

NewsBrands Ireland response to the Department of Enterprise, Trade and Employment consultation related to the Future of Media Commission Report, Recommendation 6-9, on the DSM Copyright Directive (EU) 2019/790 with particular reference to Article 15 - protection of press publications concerning online uses.

1. **Name**

NewsBrands Ireland.

2. **Are you:**

- a press publisher;
- a local or small press publisher;
- an “information society service provider”, as defined by Article 2(5) & (6) of the DSM Copyright Directive (EU 2019/790);
- an organisation representing press publishers;
- a body/entity operating under the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016; or
- other – please describe?

An organisation representing press publishers.

3. **If you are providing a submission on behalf of an organisation, who does your organisation represent?**

Our organisation is the representative body for Irish news publishers. Our members are:

DMG Media Ireland: Irish Daily Mail; Irish Mail on Sunday; Evoke.ie; Extra.ie,

The Irish Times DAC – Irish Examiner; The Irish Times; irishtimes.com; examiner.ie; breakingnews.ie

News Ireland: The Sunday Times; The Irish Sun; thetimes.ie; irishsun.ie

The Agricultural Trust: Farmers Journal; farmersjournal.ie

Business Post Group; Business Post; BusinessPost.ie

Reach: Irish Daily Star; Irish Daily Mirror; Irish Sunday Mirror; Buzz.ie; Mirror.ie

4. **Does Regulation 13 of the European Union (Copyright and Related Rights in the Digital Single Market) impact or place obligations on you/your organisation directly? What are these obligations?**

Regulation 13 does not place obligations on NewsBrands Ireland directly, but does impact our members.

We make this submission on behalf of our members. We are not privy to specific information from our members regarding their engagement with information society service providers (“ISSPs”) on these issues, but are aware of certain issues from canvassing their views in the context of this consultation.

5. Have you engaged in negotiations in relation to the rights of publishers of press publications as outlined in Regulation 13? If so, in your view, have these negotiations been conducted in a fair and constructive manner?

A number of our members have sought to enter into engagement with ISSPs with a view to negotiating in relation to the rights provided for in Regulation 13. In most cases, the ISSPs have simply failed to respond, and as a result there has been no engagement from those ISSPs on these issues or any payment made to press publishers.

We are aware that one ISSP has been engaging with certain, but not all, of our members in relation to the rights outlined in Regulation 13. However, we are not aware of any agreement being concluded with this party and we understand that the lack of information provided by this party has prevented those discussions being progressed to any meaningful degree.

In addition to concerns regarding compliance with Regulation 13, it also appears to us that the ISSPs are not cognisant of their obligations under Article 6(12) of the Digital Markets Act.

6. If negotiations have resulted in an agreement in relation to the remuneration due to the press publisher for the use, by the information society service provider, of the relevant press publications; is the agreed remuneration fair and adequate in your view?

We are not aware of any agreement having been reached by any of our members in relation to remuneration due to them, relating to the rights provided for in Regulation 13, for the use by an ISSP of the relevant publications. In circumstances where no remuneration has been agreed or paid, it cannot, in our view, be considered fair and adequate.

We are aware that some local and regional publishers have sought to negotiate with one ISSP but the amount offered was derisory and in no way reflected the investment made by the publishers in the content or the value of that content to the ISSP.

We are also aware that one of our members received an offer from another ISSP, which amount was also derisory. A further regrettable aspect of that offer is that it was an automated offer presented by a bot. Despite repeated requests by our member, at no point did the relevant ISSP make a human available to discuss the offer or provide any information regarding the methodology behind the offer.

7. If negotiations have resulted in an agreement, has there been a sufficient degree of transparency, from the information society service provider, in relation to specific information on the use of the relevant press publications (if included in the agreement) in your view?

As indicated above, we are not aware of any such agreement having been reached. We are aware of one member who, last year, sought data from an ISSP, necessary to enable more meaningful engagement. However, at the time of writing, agreement has not even been reached on the terms of the NDA for the provision of that data. This demonstrates the slow pace at which discussions progress. In the meantime, the ISSPs continue to benefit from the use of the publisher's content, with no remuneration being paid to the press publishers.

We are also aware that our members express strongly and clearly that there has not been transparency from ISSPs in relation to specific information on the use of the relevant press publications. As indicated above, many ISSPs are entirely refusing to engage. We are not aware of any situation where a member is satisfied that they have received anything close to a sufficient degree of transparency on information relating to the use of press publications.

We wish to emphasise that the delay in reaching agreement with the ISSPs should not reduce the amount that is ultimately required to be paid to the press publishers. Once appropriate agreements are concluded, the payments to be made should be backdated to the date of the transposition of the Copyright Directive on 12 November 2021.

8. If parties to negotiations failed to reach an agreement on the amount of appropriate remuneration due to press publishers for the online use of their press publications by information society service providers, what were the barriers to reaching an agreement, in your view?

Our understanding is that the barriers to reaching an agreement include the unwillingness of ISSPs to engage at all; the lack of an enforcement mechanism to force them to engage or pay a reasonable remuneration; the lack of transparency on the part of ISSPs when it comes to sharing specific information on the use of the relevant press publications; the lack of any enforcement means within the legislation to force the sharing of such information; and the refusal of ISSPs to recognise the proper and fair value attached to the use of press publications.

9. Is there any other information in relation to negotiations or any resulting agreement that you wish to add?

It is worth noting that our members, who all subscribe to the Press Council Code of Practice, invest millions annually in producing quality, fact-checked multi-platform journalism that contributes significantly to public debate and provides crucial information, insights and perspective to citizens on the events shaping our society.

As at 2020, being the latest figures available, 2,560 are employed directly by the industry across publishing, printing and distribution, with an annualised payroll cost of €141.9m. 1,658 work on the publishing side across editorial, technology, administration, marketing and legal, with an annualised payroll cost of approx. €104.8m, 40% of which is invested in editorial writing.

Our 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.

The trusted public service journalism produced by our members has a significant value to ISSPs, but the lack of transparency and engagement by ISSPs and their refusal to provide data to inform negotiations, has resulted in the absence of a realistic value being placed on the benefit of Irish news content to ISSPs and a refusal to share that value with press publishers.

A number of international studies have highlighted the value of this content.

For example, a [study](#) by University of Cambridge economics professor, Matthew Elliot, in May 2022, for the UK News Media Association, found that UK news content is worth around £1bn to the two main platforms, Google and Meta.

In Switzerland, [a study by Fehr Advice](#) in March 2023 found that media content makes a significant contribution of 70% to searches for information, indicating that Google generates approximately CHF 385 m (€403m) in SEA turnover every year from Swiss news content. The researchers concluded that a fair share of the online advertising market would be around 40%, equivalent to CHF 154 m (€161m) per year to be paid to publishers.

In the US, the Initiative for Policy Dialogue at Columbia University published a [working paper](#) in September 2023, following research to determine the value of news content to both Google and Meta. They estimate that between \$11.9bn and \$13.9bn is owed by platforms to news publishers for the use of their content.

Whilst similar research has not yet been carried out in Ireland, the same structural factors are present in our digital news market. News publishers invest millions in generating properly sourced and fact-checked news content that is relevant to engaging users and, in turn, captures valuable data for online advertising. Users who engage with news content tend to do so frequently, providing regularly updated data on a user's current interests and intent. Platforms sell that data to advertisers without properly rewarding news publishers. In Ireland, the IAB/PWC ad spend report confirmed that advertising revenue from search in Ireland was worth €300m in 2022, and €376m from paid social. It should be noted that national news publisher total print and digital ad revenues in 2023 were approximately €93m.

Despite the clear value that platforms derive from news publishers' content, these online platforms share little, if any, of these revenues with the publishers on whose news content they rely. If the public is to continue to be served with high-quality news, the benefits from the investment in journalism made by news publishers should mainly accrue to them, not the platforms.

While the decision to introduce a press publisher right is positive, in reality it has not had any positive impact on press publishers due to the lack of engagement by ISSPs, the lack of transparency and the lack of any payments being made to them.

As you will be aware, in other jurisdictions, press publishers have the ability to refer negotiations to arbitration where there is a lack of transparency or where the negotiations have otherwise not resulted in an agreement. We believe that a similar right in this jurisdiction would assist with advancing discussions. This would also align with the alternative dispute settlement mechanisms that are envisaged by Article 6(12) of the Digital Markets Act. Some examples from other jurisdictions are below:

- **BE:** The law introduces an arbitration mechanism for platform-publishers, after 4 months of unsuccessful negotiations, by the Belgian Institute for Postal Services and Telecommunication.
- **DE:** Competence of the Arbitration Board of the German Patent and Trademark Office which provisionally ordered Google to pay 5.8m EUR to Corint Media.
- **DK:** Copyright tribunal is competent to mediate.
- **CZ:** Arbitration by the Ministry of Culture in the area of abuse of dominant market position.
- **RO:** arbitration system is also in place.

We are also aware that the Competition Authority in France has taken on a greater role in terms of seeking to resolve the impasse between press publishers and ISSPs. More recently, the French Government has proposed a Bill that is designed to expedite a resolution, which terms include an obligation on platforms to communicate certain data with press publishers within 6 months. In case

of refusal, the platform could be sanctioned with a penalty up to 2% of its annual worldwide turnover. In the absence of a remuneration agreement within one year, the competition authority is competent to mediate. In case of persisting disagreements, the authority can arbitrate about the details of the agreement. We believe that intervention by the Government or the CCPC in a similar way could assist in concluding agreements.

By contrast, our legislation allows for the possibility of mediation in respect of a dispute, but otherwise lacks any mechanism to ensure that unwilling parties will engage. There is therefore a clear advantage to parties who do not wish to comply with their obligations under the legislation. We are urgently calling for amendments to be made to the current legislation that would ensure proper, bona fide engagement and which would result in binding obligations.

Finally, we welcome the use of a voluntary system of collective management to negotiate with ISSP's. This would allow press publishers to collectively seek information and negotiate with ISSPs, which would increase overall transparency, streamline discussions and increase pressure on the ISSPs to engage in discussions.

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