



**Media, Entertainment & Arts Alliance (MEAA)
submission to the
Senate Select Committee Inquiry
into the
Future of Public Interest Journalism**

July 14 2017

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BUILT ON INTEGRITY, POWERED BY CREATIVITY

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The Media, Entertainment & Arts Alliance (MEAA)

MEAA is the largest and most established union and industry advocate for Australia's creative professionals. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

Members of MEAA's Media section, formerly the Australian Journalists Association, are bound by MEAA's *Journalist Code of Ethics*.

meaa.org

"We are in danger of losing a resilient well informed citizenry necessary for a strong democracy. This is the time to act to inform us all via good journalism."

MEAA member Marguerite Marshall

"I work as a casual freelance journalist and have no job security. I believe public interest journalism is what keeps a democracy healthy. It helps keep politicians, the judiciary and the religious bodies honest and answerable. Ultimately, it serves to give us faith in our public institutions. The uncovering of the corruption of the likes of Eddie Obeid and the unveiling of child sexual abuse in Australia would not have happened had it not been for public interest journalism. The industry needs to be supported by the government, just as we see the government subsidising other industries".

Freelance journalist and MEAA member

"I believe that the work of the media is being increasingly compromised by continual cutbacks to core editorial staff which has now gone beyond the sub editors and copy writers. I understand that there are difficulties with falling revenue streams. However I don't believe that media organisations should be treated like complete independent businesses. I believe that because they have such a strong public interest role their structures and funding models should be more akin to that of CSIRO. Government funding allows CSIRO to be able to concentrate on making core pure science discoveries, that can be long term and not necessarily able to make commercial returns on investment, but are vital to the public interest and public good of the nation. Media organisations should be the same if we want to remain as a true free democracy. Freedom of the press and unbiased reporting is vital to the proper functioning of a nation and is so important to the public interest because it helps the nation stay informed and make informed decisions."

Photographer and MEAA member Bronwen Healy

"But investigative reports alone don't pay the bills that keep newsrooms operating, and the challenges facing publishers are acute: audiences and advertising revenues are shifting after decades of stability."

Jason Pellegrino, managing director – Google Australia & New Zealand, May 29 2017

Introduction

The Media, Entertainment & Arts Alliance (MEAA), the union and industry advocate for Australia's journalists, welcomes this opportunity to make a submission to the Senate Select Committee inquiry into the Future of Public Interest Journalism.

MEAA believes public interest journalism is at a crossroad.

The digital disruption that has transformed the media has shaken everything we knew about our industry. There is no certainty. The audience is fragmented. That fragmentation has savaged revenue streams whether that revenue comes from advertising, subscriptions, circulation or eyeballs.

Distribution and production of media has been separated by the internet with social media becoming a useful distribution tool, albeit one that effectively robs revenue. Social media uses news media's editorial content to lure advertising from news media to news "aggregators".

Media organisations public and private have largely abandoned investing in their product and have resorted to seemingly never ending cost-cutting. At the same time that our industry and its established business models have been under attack, our profession is too.

MEAA commends the Senate for taking the initiative in establishing this inquiry. MEAA has invited our journalist members and others to contribute and in these pages you will see their comments, suggestions and ideas that we hope will assist the select committee.

In this submission, MEAA wishes to set out our observations of the effects of disruption in the industry over the last six years, the impact on journalists and their ability to do their job, and to offer some preliminary views to you about what the problem is and the types of things the Committee might like to examine in the course of its work.

MEAA is grateful to the many journalists and members of the public who took the time and trouble to send in their contributions that have helped create this report.

Briefly, MEAA will make the following recommendations (see page 21 for details):

1. Restore and increase funding to public broadcasting.
2. Tax incentives and other forms of support for rural and regional news outlets.
3. More rigorous taxation of news aggregators
4. Consideration of a levy to raise funds from "digital disruptors" to be invested into public interest journalism.
5. Consideration of direct and indirect government subsidies to media, with safeguards to protect editorial integrity from being compromised.
6. Creation of a media diversity fund.
7. Tax deductibility for news subscriptions.
8. Industry assistance to retrain and re-educate journalists, along with innovation grants and other forms of assistance to maintain editorial staffing levels.
9. Funding for counselling and assistance to media workers as they transition out of secure work.
10. Extension of charitable or tax-exempt status to public interest journalism.
11. Encourage the establishment of foundations or not-for-profit media outlets.
12. Further investigation about how to extend workplace protections and collective bargaining to freelance journalists who work as independent contractors with poorer pay and less job security than permanent staff journalists.
13. Defamation law reform.

Government support

MEAA believes the important starting point for this process of examining the future of public interest journalism is one that has been absent from all recent efforts by Governments of various persuasions to pursue media reform. That is the public policy goal here – which surely is the public interest of having a strong and diverse media landscape in Australia to provide a wide range of reporting, analysis and opinion.

The question then is: what can or should Government do to support that outcome. What are the appropriate regulatory settings to achieve that? And frankly, as MEAA has said before, tinkering around the edges of existing ownership rules does nothing to achieve that outcome in the long run.

The market alone will not deliver a solution. There is a need for the government to step in, to intervene, and to support the media industry. As this submission demonstrates, government must respond to the digital disruption savaging media outlets by providing support to ensure that that media can continue to fulfil its role as a pillar of a healthy democracy.

MEAA stresses that any government support for the media industry and for public interest journalism must be conducted while ensuring the appropriate checks and balances are in place to guarantee the media's independence from government, particularly the editorial independence of the content produced by media that receives government support. There should be nothing that could ever smack of a *quid pro quo* for government support either in the media's operations or the content of its public interest journalism, nor should the government be in a position to grant or withdraw such support based on any considerations that would appear to be seeking to influence or punish a media outlet or its journalists for their editorial content.

The Canadian experience

Government support for the media industry has been addressed in several countries. As recently as June this year, the Canadian parliament's Standing Committee on Canadian Heritage recommended that the:

*"Minister of Canadian Heritage explore the existing structures to create a new funding model that is platform agnostic and would support Canadian journalistic content."*¹

The Canadian report is well worth examining and **MEAA strongly encourages the Senate select committee to read it** given the many similarities experienced in our two countries. The report notes:

*Local programming is the cornerstone of the Canadian media system. Local programming and local news in particular, helps Canadians keep abreast of events in their communities. According to a 2015 survey, 36.2% of Canadians got their local news from television, 23.3% from newspapers, 20.7% from radio and 18% from the Internet. In addition, a survey commissioned in 2014 by the Canadian Radio-television and Telecommunications Commission (CRTC) showed that approximately 81% of Canadians ranked local news as being important to them.*²

The report went on to note that, like Australia, the media industry once consisted solely of print newspapers and magazines, television broadcasting, and radio. Now, most information is available on multiple platforms.

"Indeed, the biggest disruptor of traditional media platforms has been the rise of Internet-based media, which has changed the way Canadians consume, and pay for, media."

The Canadian experience, like Australia, shows that

*"print media faces declining revenues, as their advertising revenue increasingly migrate to digital platforms. In addition, subscriptions have declined, as Canadians have access to a broad range of platforms which publish media for free".*³

¹ *Disruption: Change and Churning in Canada's Media Landscape*, report of the Standing Committee on Canadian Heritage, June 2017 <http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6> Recommendation 1

² *Ibid* Part 2 "Canadians' access to local information media"

³ *Ibid* Part 2.2 Print Media

Among the government-support measures recommended in the Canadian report were:

- Tax deductibility for digital advertising in Canadian-owned media platforms,
- Five-year tax credits for print media companies to compensate for investing capital and labour in digital media,
- Ensuring foreign news aggregators are subject to the same tax obligations as Canadian media,
- Through expansion and an increased budget for the Canadian Periodical Fund (which provides assistance and rewards innovation and industry initiatives to Canadian publishers, magazines and non-daily newspapers to ensure the public has access to a range of Canadian publications) make daily and free newspapers eligible to participate in the fund, offer support for online distribution of magazines and newspapers including greater support for ethnic and indigenous media,
- Apply a “diversity of voices” test to ensure there is no dominance in any media market, and
- Change the definition of a registered charity to include not-for-profit media and/or foundations.⁴

Europe and the US

European nations have a well-developed history of financially supporting private as well as public media organisations. European assistance comes in the form of either direct or indirect subsidies.

Government newspaper subsidies, which have been in use since the 1970s, exist in Belgium, Finland, France, Netherlands, Norway and Sweden. According to the London School of Economics⁵, the French government provides €1 billion a year in State subsidies.

In 2015 direct subsidies worth €77 million were provided to 326 newspapers and publications. The subsidies assisted regional and local press, helped fund modernisation and to assist with restructuring. More than 93% of the French Government’s support goes to hard-copy newspapers and only 7% to exclusively on-line providers.

Indirect subsidies worth around €500m have been made available, including €200m for exemptions from local business rates, €160m for the lower VAT rates and around €250m on the special tax and social security contributions status granted to journalists. The state also pays over €100m a year to the newswire agency AFP.

As Mike Seccombe recently wrote:

“There are many models. Across most of Europe, governments offer various kinds of subsidies... Many countries offer exemptions from value-added taxes. The risk is politicisation of media, although that does not appear to be a problem there”⁶.

The Australian experience

The audience is growing

There is still a substantial audience for Australia’s news media. According to the most recent survey by Roy Morgan Research, the number of Australians who read or accessed a newspaper’s content via print, web or app in an average 7-day period in March 2013 was 19.9 million.

Four years later the same basket of mastheads was recording a total audience of 22 million. While print news is declining, digital web and app readership has been growing, and boosting the total audience.

Traditional media continues to dominate the digital media space, despite start-ups and international imports such as Guardian, BuzzFeed, and the New York Times establishing outposts in Australia.

⁴ *Ibid* Recommendations

⁵ *Public Funding of Private Media*, London School of Economics Media Policy Projects, March 2014
<http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-11-Public-Funding-Private-Media.pdf>

⁶ What the future holds for Fairfax, Mike Seccombe, *The Saturday Paper*, 17 May 2017
<https://www.thesaturdaypaper.com.au/news/media/2017/05/13/what-the-future-holds-fairfax/14945976004636>

But revenue is in decline

The print media industry's measurement, News Media Index, reported \$2.28 billion in advertising revenue for calendar year 2016, down from \$2.466 billion in 2015 - a 7.5% decline. Print advertising fell 11.3%, newspaper-inserted magazines (NIMs) fell 9.2% while Digital rose 9.9 per cent.

Redundancies

The result of this loss of revenue, but not a loss of audience, is that media outlets have engaged in a seemingly endless round of cost-cutting, with job redundancies one of the key tools of getting costs down. There has been comparatively little effort expended in examining opportunities for investing in public interest journalism or consultation with employees about how job numbers can be maintained to encourage increased audience and advertiser support.

The redundancies have been cruel and ultimately have helped to damage the media products themselves by denying them resources and offering less and less to consumers.

MEAA monitoring of job losses at media outlets estimates that since 2011 more than 2500 journalists have been made redundant at leading media outlets – about a quarter of the total number of journalists in Australia.

That number **does not include** the journalists who, through attrition, have left their employment and not been replaced. MEAA estimates they could number at least 500.

That would bring the total number of journalists positions lost over the past six years to at least 3000. And it is important to keep in mind that previously, there were some 700 job losses that occurred as a result of the 2008 global financial crisis.

MEAA estimates that since 2011:

- Fairfax has had redundancies of at least 1024 editorial positions– 600 from its metropolitan newspapers alone;
- News Corporation has had at least 767 positions made redundant, including about 70 photographers who were made redundant in June 2017;
- At least 80 jobs have gone at West Australian Newspapers;
- At the ABC 180 positions have been made redundant with more to come;
- At country non-daily newspapers at least 120 jobs have disappeared;
- Among the newsrooms of the television and radio networks there have been several redundancy rounds in recent years with more expected; and
- There have been numerous redundancy rounds at magazine publishers, AAP and others.

Much has been lost

Already there are vital areas of Australian life that are not being scrutinised and reported on by the media for the benefit of Australian audiences because of the loss of so many journalist "boots on the ground".

- State politics and local government reporting have dramatically fallen away as media outlets devote fewer resources to covering these "rounds". This is particularly noticeable since television networks have dropped half-hour state-based current affairs programming.
- Local news and reporting in regional and rural Australia have suffered. Not only are media outlets struggling with the same economic pressures as their metro counterparts but cut-backs by major news organisations sees rural and regional audiences lose their "voice" and their access to local information. On July 11 2017, the Nine Network announced it was cutting its Darwin 6pm bulletin for a national bulletin, and would cull its Darwin journalists to just two.⁷
- There are only a bare handful of reporters covering industrial relations matters.

⁷ "Nine News Darwin to no longer have standalone bulletin", NT News, July 11 2017, <http://www.ntnews.com.au/news/northern-territory/nine-news-darwin-to-no-longer-have-standalone-bulletin/news-story/a61d0dd81497f042cfe90cd33642614f>

- Arts and entertainment reporting is now largely the preserve of contributing freelance writers and Fairfax has indicated it will effectively cease consistent reporting on these rounds.
- Science, transport (including motoring and aviation) and digital technology reporting has also been cut back with journalists made redundant and not replaced.
- Religious affairs reporting has been cut back – at a time when religious scandals have been important news there have been no dedicated reporters to cover it.
- Multicultural and youth affairs and the environment now have virtually no one dedicated to covering these issues, again at a time when it would seem essential to have these rounds reported.
- Aboriginal and Torres Strait Islander matters – the coverage of Indigenous issues has been reduced dramatically with reporting in mainstream media being extremely limited to occasional coverage when resources can be spared or only when major news stories arise.
- Court reporting has been cut back savagely, meaning that a small number of court reporters are now trying to cover several trials at several courts each day, and reporters with little court experience are being sent to handle complex cases with insufficient training or mentoring by reliable hands. This has led to issues about trust and press freedom between the courts and the media (see the excerpt from Margaret Simons below) as well as, most recently, a murder trial being aborted due to reporting by a journalist in another city adding material that had not been heard in the trial to an online news story (see page 19).

The consequences of fewer journalists must be of enormous concern – for instance, is the judicial system operating with openness and transparency if fewer journalists are reporting on this area; and those that do are faced with an increasing number of non-publication suppression orders issued by judges who, it has been suggested, are concerned that too few journalists (and many less experienced in court procedures than in previous years) are trying to cover court proceedings while under immense pressure.

Indeed, the crisis in court reporting reveals just what is at stake when the media tries to cover matters of immense public interest and importance with too few journalists.

Margaret Simons, director of the Centre for Advanced Journalism at the University of Melbourne – writing for The Guardian Australia on a research project on the civic impact of journalism, believes that the explosion in the use of non-publication suppression orders by courts, particularly those in Victoria and South Australia, is an indication that judges do not have faith that younger, less experienced reporters can adequately report on matters before the court.

Thirty years ago, the Age had a court reporting team including two senior reporters – one each for the supreme and county court, and a team of two to three more junior reporters covering the magistrates' courts. More were brought in for particular stories or when things were busy.

Today the equivalent team fluctuates in number day to day but peaks at three. The reporters run from building to building, trying to cover it all – and they are also responsible for more general crime reporting outside the courts.

Journalists, lawyers and judges lamented the departure of experience. In the past few years experienced court reporters [that] were part of the informal community that builds up around the courts have left. These journalists used to play an informal training role for younger talent coming through. Now, that doesn't happen, and the legal community notices the difference.

We estimated that at least a combined 90 years of court reporting experience has left the profession in Melbourne in the last three years. [MEAA emphasis]

Important civil cases are rarely reported, and criminal cases are reported by journalists who pop in and out of court, spread thin and always struggling to catch up. Increasingly these reporters depend on media specialists employed by the courts themselves – which helps, but potentially undermines their independence. The courts have stepped up, taking more trouble to provide transcripts, judgments and other information to reporters who sometimes never actually step into the courtroom, but are obliged to file news reports in any case.

Judges watch the behaviour of journalists in court closely. They take small things, such as whether a reporter understands how to enter and leave the court room, as measures of how experienced the reporters are.

And because they feel that less experienced reporters may not understand the rules of court reporting, judges are more likely to issue suppression orders if they are concerned about the impact of publicity. Poor reporting, they say, has in recent times led to more cases being aborted due to prejudicial publicity.

The impact of court reporting is cumulative, and institutions of the law are responding to its decline. Take out the journalists and over time you alter the way justice operates.⁸ [MEAA emphasis]

This is the crisis affecting reporting of the court system – a vital element of ensuring the public is informed and that we continue to enjoy a healthy, fully functioning democracy. This situation is replicated in the reporting rounds highlighted above – much of public interest journalism’s traditional reporting has been eroded by the constant cost-cutting, redundancy rounds, and poor resourcing. There just aren’t enough journalists available to report on what needs to be covered in order to have an informed society.

Freelance contributors

The pattern of employment in the media industry has been changing for the past two decades. Until recently, the media was made up almost wholly of full-time employed journalists, many assigned to regular rounds where they developed a specialisation allowing them to cultivate a network of knowledgeable contacts and develop a degree of expertise over time.

An initial wave of cost-cutting by implementing staff freezes saw media outlets turn increasingly to freelancers. But the seemingly endless redundancy rounds coupled with media outlets abandoning dedicated coverage of particular news rounds have contributed to the rise of insecure atypical contingent work in the industry as freelancers are left to carry the burden.

As MEAA noted in a report to the International Labour Organisation:

Part of the reason for more freelancers has been the determination of major media organisations to implement cost cutting. Not only has this meant that freelancers have replaced staff writers, but there is also a marked increase in the number of casual employees and a decline in permanent full-time employees...

The reason for this change has been largely corporate capital-related – the cost-cutting is aimed at pump-priming shareholder returns. However, this happens at the expense of the quality of the editorial product and the quality of work life of the journalists who bear the brunt of the drives.

Experienced full-time editorial employees are being slowly forced out of the industry as major media groups embrace using freelance journalists. This environment puts full- and part-time journalists under steadily increasing work pressure, and freelance journalists are placed in a difficult negotiating position that leaves them often unable to bargain for a better deal.

Waves of redundancies over the past five years has seen some of the most senior, experienced permanent journalists at media groups depart and the subsequent “content” gap filled by atypical workers paid on rates set by the employers, and without the working conditions and rights enjoyed by those they replace...

Both the staff freezes and the redundancies cut deep into the editorial capabilities of the big media groups. Not only have departing journalists not been replaced in numerical terms but often, if any additional staff are taken on (usually in a belated realization by the media groups that they cannot produce the equivalent product with fewer permanent personnel), the newly hired staff cannot hope to match the lost experience, expertise and journalistic leadership.

Subsequently, morale among editorial staff at many leading media groups has deteriorated sharply in the face of increased workloads due to the reduction in editorial resources. Workers have complained of a rise in health problems and a lack of proper and due remuneration in recognition for the sharp rise in workload and responsibility.

⁸ <https://www.theguardian.com/media/2017/may/29/trump-fake-news-and-shrinking-newsrooms-does-journalism-still-matter-in-2017>

This slump in morale is a symptom of a third, allied, issue that contributes to the rise in atypical work. The end result of this decline in editorial appreciation, and the frustrations it brings, is that many fiercely committed journalists in permanent employment have reluctantly given up trying to work under such pressures and have quit their jobs, with some choosing to leave the industry altogether.⁹

The result: in-house knowledge has been lost. Skills, experience and the network of contacts have been lost. And, as a result, the audience has declined because they cannot find the regular coverage of issues of interest to them (the decline in the media is not just at daily newspapers but also at niche, specialist publications and programs that have been culled, unable to continue without sufficient funds, advertising or subscription/circulation revenues).

Like many industries, media employers have adapted to straitened times by seeking to reduce costs by employing contingent workers, and in case of the media: freelancers.

Out of the 5500 members of MEAA's media section, more than 1400 classify themselves as freelance journalists.

As full-time journalists accept redundancy packages and leave secure employment, some opt to continue working in the industry as freelancers. But as more freelancers flood the market, there is less work available and their numbers are driving down pay rates and conditions.

Contingent work in journalism was never particularly well remunerated or secure.

MEAA's members, as independent contractors under the law, are denied the right to collectively bargain.

An attempt to change this in 2010, when the Australian Competition and Consumer Commission (ACCC) granted MEAA authority to collectively negotiate terms of engagement for freelance journalists used by the four big publishers (Fairfax Media Limited, ACP Magazines Ltd – now Bauer Media, News Limited and Pacific Magazines)¹⁰, failed. MEAA wrote to all four publishers to seek meetings to begin negotiations. Only one publisher bothered to reply – and that response was in the negative.

The cumulative result of this buyers' market for freelance work is that freelance journalists have had their earnings severely crushed. Pay rates for freelance work are under a constant downward pressure as editorial commissioning budgets are slashed. There is increased competition from a growing number of freelancers in the marketplace. There is a decline in the number of media outlets and those that remain are seeing their media products being cut back in size and scale as revenues fall.

Freelancers have lost their copyright as media outlets demand they sign away their rights in order to allow the media outlet to have total control of the editorial content and to reproduce again and again across several titles and even in other territories.

Because freelance pay rates are already so low, it is almost impossible for freelancers to seek superannuation contributions from their employers and so are a group in the workforce who are severely at risk of reaching retirement age with manifestly insufficient savings.

Increasingly in the digital era, news stories that freelancers may have worked on for weeks, are being plagiarised by rival media outlets within minutes of publication with no acknowledgement, attribution, compensation or remuneration. The instances of this digital plagiarism are becoming increasingly commonplace and a Twitter hash tag has developed: *#journotheft*.

⁹ *The Changing Nature of Work: A global survey and case study of atypical work in the media industry*, International Federation of Journalists report for the International Labour Organisation, Australian case study -

http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--sector/documents/publication/wcms_161547.pdf

¹⁰ "Freelance journalists may collectively negotiate with publishers", ACCC news release, May 26 2010.

<https://www.accc.gov.au/media-release/freelance-journalists-may-collectively-negotiate-with-publishers>

Freelancers are not reimbursed for the expenses in pursuing, investigating and gathering information for a story and face all the cost burdens of running a small business (technology being a significant expense) as well as all the inherent risks associated with operating a mobile operation that must seek out interview subjects.

MEAA is increasingly seeing many freelance journalists, with years of experience and tremendous skills, abandon the profession because they can no longer make a viable living, no matter how much effort they expend nor how many costs they incur that were previously borne by the media outlet.

And yet, media outlets continue to make their staff redundant knowing they can always exploit the pool of freelancers to fill the editorial gaps at a greatly reduced cost to the bottom line. This exploitation fundamentally cheapens public interest journalism – from being a public service to being the cheapest way to provide content for the least expense.

MEAA believes the government must step in to support freelance journalists, to restore their rights as content creators and to ensure that as independent contractors they can earn a living wage. The inquiry must take steps to strengthen the rights of freelancers in a marketplace where all the power lies with the media employer.

As the 2010 failure of the exemption granted by the ACCC demonstrates, more needs to be done to allow freelancers to collectively bargain and to ensure media employers negotiate in good faith. MEAA calls on the inquiry to take steps to overturn those decisions, including trade practices measures, which prevent freelance editorial contributors from collectively bargaining with their media employers for a fairer deal.

A recent example in Ireland is worthy of consideration. Amendments to the *Competition Act*¹¹ now provide collective bargaining rights for certain categories of freelance work – including freelance journalists. The amendments allow trade unions to apply to have groups of self-employed workers to act collectively. The aim is to allow workers in freelance arrangements to organise so they can collectively achieve a better deal for themselves.

Commenting on the legislation, a private member's bill that met with all-Party support in both Houses of the Oireachtas; the Irish Minister for Jobs, Enterprise and Innovation, Mary Mitchell O'Connor said the Act will "be of benefit to voiceover actors, session musicians and freelance journalists..."¹²

The impact of Google and Facebook

A cause of the current freefall in jobs and journalistic content is that ad revenues that funded public interest journalism have gone elsewhere.

The Pew Research Centre found that of the \$US59.6 billion spent on all digital advertising in 2015, \$US38.5 billion went to Google, Facebook, Yahoo, Microsoft and Twitter. At the same time, many of these corporations are paying minimal levels of taxation.

In Australia, internet advertising revenues are scheduled to grow from \$3.93bn in 2013 to \$7.25bn in 2018, but the digital ad revenue isn't going direct to the news organisations that produce journalistic and other content which provides considerable content that lures eyeballs and advertisers to the internet.

In increasing amounts, that advertising revenue is going to intermediaries. Morgan Stanley in Australia says that Facebook and Google are "taking all the ad market growth, and then some". It estimated last year that, Google and Facebook will "collectively extract \$4billion to \$5billion worth of ad revenue – representing 35-40% of total ad revenues".¹³

¹¹ *Competition (Amendment) Act 2017*, Act of the Oireachtas, as published on the electronic Irish Statute Book, June 7 2017, <http://www.irishstatutebook.ie/eli/2017/act/12/enacted/en/html>

¹² "Minister Mary Mitchell O'Connor welcomes the enactment of the Competition (Amendment) Act 2017", Ireland Department of Jobs, Enterprise and Innovation, June 8 2017 <https://www.djei.ie/en/News-And-Events/Department-News/2017/June/08062017a.html>

¹³ "Giants put heat on news sites", Darren Davidson, pages 26 and 28, *The Australian*, May 16, 2016

Google News does not contain advertising, but Google as a company earns about 90% of its revenues from advertising, with search prominence/placement on its search listings and fees drawn from the number of impressions.

Google's earnings:

- Google's global ad revenues increased by 17% year on year comparing the final quarters of 2015 and 2016 - from \$17.08bn to \$22.4bn
- 2015 global revenues of \$74.54 billion US dollars, expected to break US\$100 billion this year
- USA – 2015 revenues of \$35 billion (approx.).
- Australia – estimated at \$2bn in ad sales in 2014-15 and up to \$3.5bn this year.
- UK – 2015 revenues of £7 billion.

Facebook

- Facebook's profit last year was US\$10.2 billion.
- Facebook's ad revenues hit \$8.6 billion in the last three months of 2016.
- The December 2016 quarterly report stated Facebook was making a 52 cents profit on every dollar.
- Revenue jumped by 54% last year to US\$27.6 billion.
- Facebook has about 2 billion monthly users.

Although Facebook's Mark Zuckerberg says creators need to get paid, we see few tangible efforts to promote this concession. We have seen nil in Australia.

MEAA is gravely concerned at the impact aggregators and content vehicles, such as Google and Facebook, are having on the Australian media landscape. These non-paying entities strip advertising and other revenue from regulated media entities that provide important public interest editorial and entertainment Australian content for Australian audiences.

To date, aggregator companies have made little effort to acknowledge the funding problem and even less to contributing to the funding the content from which they benefit enormously.

The current situation is unsustainable and requires corrective measures at the earliest opportunity. There is an urgent need for these companies to give back funding to the content creators and the audiences that make them rich.

We have already seen the inadequacy of ancillary copyright regimes in Spain and Germany and how they can be brought undone by companies the size of Google, which is estimated to pass US\$100billion in revenues this financial year. (Google can simply pull the pin on web traffic from unhappy copyright holders.)

There is an alternative which draws on the advertising revenues taken away from traditional/legacy and even online media organisations by internet giants like Google and Facebook.

Justin Schlossberg's recent *ResPublica* paper¹⁴ canvassed the well-known fact that investors have been heading out the doors when it comes to traditional media companies, but while these media companies continue to hold considerable sway in our communities and bodies-politic, their capacity to maintain quality, durable and adequately funded investigative journalism is fading, if not gone.

In response, Schlossberg advocated:

*"... spending on long-form and in-depth news coverage ... has faced the thin edge of resource cuts in news organisations across local and national media and both public service and commercial broadcasting. There is clearly a public interest in sustaining these forms of journalism. The most logical and achievable means of support is via a nominal levy on the revenues of large scale news intermediaries in online search and social networking, including Google and Facebook."*¹⁵

¹⁴ "The Mission of Media in the Age of Monopoly", Dr Justin Schlosberg, *ResPublica*, May 2016, <http://www.respublica.org.uk/our-work/publications/mission-media-age-monopoly/>

¹⁵ page 3 of the *ResPublica* paper

It is also worth noting the very recent development in the US of the formation of the News Media Alliance - a coalition of leading news publishers seeking to overturn anti-monopoly regulations to allow them to jointly negotiate with Google and Facebook. According to a report in the *New York Times* of July 9 2017, the:

“group of news organisations will begin an effort to win the right to collectively negotiate with the big online platforms and will ask for limited anti-trust exemption from Congress in order to do so.”¹⁶

Solutions are hard to come by, but MEAA has identified some starting points:

1. Companies that financially benefit by reproducing but not creating news content should contribute funding towards maintaining and developing journalistic content and endeavours
2. Regulators at national and international level should act with urgency to establish payment mechanisms (whether by levy or other means) from intermediaries of scale (e.g. Google and Facebook) which justly compensate authors and publishers for their creative works
3. Such funds should ensure that a minimum of 1% of advertising revenues of organisations of scale¹⁷ are devoted to fund journalistic and related content as a condition of a company’s access to each market

Writing in the *New York Times*, Steven Waldman said in February 2017 that if the leaders of Google, Facebook, Verizon and Apple:

“put the equivalent of just 1 per cent of their profits, for five years, to the [journalistic] cause, local American journalism would be transformed for the next century. That would be \$4.4 billion – enough to establish a permanent endowment to fund local journalism. That would produce about \$200 million in income a year. More than 15 times the current philanthropic spending on investigative journalism – and enough for about 50 new investigative reporters in each state.”

Waldman said: “It’s time for the disrupters to solve these problems. They have the money, the know-how and the obligation.”

This aligns with Schlossberg’s reasoning that:

‘Although Google, for instance, does not profit directly from news content, it forms an integral part of its user experience and volume base, and thus, contributes substantially to the company’s bottom line’. [1]

Media sustainability in Australia can only be restored once consumers start to properly challenge the view that the internet is a benign thing that must remain entirely out of regulatory control and start to question how companies like Google and Facebook earn revenues.

MEAA believes that with the right spread of levy revenues – made available through contestable bidding managed by an independent body out of reach of government influence or control would undoubtedly bolster the plurality of news sources in Australia.

Questions about how such a system may work – from national legislation to international treaties, to scheme administration – will be complicated, but the work must begin.

Without funding sustainable investigative and long-form media where will the next “Pentagon Papers” or, in Australia, the next AWB (Australian Wheat Board) scandal¹⁸ be sourced, written about and published?

¹⁶ “News outlets to seek bargaining rights against Google and Facebook”, Jim Rutenberg *The New York Times*, July 9 2017 https://www.nytimes.com/2017/07/09/business/media/google-facebook-news-media-alliance.html?_r=0

¹⁷ The Convergence Review in 2012 recommended a threshold for regulatory capture of Content Service Enterprises as around \$50m in Australian content-sourced revenue per annum and audience users of 500,000 per month. This recommendation was not connected to levy charges per se, but is illustrative of how capturing larger entities is possible.

¹⁸ AWB scandal refers to the payment of [kickbacks](#) to the regime of Saddam Hussein in contravention of the United Nations Oil-for-Food Humanitarian Program.

Public broadcasting

Political decisions have led to dramatic funding cuts to Australia's public broadcasters. The broadcasters have had to cut their cloth to suit. These funding cuts have not been imposed for the same economic imperatives that have led to the editorial cuts at commercial media houses; they have been purely partisan political decisions that can be seen as revenge at worst or constraints at best.

The ABC consistently ranks as one of Australia's most trusted and respected institutions but it has been undermined in recent years by political attacks on its journalism and a series of funding cuts.

Since 2014, about \$270 million has been cut from ABC funding, and ABC base funding has been cut – in real terms – by almost 25% over the past 30 years. These funding cuts have placed enormous stress upon the ABC, which is being asked to do more with less, particularly on digital platforms.

The impact of the cuts can be seen in the constant redundancies being implemented, the axing of popular programs like Catalyst on ABC TV and music programs on Radio National, the doubts about the future of ABC Classic FM, and the outsourcing of comedy and drama programming to private producers.

Constant cuts are also negatively affecting the ABC's ability to fund public interest journalism and local newsrooms. Budget cuts in 2014 saw the elimination of the local Friday edition 7.30 program (formerly called *Stateline*) from eight states and territories, diminishing the in-depth coverage of state politics, health, education and environmental issues.

Deep cuts to reporting staff, field crews, travel budgets and other current affairs programs have also occurred across capital city newsrooms over the last three years. This month the state issues TV program *Australia Wide*, has been eliminated, and plans to downsize influential radio shows *AM*, *PM* and *The World Today* look likely. International bureaus have also been downscaled over the last decade following the cancellation of Australia Network – with many overseas bureaus manned by single-person video-journalists.

The single biggest contribution that could be made would be the reinstatement of 7.30 state programs. It would answer many of the questions about weekly scrutiny of state matters that are falling by the wayside. This is a space no private media has entered with any rigour. However, the stories picked up in the states and regions through this programming would undoubtedly be followed up by other media organisations. This is not an area where they are competing, despite its importance. If funding could be guaranteed to this sort of programming, the resourcing of state and regional bureaus would need to be strengthened and mandated.

However, at present the ABC looks likely to make more local cuts and continue to centralise its major news and current affairs resources in Sydney, and reinvest savings away from journalism and into entertainment and new digital platforms. This is to the detriment of its state and international coverage across the country.

The increasing use of casualisation and short-term contracts in remaining staff pools is also diminishing the capacity for fearless, investigative public interest journalism.

ABC journalists, editorial and support staff have more than delivered higher productivity in these difficult conditions, continuing to produce high quality and independent news and current affairs content and programming. But this is unsustainable without increased funding.

Public broadcasters increasingly have to fill the gaps left when commercial media outlets withdraw their editorial coverage of key areas. Reducing funding not only has an impact on the editorial resources the broadcasters can bring to bear; it also undermines their charter responsibilities to the Australian community and cripples their ability to meet the demands of technological innovation and development.

Clearly, as the current media environment continues to put pressure on media outlets, the ABC is going to have to play an increased role in the provision of news, information and entertainment as commercial media companies cut back on editorial staff. Funding needs to be restored to the ABC and new funds should be provided to ensure the ABC can provide local news as well as fill the gaps in the provision of regional and remote news where commercial providers have cut back or ceased to exist.

Consideration should be given to exploring what is a proper funding level to restore public broadcasting to its previous levels and to ensure that it can at least be one of the all too few voices available to Australian audiences should commercial media continue to contract and abandon traditional reporting areas.

If an agreed funding formula can be found, funding should be quarantined from cuts in future budgets and instead guaranteed and regularly reviewed.

The situation is similar at SBS where there seems to be an assumption that, because it is able to attract some advertising through its hybrid funding model, its needs are now satisfied. But the funding cuts imposed on that broadcaster have also led to dramatic cuts to its resources, capabilities and program offerings.

And yet there continue to be short-sighted, mainly political, demands that the ABC and SBS should merge – usually a vision that seeks to derive some fiduciary benefit rather than a thorough understanding of what a merger would mean.

As MEAA has said before, talk of an ABC-SBS merger is a distraction from serious issues of underfunding faced by both public broadcasters. MEAA is sceptical that an effective argument could be mounted to bring the two institutions together. Merger efforts tend to have more to do with “saving the silverware” than improving operations and content offerings.

The rationale for a merger seems to be only about making savings. But this simply papers over the real issue that public broadcasting in this country is underfunded for the digital age. This must be addressed as a matter of priority.

MEAA acknowledges that discussions about transmission costs and platform sharing are good and worthwhile but any savings won't address the underlying funding issue. Plus, what happens when the modest savings from a merger are absorbed? It would be extremely naïve to believe that savings could be reinvested into programming and content rather than taken by the government of the day

Any financial benefits from a merger would need to be balanced against the likely negative impact on the audiences of the ABC and SBS. Also, staff at the ABC and SBS are still going through a painful period of cost-cutting, programming changes and redundancies, and what is needed is funding restoration, not more uncertainty.

Furthermore, it is clear that the funding cutbacks are having a deleterious effect on how both broadcasters present themselves through their programming to the whole of the nation. The cutbacks have increasingly required management to centralise operations in the Sydney corporate headquarters. State-based programming opportunities have been slashed, the regional presence has been reduced and services for indigenous and multicultural communities have suffered as a result.

The two public broadcasters have become Sydney-centric in the extreme, particularly when compared with their commercial counterparts in TV and radio programming. Both ABC and SBS have a legislated obligation to tell Australian stories, to provide relevant and local coverage to all communities, to enrich our national cultural life, and to provide balance, accuracy and independence to our national debate – regardless of geographic location. Their funding must be increased to allow them to do that.

Rural and regional Australia

“The availability of diverse local content in rural and regional communities, including news and emergency information, is critical for community identity and cohesion, for the engagement of individuals in democracy, and for people to be well informed about issues that impact upon their lives.”

House of Representatives Standing Committee on Communications and the Arts, May 2016¹⁹

¹⁹ House of Representatives Standing Committee on Communications and the Arts, *Arts and the news to rural and regional Australia: Inquiry into broadcasting, online content and live production to rural and regional Australia*, May 2016, p. 78.

Media outlets in rural and regional areas are facing enormous pressures as revenues dry up and audiences are lured to metropolitan media that neglects to cover the issues that affect rural Australians and their communities.

This is why MEAA is concerned that media ownership changes have a fatal impact on rural and regional Australia. Media concentration denies rural communities their own voice, prevents their stories being told, means that they are less informed about the issues that affect their lives, and have news, information and entertainment imposed upon them from big metropolitan centres.

Despite economic challenges, population shifts and service availability constraints – including an increasingly shaky commercial media presence – regional Australia represents roughly one-third of our nation’s population.

The 2011 federal government report, *Families in regional, rural and remote Australia*²⁰ noted that in 2009 there were 4.3 million people in inner regional areas, 2.1 million in outer regional areas, 324,000 in remote areas and 174,000 in very remote areas (Australian Bureau of Statistics [ABS], 2010). Because of density, the absence of economies of scale and relatively fewer profitable business opportunities, fewer government and private services are delivered. Access to broadcasts and the range of broadcast products is less in regional and rural Australia than in cities.

As the Department of Communications observed in a 2014 paper²¹:

“In general terms, a distinction can be drawn between metropolitan and regional markets in terms of the control and ownership of the major media outlets... Metropolitan markets tend to support a larger number of media outlets, and as a consequence there is a greater level of diversity of ownership and services in these areas. The inverse is true in most regional markets, which tend to exhibit higher levels of media concentration and more limited diversity. This is in part driven by the relatively dispersed nature of the Australian population across a large geographic landmass, which itself tends to result in few (or single) providers serving smaller communities.”

The Report of the Independent Inquiry into the Media and Media Regulation (the “Finkelstein Report”)²² was more direct: “Coverage of local community news is... modest, particularly in small communities in regional and remote areas”.

Of newspapers servicing these areas, the Finkelstein Report observed that “most of them have limited resources and consequently low capacity for in-depth coverage of local issues. Much of the content is in the form of generic news with little independent analysis.”

With regard to regional television services, “only the main urban regional centres have a locally produced television news service”.²³

The question of how to ensure regional content is delivered is not new. For instance, the Australian Broadcasting Authority’s (ABA) 2002 inquiry into the adequacy of local news and information provided by commercial television providers in regional NSW, Queensland and Victoria²⁴ found that “some regional commercial television broadcasters are not sufficiently responsive to audience needs for local content, particularly programs about matters of local significance”.

The ABA’s report gave rise to regulatory adjustments in 2002 and 2006. These included the imposition of licence conditions and obligations mandating minimum local content. The impact of these measures appears to have been moderate and short-lived.

²⁰ *Families in regional, rural and remote Australia*, Australian Government, Australian Institute of Family Studies, 2011, Baxter, J, Gray, M and Hayes, A <https://aifs.gov.au/sites/default/files/publication-documents/fs201103.pdf> Page 2

²¹ *Media Control and Ownership*, Policy Background Paper No. 3, June 2014, Department of Communications, page 21.

²² Report of the Independent Inquiry into the Media and Media Regulation, Hon R Finkelstein, February 2012 http://www.abc.net.au/mediawatch/transcripts/1205_finkelstein.pdf

²³ *ibid*

²⁴ ABA Report, 2002, page 329

Relying on the ABC to fill the vacuum is not as solution. The significant funding cuts inflicted on public broadcasting have left the ABC stretched and this must be addressed with urgency. As MEAA said in its submission regarding the *Australian Broadcasting Amendment (Rural and Regional Advocacy) Bill* in early 2016:

Regional and rural broadcasting should not have to take precedence or compete with the rest of the ABC's operations. Traditional regional and rural media voices – across print, broadcast television and radio have been in decline for some time and this trend shows no sign of abating.

The unfolding crisis in rural and regional media coverage is far greater than the ABC's role and contribution. Diversity and local content are rapidly diminishing across the board as funds dry up in both commercial and public media organisations.

Changes to media regulation announced by the Minister for Communications on 23 February 2016, such as the abolition of the two out of three or 75% reach rules, will, absent clear and immutable safeguards, further threaten local content and the diversity of opinion available to regional and rural residents.

So-called new media (i.e. digital/online broadcasters and new entrants like Netflix) will not contribute to improvements in local content and the presence of media resources in regional and rural areas. They are not subject to licence conditions, have few if any local resources and often tailor their products to audiences in more than one country. Notwithstanding the dynamics of media reform in recent times and the race to retain or build market share, the rationalisations of the past five to ten years in print and broadcasting entities make the ABC's prosperity vital...

MEAA's overall view of the Bill is that its objectives cannot be supported without the guarantee of additional protected funding, including the restoration of the \$254 million in cuts announced in November 2014...

To achieve the Bill's overall objectives, the Government and the ABC must acknowledge that the delivery of relevant local news and stories in regional areas requires employees living where the stories happen. Honouring a requirement that the Corporation broadcast at least 5 radio bulletins that consist solely or primarily of regional or local news between 5am and 8pm, at regular intervals, will be doomed if dedicated additional resources are not made available.

If a suitable funding increase [could be achieved for] regional editorial (and related) employees, MEAA would support the requirement that the Corporation facilitate employment of a proportion of staff in regional areas...

As MEAA noted in its 2013 submission on the ABC and regional diversity,

"In an era where the fragmenting media landscape means newspapers are downsizing or closing in regional areas, it is more important than ever that the ABC is funded to remain a news-forward, responsive and in-depth provider of quality news for regional Australians."

Public Broadcasting in regional areas

The structural decline in privately funded media has been felt at least as harshly in regional as well as metropolitan areas. Regional television newsrooms have closed or been scaled back as never before.²⁵ To exacerbate the decline in regional news delivery, the ABC's budget was cut by \$254 million from 2014 to 2019.

The ABC is a core regional media organisation in Australia – it serves as both a quality and trustworthy news source and as a safety net. A potent blend of funding cuts and misdirected organisational priorities have seen the ABC's ability to deliver stories of scale and substance to regional communities severely hampered.

²⁵ the past decade or so has seen television newsrooms closed in Griffith, the Gold Coast, Newcastle, Wollongong, Canberra, Orange, Wagga Wagga, Mildura and Albury and news services and local coverage scaled back in Bendigo, Ballarat and Gippsland, Mt Gambier, Albany, Bunbury, Geraldton and Broome.

Inconsistent and reduced regional funding makes it extremely difficult to attract and retain journalists in regional and rural locations and for them to develop familiarity with an area. It follows that the corporation's ability to cover and report stories of regional interest and significance is severely compromised.

There is some opacity to the true number of ABC employees in regional and rural locations and those providing content to those locations. The ABC did report regional employee numbers in 1996 (1029 "regional services" employees), 1999 (1082 in "local and regional services") and as recently as 2008, when it reported 946.5 employees in "radio and regional content". The ABC's 2016 Annual Report included a pie chart that stated that 10.07% of employees worked in regional areas. On current figures, this equates to 421 employees.

Looking at the figures from another angle, the number of regional and rural employees has been reduced from 25% of employees in 1998 to 10.07% of employees in 2016.²⁶ It does appear that the number of ABC regional employees has fallen far faster than overall employment levels.

The loss of regional and rural journalism resources was canvassed in 2012's Finkelstein report which noted that, "although most attention is at a national level, often the short-comings in journalistic surveillance and in the richness of the media environment are felt most at local levels, outside the major cities. This is one area, however, where a small investment by government could produce significant improvement. Small regional communities are poorly served for local news and the inquiry is of the view that the situation could be ameliorated with some limited support by the government."²⁷

In contemplating the ABC as the recipient of additional funds, the Finkelstein inquiry noted that "the additional funding could be tied to specifically designated functions and conditional upon specific undertakings on its use."²⁸

MEAA would strongly support such an initiative.

Print in regional areas

Together with broadcasting, in the last two to three years, MEAA has also witnessed precipitous falls in employee numbers in commercial regional print operations.²⁹

Prior to APN's sale to News Corp, it had lost at least seventy editorial positions across its daily titles in Queensland and Northern NSW; Fairfax had dispensed with the services of about 300 employees through its *Transcend* and *NewsNow* regional programs; and News Corp has at least 150 fewer regional employees now than five years ago.

The Fairfax cuts led in some cases to the forced closure of offices of mastheads in communities and a withdrawal back to a more central "hub" where journalists continue to provide copy for mastheads from afar.

Mastheads like the *Border Mail*³⁰ have seen the departure of long-serving, experienced and well-connected journalists and a huge reduction in the resources needed to cover important, yet resource intensive areas like council proceedings, local development proposals and land acquisitions/sales, meetings of local authorities and committee groups where pivotal decisions impacting residents across the full social spectrum.

That is not even to mention all the vital, small-community stories that back and give much-needed exposure and marketing to fund raising events, which are the lifeblood of many of these already struggling rural and regional communities which these under resourced newsrooms simply do not have the staff in place to cover in the same way as they have in the past and indeed in the depth and breadth their communities still want these former "papers of record" to do.

²⁶ This is a basic extrapolation of ABC regional employee numbers. The ABC pie-chart represents radio, television and other departments as discrete operational areas. It is possible that these departments have regional employees. It is certainly the case that they would provide broadcast services to regional communities.

²⁷ 'Report of the Independent Inquiry into the Media and Media Regulation', R Finkelstein QC, page 331

²⁸ Ibid, page 332

²⁹ APN has shed at least fifty editorial positions, Fairfax about 300 and News Limited at least 100 in the past 3 years.

³⁰ *The Border Mail* received the 2012 Walkley Award for Journalistic Leadership for its series "Ending the Suicide Silence" on teen suicide in the Albury-Wodonga area.

So-called new media (i.e. digital/online broadcasters and new entrants like Netflix) have little, if any, interest in producing regional (or local) content. They are not based in regional and rural areas and are generally not impacted by broadcast regulations.

MEAA calls upon the Public Interest Journalism inquiry to recommend specific and durable funding assistance for regional media providers, both private and public.

Concentrated media exacerbates the problem

In the absence of action we face the risk of our media market, already one of the most concentrated in the world, becoming even more so.

It is a dangerous fallacy to think the internet in and of itself will provide more diversity.

Allowing greater concentration of ownership through mergers will only lead to more job cuts (as the new owners extract increased “productivity” and “efficiencies” from the merged business) and obviously fewer voices in our media.

MEAA notes that a media reform proposal is once more before the Parliament and MEAA hopes that before any legislation is passed in the Senate, cross-benchers will consider what MEAA said in its submission on the 2016 media reform proposal in light of the investigations of the Senate select committee into the future of public interest journalism in Australia.

Last year, MEAA said: “With respect, the Bill and its sponsors have avoided advancing comprehensive and integrated reforms in favour of select changes that will have a modest, if not harmful, effect. It is frustrating that current unregulated content providers and potential future rivals will be unable to gain any insight into the future regulation of our media market from this Bill.

“For the sake of clarity, MEAA supports the removal of the 75% reach rule. This rule has been entirely superseded by digital technology and the streaming practices of a range of media (and other) organisations.

“MEAA also supports the extension of local content requirements following trigger events. This is a necessary and desirable change.

“We are however concerned that the two-out-of-three rule would be removed without broader consideration being given to the need to identify and enforce the terms upon which all media organisations may provide services to the Australian market and provide consumers with greater choice.

“MEAA is concerned that the Bill’s dominant focus is on relieving the regulatory burden on currently regulated entities. The benefit the Bill seeks to provide to these entities is the ability to consolidate and achieve broader scales of operation and efficiencies in service delivery. In an already heavily concentrated Australian media-market, we think this approach undermines the public policy benefits of media diversity.

“While MEAA favours a genuine levelling of the playing field, fewer voices will do a disservice to the Australian community.”³¹

MEAA went on to point out that the abolition of the two-out-of-three rule does not promote diversity: “The Department of Communications’ June 2014 Policy Background Paper on Media Control and Ownership acknowledged that digital technologies would erode ‘the historic delineations between traditional and new media.’

“It nonetheless made the important qualification that: ‘More broadly, the proliferation of online sources of news content does not necessarily equate to a proliferation of independent sources of news, current affairs and analysis. Indeed, the internet has, to date at least, tended to give existing players a vehicle to maintain or actually increase their

³¹ <https://www.meaa.org/resource-package/meaa-comments-on-the-broadcasting-legislation-amendment-media-reform-bill-2016/>

influence. This pattern can be seen in Australia where to date, the established media outlets have tended to dominate the online news space.³²

“Observations like these give MEAA considerable pause for thought when assessing the need to dispense with regulations in their entirety. It is also the case that other rules geared towards national and regional media diversity are being compromised.

MEAA went on to note that the Department’s own background paper also reported that 72 licence areas in regional Australia were “at or below the minimum floor in terms of voices”³³.

Minister Fifield said on March 16 2016: “Even with two out of three removed and consolidation occurring, there would still be significant ownership diversity amongst sources of news”³⁴.

MEAA cannot agree with this assertion – it is baseless.

MEAA supports comprehensive media reform over a process that simply relaxes conditions for long-standing media companies. Minimum conditions, based on reasonable thresholds of economic activity or revenue, must be established for all players – old and new – to ensure market equality.

MEAA is also wary that leaving a regulatory vacuum for any length of time may condition media companies to resist the future implementation of new arrangements.

Media diversity requires policing to ensure the public interest is met. It is not necessarily a natural consequence of technological advancement.

MEAA calls upon the Government to defer abolition of the “two-out-of-three” rule until plausible laws are drafted to encourage media diversity in the digital age. The effect of doing otherwise will be greater consolidation and fewer voices in media organisations of scale.

MEAA is unable to comment with authority about the adequacy of current competition and consumer laws as they may (or may not) apply to search engine and social media enterprises.

We are nonetheless concerned by the near-monopoly nature of Google, with approximately 94 per cent of Australia’s search market and the escalating reach of social media platforms like Facebook, which had 17,000,000 Monthly Active Australian Users.³⁵

The mainstays of Australian competition and consumer law are unconscionable conduct, misuse of market power and preventing acquisitions that lessen competition. As presently structured, none of these laws seem especially useful in tackling the enormous might of companies such as Google and Facebook. They have become monopolies without borders.

While it is clear these companies are now huge players in advertising markets, there is no agreement that they are media companies.³⁶ Nor do they appear to contract with media suppliers for the distribution of media content over the web.

As a search engine company, Google asserts that there is a ‘value exchange’ between content creator and content disseminator that justifies its carriage of content. We believe this undervalues the cost of producing original media content, especially public interest journalism.

³² Policy Background Paper, Media Control and Ownership, Department of Communications’, June 2014, p.p. 35-36

³³ *ibid*

³⁴ Minister for Communications, Senator Mitch Fifield, National Press Club Address, Canberra, 16 March 2016

³⁵ Both figures from June 2017

³⁶ MEAA acknowledge a growing chorus of media proprietors and advertising companies that insist that Google and Facebook be recognised as media companies.

MEAA is aware that a range of significant US media companies, including the *New York Times* and *Washington Post*, are in the process of seeking a regulatory exemption from the US Congress so that they may collectively bargain with Google and Facebook on the exchange of their product for payment instead of the current de-listing that Google offers to recalcitrant content providers.

As Jim Rutenberg wrote in the *New York Times*, “the manoeuvring is about more than the fight for digital territory. It’s about the endurance of quality journalism — expensive to produce, and under economic pressure as never before...”³⁷

If an exemption of this kind was needed in Australia, MEAA would strongly support its creation.

Addressing “fake news”

“The upcoming generation not knowing the difference between ‘fake’ news and properly researched, verifiable, ethical journalism. Honest ethical journalism shines a light into the dark corners where the corrupt want to hide. It is crucial that it is encouraged and supported. Public interest journalism is essential and cannot be underestimated if a thriving democracy is to be maintained. A challenge for the future is the dominance by a few commercial media behemoths, squeezing out local, niche news organisations; and the divergence of news consumption via varying platforms.”

Freelance journalist and MEAA member

The inquiry’s terms of reference make a specific request for information on fake news.

MEAA believes the endless cost-cutting we are experiencing in established newsrooms could not have come at a worse time to coincide with the rise of deliberately-created misinformation. Cutting reduces quality and endangers public trust. Public trust in our media is critical to counter malicious sources of false information.

Measures of public trust in the media can be notoriously tricky things, but there appears a consistent downward trend in the western world. The most recent Edelman survey had trust in the media in Australia at only 32%, a 10 point decline year-on-year, and a staggering 15 points lower than the figure for the US.

There can be no doubt that the savage cost-cutting we have seen in newsrooms is contributing to a decline in quality which can only further endanger public trust.

Recently in Australia a Melbourne murder trial was aborted after an article was published on the Yahoo 7 site which contained prejudicial details of the accused drawn from Facebook which had not been put to the jury. The article was published directly to the website by the Sydney-based journalist, who did not attend the trial, without any intervening checks. While the publisher claimed this was in breach of company policy, what resources there were in the newsroom to back that policy up is an open question.

Simon Wheeler, head of editorial at Yahoo7, “accepted that a process that he described as ‘copy and paste’ was commonplace and readily anticipated by journalists and news website proprietors as a legitimate and possible use of material posted to the website”.³⁸

MEAA was recently contacted by a journalist working for a digital news operation who wanted to know what the law was about publishing photos of the accused in particular court proceedings. Why did they ring us? Because they said there was no one in their newsroom who knew the answer to the question.

At a time when attacks on our profession are being led by no lesser person than the President of the United States, restoring and maintaining public faith in the integrity of our work is more important than ever.

The “fake news” label is being thrown around like confetti by politicians. Not just the populist Trump imitators, but by politicians of every political stripe - as MEAA’s annual report into the state of press freedom in Australia noted. It, of

³⁷ Jim Rutenberg, *News Outlets to Seek Bargaining Rights Against Google and Facebook*, *New York Times*, 9 July 2017

³⁸ <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2016/699.html>

course, has nothing to do with what the term actually means: content that is not authentic journalism, content that is deliberately and maliciously designed to deceive the reader into believing it is authentic. When a politician uses the term, too often it has everything to do with seeking to diminish inconvenient facts and analysis that does not fit a politician's preferred narrative.

We urge this inquiry to focus on the stark realities confronting the news industry in this country.

Recommendations

Government support for media

There is no magic bullet to restoring the media to the position it was just six years ago. Digital disruption has and will continue to reshape the industry. There is no going back.

But it is true that, unless something urgent and comprehensive is done the media will continue to collapse, redundancies will continue to reduce the number of journalist "boots on the ground", audiences will become increasingly dissatisfied with media outlets and more susceptible to "fake news", and the public will become less informed.

Access to information is a human right. The media plays an essential role as the fourth estate in a healthy, functioning democracy. Government has for decades played a role in the structure and regulation of broadcast media. It is a major advertiser. It is time for government to foster, encourage, promote and support the media so that it can continue to function for all Australians.

MEAA believes the following areas of government support for media should be considered so that what has been called 'the most endangered' form of journalism in new media ecosystem - public interest journalism - can be saved.

Restore and increase funding for public broadcasting

It is clear that the cuts to the ABC and SBS has taken place at the worst possible time – denying services, content, programming and personnel from covering news, information and entertainment at precisely the moment when commercial media organisations were making the most significant cutbacks to their own output.

It is clear that the public broadcasters, and particularly the ABC, must step into the breach caused by commercial media outlets abandoning areas of public interest journalism that they previously resourced. This is necessary for ensuring that the audience is kept informed and that services are provided where others do not exist or are already crippled and unable to function – this is particularly true in remote, regional and rural Australia.

Support for rural and regional media

While many media outlets have already been lost from the bush, those that remain continue to struggle against unequal forces. The need to ensure a multiplicity and diversity of voices, as well as maintaining local voices and ensuring local stories are told, requires the government to provide support for rural and regional news outlets in the form of tax incentives and other measures.

Tax pursuit and relief

Digital disruption has fragmented the audience and the revenue base for the media. It has meant that the audience assumes the news it wants comes at no cost. That is because it is increasingly delivered by media organisations (that pay negligible or no tax in Australia) that have subsumed the role of being a publisher by taking copy and distributing it – taking editorial content they have not created and earning revenue by disseminating it to an audience that attracts advertisers.

Tax these media companies to effectively recover lost revenue from content creators and return it to the media organisations in the form of tax relief, subsidies, training, re-training and public broadcasting.

Some consideration should be given to implementing a levy so that funds could be raised from digital disruptors and redirected to supporting media and public interest journalism.

Subsidies

Government newspaper subsidies, which have been in use since the 1970s, exist in Belgium, Finland, France, Netherlands, Norway and Sweden. Canada has its Canadian Periodical Fund providing assistance and rewarding innovation and industry initiatives to Canadian publishers, magazines and non-daily newspapers to ensure the public has access to a range of Canadian publications.

MEAA understands the Senate select committee has already been provided with submissions that detail the range and type of subsidies that exist in many countries.

MEAA would particularly like to direct the Senate select committee to the London School of Economics Media Policy Projects' brief *Public Funding of Private Media*.³⁹ It notes that indirect subsidies for press are "widespread" across 13 European countries and usually exist in the form of reduced value added tax. "Other instruments used to indirectly support the press are reduced tariffs for telecommunications, electricity, paper or transport."⁴⁰

"Several countries also implemented direct press subsidies. The most common is a production aid for selected press organisations (see Table 2). The idea behind this form of subsidy is to maintain news organisations that experience difficulties refinancing themselves in the (advertising) market. By supporting specific titles (e.g. second newspapers) these subsidies potentially preserve or improve media diversity and pluralism. In addition, some countries also support newspapers in minority languages."⁴¹

MEAA would like to highlight one example: the French government provides €1 billion a year in State subsidies.

- Direct subsidies – In 2015 direct subsidies worth €77 million were provided to 326 newspapers and publications. The subsidies assisted regional and local press, helped fund modernisation and to assist with restructuring. More than 93% of the French Government's support goes to hard-copy newspapers and only 7% to exclusively on-line providers.
- Indirect subsidies – Indirect subsidies worth around €500m go to reduce postal tariffs and to assist with transport. There is also around €200m for official judicial and legal notices, another €200m for exemption from the local business rates, €160m for the lower rate of VAT applied to the press, and around €250m on the special tax and social security contributions status granted to journalists. The state also pays more than €100m a year to newswire Agence France Presse (AFP).

MEAA believes there are numerous opportunities for the government to ensure subsidies could be made available to media that would not only directly and indirectly provide assistance to the industry but also be able to do so without fear of editorial integrity being compromised.

MEAA urges the committee to consider these opportunities. As the London School of Economics paper notes: "The comparison of public support measures for private media organisations in 18 media systems shows that if there is political will to support news organisations and journalism, policymakers can choose from a number of different options and there are established measures to protect editorial independence."

A levy on news aggregators

It has been suggested, and MEAA mentioned in its public hearing, that a levy could be applied to news aggregators – with a figure of 1% having been suggested as a starting point for discussion.

Just how a levy could be implemented should be investigated.

³⁹ *Public Funding of Private Media*, London School of Economics Media Policy Projects, March 2014

<http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-11-Public-Funding-Private-Media.pdf>

⁴⁰ *Ibid* Page 8

⁴¹ *Ibid* Page 9

MEAA would suggest the independent distribution of a levy is crucial for its success. A levy would need to have a structure with transparency, plus guidelines and assurances of independence and perhaps, would operate much like a blind trust in terms of its distributions. There would also need to be a considerable discussion with the industry and with MEAA about a distribution mechanism that it would guarantee ongoing editorial independence.

The levy could operate, in part, as a media business incubator – providing funds to assist with supporting start-up media businesses. If a start-up company is successful, the start-up cash could be repayable via a HELP/HECS type system.

Media diversity fund

The Committee will be aware that the Government on June 28 2017 the Federal Government waived broadcasting licence fees for television and radio broadcasters for the current financial year – a one-off relief measure worth \$127 million.⁴²

MEAA proposes the creation of a media diversity fund of between \$50million- \$100million per annum over five years. Eligibility could be for new and “old” media, but based primarily on the provision of public interest journalism – and specifically in the form of investigative and/or long-form journalism.

Funding could be sourced from the government, the levy on news aggregators outlined above levy or based on other media operating fees (as envisaged in Convergence Review).

The levy could be overseen by a New Media Steering Group that could develop a selection criteria and report back to the Senate select committee every six to 12 months.

Tax deductibility for news subscriptions

Tax deductible subscriptions should be available to encourage people to pay for and support Australian news media that helps inform and entertain Australians and is seen as a vital pillar of Australian democracy.

Deductibility should be offered for media that can demonstrate it provides essential news, information as a public service. It should be available for any media business that employs Australian journalists to report on Australian events.

Industry assistance scheme

“It has long disturbed me that there are no avenues for mentorship... for connection between the new vibrant youth of our industry with those who have worked their lifetime in it. Everything that happens is by fortunate chance rather than embedded in our professional environments. No-one anywhere is running the training of journalists on site. Institutional training seems to have been an excuse by employers to drop this important aspect of producing good journalism and journalists. Hoping that it happens through luck and chance is not good enough surely, especially given the time poverty of most of us working in the industry these days. With Mark Colvin's sad passing, who replaces him within the ABC corridors?”

MEAA member Kirsty Cockburn

The offer of retraining, retooling and innovation grants and assistance should be offered to help the media industry cope with digital disruption and to maintain editorial staffing levels to ensure important public interest reporting rounds are maintained. This could include scholarships for specialised journalism training (in areas such as investigative reporting; science and technology; freedom of information; and so on, as well as mentorships and exchanges).

The aim will be to encourage the media to explore ways to work smarter using digital and to ease the transition from traditional media platforms such as print.

For individual journalists, MEAA supports the provision of counselling and assistance to media workers as they transition out of secure work.

⁴² <http://www.abc.net.au/news/2017-06-28/interim-financial-relief-for-australian-broadcasters/8659384>

And there should be an end to the practice of exploiting student/trainee journalists by ensuring that internships at media outlets are fully paid.

Encourage philanthropic support

There is a strong history of philanthropic support for US media. Legislation provides tax deductibility or exemption to low or non-profit organisations. Some states in the USA also have provision for what are known as *low-profit limited liability corporations* (L3Cs).

Australia already does have a scheme to grant charitable or tax exempt status to organisations, including in the cultural space. An expansion of this in the area of public interest journalism may be worth examining.

The recent Canadian parliament's report (outlined above) urged the Canadian Government to make it easier for not-for-profit media and foundations to become registered charities.

Clearly we cannot expect to match the philanthropic experience of the US but the situation is so dire for the Australian media that every opportunity should be explored and encouraged. There is an opportunity for government to encourage the establishment of foundations and not-for-profit media outlets and this should be explored.

MEAA would be willing to assist with this concept and it is likely this would also be supported by the Walkley Foundation.

Support for freelance journalists

Under the law, freelancers are independent contractors. But it is clear that media outlets have been exploiting freelancers for many years: reducing their pay rates, stripping away their rights, forcing them to sign unfair contracts that restrain their ability to trade. This maltreatment must stop.

If media outlets are to use freelancers as editorial content providers that work alongside their employed staff, then freelancers must be entitled to some of the same wages and benefits as those staff.

MEAA believes there is an opportunity for consultation with freelance journalists to ensure their voices and grievances are heard and addressed by a new way of working. This should include a scale of proper pay rates for freelance work, a pay scale that is enforceable.

MEAA would welcome a government study to develop ways to address how freelance journalists can be afforded protections and certainty that would allow them to continue to work as independent contractors without being subjected to the mistreatment, poor pay and insecurity currently meted out to them.

Consideration should be given to amending trade practices measures to allow freelance journalists to collectively bargain for a fairer deal and to ensure that media employers bargain in good faith.

MEAA would support consideration being given to distributing funds from a possible levy on news aggregators to assist freelance journalists with training and development, particularly in operating a small business and for compensation for unfair contracts and plagiarism (#journotheft), and to ensure they are provided with funding to ensure a liveable income and prompt payment (terms of trade).

Defamation laws

Defamation actions require media companies to lawyer up at enormous expense with the potential for costly damages and costs to be awarded against them. Defamation has evolved into an immense threat to media businesses, and to press freedom itself.

There is a dire need to reform of Australia's uniform national defamation legislation that allows people to be paid tens of thousands of dollars damages for hurt feelings without ever having to demonstrate they have a reputation, let alone one that has been damaged.

Leading media lawyer Peter Bartlett, writing in the 2017 annual report into the state of press freedom in Australia, quoted leading media QC Matt Collins: “as soon as a publisher is found to have made a factual error and no matter how minor, in practical terms, the plaintiff succeeds”. He adds that it is relatively easy for a defamation plaintiff to establish that he has been defamed. It is then up to the defendant to establish that even though the plaintiff has been defamed and has suffered loss, the plaintiff should not be awarded damages. That is a huge hurdle for a defendant, and one that is rarely achieved.”⁴³

The uniform national defamation law regime commenced operation in January 2006 by agreement among the states at the Council of Australian Governments (COAG). Only the states are signatories to this COAG agreement, the federal government is not a signatory. Any changes to the law must be agreed by all of the states.

The regime does not have a review clause. However, in 2011, after five years of operation the NSW Department of Justice undertook a review of the defamation laws. That review was not concluded and not presented to the NSW Government.

MEAA, as a member of the Australia’s Right To Know (ARTK) industry lobbying group, supports an ARTK campaign for a review of the operation of Australia’s uniform defamation law regime. In July 2015 ARTK called for the law to be updated so that it could rectify problems that had become evident after almost 10 years of operation and also to reflect changes made in Britain when that country’s law was updated to reflect the impact of digital publishing. ARTK’s aim was to bring the law in line with international best practice and remove areas where the uniform laws have not proved successful or where it is inconsistent or do not work as intended. Another aim was to ensure that criminal defamation is repealed and removed from the statutes.

At the end of 2015, the meeting of the various attorneys-general that makes up COAG’s Law Crime and Community Safety Council (LCCSC) the issue of a uniform defamation law review and update was being discussed “below the line”.

The NSW Government was tasked with finalising its 2011 review; NSW would be used a template for a broader discussion among all the jurisdictions so that the uniform defamation legislation could be updated. The aim was for the review to be presented to the NSW attorney-general which would then result in a cabinet paper being presented to the NSW Cabinet sometime in 2016. The paper would be expected to recommend issues to be further considered by the Defamation Working Group (DWG) which consists of officials from all jurisdictions. The DWG would then make recommendations to the LCCSC. It was anticipated that the LCCSC would then create a mechanism of public consultations.

There appears to have been no further progress.

It is high time the defamation law regime in Australia was updated. MEAA urges that the Standing Committee on Law, Crime and Community Safety move swiftly to review and reform the national uniform defamation law regime.

⁴³ *The Chilling Effect, the Report into the State of Press Freedom in Australia 2017*, MEAA, May 3 2017, page 7
<https://www.meaa.org/resource-package/the-chilling-effect-the-report-into-the-state-of-press-freedom-in-australia-in-2017/>