



NewsBrands
Ireland

NewsBrands Ireland Submission to the Future of Media Commission

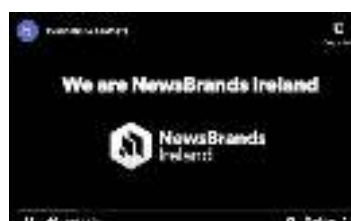
January 2021

NewsBrands Ireland Submission to the Future of Media Commission

Introduction

NewsBrands Ireland is the representative body for Irish national news publishers (listed in [Appendix 1](#)).

Our member publishers produce trusted public service content across a range of print and digital platforms, as seen in this short video.



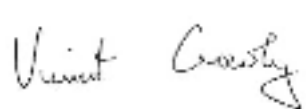
NewsBrands Ireland's remit is to promote the vital contribution made by our members' trusted journalism to society and democracy, to convey the commercial power of news brand audiences to advertisers, and to work towards a fair and balanced legislative framework *that supports public service journalism and a vibrant national news publishing industry.*

We are members of the Press Council of Ireland and subscribe to the Press Council Code of Practice. Advertising that appears in our member publications is subject to the codes of the Advertising Standards Authority of Ireland. We are an active member of Media Literacy Ireland and work closely and collaboratively with European and global counterparts, News Media Europe and WAN-FRA, on policy and press freedom issues.

We welcome the opportunity to make this submission to the Future of Media Commission. It will be supplemented by a formal economic study of our sector, which is currently being prepared.

This submission brings together the common challenges which are facing our member publishers and detailed and practical solutions that we believe will help to sustain the industry into the future.

Yours sincerely,



Vincent Crowley,
Chairman, NewsBrands Ireland



Ann Marie Lenihan,
CEO, NewsBrands Ireland

Executive Summary

The public service journalism produced by our members not only uncovers present-day wrongdoing by those in a position of trust, but, as we have seen all too often in recent years, also reveals horrific secrets of our country's past.

It holds truth to power and helps us understand what is going on around us. It connects communities and is central to a free and democratic society. Its investigations and reporting feed the wider news eco- system with much of national and local radio relying on newspaper print and online journalism for their broadcast content.

But the future of Irish journalism, and indeed global news journalism, is under growing threat. As we have witnessed in other countries, without credible sources of news, where information is factual, accurate and politically impartial, public trust and democracy itself are undermined.

So far, we are fortunate in Ireland that news publishers continue to fulfil that role of a trusted source, operating impartially and holding public figures and politicians of all parties and none to account. But Irish news publishers are facing very real challenges at present for their businesses to remain viable.

Declining print circulation, draconian defamation laws, changed advertising models, and a fundamental imbalance of power between platforms and publishers have put enormous pressure on news media outlets. How news is produced, delivered and consumed has changed radically. Publishers have had to completely re-think their business model and innovate their product offering with the creation of on-line editions, websites, mobile apps, video and podcast. Investment in adapting and innovating their business model has meant cost-cutting in other areas with significant restructuring and inevitably job losses.

Through technological innovation, reader engagement, and brand loyalty, Irish news publishers are commanding larger audiences than ever before with 72% of people reading a print or digital newspaper every week (Source: Kantar TGI 2020). Our combined monthly digital audience is 42.4 million users and 295 million page monthly impressions. (source; Google Analytics August 2020)

The problem therefore is not a lack of readers or relevance, but a lack of revenue. The economic model which once sustained newspapers is broken. However, with the right supports from government, the future sustainability of the industry can be protected.

There is a growing acceptance globally from governments that journalism must be protected and that measures are taken to ensure its viability. Ireland

is currently an outlier within the EU in terms of government action in relation to support for independent journalism (as detailed in Appendix 3.) Many of these countries also introduced additional significant Covid-specific supports during the pandemic, for example: Denmark, a media support scheme valued at €24m; France, funding worth €337m over two years for a “Strategic Sector-Specific Plan”; Norway - €27m fund to compensate for ad revenue loss; Sweden – an additional €19m this year for news media; Switzerland – €30m per year for next ten years to support digital transition; UK – commitment to invest €57m in advertising partnership with publishers.

If the Commission Members believe that public interest journalism is something worth fighting for – and in this submission we set out numerous reasons why our country, our democracy, is well served by our newspapers - they can support the industry by recommending the following measures, which will be elaborated further on in this submission:

- **Reduce VAT to 0% on newspapers and digital news products, as is the case in Britain and other EU countries.**
- **Tackle the dominance of tech platforms in the digital advertising market.**
- **Transpose the EU Copyright Directive which provides a legal basis in Article 15 for publishers to negotiate payment for the use of their content with platforms. This should be supported by mandatory codes similar to those being developed in Australia.**
- **Complete the long-overdue Review of the Defamation Act and reform Ireland’s draconian defamation laws that support legal costs so punitive they have the potential to put publishers out of business.**
- **Ensure public service journalism is supported across all media.**
- **Implement a Digital Tax, a portion of which to be allocated for training and development of journalism**
- **Provide subsidies for the distribution of newspapers.**
- **Increase Government investment in advertising with news publishers.**

The news publishing industry needs support now to ensure it can continue in to perform its critical role in providing fact-checked, reliable information to citizens, particularly at a time when such information is critically important.

It must be acknowledged that if newspapers disappear – and regrettably, they will, without the urgent measures and supports outlined in this submission - so too will much of Irish online news, and with it many stories that need to be told. Without a vibrant news publishing industry, who will report on the courts, the Oireachtas, the County and City Councils, local and national sporting events, raise awareness of important societal issues and campaign for change? Google? Facebook? Twitter? Who will expose scandalous wrongdoing and criminality and highlight injustice, as newspapers have been doing day in, week out, year after year after year?



Our members contribute significantly to public debate by breaking original news stories, by reporting general news and by operating as a forum for public debate. This education of public opinion aspect of our members' activity was explicitly acknowledged in the Constitution in 1937. Article 40.6.1 of Bunreacht na hÉireann acknowledges "the right of the citizens to express freely their convictions and opinions" and explicitly states that

"The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

It could in-fact be argued that the Constitution should go beyond respecting the importance of a free press to explicitly enshrine the importance of a free and independent media to Irish public life.

We have seen countless examples of agenda setting newspaper journalism in recent years. **The Sunday Times investigation into corporate governance in the FAI**, and the **Irish Examiner's GolfGate revelations** are just two recent cases of painstakingly researched stories which dominated the news agenda when they broke.

This content was then shared, reproduced, and further built on by other players in the communications ecosystem, including broadcast and social media. Without the investment made by news publishers, many stories such as the above would not have come to light and our society and democracy would be the poorer for that.

Irish news journalists bring misconduct by institutions and public figures to the attention of citizens, helping hold public individuals and institutions to account. The **Irish Independent's 'Votegate' story**, for example, led to a greater understanding amongst the public of the importance of the passage of legislation through the Oireachtas as well as having profound Constitutional implications.

In 2014, The Irish Mail on Sunday broke the 'Tuam Babies' scandal highlighting local historian Catherine Corless's research and its own subsequent investigation of the burial plot. This work led to the Commission of Inquiry into the Mother and Babies Homes which published its final report this month.

Without **Irish Examiner** journalist **Michael Clifford's** work in exposing the smear campaign against Garda whistle-blower **Maurice McCabe**, he may never have been publicly vindicated.

Crime reporting from newspapers such as the **Sunday World** lifts the lid on Ireland's organised crime scene. Stories such as **'The Penguin Files'**, which was the culmination of years of investigation and access to secret German police files uncovered the power and influence of Ireland's most elusive yet prolific crime figures.

Campaigning journalism by newspapers galvanises support for issues affecting ordinary people such as **The Irish Sun's 'Defend our Forces' campaign**, and the **Irish Mirror's** campaigns on the homeless crisis and how vulture funds were affecting ordinary people. The **Irish Daily Mail** campaign, **'Protect Our Kids online'**, successfully brought the issue of child protection online to politicians and the wider public.

This year, the **Irish Daily Star** took a stand against **Daniel Kinahan** in his bid to re-invent himself as a boxing promoter. The paper boycotted coverage of his fight and ceaselessly reported the harm Kinahan and his cartel had inflicted on the Irish people. Within days, Kinahan's plan to re-invent himself as a legitimate businessman had collapsed and he withdrew from the fights.

In 2019, the **Herald** actively supported the campaign for the HSE to approve the drug **Spinraza**. This drug benefits those suffering from Spinal Muscular Atrophy (SMA), a life-threatening genetic disease affecting part of the nervous system. Thanks to the publicity generated and a number of public protests, the HSE announced that it would fund the drug for those under the age of 18, bringing joy to the families involved.

Coverage of Covid-19

Throughout the pandemic, Irish news publishers have brought factual, responsible information to the public. Publishers have ensured the continuity of news coverage, of the print and distribution supply-chain, and have set up dedicated teams to work on COVID-19 to fulfil the vital information needs of citizens. All of this requires tremendous coordination efforts with authorities and healthcare professionals.

The Sunday Independent carried the first report from inside a hospital after they closed to visitors in March. In a factual and measured behind the scenes report, the story informed readers how hospital staff prepared for the surge and shared their reassuring message of hope at a time of great uncertainty. The publication also asked hard questions about the state's response to the pandemic through interviews, comment, and investigation.

The ‘Lives Lost’ series from The Irish Times served as an important record of the devastation caused by Covid-19, putting faces and personalities to the previously anonymous statistics. **The Irish Times also led a powerful investigation into the nursing homes affected by Covid.** Using personal testimonies, background information from insiders and internal whistleblowers, high-level leaks, official records sourced under the FOI Act and data journalism, they sought to paint the picture for the public of how one section of our society, the most vulnerable in this crisis, bore the brunt of a pandemic.

The Business Post’s coverage of insurers’ refusal to pay out on business interruption policies at the height of the Covid-19 pandemic brought an important topic of immense public interest to light. Susan Mitchell, its health editor at the time, led the way in terms of analysis and information relating to coronavirus.

As Ireland began to emerge from the first lockdown, **the Irish Mirror called for ‘A Better Ireland’, with a campaign focused on universal health care and serious tackling of the homeless crisis.**

The Irish Examiner’s investigation into an Oireachtas Golf Society dinner held in Clifden just as new COVID-19 restrictions were announced, revealed to the public how some members of the establishment believe themselves to be above the law.

The Irish Farmers Journal brought specific agriculture focused news to its readers, reassuring them and providing them with vital business information to help ease the pressure on the farming community.

[Appendix 2](#) contains some detailed examples of public service journalism produced by our members.

Special reports and Supplements

Through their unique content, news publishers, provide the public with information on issues spanning economics, politics, sport, culture, community and more, synthesising facts into analysis. They bring together information into stories that readers can engage with.

News publishers regularly produce special print or online supplements during key periods that serve to inform and educate the population on issues ranging from the annual Budget, Local and General Elections, climate change, CAO options, and historic commemorations such as 1916 or the War of Independence

Contribution to Media and News Literacy

Newspapers and news media promote reading proficiency by helping in the development of essential literacy skills. At the same time, the range of authoritative information provided by news media is indispensable to citizens who wish to inform themselves about the major challenges facing our society.

Newspapers and news media contribute to lifelong education because they constantly keep people informed about the latest developments, long after they have left full-time education. By browsing a news website, app or paper, readers can come across viewpoints they may not have considered and facts they may not have been looking for.

Increasingly newspapers journalists have provided important ‘fact-checks’ to verify information such as Independent.ie’s [fact check service](#) and the regular ‘Explainers’ which appear in newspapers and websites. These serve to clearly combat misinformation and to provide the public with responsible information on important issues of our time such as elections, vaccines, and Covid-19.

In a complex news landscape, media literacy is crucial. It means more than identifying ‘fake news’; it is about understanding journalistic processes and their value, how news is presented online and how it is regulated.

Irish news publishers recognise the vital importance of news and media literacy to democracy and through NewsBrands Ireland, run a free secondary school programme for students called [Press Pass](#).

Press Pass is a complete student journalism and news literacy programme which is designed to empower students to recognise responsibly produced news and learn how to produce their own journalism. Through this News-In-Education programme, Press Pass helps teachers to incorporate news media in their lessons. In doing so, students are encouraged to not only consume the news but to actively discuss it, question it, and reflect on it. The programme is entirely funded by news publishers and has reached approx. 90,000 students to date from all across the country.



A. From newspapers to news publishers

The sector has undergone substantial structural change with respect to how news information is produced, delivered and consumed.

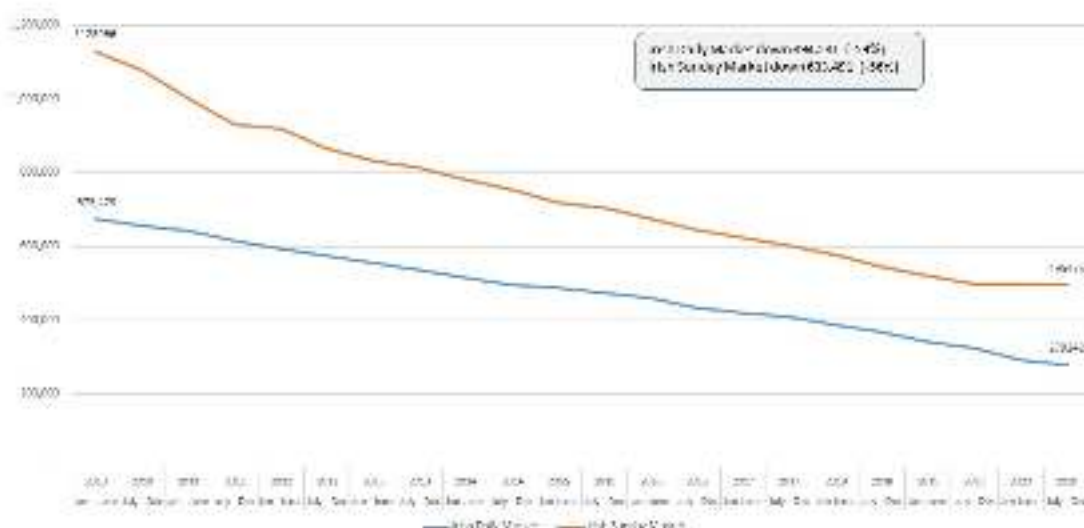
In response, Irish news publishers have invested significantly in continually innovating their products and processes and rethinking the business model. They have established on-line editions, websites, mobile apps and mobile sites, introduced video and podcasts and creatively adopted new revenue-creation models.

Interest in our news, across our combined print and digital platforms, from the general public has never been greater and this has been especially so in recent months as people turned to quality news providers for information during the Covid crisis. Irish news publishers are commanding larger audiences than ever before with 72% of people reading a print or digital newspaper every week (Source: Kantar TGI 2020). Our combined digital audience is 42.4 million users and 295 million page monthly impressions. (source; Google Analytics August 2020)

Our challenge is one of revenue not of relevance.

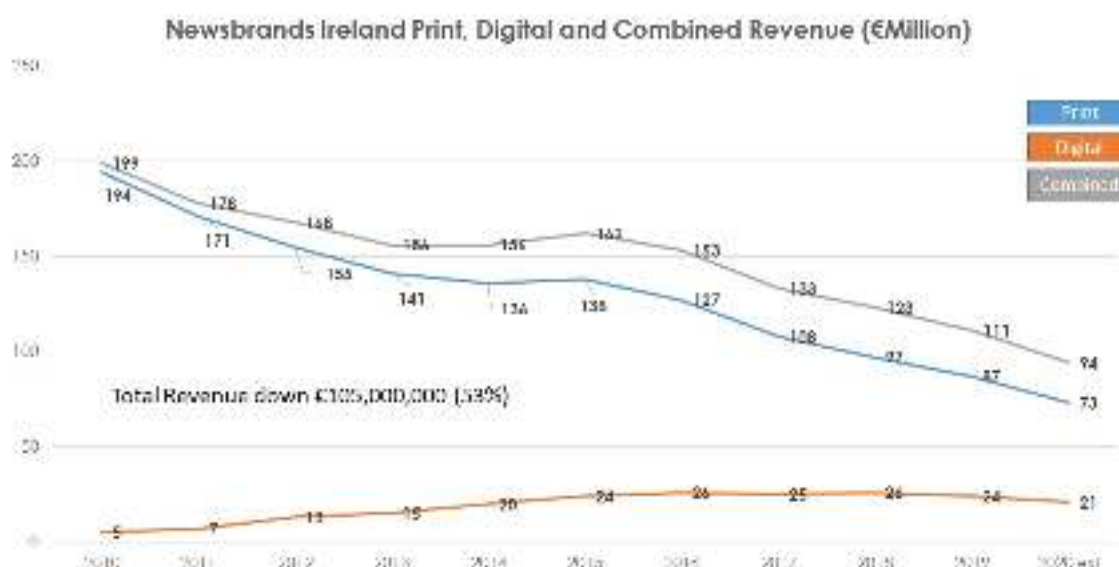
As readers are changing their habits, increasingly consuming their news online, newspaper sales have declined significantly in the past ten years by over 50%.

Irish Daily & Irish Sunday Market 2010-2020



Revenues from print advertising for national titles has dropped from a high of €367m in 2007 to €87m in 2019 and forecast to further decline to €73m for 2020.

During the current crisis, advertising revenues have declined by up to 50% year on year.



Clearly from this chart, we can see that revenues from digital advertising for news publishers have now flattened whilst the digital advertising market has boomed.

It is also worth mentioning in the context of the Irish media market, and in particular the size of Ireland's advertising market, that RTE's public funding is very significant. The nature of RTE's dual funding model raises issues not only in the TV and radio advertising markets but also in the digital advertising market. While steps like restrictions on minutage, discounts and rates schemes have been put in place to address some of these issues in the TV advertising market, the same cannot be said for the digital advertising market.

RTE does not charge for its online news services. In addition to posing an extra challenge to the news publishers' subscription model by creating an expectation of free delivery of online news, RTE's digital properties compete in the digital advertising market directly with news publisher websites, news and sports apps. Public service journalism requires

significant funding. While RTÉ digital properties can exploit content that was partly or fully paid for by public funding, our members have to invest millions in content creation.

B. The Oligopoly Power and Economic Clout in Digital Media Advertising Market

As the digital advertising market has increased to now constitute more than 50% (c. €500m) of the overall advertising market, in part of as a result of the growth in audience for news media content, the supply chain has supported the aggregators and distributors rather than its content creators, including news publishers.

Increasingly publishers' ability to invest in quality journalism at local and national level is threatened by the lack of a level playing field in competing with big tech and its exploitation of inequality of bargaining power.

In the new media landscape publishers are struggling to monetise content adequately while international technology giants use our content to drive and retain traffic on their networks. Increasingly, publishers have become reliant on a small number of consumer facing platforms, who act as an intermediary between the publisher and the consumer in the distribution and presentation of content. Given their market position, these platforms are unavoidable for publishers.

The relationship is symbiotic but asymmetrical as the platforms grow rich from insight into their user interests in news. This insight in turn informs their advertising businesses. Publisher content enhances their products, making the user experience richer, and more relevant for search and social. Publishers are acting as a fuel for the engines of the platforms, with little in the way of return.

In other words, Google and Facebook take the journalism we pay reporters to create, and then use it to Hoover up advertising that we need to fund our journalism in the first place. This is wrong and patently unfair, and is one of the biggest threats to the continued existence of Irish newspapers and the public service journalism we create.

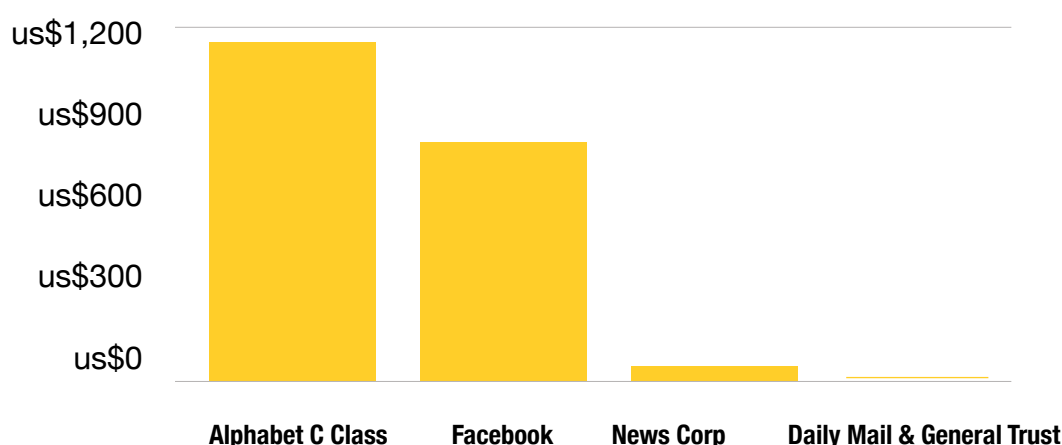
Core Media, in its Outlook report in March 2020 stated "the dominance of the duopoly (Google and Facebook) has a significant impact on the budgets available to Irish online publishers". It forecast that Google and Facebook will continue to increase their share of the market in 2020, after securing "about €425 million in Irish advertising revenues in 2019."

By contrast NewsBrands' members secured just €26m from digital advertising in 2019, forecast to decline to €21m for 2020.

Google also enjoys an almost total monopoly of internet search with an estimated 96.3% of all searches in Ireland taking place on its browser or app. While there is greater competition in social media, they are dominated by Facebook (which also owns Instagram and WhatsApp).

The commercial power and influence exerted by Google and Facebook can be seen in the equity value of their shares and in the rise in that value over recent years. This contrasts sharply with the experience of quoted news publishers. Companies that would traditionally be considered giants – such as NewsCorp and the Daily Mail Group – look tiny by comparison.

Market Capitalisation 31.12.2020 (US\$ billions)



	Market Capitalisation 08.01.2021 (US\$ billions)	Growth in Share Price Since 2000	Comment
Alphabet C class	\$1,219	+3176%	Owner of Google, share price rise since August 2004.
Facebook	\$762	+536%	Share price rise since May 2012 only.
News Corporation	\$11	+22%	Publisher of The Times, price rise since June 2013 only.
Daily Mail & General Trust	\$2	+13%	

Urgent pro-competitive reform to rebalance the platform-publisher relationship and restore competition to the digital advertising market is needed to secure a sustainable future for news publishers. Below, we have set out some examples of how other jurisdictions are addressing the issue.



United Kingdom

The Competition and Markets Authority (CMA) in the UK conducted a year-long review into online platforms and digital advertising, following a recommendation of the Cairncross Review. The CMA CEO – Mr Andrea Coscelli – has said “Our work found that large multinational online platforms such as Google and Facebook now have a central role in the digital advertising ecosystem and have developed such unassailable market positions that rivals can no longer compete on equal terms.” He called for competition authorities across the world to cooperate “to tackle this problem together.”

In November 2020, the British Government announced that it will set up a Digital Markets Unit - which will begin work in April 2021 and sit within the CMA - to oversee a “pro-competition regime” for platforms including those funded by digital advertising, such as Google and Facebook. The Digital Markets Unit will be put on a statutory footing, with legislation expected this year.

A new code will be introduced to govern commercial arrangements between publishers and platforms to help keep publishers in business - helping enhance the sustainability of high-quality online journalism and news publishing in the UK.

The House of Lords Communications and Digital Committee published its [Breaking News? Future of Journalism Report](#) on 27th of November 2020 and welcomed the completion of the Competition and Markets Authority’s market study on online platforms and digital advertising.

The Committee recommends (p. 64) “The Government should set up the proposed Digital Markets Unit as a matter of urgency and ensure that it has the powers and resources it needs.

“There are strong arguments in favour of undertaking a market investigation into the online advertising market in parallel to this work. However, the CMA is justified in leaving the issue for the Digital Markets Unit provided that the Government acts swiftly.”

The report further states (p. 70) ***“There is a fundamental imbalance of power between news publishers and platforms. Due to their dominant market position, Facebook and Google can stipulate the terms on which they use publishers’ content.”***

The Committee recommends: “The Government should use the Online Harms Bill to legislate for a mandatory news bargaining code modelled on the Australian Competition and Consumer Commission’s proposal. Once it

is set up, the Digital Markets Unit should take on responsibility for this and keep under review publishers' concerns about the ways in which platforms use their content. The Government and regulators should work closely with international partners on this issue.

On January 8th, the CMA opened an investigation into Google's proposals to remove third party cookies and other functionalities from its Chrome browser. The CMA investigation will assess whether the proposals could cause advertising spend to become even more concentrated on Google's ecosystem at the expense of its competitors. The CMA's chief executive, Andrea Coscelli, has warned that *"Google's Privacy Sandbox proposals will potentially have a very significant impact on publishers like newspapers, and the digital advertising market"*.



Australia

In 2017, the Australian Consumer and Competition Commission, was set up to inquire into the impact of Facebook and Google on the state of competition in media and advertising. Its 18-month inquiry found a bargaining power imbalance between news media organisations and the large digital platforms, and recommended that codes of conduct be negotiated to govern their commercial deals. The code aims to ensure that news media businesses are fairly remunerated for the content they generate, helping to sustain public interest journalism in Australia.

In December 2020, the Australian government tabled world-first legislation in parliament that will force Google and Facebook to negotiate a fair payment with news organisations for using their content in Facebook's newsfeed and Google's search. Google has now started hiding some Australian news sites from search results, in a move media outlets say is a show of "extraordinary power" as the tech company bargain with the Australian government over financial payment for content.



France

In France, the EU Copyright Directive has been already been transposed giving publishers a legal basis under the provisions of Article 15 to negotiate licensing agreements with Google. The French Government and French Copyright Authority actively supported news publishers in this.

We believe that Ireland needs to take a lead in Europe to address the imbalance of power between news publishers and platforms and ensure that the significant investment made by news publishers in public service content is protected. The EU Copyright Directive should be transposed into Irish law as soon as possible (deadline is June 2021) to provide a legal basis for publishers to negotiate payment for the use of their content by

platforms. Mandatory codes should be implemented to support publishers in their negotiations.

C. Our Defamation Regime

Ireland's defamation laws are among the most restrictive in Europe and throughout the English-speaking world. They result in having a chilling effect on the media's role as the public's watchdog and its ability to reveal matters of important public interest.

Furthermore, the high level of awards – far in excess of other jurisdictions – and related legal costs are having a profound impact on the financial viability of many local and national newspaper.

The European Commission in its recently-published Rule of Law Report stated that *“Ireland's defamation laws raise concerns as regards the ability of the press to expose corruption.”* The Commission also said it was worried about the frequency of defamation cases in the courts, which are extremely difficult and expensive for publishers to defend.

The former editor of the Sunday Times (Ireland edition), Frank Fitzgibbon identified defamation as one of the greatest threats facing news media. Based on his long experience as a national editor he said that most aggrieved parties take actions against newspapers on the grounds that they have suffered damage but that this damage is never quantified. They frequently state, without any proof, that a published article has caused people to think less of them and/or held them up to ridicule.

Fitzgibbon has long contended that litigants should be required to identify in detail how they have been affected by an article and the precise nature of the damage that has been caused. He says that if an individual is concerned about having an inaccuracy amended then, if it cannot be resolved between the parties, it can be adjudicated upon by the Press Ombudsman. But this rarely happens.

In his experience it is unusual for complainants to be satisfied with a correction or apology. Fitzgibbon says “it is always about the money.” He points out that the type of damages sought for inaccuracies in reporting are often multiples of the compensation paid to individuals who suffer harm as a result of accidents, such as losing a limb. He describes this mismatch as “immoral”.

The newspaper industry is under tremendous financial pressure but there is a view in some quarters that taking an action against a publication is as good as a lottery payout. This is not a misconception. An individual who presses their case against a newspaper, regardless of the strength of their

argument, is likely to walk away with a significant out of court settlement because newspapers simply cannot afford to run multiple cases at the same time given the extortionate cost of defending actions.

That is why libel and defamation cases so rarely get into court.

These settlements are never publicised but, in total, they are a multiple of the few cases that are fought in court.

Former Irish Examiner editor, Tim Vaughan, strongly agrees with Frank Fitzgibbon's views on the threat to the future of journalism in Ireland because of current Defamation law, associated exorbitant legal costs, and a 'compo culture' approach by litigants unburdened of any need to prove damage to their reputation.

He cites a case where an individual sued for defamation and sought a financial settlement with a condition that there should be no mention of it in the newspaper – no published correction, clarification, or apology. *"Here was a guy who claimed his reputation had been damaged yet he expressly didn't want any correction or apology. Just thousands of euro and legal costs. It was all about the money, and that's usually the case,"* he said.

A consultation on the review of the Irish defamation law took place in late 2016 and early 2017 but, to date, there has been no sign of any tangible result of that process. The Programme for Government includes the following commitment:

Review and reform defamation laws to ensure a balanced approach to the right to freedom of expression, the right to protection of good name and reputation, and the right of access to justice.

There is ample evidence that the 'compo culture' which is threatening the existence of many businesses today due to soaring insurance costs is mirrored in the exploitation of our defamation laws by claimants who – unlike in the UK – do not have to prove serious harm to their reputation.

Many plaintiffs choose not to make a complaint to the Press Ombudsman but to pursue the legal route instead as very often the prevailing view is that there is nothing to lose as the likelihood is the newspaper will invariably settle rather embarking on a lengthy and expensive trial.

Whilst our submission to the Review in January 2017 covered a number of areas, there are four specific changes to the current law that would significantly benefit the industry and these are outlined in the recommendations section below.



i. VAT

VAT on print and digital news products represents a tax on literacy. The current 9% rate should be reduced to 0% . This would give publishers approximately €18m that could be invested in innovation, training and adapting their business.

Most other European countries apply zero or reduced rates in recognition of the unique role of news media in democracy. The UK, Belgium, Norway and Denmark apply 0%. Other countries apply very low rates such as France (2.1%), Switzerland (2.5%), Luxembourg (3%), Spain and Italy (4%), Malta, Hungary, Croatia and Cyprus (5%), Sweden, Greece, Portugal, and the Netherlands (6%) and Germany (7%).

ii. Dominance of Tech Platforms

Urgent pro-competitive reform to rebalance the platform-publisher relationship and restore competition to the digital advertising market is needed to secure a sustainable future for news publishers.

We would recommend following the example of both the UK and Australia where mandatory codes are or have been introduced to govern the behaviour of platforms to ensure the fundamental bargaining power imbalance between platforms and news publishers is addressed.

iii. Copyright

The EU Copyright Directive should be transposed into Irish law as soon as possible (deadline is June 2021) to provide publishers with a legal basis under Article 15 to negotiate payment with the platforms for the use of their content. This should be supported by mandatory codes similar to those being developed in Australia.

iv. Reform Irish defamation law

The ongoing failure to complete the Review of the Defamation Act and introduce key reforms is unacceptable. The current regime represents a huge financial burden for publishers. A survey of members revealed that €32m was spent on defamation cases over a five year period with more than half of that amount spent on legal fees.

NewsBrands made a detailed submission to the Review of the Act in January 2017 and below are our key recommendations which would significantly ease the ruinous financial burden of defamation cases while in no way diluting the fundamental right of a person to their good name and their ability to sue newspapers for libel when they have been defamed:

- The Review of the Defamation Act should be completed without further delay and the new Defamation Act should include a ‘serious harm’ test. This test, already successfully in operation in the UK, discourages trivial claims that can chill free expression and inundate Irish 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 Press Ombudsman.
- Cap on damages. Damages in Ireland are much higher – often multiples of the equivalent awards in the UK and Europe – and very often multiples of awards in serious personal injury cases. The Act should set a cap on court awards as is the practice in a personal injuries actions. Both Austria and Malta have set caps on awards in defamation cases. (€20,000 in most circumstances in the case of Austria and €11,646.87 in Malta). In the UK there is an an effective cap of £240,000 on awards.
- Abolition of juries. Defamation is virtually the only civil action that continues to be decided by juries. The use of juries considerably lengthens the duration of the trial, thus increasing the often enormous legal costs, and can result in unpredictable levels of awards.
- Responsibility for User Generated Comment The absence of clarity surrounding liability for user generated comment on news websites is a major concern. This legal uncertainty now places news websites at a legal and commercial disadvantage to Facebook and Google. They argue that they are “traditional” ISPs and have thus escaped legal liability for user generated content. Specific protection should be afforded to news websites for third party comments, similar to that provided in the UK.

v. Support for Public Service Journalism

The current funding model, which allocates funds to broadcast media only through licence fee and the Sound and Vision fund does not facilitate a level playing field. Support for all public service content providers should be available to ensure fair competition.

vi. Digital Tax

NewsBrands recommends the introduction of a digital tax, a portion of which to be dedicated to training and internship programmes for young journalists and towards digital and multi-media training for journalists. In her December 2019 mission letter to Margarethe Vestager (Executive Vice President of the European Commission for A Europe Fit for the Digital Age), Ursula von der Leyen (the Commission President) wrote “You will coordinate the work on digital taxation to find a consensus at international level by the end of 2020 or to propose a fair European tax.”

The Commission has promised to put forward legislation in the first half of this year if there isn't sufficient progress towards a global solution at OECD level, where the US had previously stalled negotiations.

In the meantime, several countries have proceeded with adoption of a digital tax, including France, Austria, Czech Republic, Italy, Poland, Spain, UK and Hungary. In the case of Austria, €15m is allocated towards the digital transformation of the news publishing sector.

vii. Support for distribution of newspapers

The combined weekly sale of NewsBrands' members print titles is 2.2m copies, a core component of the business and current revenue model as well as contributing €58m in margins to retailers. An average newspaper purchaser spends €14 euro in the shop when they buy their paper, an annual value of €1.9bn to the retail sector.

The cost of distribution of newspapers is significant and other countries provide subsidies and grant-aid towards this cost:

- France €52.96m in aid for distribution
- Belgium – reduced postal rates
- Germany – reduced postal rates
- Sweden – subsidies for distribution, increased by 50% in 2018. Total subsidies €54m.
- Portugal – 40% of cost of postage subsidised
- Switzerland – distribution fund of €46m administered by Swiss postal service

NewsBrands recommends the introduction of aid towards the distribution and postage of newspapers to ensure citizens can continue to have access to the printed product. This is particularly important for the older demographic and also bearing in mind the challenges of broadband penetration.

viii. Government investment in advertising

During the pandemic, the Government has utilised our members' print and digital platforms to communicate key public health messages around Covid. This investment by Government in advertising represents a very tangible support for news publishers.

Independent research undertaken by international research company, Research and Analysis of Media (RAM), showed that these advertisements outperformed all other similar ads in achieving above average recall, recognition, engagement, and action with 77% of readers recalling the ads.

Recall amongst the 15 to 34 age group was particularly strong.

An ongoing commitment from Government to invest in advertising would represent a key support for news publishers.



Until relatively recent times it would have been fanciful to think we might live in a country where at some point in the future our newspapers, or more pertinently, the journalism that our newspapers create, would cease to exist. That they would be gone, crushed to financial extinction.

Newspapers – who are now in a modern sense 24/7 news publishers – whose reason for being is to probe, to inform, to educate, to entertain. To highlight wrongdoing and reveal corruption; to ask the awkward questions that need to be asked of powerful people and institutions to hold them to account for the greater good.

And, of course, to elevate and celebrate our cultural creativity and the essential essence of sport. It's what we've done for generations, without fuss or fanfare, which is as it should be. But it's not fanciful to think that there is some future threat to our ability to continue doing what we do, because it's a threat that bears down on Irish newspapers – and the journalism we create across multiple platforms – right now.

This, of course, is not a new phenomenon: it's a well known fact that tens of thousands of well-established newspapers across the world have gone out of business in recent years. What is less appreciated and understood is the societal and democratic deficit left in their wake.

The threat of widespread closure of Irish newspapers is, thankfully, not imminent, but it is real. And what if that is allowed to happen, for lack of reasonable State support? Who will be trusted sources in a world of misinformation and disinformation that has destabilised erstwhile strong democracies in a way unthinkable up to very recently?

Who will ask the awkward questions, who will reveal what the powerful want hidden, or campaign for the marginalised and highlight injustice?

Or send brilliant wordsmiths to capture the magic of the Special Olympics, a County Final or the opening night of a new Druid play? Facebook? Google? Twitter?

Yes, the threat is very real, but it need not be inevitable. Not if the reasonable measures outlined in this submission are accepted and implemented, quickly.

There is no time for the complacency of inaction.

These recommendations are not about saving traditional print newspapers, rather they are to create a business environment that will sustain quality news publishing companies into the future – professional companies

who are independent of the state, who are responsible, and a clear vision serving the interests of the public and holding those in authority to account.

By implementing these measures, one marker of success of this review in a decade's time would see a vibrant and well-funded independent news media sector marked by an increase in the number of news media journalists.

We therefore respectfully ask the Commission to strongly recommend the urgent implementation of these measures to help ensure the future of our newspapers so that we can keep doing what we do best, and, in so doing, continue contributing to the benefit and betterment of our communities, society and democracy.

Our recommendations in relation to defamation law reform and immediate transposition of the EU Copyright Directive require no financial commitment from Government but would represent significant support for the industry.

Thank you for your consideration.





Appendix 2

Examples of Public Service Journalism

Irish Independent: The political scandal that became known as 'Votegate'

In October 2019, an investigation by the Irish Independent revealed a matter of grave political and legal significance and immense public interest by disclosing TDs were acting in breach of their Constitutional duties in Dáil votes.

The initial investigation of one incident of bad practice led to a floodgate of allegations that saw the newspaper's journalists review more than 50 hours of Dáil footage. Several other examples were uncovered, leading Ceann Comhairle Sean Ó Fearghail to tell the Dáil that what the Irish Independent exposed had "eroded public confidence in how our National Parliament conducts its business".

The so-called 'Votegate' affair also led to renewed scrutiny of working arrangements in Leinster House and in particular the system of clocking in for



the purposes of expenses. The Irish Independent highlighted how some TDs missed votes despite being 'clocked in'.

In light of the seriousness of the issues, two members of the Opposition frontbench resigned, four TDs apologised on the Dáil record for their behaviour and three separate investigations were initiated within the Houses of the Oireachtas. The voting system within the Dáil was formally tightened to ensure no repeat of the affair, with directives issued to TDs on their behaviour and seating, extra verification safeguards introduced and the approval of the installation of cameras to log movements during votes. The profound political implications of the TD voting scandal, lead to a greater understanding amongst the public of the importance of the passage of legislation through the Oireachtas. The scandal also had profound Constitutional implications as Article 15.11.1 of Bunreacht na hÉireann specifies: "All questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member."



just another anonymous Covid-19 statistic and gave back rightful dignity to their memory. That, by any definition, is journalism that matters.

The Irish Times: Lives Lost series

The Lives Lost project by The Irish Times told the stories behind the Covid-19 death statistics. Throughout the pandemic, as the daily death toll rose, most of those who died of Covid-19 remained largely anonymous. Where their stories came to public attention, it was due to the manner of their final days rather than the rich and cherished lives they lived.

The aim of the Lives Lost project was to put that right. As the series grew to more than 100 obituaries, the project together told the story of a generation of men and women who were worst hit by the disease, and the multiple social forces: emigration, women's rights, free secondary education, among others that shaped their lives.

The real significance of Lives Lost is that it helped to reclaim these mothers and fathers, grandmothers and grandfathers, sons and daughters, from being



The Sunday Times: Transparency and Corporate Governance at the FAI

The genesis of this newspaper investigation was in the story that revealed that John Delaney, the then chief executive of the FAI, had been forced to loan the association €100,000 of his own money to keep it afloat. The transaction was never declared in the FAI's 2017 annual accounts.

At the time the FAI had always insisted it was in rude financial health. When Delaney sought to injunct The Sunday Times from revealing that the FAI was in fact in dire financial straits, the newspaper fought him in court and won the right to publish.

Since that story, The Sunday Times broke several stories shining a light into the inner operations of Delaney's FAI.

Following these stories, an Oireachtas Committee was set up to investigate the issue and Sport Ireland cut the agency's funding and has since introduced new transparency requirements for all sporting organisations receiving state money. The FAI subsequently removed Delaney from his role as chief executive. He has since been suspended from his UEFA role. The FAI has carried out a major reform of the organisation.



The Irish Mail on Sunday - Tuam Babies' scandal

On January 12, 2021 the Commission of Inquiry into the Mother and Babies Homes published its final report. This Commission came about as a direct result of The Irish Mail on Sunday's work highlighting local historian Catherine Corless's research – and their subsequent non-invasive investigation of the burial plot with ground penetrating radar in 2014.

When the story first broke, it was not followed up by any other media outlet. It took international headlines to get Irish media to treat the story with the seriousness it deserved.



Irish Mirror: A Better Ireland

As Ireland began to emerge from the first Covid-19 lockdown, the Irish Mirror demanded a better country for all with a campaign that called for a more equitable society where the voices of the vulnerable would be heard and responded to as much as the strong and powerful. This unique time in history gave the country the perfect opportunity to

leave the socially unjust aspects of our former lives behind and replace them with more compassionate social and economic policies. The media has a responsibility to allow the voices of the people to be heard and 'A Better Ireland' campaign focussed on universal health care as well as dignified and safe living conditions and healthcare for the elderly and serious tackling of the homeless crisis. A road map to the survival of rural Ireland was also documented as was protection for the environment as well as decent family living with a stronger sense of community.

The Irish Mirror gave a platform to those at the frontline of these issues so that they could lead the charge in creating a blueprint for a better Ireland.



Business Post: Insurance Reform

The Business Post's coverage of insurers' refusal to pay out on business interruption policies at the height of the Covid-19 pandemic brought an important topic of immense public interest to light.

Through their reporting, it was revealed that some business interruption policies had been sold to businesses specifically on the basis that they would provide protection in the event of Covid-19 pandemic closing their doors.

In comment pieces supplementing the reports, the paper highlighted the inconsistent, incorrect and at times incoherent positions insurance companies took to justify their actions, most of which were abandoned as they were exposed.

The Business Post also broke the story that the insurance industry itself had been telling those at the highest levels of power, including Paschal Donohoe, the Finance Minister, that they accepted many businesses had a strong case for their claims to be paid out - while in public they continued to contest this.

This campaign gave small, independent business owners and their thousands of employees a fighting chance against the insurers in their bid to get what they believed to be owed to them.

Sunday Independent – Nursing Homes Investigation

In 2019, the Sunday Independent conducted a meticulous, time-consuming, and informative 'Fair Deal' investigation into the charges in 330 private and voluntary nursing homes.

The investigation uncovered that Irish nursing homes were charging elderly residents €16.9m a year in extra fees for activities on top of the millions in public money they are paid through the Fair Deal scheme.

This investigation brought to light that the nursing home charges issue is not just a consumer issue but a symptom indicating a deeper malaise in care for the elderly.



Irish Farmers Journal – Coronavirus coverage

The Covid-19 lockdown overwhelmed the country and farmers. A flood of public health advice and horror stories from abroad had farmers variously confused, fearful and dismissive.

The Irish Farmers Journal's mission was to take the overwhelming amount of information and distil it into essential practical farm advice, health guidance, and business knowledge so that farmers could protect their families and their incomes.

The editorial tone was one of determination to make the lockdown work, give farmers the facts they needed and translate and tailor the very broad public health advice into farmer-specific answers.

By quizzing government departments, the Journal helped farmers decipher how to work and protect themselves, make



business decisions so they would not fall foul of government advice, but not dig themselves into a financial hole, and to turn to the Journal as the single best source of real solutions for them and their families. This was done through print, digital and social media, with farmers asking what they needed to know and the paper in turn working for them to give them their answers from a dedicated team of journalists.

Irish Daily Star: Daniel Kinahan campaign

The name Daniel Kinahan came to the attention of media outlets across the world in 2020 following his involvement in the proposed World Heavyweight fight between Tyson Fury and Anthony Joshua.

Kinahan, who has been identified by the High Court as controlling a vast international network of drugs and arms smuggling, was name-checked by Fury and fight promoter Bob Arum as the man responsible for arranging one of the most-eagerly awaited match-ups in boxing history.

The Irish Star took a stand to highlight how his involvement in these fights was unacceptable and ran a campaign reporting the harm Kinahan and his cartel have inflicted on the Irish people.

The campaign made international headlines and was mentioned in the Irish and British parliaments. Within days, Kinahan's plan to re-invent himself as a legitimate businessman had collapsed and he withdrew from the fights.



This newspaper campaign led the way in challenging Daniel Kinahan and showed how a newspaper can mobilise quickly and effectively to speak truth unto power – criminal power.



Irish Examiner: 'Golfgate'

In August 2020, a dinner was held by the Oireachtas Golf Society at a Clifden hotel. More than 80 guests were in attendance, including European commissioner Phil Hogan, agriculture minister Dara Calleary and Supreme Court judge Séamus Woulfe.

Just the day before, Taoiseach Micheál Martin had announced more restrictive measures would come into place in a renewed attempt to quell the spread of Covid-19 in Ireland. A limit on indoor gatherings was among the measures announced.

Ireland had been in the grips of Covid-19 for almost six months by this stage, with more than 1,700 deaths from the virus, the country subject to lockdown conditions and the economy suffering from the devastating impact of the global pandemic.

The Irish Examiner broke the story of what became known as 'Golfgate' online on the night after the dinner. By the following morning, Dara Calleary had resigned. Leas-Cathaoirleach of Seanad Éireann, Jerry Buttimer would follow suit. The issue dominated every newspaper and broadcaster, with calls to RTÉ's Liveline memorably capturing the public's anger at the time. Further

resignations would follow, with EU commissioner Phil Hogan resigning a week after the event took place. The scandal had further ramifications when Judge Séamus Woulfe refused to stand down and the chief justice became embroiled in the matter having urged him to do so. Golfgate was subsequently covered around the world from BBC and the New York Times to Europe's leading titles and the Financial Times.



The Irish Sun: Defend Our Forces campaign

The Irish Sun has reported extensively on the retention crisis facing the Defence Forces due to inadequate pay, lack of investment and sub-standard working conditions.

In 2010, it launched its 'Defend Our Forces' campaign amid dismay over the granting of what was viewed as an inadequate €10 million package of allowances following a Public Services Pay Commission report. Irish Sun journalists spoke to former members, representative bodies and families to illustrate the scale of the problems and the depth of frustration. They exposed, via deeply personal interviews, the extent to which serving members suffer deprivation as a result of poor pay, including the stark example of soldiers feeding their families with a main meal of cereal.

The campaign gained coverage across local and national broadcast media, where Irish Sun journalists highlighted the issues. These efforts galvanised public support for the

Defence Forces, as seen in attendance figures at subsequent rallies organised by the Wives and Partners of the Defence Forces. As a result, the Government came under sustained pressure and finally set up a Commission on the Future of the Defence Forces



Irish Daily Mail: Protect Our Kids Online campaign

Since early 2017, the Irish Daily Mail has been campaigning for greater protection for children on the internet. Today, child protection online is the biggest topic of concern for most parents - and a constant national talking point. No media organisation has done more to raise awareness of this issue, investing enormous amounts of time, money and – crucially - editorial coverage. In the first 18 months of the campaign, significant policy changes resulted. These included:

The Education Minister requiring all schools to devise a policy on smartphones, including an assessment of the harm they may cause

Fianna Fáil backing a total ban on smartphones in all schools up to Junior Certificate, through legislation if necessary

The single biggest step forward in this area was the appointment of a Digital Safety Commissioner with tough powers to police internet content. In particular, such a watchdog was required to regulate social media sites. The Irish Daily Mail has pursued this demand relentlessly for almost three years as part of their campaign, despite public opposition from the tech sector. Throughout that process their reporting team not only revealed the truth about what was happening to children online, but also harnessed support for this measure among parents, teachers, members of the Oireachtas, and the Fine Gael parliamentary party.



NewsBrands
Ireland

Appendix 3

Supports for news publishers
in other countries

[Click here to view Appendix 3 supports document \(an internet connection is required\)](#)