



## **Submission to the Future of Media Commission**

January 14, 2021

### **Summary Position**

As managing editors of Ireland's two court reporting agencies - Ireland International News Agency (IINA) and CCC.nuacht (CCC) - we would like to address the Commission on a matter of urgent concern to the future of public service journalism in Ireland.

IINA and CCC were both established decades ago in order to place news coverage of the Irish courts on a professional, standardised footing. Our agencies, which together operate under the "Courts News Ireland" brand, employ a staff of highly qualified and experienced court reporters to provide daily coverage of court sittings for the Irish media.

Throughout the various crises, economic depressions and media consolidations that have come our way over the years, we have managed to maintain our highly regarded service solely by relying on commercial revenue.

However, the ever-shifting media landscape has seen our most important clients continue to seek drastic reductions in the rates they pay us for the provision of court copy.

These cuts have accelerated in the past 12 months and, to be frank, should they continue we believe it will no longer be viable to provide regular, professional news coverage of court sittings in Ireland.

This would manifestly be a deficit to democracy and would run contrary to the constitutional requirement that justice be administered in public.

In short, a veil is descending on the "eyes and ears of the public" in the courtroom.

Like the Oireachtas, the courts are of central importance to the functioning of public life. However, unlike the Oireachtas, coverage of the courts is not supported by any public funding and court reporting is not afforded any special protections.

It is our proposal that the nature of how the courts are covered be changed from a private enterprise model to a collaborative approach between the State, traditional media and social media companies, through the establishment of a not-for-profit “Courts Coverage Fund”.

With participation in this fund, these partners would all commit to and share the costs of maintaining the important public service provided for by full-time, professional coverage of the courts.

### **Who we are**

IINA and CCC are news agencies contracted by the Irish media to report daily from the Irish courts.

With an entrenched reputation for accuracy and excellence in reportage, our staff of trusted, experienced journalists file daily news reports on court proceedings to broadsheet standard.

Court reporters are trained mediums of fact who report faithfully from court without editorialising. As the broadcast of court hearings is not permitted in Ireland except in very limited circumstances, court reporting is the sole means of conveying the workings of the courts in an unadorned manner.

Many of the country’s leading journalists and broadcasters began their careers with our agencies and we continue to offer stable, well compensated and much-needed employment to journalists in Ireland.

Most of the courts news content published by the Irish media is provided either directly or indirectly by IINA and CCC. We hold contracts to provide courts coverage to almost every media company operating in Ireland, including RTE, Independent News & Media, the Irish Times Group, News UK and the Daily Mail Group etc.

In 2013, we created the Courts News Ireland website, which was one of the first subscription-only news websites to be launched in Ireland and remains the country's only dedicated online source for courts news.<sup>1</sup>

### **Public Service News Provider**

The Constitution provides that justice shall be administered in public in all courts in Ireland.<sup>2</sup>

In an oft-quoted judgement, the British jurist Lord Diplock wrote that the conveyance of the behaviour of the courts to the public provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains public confidence in the administration of justice. The principle

---

<sup>1</sup> <https://courtsnewsireland.ie/>

<sup>2</sup> Article 34.1 of the Constitution of Ireland. <http://www.irishstatutebook.ie/eli/cons/en/html - part11>

of open justice, he wrote, requires that the press be admitted to court and that nothing should be done to discourage the publication of fair and accurate reports of court proceedings.<sup>3</sup>

The recognition of the crucial role of the press in facilitating the requirement for open justice by reporting court proceedings – in other words operating as the eyes and ears of the public in the courtroom - has long been echoed by the Irish courts.<sup>4</sup>

For over 30 years, IINA and CCC have worked closely with the Courts Service and legal profession to provide this vital public service and ensure the public remain informed of the proceedings of the Irish courts.

Our reporters operate as a “trained ear” attuned to important matters of due process and have accumulated expertise that can only be achieved through daily attendance at court.

Should full-time court reporting be driven to extinction, many controversial court rulings and legal submissions would go unseen by the public.

### **Existential Threats**

Our reliance on private enterprise to fund what is a vital public service has always presented serious challenges.

However, in the past 12 months there have been a number of take-overs and consolidations in the Irish media market - in particular the purchase of INM by Mediahaus and the sale of the Irish Examiner to the Irish times - that have resulted in serious and unsustainable pressures on our service.

For example, in October last year a key IINA client requested drastic cut-backs in their rates just four years after securing another large reduction. This has resulted in a 36% drop in revenues from this client alone.

We fear that the enormous challenges currently facing Irish media institutions, including ever-decreasing print circulation, falling advertising revenue and the economic impact of Covid-19, will only serve to accelerate such requests.<sup>5</sup>

Vincent Crowley, chairman of newspaper representative body NewsBrands Ireland, recently told the Oireachtas Committee on Media that “the economic model which once sustained newspapers is broken.”

---

<sup>3</sup> Attorney General-v-Leveller Magazine Limited 1979 1 AER 745

<sup>4</sup> Irish Times Ltd. v. Ireland [1998] 1 I.R. 375 at 409 (S.C.)

<sup>5</sup> Mark Paul, “INM’s newspaper and advertising sales fell 7% last year”. Irish Times. 10/11/20.

<https://www.irishtimes.com/business/media-and-marketing/inm-s-newspaper-and-advertising-sales-fell-7-last-year-1.4405614>

He highlighted that the revenues for print advertising have dropped 75% from a high of €367m in 2007 to €87m in 2019. The forecast for 2020 is around €60m.

Crowley told the committee: "This decline has not been replaced by digital advertising, which is being hoovered up by the likes of Google and Facebook, who took €425m in digital advertising from this market last year, compared with €26m for national news publishers."<sup>6</sup>

The changing nature of news coverage has also impacted the prominence afforded to courts news stories. As daily court reporting, particularly in criminal cases, must necessarily follow strict structural rules and legally cannot contain any comment and little in the way of creative style, it naturally cannot be classified as "unique" content. Only at the conclusion of criminal trials do reporters have scope to file "long-read" pieces that are less bound by legal constraints.

As news desks are under pressure to divert readership to their online subscription services, heavy emphasis is now placed on "unique" content, while straight reporting is increasingly relegated in importance. Although jury verdicts and sentencing in major criminal trials are still given prominence, daily reports from criminal trials are no longer afforded the level of coverage they traditionally enjoyed.

The former Chief Justice Susan Denham, in a speech to mark World Press Freedom Day in 2014, described how the severe decline of the economic model which underpinned court reporting has endangered the perception of justice being administered in public.

Ms Justice Denham remarked: "The ongoing challenges of the economic environment, lessened advertising income, consumer resistance to price increases, reduced readership, and changes in the operations of traditional media, might be said to put at risk the way courts rely upon them to connect to the public.

"One aspect of this is the lack of first hand reporting of regional and local courts. We know from calls to our offices, of reporters and newsrooms relying on second-hand information in this regard. That lack of attention is worrying in terms, not only of defamation resulting from inaccurate reporting, but also from justice not being seen to be done locally – if local newspapers and radio are not as keen as in times past on local court stories."<sup>7</sup>

Since those fateful remarks, there has been a near end to local court reporting in Ireland. Only very high-profile cases, alerted to correspondents in advance, now have any chance of being covered outside of Dublin. This is a deeply unsatisfactory situation that sees a large proportion of the work of the judiciary and legal profession go unseen and unheard.

The same pressures identified by Justice Denham as bearing down on local reporting are now replicated at a national level, and there is a clear and present danger that a similar collapse in professional reporting of the higher courts will follow.

---

<sup>6</sup> Paul Hosford, "Newsbrands: Newspapers struggling to stay afloat in perfect storm". Irish Examiner. 16/12/20. <https://www.irishexaminer.com/news/arid-40191840.html>

<sup>7</sup> Ms Justice Susan Denham, *Media Freedom & the Rule of Law*, Seminar on Aspects & Challenges of Media Freedom, Four Courts, Dublin, May 1 2014

## **Precedent for Public Funding**

We submit that, because of the vital public service function we carry out and the unsustainability of our traditional funding model, financial support from the State is now necessary for the maintenance and future viability of our service.

An anomalous situation currently pervades whereby substantial public funding is made available to provide coverage of the legislative function of the State through the Houses of the Oireachtas broadcast channel (Oireachtas TV) but no such supports are in place for coverage of the legal functioning of the State.

The most recent tender for the operation of Oireachtas TV put the cost at €1.4 million per annum<sup>8</sup>, while an upgrade of the Oireachtas TV broadcasting suite at Leinster House in 2019 cost €373,000.<sup>9</sup>

It is our submission that the operation of the courts system is of equal importance to the functioning of the State as that of the legislature, and that coverage of the courts is thus equally deserving of public funding.

## **Suggested Model: The Courts Coverage Fund**

We submit that the nature of how the courts are covered should change from a private enterprise model to a collaborative approach between the State and commercial media, whereby these partners commit to and acknowledge the necessity of professional court reporting and share the cost burden involved.

The fair distribution of cost would serve to alleviate the pressure on the embattled news industry, which is currently the sole supporter of what is a service vital to public life, without simply transferring the burden elsewhere.

It is our aim to achieve this collaboration through the establishment of a “Courts Coverage Fund” that would calculate a set cost to ensure the continuance of professional reporting from the Irish courts over an agreed period.

We suggest that the pillars of Irish media – for example RTE, the Irish Times Group, INM and DMG – be invited to pay tailored amounts into this fund. These amounts would replace the individual contract fees these pillar entities currently pay IINA and CCC for courts coverage.

To provide the public support needed, the State would also be invited to pay an agreed amount into the fund, thereby reducing the cost burden on traditional media and ensuring the continuity of courts coverage.

---

<sup>8</sup> <https://irl.eu-supply.com/ctm/Supplier/PublicTenders/ViewNotice/231680>

<sup>9</sup> Stephen O’Brien, “Oireachtas TV suite upgrade cost €373,000”. The Times Ireland. 05/01/20.  
<https://www.thetimes.co.uk/article/oireachtas-tv-suite-upgrade-cost-373-000-s9rxgfvpy>

It is also our suggestion that social media companies be invited to pay into this fund. From January of this year Facebook will begin paying mainstream UK news outlets millions of pounds a year to license their articles, in what is a fundamental shift in their approach to traditional news suppliers.<sup>10</sup>

In the UK, a dedicated Digital Markets Unit is also to be created within the Competition and Markets Authority (CMA), as part of a government strategy to support the sustainability of the news publishing sector and ensure publishers get a "fair deal" from the platforms on which they rely.<sup>11</sup>

It is clear that social media companies will soon be obliged to offer further support to traditional news publishers and the decision by Facebook to license content can be seen as a proactive response to this coming reality.

Our hope is that we can invite social media companies, who already play an enormous role in Irish economic life, to take similarly proactive steps here with participation in a Courts Coverage Fund.

Such a fund could also provide a mechanism for the coverage of local courts, which as we identified, go largely uncovered. We submit that the funding could be provided for a number of "Local Democracy Reporters" who are tasked with providing daily news coverage from local courts.

In 2018 the Local News Partnerships were launched in the UK, which see the state (through the BBC) fund public service local journalism that can be used by both the BBC and other news outlets.

Through the Local News Partnerships, the BBC invests up to £8m a year in public service journalism. The biggest component of the partnerships is the Local Democracy Reporting Service, where the BBC pays for reporters to cover the work of local councils and other public bodies. There are currently 135 of the reporters in post covering Great Britain. The service is due to launch in Northern Ireland soon.

The Local Democracy Reporters have filed more than 54,000 stories in the last year, which are shared with the BBC and can be used by all external partners.<sup>12</sup>

This year's review of the scheme has highlighted that are plans to encompass court reporting in the LDR scheme.<sup>13</sup>

---

<sup>10</sup> Jim Watterson, "Facebook to pay UK media millions to license news stories". The Guardian. 01/12/20. <https://www.theguardian.com/technology/2020/dec/01/facebook-to-pay-uk-media-millions-to-licence-news-stories>

<sup>11</sup> <https://www.gov.uk/government/news/new-competition-regime-for-tech-giants-to-give-consumers-more-choice-and-control-over-their-data-and-ensure-businesses-are-fairly-treated>

<sup>12</sup> <https://www.bbc.co.uk/mediacentre/latestnews/2019/local-news-partnerships>

<sup>13</sup> <http://downloads.bbc.co.uk/aboutthebbc/reports/reports/lnp-review-2020.pdf>

It is clear that Local Democracy Reporters are sorely needed in Ireland and as such a service cannot be provided for by private enterprise, we propose that the Courts Coverage Fund be used as the conduit to fill this lacuna.

### **Conclusion**

The ongoing coverage of the Irish court system, essential to the healthy functioning of our democracy, is now in serious jeopardy.

Should State funding to support this public service journalism not be forthcoming, the operation of the agencies that carry out this vital work will shortly be unsustainable, leading to employment loss and serious damage to the administration of justice in Ireland.

We petition the Commission as a matter of urgency to recommend the establishment of a collaborative funding model for the coverage of courts in Ireland, as a fair and sustainable method to maintain public confidence in the courts system and ensure the robustness of our democracy.

Brian Kavanagh, IINA

Declan Brennan, CCC.nuacht