

NewsBrands Ireland supplemental submission to the Joint Committee on Tourism, Culture, Arts, Sport and Media on Future Business model plans and long-term vision for the media sector (Radio & Print Media and Journalism.)

Introduction

NewsBrands Ireland is the representative body for Ireland’s leading national news publishers. We welcome the opportunity to provide further information to the Joint Committee on Tourism, Culture, Arts, Sport and Media, to supplement our original submission in November 2022.

Changes in the past year

Unfortunately, the environment for the news publishing industry and all producers of public service journalism has become even more challenging in the past year.

The three inter-related ‘megatrends’ that have disrupted news publishing over the past decade continue to impact: the rise of digital platforms and the decline in both print circulation and advertising revenues. Print circulation has continued to decline, with a further 7% decrease in sales in the past year. An increasing number of retailers have also stopped stocking newspapers, with the CSNA reporting in August ‘23 that 40 retailers in the Dublin city area had stopped selling newspapers.

Advertising revenues have declined by a further 5%, and 72% of publisher advertising revenues come from print. One of the points to note is the impact of certain legislation on publisher print advertising revenues. For example, the Employment Permits Bill will remove the requirement to advertise certain positions in a national newspaper for three days. This will represent an annual loss of revenue to national news publishers of approximately €600-700k.

Publisher reliance on print revenues – both advertising and from sales – continues. This is not just a domestic position, but globally 70% of publisher revenues still come from print.

Relationship with tech platforms

Since our submission last year, publishers continue to be challenged by the opportunity to monetise their digital content effectively whilst online platforms continue to generate significant revenues from that content.

Reliable news and quality journalism add value to Google, Meta, TikTok and other tech platforms as trustworthy and diverse content is in demand by consumers.

The platforms utilise that trusted content which publishers have spent millions investing in to obtain the attention of consumers and sell some of that attention, through other products and services, to their customers. In the process, these platforms absorb a disproportionate share of digital advertising revenue.

Article 15 in the EU Copyright Directive provides publishers with the legal basis to negotiate with platforms for the use of their content, but it has proven extremely difficult to do that. Whereas other countries, as part of their transposition, provided for a fair deal mechanism, mediation and arbitration should the parties not be able to agree appropriate remuneration, Ireland's transposition did not provide any mechanism to support publishers in their negotiations.

The Future of Media Commission recommended in its report that the EU Copyright Directive be assessed by the Dept of Enterprise, Trade, Employment within 12 months of transposition to establish how the legislation is working in practice and the actual and forecast economic benefits flowing to Irish publishers. However, the actual FoMC Implementation and Action Plan included instead a provision for DETE to feed into the European Commission's own review in 2026 and use the Stakeholder Consultation Group to engage with relevant stakeholders on the operation of the Copyright Directive in practice

and to seek views on potential for changes to the operation of the Irish legislation. This is an unnecessary delay in assessing the impact of Article 15 as transposed here. More meaningful support in the legislation to assist news publishers, and those whose content falls under the provisions of Article 15, would be of significant benefit.

The committee is mindful no doubt of the aggressive tactics adopted by the platforms in other jurisdictions. In both Australia and Canada, where Governments implemented sensible legislation to enforce fair remuneration from platforms for the use of news publishers' journalism, platforms reacted with news blackouts, with threats also made in the US,

The aggressive tactics from the dominant tech platforms directly harm the public's access to genuine and authoritative sources of news and information.

AI

In the past year, we have seen the proliferation of AI Systems, especially Generative Artificial Intelligence (GAI), present a sea change in how we interact with and deploy technology and creative content.

Publishers invest millions in creating high-quality content that keeps our communities informed, entertained, and engaged. We are aware that this content is being used to train and deploy AI systems, but there is a lack of transparency on its use by platforms and no payments are being made to publishers for the use of their content for this purpose.

In Canada, the Government has launched a consultation on the impact of generative AI for copyright.

Questions will touch upon i) the use of copyright-protected works in the training of AI systems ii) *“authorship and ownership rights related to AI-generated content iii) liability, especially when AI-generated content could infringe existing copyright-protected works.”*

Defamation

Publication of the General Scheme of the Defamation (Amendment) Bill in earlier this year was greatly welcomed by NewsBrands, following a delay of some seven years.

It is crucial that the reforms to the defamation laws, now prioritised by Government, be implemented as quickly as possible and, certainly, within the likely limited legislative timeframe of the current Dáil.

A failure to implement these changes speedily would continue to undermine the work of the independent media in Ireland, which further erodes the proper functioning of democracy in this country.

The two key changes required to the law are:

Abolition of Juries

The abolition of juries in defamation actions is the most important change in the General Scheme of the Defamation (Amendment) Bill and must be introduced without delay.

We have been calling for this change for almost 40 years. Jury trials are unpredictable, time consuming and costly. Their decisions lack transparency. A number of jury awards, giving damages greatly in excess of those available in severe personal injury actions, have served to bring the legal system into disrepute.

It cannot seriously be suggested that a successful party, as in practically every other civil action, is any less vindicated by a verdict from a senior judge than from a jury.

The decision-making process of juries in defamation actions is opaque. They do not have to explain how they came to their decision, how they applied the law or how they assessed the level of an award. A reasoned decision by a judge brings predictability to the process and chimes with the need for greater openness and transparency in public life.

A trial before a jury lengthens considerably the time taken to run a case. They are often twice as long as equivalent cases before a Judge. This leads to greatly increased legal costs and a considerable waste of court time.

Serious Harm Test

The General Scheme provides for a serious harm test in cases involving companies, public authorities and retailers, and it accepts the need for such a test. It is a mystery why it is not being introduced in all defamation cases.

This test, already successfully operated in the UK, discourages trivial defamation claims that can chill free expression and inundate the courts with lengthy and costly court cases. Claimants who do not meet the test have the option to take their case to the Office of the Press Ombudsman. It also deters libel tourism.

As is the case with retail outlets, the Irish media faces, on an almost daily basis, unwarranted and exaggerated claims for defamation. The costs of defending these claims are significant and these costs are often unrecoverable even where the defence succeeds.

A serious harm test for all defamation proceedings would act as a deterrent to vexatious claims and alleviate the risks to Ireland associated with ‘libel tourism.’

The committee’s support for speedy drafting and publication of the Defamation Bill would be appreciated.

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