to online political advertisements. Firstly, such advertisements must be labelled as “political adverts”, and a link to a “transparency notice” must be included. This transparency notice, as per the Act, must include identifying information regarding the “buyer” of the advertisement, and confirmation of whether micro-targeting or look-alike targeting were used in displaying this advertisement to the user. As well as this, the

amount paid, the number of days which it will be displayed and promoted, the estimated audience size, its views and other such information must be included. The online platform must update this information in real time. As well as this, the platform must establish, maintain and update an online archive containing each political advertisement purchased, along with its transparency notice. This archive shall be made available to the public.

A number of obligations are also placed on platforms, in that they must verify the identity of the buyer of the advertisement. This verification includes verification of official documents to verify their identity, their address and the source of their funds. If it is funded by another party, their identity must also be declared. As well as this, a statement and statutory declaration must be made declaring that the statement made within the advert is “to the best of the knowledge and belief of the person concerned” “correct in every material respect”.

The buyer is obliged to provide such information as was described under 4.2.1 and 4.2.2. As well as this, they are obliged to comply with any “reasonable request” from an online platform, such as information and documents to assist with verification. If a buyer provides information relevant to verification which they know, or ought to know, is false, they are guilty of an offence.

The placing of online political advertisement from a person from outside of the State is not permitted, save for the buyer meeting one of the following exceptions;

- They are a natural person and provides evidence that they are a citizen of Ireland
- They are a company, body corporate or unincorporated body of persons that provides evidence that it maintains an office in the state, from which they carry on one or more of their principal activities
- They are a natural person and provides evidence that they are a national of a member state of the EU and the advertisement relates to an election to the European Parliament
- They are a company, body corporate or unincorporated body of persons that provides evidence that it maintains an office in the a Member State of the EU, from which they carry on one or more of their principal activities, and the advertisement relates to an election to the European Parliament
- is a European political party and provides evidence of its registration under Regulation No. 1141/2014, and the advertisement relates to an election to the European Parliament

As well as directly enforcing the previously mentioned obligations on buyers and platforms, the commission holds a number of other functions:

- Monitoring online political advertising
- To encourage compliance with the act, including publication of notices in both English and Irish which provide guidance on compliance
- To carry out investigations into online advertising practices both on the basis of its own initiative and information that is provided to it
- To decide appeals
- To make arrangements to arrange for the transfer of online archives created by online platforms and the maintaining of such archives after such a transfer, so that each advertisement and accompanying transparency notice is maintained for a period of 7 years from the date of its initial inclusion
- To identify trends in relation to contraventions of the act or other matters related to the Commission's functions and prepare and publish reports on such trends
- To prepare and publish such information in connection with online political advertising to the public where it considers it to be appropriate

## **5. What is the impact of the Code of Practice on Disinformation in your country?**

The Irish media regulator the Broadcasting Authority of Ireland (BAI), has been particularly proactive when it comes to disinformation. The European Commission assigned the European Regulators Group for Audiovisual Media Services (ERGA) with the task of monitoring the effectiveness of the Code and its implementation. The Broadcasting Authority of Ireland (BAI) have taken a particularly active role in monitoring the Code. The BAI commissioned DCU's Institute for Future Media, Democracy and Society (FuJo), which now coordinates EDMO Ireland, to produce three reports assessing the code; ElectCheck, CodeCheck and CovidCheck<sup>15</sup>. These reports examined the transparency of political advertising during the 2019 European Parliament elections, the empowerment of consumers and the research community in Ireland by Google, Facebook, Microsoft, and Twitter, and the Covid-19 transparency reports released by the platforms in 2020/21.

In each report, FuJo identified significant inconsistencies in the reporting standards and the quality of efforts made by the platforms. The most recent report, CovidCheck, found that the reports submitted by the platforms were highly repetitive, often irrelevant and generally failed to provide the data that was requested. The report recommended the establishment of more robust monitoring and reporting

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15 [https://fujomedia.eu/wp-content/uploads/2019/09/Elect-Check-2019-Report\\_Interactive-PDF-1.pdf](https://fujomedia.eu/wp-content/uploads/2019/09/Elect-Check-2019-Report_Interactive-PDF-1.pdf),  
[https://doras.dcu.ie/26472/  
content/uploads/2020/04/20200428\\_CodeCheck\\_Final.pdf](https://doras.dcu.ie/26472/content/uploads/2020/04/20200428_CodeCheck_Final.pdf)

[https://fujomedia.eu/wp-](https://fujomedia.eu/wp-content/uploads/2020/04/20200428_CodeCheck_Final.pdf)

procedures. After presenting the key findings to the ERGA monitoring group, the FuJo recommendations were endorsed and incorporated into ERGA's own recommendations for the revision of the Code<sup>16</sup>.

Additionally both the FuJo report and ERGA's report recommended the appointment and signatory funding of an independent auditor to monitor implementation as the monitoring process is time intensive and it is unclear how monitoring will be funded in the future. The Future of Media Commission report also includes developing "effective long-term monitoring of the application of the EU Code of Practice on Disinformation and the Digital Services Act in Ireland" as part of the work of the National Counter Disinformation Strategy, indicating that monitoring the Code will continue to be a priority for the national media regulator.

## **6. Are there specific policy measures in the country aimed at strengthening the fact-checking capacities and capabilities of independent fact-checking organisations, media and journalists?**

There are no specific policy measures aimed at strengthening fact-checking capacities. However, The Future of Media Commission report did profile the role of The Journal FactCheck, the only verified Irish signatory of the International Fact-Checking Network and the report describes fact-checking as important for countering misinformation. The report recommendations do suggest that the National Counter Disinformation Strategy should: "Identify measures to support innovation in fact-checking and disinformation research and provide support for innovation in areas critical to compliance with the new regulatory environment created by the Digital Services Act".

## **7. Is there nationwide accessible data in connection with disinformation?**

The Electoral Reform Act 2022 allows for the creation of a nationwide hub of data collected in relation to electoral advertising, although this depends on if the relevant section is commenced. The act requires platforms to establish, maintain and update an online archive containing each political advertisement purchased, along with its transparency notice. This archive shall be made available to the public. The Electoral Commission will manage and cultivate this data and ensure it is ordered and accessible. This archive will include anything that is deemed to be false or inaccurate and it will be marked as such.

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<sup>16</sup> [https://erga-online.eu/wp-content/uploads/2021/11/ERGA-RECOMMENDATIONS-2021\\_11.pdf](https://erga-online.eu/wp-content/uploads/2021/11/ERGA-RECOMMENDATIONS-2021_11.pdf)

Aside from this, there is no nationwide accessible public data in connection with disinformation.

## **8. What forms of regulation were introduced as a response to the Covid-19 pandemic?**

Ireland did not implement regulation on disinformation in response to Covid-19 regulation.

## **9. Were specific policies introduced in the context of the war in Ukraine? Based on what ground? What was the national follow-up to the EU ban to rt and sputnik?**

Ireland followed the EU banning of ‘Russia Today’ and ‘Sputnik’ as a part of the sanctions against Russia. This was swiftly followed by Eir, Virgin Media TV and Sky Ireland removing the channel from its distribution in response<sup>17</sup>.

Notable, however, is that beyond this initial removal of these services, little more was done to regulate. An example of this is Chris Tordoff, an Irish Comedian who worked for Russia Today UK and the Irish state broadcaster. Tordoff, playing his character ‘Viper Higgins’ and ‘Francis Higgins’ created 50 short comedy news clips for RT UK. Access to these clips was restricted, but similar clips which appear on Tordoff’s Youtube channel remain unregulated. One of these clips includes a visit to the Russia Today offices in London, and another involves a trip to Moscow.

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<sup>17</sup> <https://www.thejournal.ie/russian-news-channel-rt-banned-eu-ireland-5698500-Mar2022/>