



Submission to the Irish Copyright Review Committee 2011

14 July 2011

1 Introduction

This submission is being made by Distilled Media Limited in response to the call for submissions for the committee.

1.1 About Distilled Media Limited

Distilled Media Limited is an online news company which commenced operations in mid-2010. At present we have four news brands in the Irish market each in a different vertical:

- **TheJournal.ie**: politics and current affairs
- **TheScore.ie**: sport
- **Business ETC**: business & technology
- **The Daily Edge**: entertainment and lifestyle

The company was founded by Brian and Eamonn Fallon who are responsible for the creation and/or the management of a range of websites including Daft.ie, Boards.ie, Adverts.ie and BoardsDeals.ie where 60 people are employed. The parent for these brands was described as the fastest-growing technology and digital company in the 2009 Deloitte Fast 50 Awards, and also ranked 8th in the Fast 500 Europe, Middle East and Africa. Apart from these operations in Ireland, the parent of these brands has developed operations in markets such as the UK and Poland.

Distilled Media Ltd is an innovative company in the nascent industry of digital news distribution. Our approach has been cited by media and technology thought leaders internationally as innovative and ahead of the curve.

For instance, our use of technology in the reporting of the 2011 General Election was highlighted by Harvard's Nieman Journalism Lab as an example for US-based news providers to follow.¹ Separately, leading technology publisher TechCrunch described our approach to digital publishing as "an example of the future of news".²

Our brands exceeded their first year traffic targets within four months and have now got the largest social media presence of any Irish publisher, traditional or digital.

Our publishing model has been designed to leverage new, and established, methods of news distribution which are being used in leading markets in the US and the UK. It has been customised and adapted to take account of this market's requirements and established best practice in traditional publishing. Our model involves a combination of:

- **Content curation**, sometimes called aggregation, underpinned by clear, transparent policies about attribution and links to the original sources of content
- **Content origination**, which involves a traditional newsroom process where journalists research, write and publish stories

¹ <http://www.niemanlab.org/2011/02/attitudes-in-the-tubes-an-irish-site-mines-twitter-for-political-trends/>

² Dublin Web Summit, June 2010

- **User-generated content and engagement**, whereby readers can not only read news on our sites or watch video but also comment on those stories via their Facebook and Twitter accounts or contribute reports, photographs and other content for publication on the site³

This approach has provided a publishing platform that is unique in the Irish marketplace. It has become a vehicle for individuals who find it difficult or impossible to engage directly with the news and current affairs agenda through more traditional publishing channels.

Also, it has allowed a range of publishers – including film and animation companies, innovators of digital technologies in third-level institutions and also traditional print or broadcast journalists – to extend the value of their work through new dynamic publishing platforms.

Distilled Media Ltd currently employs 15 full-time and seven part-time staff in our offices in Dublin and has plans to expand this team within the next year. Also, we have developed an ecosystem of mainly local content creators including:

- **Photo journalists** from both mainstream agencies which supply traditional publishers and new market entrants which are focused on digital publishing opportunities
- **Freelance content producers**, such as animation film companies based in the Digital Hub⁴, traditional journalists and publishers,⁵ and talented young writers who we have identified or who have approached us⁶
- Other compatible **digital publishers** such as Business Insider with which we have content sharing arrangements on a free of charge basis
- **Technology innovators**, who are developing cutting-edge solutions in research laboratories in universities and have becoming a collaborative publishing partner to allow them to gain exposure for their wares

Innovation is at the heart of our business philosophy. Apart from technical and publishing initiatives, we have innovative recruitment, remuneration and other HR practices. At a time when traditional publishers are contracting their teams, and no job opportunities exist for young, talented media or other graduates, Distilled Media Ltd has been employing graduates and others who want to pursue publishing careers.

Apart from our full-time team, we have an internship programme which has offered graduates paid work placements on a structured basis. We are also engaged in exploring a wider internship initiative with other parties whereby internship models used in other markets such as the US would be applied in Ireland and where Distilled Media Ltd would

³ One example of this is our relationship and digital media partnership with the Dublin Fringe Festival which will leverage and promote its creative content and where our sites will be used for engagement and interaction on festival themes

⁴ Examples include The Line (video vox pop), Galway Arts Festival or GAF TV (video)

⁵ Recent examples include US publisher Niall O'Dowd who approached and wrote a column for TheJournal.ie on the traditional media treatment of his Presidential bid and which received extensive user reaction and engagement; another example is Niall Stange who approached us to republish and promote a piece he had written for the New York Times

⁶ Examples include satirist (not) Cardinal Brady, banking commentator Nick Leeson, news photographer Stephen Kilkenny and Irish online journalists working in overseas markets - Richard Conway who wrote from Libya and Caelainn Hogan who wrote from South Sudan

become the media partner. The aim is that this would be to allow talented Irish graduates who are deprived of opportunities to gain valuable work experience across a range of sectors with innovative online supports to be provided by our publishing platform.

Internet and the Irish economy

Our submission is being made against the background of the acknowledged importance of the internet and internet businesses to the Irish economy. We concur with the broad policy approach that such an economic focus is vital for the Irish economy and believe that there is considerable potential for the digital sector to be an engine of economic recovery and growth.

The presence of leading international brands – Google, Facebook and LinkedIn among others – and the focus of IDA Ireland in attracting further leading brands is an important cornerstone of our economic policy.

Our position is that such industrial and economic policy objectives can only be realised if the regulatory, legal and operational environment is conducive to such businesses.

1.2 The news distribution industry

Digital news distribution is revolutionising the business of news. Audience behaviour and the availability of digital technologies are driving the digital news distribution market. A series of reputable studies have shown changing media habits among international and Irish media audiences, such as:

- Currently, more than half of European consumers read a newspaper or magazine and also use the internet at least weekly. In 2010, more consumers were reading a newspaper than use the internet but by 2014 this is expected to be reversed⁷
- The average Irish consumer is spending 2 hours 44 minutes on the internet each day and only 37 minutes on printed media⁸

News is an intensive 24/7 business. The internet has meant that individuals' news habits are changing profoundly, as audiences no longer have to wait for the news to be collated every night and delivered to them once a day on newsprint. Instead they can keep up to date with rolling digital news services using a plethora of channels such as web, mobile web, apps, RSS, email, Twitter or Facebook to name a few.

Traditional media companies which generally had natural geographic monopolies on news distribution are struggling to satisfy consumers online. This is because there is very little commonality in the business processes of digital news production and traditional news production. As a result there are opportunities for companies which hit on new formulae to become global brands within a matter of years.

For example:

⁷ Source: IAA Mediascope 2004-2010

⁸ Source: REDC De-coding digital trends in Ireland 2011, online survey of 500 adults aged 18+

The Huffington Post: started in 2005 and is now the third-largest news website in the world. The business was sold in February 2011 for \$315 million to AOL and most recently has entered the UK market

Google News: Started in 2004, Google News finds the most popular stories on the internet and provides an online signpost for web users to read these stories. Online news publications receive on average 20% of their total readers from Google News. This makes Google News an indispensable part of every online publication in the world. Google is also an important source of commercial revenue for the digital channels of traditional publishers which take advertising through its display network

Business Insider: Started in 2009, this business and technology news website has managed to build an online audience that equals the Financial Times in less than three years.

The success of these companies is due to the fact that they are finding ways to produce and distribute news in a way that best satisfies consumers, both nationally and internationally, and to the platforms and technologies they are using.

It is likely that there will be much growth in this industry over the coming years. It is widely forecast that smartphone and tablet usage will exceed desktop PC internet usage by 2014⁹. Companies that can capitalise on this and other trends have the potential to develop incredibly large-scale customer bases over incredibly short time periods.

However there are copyright issues that exist in Ireland that would hamper such innovation. In fact, none of the successful digital media examples above would have been able to exist under the current copyright regime in Ireland.

These profound market changes are having a serious impact on traditional news providers, such as newspapers, which have higher overheads and different operational models to newer, digital publishers. Internationally and nationally, studies have shown that the newspaper sector was slow to adapt to the internet and has lost audience and revenues to digital players.

New market opportunities existed for traditional publishers, as they did for those with a pure digital focus, but few embraced these channels. These issues have been well documented in various studies published over recent years internationally as well as in Ireland.¹⁰

There has been a considerable media debate, online and offline, about the impact the crisis in traditional media has on the democratic system and particularly how various institutions, such as courts and parliaments, are reported. Traditional media figures have argued that the internet will have a serious impact on the revenue base of traditional media and as a consequence will have far-reaching consequences for democracy.

⁹ Source: Google

¹⁰ Examples include the OECD study, *the Evolution of News and the Internet* (June 2010), the Columbia University study *The story so Far* (May 2009) and the AMAS study commissioned by RTÉ, *Digital Advertising and its impact on traditional publishers*

Counter-arguments, which we concur with, are that a new form of media coverage will be created which will greatly enhance rather than harm democracy. Through initiatives such as making webcasts of parliamentary and other democratic procedures and disseminating them through a variety of online media channels, there is greater potential for citizen engagement and debate.

New models are already emerging, which were evident during the political upheavals in North Africa earlier this year, where citizen journalists armed with mobile phones and Facebook or Twitter accounts succeeded in providing immediate, often harrowing, first-hand accounts of the turmoil.

New curators, such as the Storyful venture devised by former RTÉ journalist Mark Little became the trusted source for both digital and traditional media in filtering such content and providing it to a much broader audience than could have been imagined in the pre-internet era. Storyful has won the trust not only of digital publishers such as YouTube but also traditional broadcast publishers.

4.1 Irish copyright law and innovation

The rapid growth of the internet means that individuals are now communicating and disseminating information in ways that could not have been imagined several years ago. As the last substantive piece of copyright legislation was enacted in 2000, it is now seriously out of step with market developments.

Many of the global internet brands that are a part of daily life for much of the Irish population were started less than a decade ago. For example:

- Facebook, started February 2004¹¹
- Gmail, started April 2004
- YouTube, started February 2005
- Twitter, started July 2006

Internet-enabled devices such as smart phones and tablet computers have become more entwined with people's daily lives. In parallel, there are major changes in how information or news sharing and dissemination are managed. It is certain that further, fundamental changes will continue to happen at a phenomenal pace as the internet and online news distribution evolve.

Distilled Media Ltd believes that:

- **The copyright regime in Ireland is one that does not easily provide for such new forms of communication. Rather than have a legal framework that allows for change, as is the case in the US, Ireland periodically updates legislation as technology advances. Given that the pace of technological change far exceeds legislative change, many of the services of brands such as Facebook, YouTube and Twitter would have struggled to be established in Ireland.**

¹¹ The number of Irish Facebook accounts is close on two million (source: Facebook). However the number of actual users is lower given multiple and dormant accounts. No such data on actual users is available for the Irish market.

- **The purpose of copyright is to promote innovation by providing an economic incentive to create. In the Irish case, our current legal framework is failing the innovators and, as a consequence, is not supporting broad economic or industrial development policy**

These anomalies and issues need to be addressed in new copyright legislation.

4.2 Copyright and digital news

Copyright protection is essential to provide an economic incentive for content producers to continue to invest in the creation of new content. As stated above, digital news production relies on an ecosystem of producers: photographers, video producers, journalists, editors, curators, bloggers and the general public who comment, tweet or publish photos.

Distilled Media Ltd believes that:

- **It is important that a legal framework is in place to support all the content producers in the ecosystem which are interdependent. It is also important that the remedies available to those content producers whose copyright is infringed are not prohibitively costly**
- **There are two main barriers to innovation in Ireland for the digital news industry. Firstly, fair dealing does not sufficiently allow for the new technologies and new forms of communication that are in daily use. Secondly, there is a lack of clarity and differing interpretations on the legality of hyperlinking from one site to another.**

These issues need to be addressed in new copyright legislation.

4.1 Fair dealing

The limitations of fair dealing are best illustrated by referring to global internet companies that could fall foul of Irish copyright law.

Google News: The concept of a search engine is not provided for under Irish copyright law. By indexing the content of the web and republishing that content (words, photos or videos), Google can often be seen to be infringing the copyright of the holder (particularly in the case of Google News).

In practice, few of those affected perceive this as copyright infringement because very few publishers (companies or individuals) want to reject the traffic that Google provides to their sites. Google is the prime source of traffic to all websites, including those of newspaper publishers, and such traffic is a key metric for how such sites are monetised through advertising. The scale of Google is such that it would be unusual or commercially damaging for a publisher to opt out of services such as Google News.

There are some bizarre potential consequences for new competitors to Google. Hypothetically, a new search engine located in Ireland could run into trouble under the copyright legislation and, potentially, Google could use this law to stop such an Irish competitor.

Such a move would be deemed anti-competitive and in conflict with competition policy and practice - but it could potentially be supported by copyright law.

Distilled Media Ltd believes that services such as Google News are a positive influence for media and for furthering democracy. Such services enable small publishers to share a platform with large ones. Their algorithms “bubble up” the stories that are being widely talked about and also attempt to send the traffic to the original source even if the story is published elsewhere.

However, Google News has been sued by traditional publishers¹² many times¹³ but the US fair use doctrine provides the legislative protection needed for such digital media innovation.

Hypothetically, a new service such as Google News could face barriers to establishment in Ireland, through traditional publishers using existing copyright law to block such a venture and preserve their current market position in news.

Facebook: Facebook allows people to publish links to news articles on their personal Facebook page. As part of this, Facebook automatically copies the headline, a portion of the article and a photograph if one is available and republishes this information on Facebook. However, under Irish copyright law, this everyday activity for the majority of the Irish population which use Facebook could be deemed to be illegal.

If a new social network was to be set up in Ireland existing publishers could use copyright law could attempt to block it. This would run counter to competition policy.

Distilled Media Ltd believes that such anomalies and potential legal loopholes which act as a barrier to internet news distribution, and daily media activities by Irish citizens, should be addressed in new copyright legislation.

4.2. The legality of hyperlinks

The concept of the hyperlink has made the World Wide Web possible. The act of browsing from one site to another is part of the very fabric of the internet. Daily internet activity by the majority of the population involves clicking on and sharing links. However, there is an absence of legal and operational clarity about links between publishers’ websites.

Hypothetically, a copyright holder could argue that they don’t want one publisher linking to a public page on its website while at the same time it doesn’t mind others doing so.

¹² <http://www.nytimes.com/2006/09/22/business/worldbusiness/22iht-google.2907399.html>

¹³ <http://news.dcealumni.com/376/20305-googles-news-sued-for-infringing-agence-france-presse-copyrighted-work/>

In a time where social media and the sharing of links are what make the digital news industry (and the wheels of democracy) tick, this is a worrying situation.

In news reporting, stories are built upon previous stories. No one news organisation has a monopoly on news, and as any given news story develops, it is moved along by multiple players on multiple media platforms.

The online news article is presented very differently to the printed news article. The presence of linking means that background to stories, analysis or more detailed information are available to the reader at a click. This provides for more concise writing and a better informed public.

Users typically do not read web pages from top to bottom. They scan them instead. The best experience for readers is often one in which they are pointed to the best source of information, and that often means via deep-links into other websites.

The use of deep-linking is particularly important in the growing area of citizen journalism projects where the public are invited to help journalists sift through large volumes of content (such as public records) to uncover stories.

It is also highly beneficial to all publishers' websites, in that such deep-linking grows traffic and potential monetisation is enabled from it.

Distilled Media Ltd believes that current copyright law is opaque. Worst case interpretation of some clauses would promote a regime which is akin to digital racism - the denial of a basic right. This is counter-intuitive and does not promote a healthy digital media sector including multiple publishers, traditional and digital, and the various other players in the ecosystem.

This submission has been prepared by Brian Fallon, Co-Founder and Director, Distilled Media Ltd who is available to discuss the points with the committee members.