

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

## JOINT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND EN- VIRONMENT

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*Dé Máirt, 11 Iúil 2017*

*Tuesday, 11 July 2017*

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Tháinig an Comhchoiste le chéile ag 5 p.m.

The Joint Committee met at 5 p.m.

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Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Timmy Dooley,	Joe O'Reilly.
James Lawless,	
Eamon Ryan,	
Bríd Smith,	
Brian Stanley.	

Teachta / Deputy Hildegarde Naughton sa Chathaoir / in the Chair.

## Business of Joint Committee

**Chairman:** I remind members to either turn off their mobile phones or switch them to flight mode as they interfere with the sound system. It is proposed that we follow the following agenda, starting with a public session on the pre-legislative scrutiny of the general scheme of the Broadcasting (Amendment) Bill 2017 and retransmission fees. We will then have a sos of five minutes, followed by a meeting in private session. Is that agreed? Agreed.

The committee considers the funding of public service broadcasting to be one of its priorities this year. I thank the stakeholders, witnesses and members who attended our forum in Dublin Castle last Friday. It was very positive. Today's topic was referred to the committee by the Minister. I welcome all of our witnesses today. From the Department of Communications, Climate Change and Environment we have Ms Patricia Cronin, assistant secretary, and Ms Mary Mooney and Mr. Dualta Ó Broin, assistant principals. We also have Mr. Michael O'Keeffe, chief executive, and Ms Celene Craig, deputy chief executive, from the Broadcasting Authority of Ireland. From Raidió Teilifís Éireann we have Ms Dee Forbes, director general, Mr. Brian Dalton, managing director of corporate affairs, Ms Aisling McCabe, director of platforms and strategy, Ms Eleanor Bleahene, RTÉ solicitor's office, and Mr. Matthew Horsman and Mr. Paul Fleming. We also have Mr. Pádraig Ó Ciardha, leascheannasaí of TG4. The witnesses' opening statements and presentations have been circulated to the committee and will be published on the committee website after this meeting.

I wish to draw the witnesses' attention to the fact that, by virtue of section 17 (2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if you are directed by the Chairman to cease giving evidence in relation to a particular matter and you continue to do so, you are entitled thereafter until to a qualified privilege in respect of your evidence. The witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given, and are asked to respect the parliamentary practice to the effect that, where possible, you should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Any submissions or opening statements made to this committee will be published on the website after this meeting. Members are reminded of the longstanding parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I will now call on the first witnesses from each organisation. If they wish to have other representatives from their organisations speak, I will let them introduce the speakers in question. Our first witness is Ms Patricia Cronin from the Department of Communications, Climate Action and Environment.

### Pre-legislative Scrutiny of the General Scheme of the Broadcasting (Amendment) Bill 2017 and Retransmission Fees: Discussion

**Ms Patricia Cronin:** I thank the Chairman. I will give a brief introduction and background to the legislation before moving on to discuss the substance. I would first like to thank the Chairman of this committee, Deputy Naughton, for inviting the Department to participate in today's meeting. I hope that today's exchange will be of benefit to the committee in its con-

sideration of the proposed amendments to the Broadcasting Act. I will make a brief opening statement and then, following the contributions from RTE, TG4 and the BAI, my colleagues and I will be available to answer questions.

Following a request from the Minister, this committee agreed last October to review the issue of the future funding of public service media. This culminated in a very useful consultative forum at Dublin Castle last Friday, which in turn helped to educate and inform stakeholders about the challenges facing public sector broadcasting. When the Minister wrote to the committee on this issue, he indicated that he would also be bringing forward legislative amendments to the Broadcasting Act 2009 to deal with some of the shorter-term funding issues. Since then, the Minister has sent the draft scheme of the Broadcasting (Amendment) Bill 2017 to this committee for pre-legislative scrutiny. Committee members have already been provided with some briefing on the heads of the Bill. In addition to scrutiny of the Bill, the Minister requested that the committee consider the issue of retransmission fees, which are not currently included in the legislative amendments. I propose to set out the key elements of the Bill and an outline of the need for consideration of retransmission fees. The draft scheme of the Bill contains a total of seven heads, which deal with the funding of broadcasters and improving TV licence fee collection. I will set out the most significant proposed amendments.

One of the difficulties associated with the current TV licence system is the unacceptably high level of evasion, which is estimated to be more than 14.6%. This is very high by European standards with, for example, the UK having an evasion rate of 7%. The figure in Ireland equates to a loss of approximately €40 million per annum to public service broadcasting, which includes the broadcasting fund that supports the independent audiovisual production sector. The evasion rate in the UK fell from 13% in 1991 to the current 7% after the BBC engaged commercial companies to undertake the licence fee collection role. On the basis of legal advice received from the Office of the Attorney General, however, it is clear that the current legislation does not allow for the Minister to appoint a TV licence agent by way of public tender. The proposed amendments to section 145 would rectify this situation.

The proposed amendments to sections 33 and 123 of the Broadcasting Act 2009 are designed to allow for the Broadcasting Authority of Ireland, BAI, to be allocated public funding from TV licence fee receipts towards meeting its operating expenses. A further amendment in section 33 provides criteria that the authority can consider when determining the granting of exemptions, deferrals or reductions in the levy for individual broadcasters or classes of broadcaster. It is intended that the consequent reductions in levy contributions would be applied across the board by the BAI in order that all broadcasters would benefit in equal proportion from the measure. It is proposed that smaller community radio stations will be exempt from the levy altogether.

The section 71 licensing process was established in the 2009 Act as a means of encouraging new market entrants, and particularly with regard to new and innovative forms of audiovisual media that might have a smaller audience appeal. As such, it was determined that section 71 broadcasters would not be subject to paying the BAI levy. Section 71 is, however, the only way in which new entrants, including traditional linear broadcasters, can establish themselves to provide broadcasting services in Ireland. Given the likelihood that some UK-based broadcasters will look to establish a base in Ireland following Brexit, it is considered that the current provision should be amended in anticipation of this possibility. This head, therefore, proposes providing the BAI with greater flexibility in determining the classes or types of section 71 contracts that might need to be issued in a post-Brexit scenario. The proposal and provides for amending the levy provisions to allow for the possibility of bringing section 71 broadcasters

within the scope of the BAI levy. This would ensure that, where appropriate, such services can be required to contribute towards the costs of their regulation, which would serve to reduce the burden upon other broadcasters paying the levy.

It is proposed to amend the provisions of section 154 to allow for the creation of a new funding scheme that would allow the granting of bursaries to journalists in local or community radio stations. The purpose of the scheme is to promote the development of good journalistic practices and standards in local radio. The proposed amendment takes account of the BAI's objective to "provide a regulatory environment that will sustain independent and impartial journalism" set out in section 25(1)(d). The authority would determine the number and amount of bursaries.

It is proposed to repeal the current exemption for cable platforms that is provided in section 103 of the Copyright and Related Rights Act 2000 on the basis that there is no longer a public policy objective served in maintaining this exception. This exemption was originally introduced in the late 1980s to support the roll-out of cable television services in Ireland. This task has largely been achieved and, in any case, television services are now available over a wide range of platforms, including satellite. The exemption only relates to Irish broadcasters. The cable operators are not exempt from clearing rights in respect of any of the UK channels that they carry. The way the system currently works is that RTE, TV3 and TG4 clear both the broadcast rights and the content rights for all platforms. By repealing this provision, the rights holders for the content would have the flexibility to negotiate the clearance of their rights with the broadcasters or directly with the platform operators, whichever was deemed most beneficial to them. The broadcasters would also be free of the onus to clear all of the rights for every platform. The amendment would also remove the anomalous situation where a platform operator can exploit this provision to retransmit content which the public service broadcasters do not have the right to broadcast outside of their own network. It is worth noting that a similar approach has been taken in the UK Digital Economy Act, which was enacted at the end of April this year.

I will now address retransmission fees. The issue of amending section 77 to allow Irish broadcasters subject to "must offer/must carry" obligations - RTE, TV3 and TG4 - to negotiate adequate compensation for the content they provide to television service providers has been identified by RTE as a potential significant source of revenue for public service broadcasters. A legislative amendment would be required in order that broadcasters can seek to agree financial terms with relevant platform operators, including Eir, Sky, Virgin Media and Vodafone. The platform operators are not in favour of amending the existing regime in this area. The Minister is of the view that it would not be prudent to progress any legislative proposal without detailed consideration being undertaken. He had advised the Cabinet of his intention to ask this committee to engage with both the public service broadcasters and the platform operators on the issue of retransmission fees.

I hope this submission assists the committee's consideration of the draft legislation and I look forward to answering any questions members may have.

**Chairman:** I now invite Mr. Michael O'Keeffe from the BAI to address the committee.

**Mr. Michael O'Keeffe:** I thank the Chairman and members for inviting us here today. We welcome the principles contained within the proposed Bill, which we believe will be of benefit to the public, commercial and community broadcasting sectors in Ireland. A number of the heads, including the specific wording of a number of proposed sections, require further consideration and clarification and we envisage assisting the committee and the Department as this

goes through the legislative process. I will comment on some specific heads concentrating on some more than others because they relate to us.

There are three elements to head 2 covering working capital arrangements for the BAI, the potential extension of the levy order to section 71 contractors and a proposal to allow the BAI to be part-funded from the licence fee. The BAI has sought the element relating to working capital for some time and it strongly supports the proposal. It is somewhat complex and relates to when the BAI was first established and the fact that the levy is payable in arrears. It left us short of working capital at the very beginning. We have addressed that through a borrowing facility every year. As this proposal would remove the requirement to go through a borrowing arrangement every year, we would welcome it. We see it as a minor amendment that will be of benefit to us.

We welcome the proposal to include section 71 contractors within the levy order provisions. We understand the background. In respect of the background to excluding them back in 2009, the idea was to encourage new entrants into the marketplace. We did not have many new entrants based in this jurisdiction and the provision was designed to encourage those. It is important that we still have that provision. This is why it is important that the discretion and flexibility within the proposed section 33(4)(A) of the head are maintained because there will be a different mix of broadcasters. We might have potentially larger broadcasters from the UK coming in and it is certainly appropriate that there be a levy provision on those but, hopefully, we will see the development of smaller, niche, minority broadcasters. It would be difficult for these broadcasters to become established if we were to impose significant burdens on them. We welcome the fact that it is happening but we think the flexibility the Department has put into the head makes a lot of sense and we very much support that.

The BAI notes the potential for up to 50% of the levy funding to be provided from the licence fee. We welcome the principle of reducing the financial burden on the commercial and community broadcasting sectors and TG4 under this proposal. We would express a concern around RTE in respect of this because there is potentially a net loss through this proposal. RTE does pay us a levy as well. If the money is taken from the licence fee and there is no recompensing mechanism, there will be a net loss to RTE on that. The BAI, in its annual reviews of RTE funding over the past few years has recommended small increases in that funding but if this was to be implemented without there being some mechanism to offset it, be it through the increase in tackling evasion or an increase in the current level of the licence fee funding that goes to them, the principle would go some way to addressing it. We agree with the principle and it is very valuable from our point of view that there is funding given to the broadcasting sectors, public, commercial and community, because they are challenged. We would caution, however, that before it is implemented to the extent envisaged the question of how the net loss that RTE would suffer would be addressed.

Head 3 addresses the lacuna in the current Act around the section 70 contractor, which is TV3. We support the principle that every service transmitted should operate with a licence whether provided in Ireland or another EU jurisdiction. We welcome the principle under this head.

I have captured many of my points about head 4 in my response to head 2, which concerns the safeguarding of any loss of income that would arise from RTE as a result of that. The timing will be important in respect of how and when we introduce the new levy provisions.

We have no current role in the matters envisaged in head 5 and I do not envisage the De-



partment will give us a current role and we are happy with that. We endorse everything the Department has said about, and any initiative that supports, tackling the high levels of licence fee evasion but we do not particularly want the task.

We strongly endorse the provisions under head 6, the bursary for journalism in the community sector. It is intended that this will be done through the broadcasting funding scheme. It does support our objective within the Act of sustaining independent and impartial journalism. It has the potential to support the sustainability of local community radio sectors which have obligations around news and current affairs and I think this will help to support those, particularly local radio services which provide strong commitments to news and current affairs. It also should support increased diversity for audiences. There are several reasons for seeing this as a very positive development and we strongly support the provisions under head 6. The issue of copyright addressed under this head is not currently within our remit. We would like to reserve our position and explore the proposal further before taking a formal position on this.

Deputy Ryan asked me about the retransmission fees last week. I have not changed my view in the week. We support the principle of platform operators being charged retransmission fees which would recognise the value of the content being created by the public service broadcasters and other free to air broadcasters. The content provided by these services is a key driver of consumer support for the packages provided by platform operators. In a time of funding challenges for broadcasters under existing models, it would appear a legitimate mechanism for the provision of additional funding to support content creation. We do think, however, as do our colleagues in the Department, that there are strongly held views among the platform operators in opposition to this proposal. We suggest that there may be a requirement for further analysis, for example, international comparators or perhaps an impact assessment of what the proposal might entail. This might be undertaken in advance of any decision being taken to amend the legislation. I emphasise that we support the principle of charging retransmission fees. We are happy to answer any questions the committee may have.

**Mr. Pádhraic Ó Ciardha:** I will try to be brief in two languages. Gabhaim buíochas leis an gcoiste as an gcuireadh teacht anseo. Tá sé go deas i gcónaí a bheith ag éisteacht le polaiteoirí ag caint faoi chúrsaí craolacháin. Níl an Bille mar atá sé foilsithe pléite ag bord TG4, mar sin níl aon tuairimí dochta cinnte le nochtadh agam. Tá tuairimí láidre ag bord TG4 faoin maoiniú a chuirtear ar fáil don chraolacháin poiblí agus cuirfidh mé iad sin i láthair i mBéarla faoi cheann soicind. Tá gá le rud éigin a dhéanamh. Níl sé soiléir dúinne mar bhainistíocht gurb é seo an rud is gá a dhéanamh ag an bpointe seo. Tá géarchéim ann. Tá gá le maoiniú ilbhliantúil, dóthanach, sásúil a leanas agus a bheas seasmhach. Níl seisean ar fáil faoi láthair.

We welcome any proposal that faces the crisis that is facing all the public service broadcasting on the island. There is a funding challenge for all of us; the smaller one is the bigger the challenge. We therefore welcome any proposals.

It was wonderful to hear all the great ideas that came forward at last Friday's forum. I congratulate the committee on organising it. We would be slightly agnostic on some of the proposals here. Continual slicing of the licence fee may sometimes seem to be a solution but I am not sure it is the robust multi-annual, viable long-term solution that is required for some of the challenges we face. I am not sure that making the carriage proposal obligatory will necessarily work to the advantage of small broadcasters such as our organisation. I have sat in a room negotiating with some of the major platform providers on key questions and it is not an easy conversation. Sometimes one has to be very agile in doing that. Would it be worth pursuing the idea of making such carriage fee voluntary rather than mandatory? There are bigger broad-

casters than us in this room and perhaps the conversations are easier when they sit across the table from some of these multinational companies. I welcome any proposal that gives us more funding, obviously, I would be foolish not to. I would however be less than honest if I did not say that it is not easy for an organisation of the scale of TG4 to negotiate in any meaningful way about large sums of money without knowing that there is something else the big player can do to another part of its activities that may be to its detriment.

Sin a bhfuil le rá agam. Sílim gur iontach an rud é go bhfuil an Bille againn. Molaim an coiste and I look forward to hearing what the committee has to say.

**Ms Dee Forbes:** I thank the Chairman and the committee for inviting us here today for what we hope will be a really good and robust discussion. With me here today are colleagues from RTE, Brian Dalton, managing director corporate affairs; Aisling McCabe, our head of platforms and strategy, and Eleanor Bleahene from our legal team. In addition we have asked two colleagues from the international media strategy firm Mediatique, Mathew Horsman and Paul Fleming, to join us, to help provide some important context on the specific issues of copyright reform and retransmission fees, which is a complex area.

Unfortunately, I was away last week so I missed the future broadcast event the committee held last Friday in Dublin Castle but I have had incredibly positive feedback from colleagues and others on the day. I echo the congratulations to the committee on having planned such an event. It seems there was broad agreement on the need for an independent, publicly-funded national media organisation to continue to play a central role in Irish life. It also seems there was a degree of consensus that the TV licence fee is in need of significant reform and modernisation. That is very welcome.

I am also delighted that the committee has engaged in a thoughtful process to understand the very real challenges facing public service broadcasting here in Ireland. RTE welcomes discussions on these issues, and if we can be of any help to the committee as it thinks more about this in the coming weeks we would be very happy to help.

As Ireland's largest public service broadcaster operating in an industry facing unprecedented change, the committee is aware of the many challenges facing RTE. We will shortly be publishing our annual report for 2016. The committee may have seen some of it already. While 2016 was a strong year in terms of audience it was also a challenging year in terms of finance. The exact details will be published next week and will show a deficit for 2016. As I said the last time I was here, most of these challenges are for both RTE and the broadcasting sector to solve. We must continue to engage audiences with great programming and strong journalism. We must make the most of newer technologies to connect and interact with, and be relevant to, audiences in new ways. We must invest in our infrastructure and digital technology to position RTE for the future. We must restructure to create a more integrated organisation and, like every organisation, continually fight to reduce our costs. We must also develop new sources of commercial revenue to help sustain the public services and programming Irish audiences continue to really value. All of these areas are for us to address and while many of these are in progress, I look forward to outlining to members our new five-year strategy later in the year, once we have completed it.

The one aspect of public service broadcasting that is outside our control is the TV licence system. That is the responsibility of the Minister, Government and this House, and RTE cannot fix it though we are reliant on it for over 50% of our revenue. Some commentators seem to think that we should not continue to advocate for reform of the TV licence system, even though

everyone knows, as was confirmed again by Friday's discussions, that it is fundamentally broken. The reason we keep advocating for reform is because there has been no reform. The current uncertainty around the TV licence fee system, both in its current performance and in how and when it might be reformed, is making it almost impossible for RTE and those reliant on us to plan for the next year ahead, let alone the next five years as is expected by our regulator and the Department. The cost of the TV licence fee has now not been increased in a decade. This is unlike virtually every other public or private utility. To keep pace with inflation, stamps have increased in price, newspapers, pay TV subscriptions, health insurance, phone bills, hospital fees, electricity, broadband, bus fares - almost anything one can think of, so why not the TV licence?

During 2016, on average, Irish adults spent an hour watching RTE television and an additional hour listening to RTE radio every day. RTE's online and mobile services are also among the most popular and frequently used in the country. Currently at €160, the TV licence costs Irish households 44 cent a day. The most vulnerable in Ireland have their TV licence paid through the household benefits package. If the TV licence fee had simply kept pace with inflation since it was last raised, as it is supposed to do as set out in legislation, the TV licence today would be at €175 per household per year, or rather 47 cent per day, still just over one quarter of the cost of daily broadsheet newspaper. That change alone would bring in an additional €15 million to public service broadcasting, to both RTE and the independent production sector which is very reliant on that income. Licence fee evasion in Ireland is among the highest in Europe at approximately 15%, with some €40 million being lost each year to public service broadcasting and programming in both RTE and the independent production sector. A further €20 million is being lost each year through outdated TV licence exemptions, no longer reflective of how people are consuming TV. These exemptions were written before the iPad even existed or a whole host of TV services like Sky Go, RTE Player and TG4 Player had become so prevalent.

The failure to reform and modernise the current TV licence system is now clearly unfair on those who do pay it and who are subsidising those who do not. It is costing jobs across the sector, is causing a stark reduction in Irish-made TV programming, threatens the provision of trusted news and current affairs and has a stifling effect on the potential of the Irish broadcasting sector as whole. Sensible and achievable reforms, many of which have been introduced in other European countries, could transform the sector here in Ireland and help to ensure the long-term viability of a strong Irish broadcasting voice.

I was encouraged by Deputy Dooley's reported comments last week that the Irish television licence fee system needs to be completely reformed to ensure proper funding for public service broadcasting. In the context of comprehensive reform, I agree with him that it would be appropriate for a sensible discussion about how the increased proceeds of that reform might support public service broadcasting and programming, both inside and outside RTE. I very much hope that the committee will encourage decisive action and advocate for comprehensive reform, because without it much of the ambition that I know many in RTE have for public service media, and indeed that many members of this committee have for us, will simply be impossible to achieve.

In this context, we welcome the opportunity to give the committee our perspective on the proposed legislation and to give our views on the issue of retransmission fees, which we strongly feel should be accommodated within this amendment Bill. Indeed, as members will see from our own suggested amendments, they are relatively straightforward and they are sought in a context where RTE and other Irish free-to-air broadcasters must offer their channels to any ap-



appropriate network, no matter how small or how large. The key change we are looking for is the insertion of two words into section 77(11) and section 77(12) of the Broadcasting Act, which when allied with the Minister's proposed changes to copyright legislation would simply provide for an entitlement for RTE to be paid for what it is obliged to offer. This would finally level the playing field for fair negotiation between Irish broadcasters and TV platforms. Sky, Virgin, Eir and Vodafone are key partners for RTE and other Irish broadcasters. We have worked, and will continue to work, well together - it is in all our interests. These pay TV platforms, crucially, allow us to maximise our reach with audiences, a key tenet of public service broadcasting, and allow us to generate commercial impacts. In turn, as Mr. Horsman and Mr. Fleming will illustrate in detail shortly, we are creating very significant commercial value for them. In our view the relationship, largely because of the law, is now very imbalanced in favour of platforms.

Creating a level playing field by amending legislation is not a guarantee of any outcome. It is not a handout and it is not double taxation as the platforms may allege, but it will allow for a fair commercial negotiation on the basis of value. Not only could these reforms help RTE maximise its commercial revenues, as it is required to do by law, it could also provide crucial new revenues to all Irish broadcasters, essential to ensure continued investment in Irish programming and the Irish independent production sector. These reforms would also ensure that broadcasters can protect the value of their channels and programming from a whole new category of market entrants.

Access for consumers to broadcaster channels on pay TV services is changing at a rapid pace. In recent years, the simple onscreen TV guide is increasingly being pushed to the side with home screens, which offer consumers all sorts of choices from on-demand programming, Internet services and movies and other services competing for the attention of audiences. It is reasonable to ask whether the existing pay TV providers in Ireland would have been able to grow such successful businesses here without free access to Irish free-to-air channels, the channels that remain, despite so much change, by far the most popular in pay TV homes. As of today, under existing must-offer legislation, should Facebook, Google, Amazon or Apple want to launch a TV proposition in Ireland, they could simply ask for our linear TV channels and we would be obliged in law to offer our channels to them free of any fees. While there may have been a rationale many years ago to support the growth of different forms of TV access, is it reasonable for this to continue now not just for the existing players, but potentially for a whole new set of operators, many of whom are some of the most well-resourced media companies in the world?

Members will have seen from our submissions in advance of this session that we have included two detailed papers relating to copyright reform and retransmission fees. One details our specific suggested legislative amendments and the other, from Mediatique, is a detailed submission which we believe sets out a fair description of the current arrangements between broadcasters and platforms in Ireland, and strongly makes the case for a fairer system. We are conscious that these are complex issues and that is why we have asked Mr. Horsman and Mr. Fleming to come in, walk members through their submission and give them the opportunity to ask questions on both the international context and the benefits of a levelling the playing field between broadcasters and platforms. Before I do that I wish to briefly comment on the other aspects of the amendment Bill as currently presented. All of us here, including my colleagues around the table, share an ambition for Ireland to produce much more diverse and high-quality Irish programming and content to benefit the viewer; for there to be strong, fair, independent broadcast journalism and investigative reporting; for there to be more investment in key genres like TV drama and children's programming and in innovation; for there to be a thriving and

creative independent production sector; and for there to be a plurality of voices, viewpoints and viable outlets and sources in Irish broadcast media at both local and national level.

Overall, given the scale of reform I believe everyone here considers necessary with regard to the TV licence fee in particular, if this version of the Irish media landscape is to happen, we are somewhat disappointed at the scope of ambition and likely impact of the proposed Bill. That is not to say there are not some welcome developments, because there are, but there is an opportunity to do more.

RTE believes strongly in the central role of the broadcasting regulator, the BAI. Its role is becoming more complex as technology evolves and audiences are consuming media in more fragmented ways. Clearly the BAI needs to be resourced properly to fulfil its role. Making adjustments to facilitate the BAI regulating new broadcast services that may move to Ireland due to Brexit makes eminent sense, as indeed it makes sense to amend legislation to give the BAI discretion on section 71 licenceholders in respect of the BAI levy.

However head 4 of the proposed Bill is of concern to us. Given the context of a host of independent reviews - many of them conducted by the BAI itself - stating that RTE should receive increased public funding, we were somewhat surprised that an outcome of the Bill as proposed would result in a further cut in public funding to RTE. If, as stated, the current BAI levy was to be part-funded up to 50% from the TV licence fee, it would result, by our calculations, in a net loss of approximately €1.6 million to RTE per year. That monetary figure could grow further should the BAI's costs increase.

We are very aware of the financial pressures currently on all broadcasters and would welcome measures to relieve the regulatory cost burden for everyone, but to do so in a way that has the net effect of reducing RTE's public funding further hardly seems either fair or consistent with all the independent reviews suggesting the reverse needs to happen. We believe that any move to use TV licence fee revenues to directly pay for the BAI's costs should only happen after real TV licence fee reform begins to deliver increased revenues.

RTE welcomes the move to consider the TV licence collection arrangements. However, in respect of head 5 of the Bill as set out, it appears that should the Minister appoint an issuing agent following a public competition, it would not be given the enforcement powers, under section 145, to do the job. RTE would welcome further clarification from the Department as regards the proposed amendments here and what purpose they serve.

As for head 6, RTÉ welcomes the initiative to support the development of young journalists through a new bursary scheme administered by the BAI. The scope and scale of this scheme is, however, unclear, nor is it clear how it might impact on the funding allocated to other BAI schemes. RTE would welcome clarification from the Department as to what is being planned.

RTE greatly welcomes head 7, which proposes the removal of the copyright exemption that currently applies to cable operators. RTE has been advocating for such a measure for a number of years now and it is a welcome development. I will now hand over to Mr. Horsman and Mr. Fleming from Mediatique to take the committee through some detail on the transmission fees.

**Mr. Mathew Horsman:** We have quite a detailed report and I assume committee members have received it. We have copies if people wish to see it. I will leave them for members to decide if they want them. What we thought we would do is-----

**Deputy Eamon Ryan:** Could I have a copy please?

**Mr. Mathew Horsman:** Yes.

**Chairman:** We will give them out.

**Mr. Mathew Horsman:** Members need not worry; we will not go through this rather dense document page by page. Hopefully, all the answers members ever had about retransmission are in there. I will make a few opening comments and then Mr. Fleming will take us through some of the modelling we have done to look at retransmission fees and then I will come back and talk a bit about the overall revenue impact and what is going on in the Irish market.

At Mediatique we have worked on retransmission consent for some years now. We started in 2012 for the Department for Digital, Culture, Media & Sport, DCMS, where we did one of the first big reports in the UK on this topic. We have worked for other broadcasters in the UK - Channel 4, the BBC and ITV. Most recently, we have been working with RTE. We have been working with the team here on this issue since 2014. Our background is that we look at this pretty objectively.

What I am about to say is the view of Mediatique, albeit we are here at the invitation of RTE. There is an imbalance in the Irish market between free-to-air channels on the one hand and pay TV platforms on the other. There is no doubt about the imbalance. Pay TV operators in particular benefit from access to the linear channels, the underlying RTE 1 and RTE 2 channels, and all the associated services that come with that, which help pay TV operators sustain the subscription revenues they get from their users. It would not be as attractive were not for RTE channels being available, which as we heard from Ms Forbes are very popular channels, but also the content on those channels is there to be time shifted and watched on a personal video recorder. The content can be available through a player proposition from RTE. All of those services are hugely fundamental to the value proposition that is offered by Sky and Virgin in particular in this country and yet they do not pay anything for the underlying channels.

RTE has been held back from openly negotiating the terms of those particular services going to the pay TV operators because of the copyright exemption and because of the “must-offer, must-carry” issues about which many people in the room have been talking. What we are going to address is what might need to happen for those payments to be made. I should point out that I hear a lot from Virgin and Sky as we are very close to them in the UK and they will probably check with me first about what they will tell the committee. Payments are made in the US and in European countries and territories. It is not unbelievable that payments would be made by pay TV operators for free-to-air public service broadcasting services. We include a review of the markets where that is the case. We can talk about them if members wish. We talk about one particular market where retransmission fees are huge, namely, the least regulated broadcast market in the world, the US, where retransmission fees this year will be \$7 billion paid by the pay TV operators to free-to-air channels in return for having the right to put those channels on their platforms.

I am not as expert on the US market as the person whom I am about to quote. Here is something to conjure with: “Asking cable companies and other distribution partners to pay a small portion of the profits they make by reselling broadcast channels, the most-watched channels on their systems, will help to ensure the health of the over-the-air industry in America.” So said one Rupert Murdoch to the News Corporation annual meeting in 2009. Fox, the free-to-air service in the US, is heavily helped by retransmission fees. Where Mr. Murdoch has channels to sell, he thinks retransmission is a quite a good idea. Where he has a platform, such as in Ireland and in the UK, he is not so interested in the retransmission system. That is interesting

from our point of view.

Why is this coming up now? Why is there suddenly this talk about retransmission fees? In fact, it is not quite sudden because as members have just heard, we have been talking about this issue since 2012 in the UK and since 2014 in Ireland. There are some issues that have to be addressed. The business models of the broadcasters are increasingly under pressure and they are being put under pressure by the very propositions that pay TV operators provide to their consumers. Members should not get us wrong; it is terrific that these wonderful platforms are launched and they have time-shifting capabilities, Internet protocol, IP, delivered services over the top or within the services themselves. That is terrific for the consumer. The consumer is happily paying between €30 and €50 a month for the services overall. That includes pay TV channels, sport and everything else. The part of that proposition in the value is derived from the channels for which they pay nothing. This weakening of the business model which the committee has heard of from many people in the room today is only going to accelerate through changes in things like navigation, home screens and the like where it is harder and harder to find the content the Government has intervened to ensure is produced, namely, original Irish content made by RTE in particular.

The other “why now?” point is very much up to the committee. It is first of all the reform of section 103 to recognise this particular exemption for cable operators is no longer fit for purpose given what is happening in the overall marketplace. I suspect that argument has been won. It has certainly been won in the UK in the Digital Economy Act passed earlier this year and mentioned by the previous speaker. According to the Act, it will be the case from this month or early next month that there is no copyright exemption for cable operators in the UK. That will be the starting gun for really serious negotiations between broadcasters and the pay TV operators, in particular initially Virgin, as a result of these changes.

There are other things going on in the UK which I am very happy to share with the committee if it so desires. Before we get into the numbers, the point we are trying to make is that negotiation is now possible or may be as a result of section 103 and just a few changes in the enabling legislation around “must offer” which are necessary to create the conditions for a level playing field whereby broadcasters, in particular RTE, and the platform operators at least enter negotiations on an equitable and fair basis. That is not the case currently. Perhaps it would be easier to see a positive outcome for RTE and broadcasters were these changes made. They are no guarantee of this happening nor are they mandated payments, but it would allow free and open negotiations to occur between, in this case, RTE and the platform operators.

A question we have asked ourselves is how much we are talking about and what it is in relation to other payments that go on in the Irish market. First, we have to concede one important point, which the platform operators like to point out. Both channel suppliers and platform operators benefit from the channels being available on those platforms. The channels can charge advertisers reached via the platform to generate advertising revenues, while the platform gets to derive subscription income by being able to offer a full range of popular services. The question is who benefits most. Absent these commercial negotiations, the only way to estimate is to ask consumers what they would do if certain services were no longer available on the platform. That is the big test. In other words, what revenues from advertising and subscription are at risk if the channels were not carried? The flip side of these negotiations for the channels on the platform is what would happen if they were not there. With RTE, we asked consumers in the Irish market in 2014 and again in 2016 and Mr. Fleming will take us through the results of that survey.

**Mr. Paul Fleming:** In order to test the value that accrues on both sides, namely, the platform on the one hand and the free-to-air channel on the other, RTE undertook two surveys in 2014 and 2016, respectively. The key message is on page 6 of the document circulated. We can answer any questions in detail from the committee. The survey asked subscribers what they would do if the free-to-air channels were no longer available on the Sky and Virgin platforms and 50% of Sky homes in 2014 and 2016 said they would leave the platform. Equally, somewhere between 60% and 70% of Virgin media homes said they would leave the platform. A further significant proportion of homes of 15% to 17% in relation to Sky and 17% to 18% in relation to Virgin Media said they would stay on the platform but expect a discount in the price they pay on a monthly basis of somewhere in the region of 20% to 30%. What underpins this is the importance of the free-to-air channels to those subscribers. According to the data at the bottom of the page, 57% of people said RTE 1 was the most important channel to them on the Sky platform. A similar percentage is true for Virgin Media.

To some extent, this underpins the reason people make these decisions on leaving a platform if RTE and other free-to-air channels are no longer available. In effect, a large proportion of the value Sky and Virgin generate is underpinned by the fact that they carry the free-to-air channels. Of course, there is value for RTE also because a material percentage of people, 30% in relation to Sky, said they would stay on the platform if RTE was no longer available. They would either cease to watch RTE altogether or they would make alternative arrangements to watch it on Saorview or via another device. As such, there is a potential revenue risk to RTE from no longer being on the platform in that they would lose access to viewers and, hence, advertising revenue. As Mr. Horsman said, there is value for both sides and potential risks to revenue for both sides. Our analysis is about determining how large these risks are on both sides and what the relative value at stake was.

Turning to page 7, we can run the committee through some of the headline statistics. The Irish situation is set out on the left hand side. We looked at a number of scenarios. We looked at RTE coming off Sky and Virgin and then at all the free-to-air channels coming off. In each case, the value to the platform is materially larger than it is to the free-to-air broadcaster. That suggests the revenue at risk from the loss of subscribers and having to impose discounts is far greater than the potential loss of advertising revenues to RTE and the other free-to-air channels. Given these benefits, a fair settlement if commercial negotiations were possible, might suggest the midway point between those two by splitting the difference. This implies a payment from the platform operator to the free-to-air broadcaster in each case.

As Mr. Horsman said, we undertook a similar exercise in the UK in 2014 on behalf of Channel 4 and ITV across similar scenarios. We looked at all the PSBs or FTA broadcasters and just ITV and Channel 4 as the main commercial broadcasters. The patterns are more or less the same. The benefits to the platform are materially larger than the benefits to the free-to-air broadcaster which implies a payment from platforms to FTA broadcasters under some kind of commercial agreement. In practice, of course, outcomes will vary depending on the time, risk attitude and nature of the people involved in a negotiation. We have attempted here to simulate what we think a commercial negotiation might look like. In practical terms, it is impossible to model what the actual outcome of commercial negotiations will be. We have tried to simulate what it might look like.

**Mr. Mathew Horsman:** This gives us a kind of indicative quantum but also, and crucially for us, the flow. The direction of the flow of funds in all the examples is from the channel groups to the platforms. That has been true, which is what drives the US market where \$7



billion is spent for that. In every case where there has been disagreement or a dispute, it is routinely settled in favour of the free-to-air channel. People do not want a cable offering which does not include the most popular channels if they can easily, as it were, cross the street and get it from somewhere else. In a competitive market, that is a great restraint on the ability to simply get rid of services, place the whole system into blackout and live with it. That is not going to happen because the platforms will want to continue to have access to the channels.

One of the reasons we provided figures for 2014 and 2016 is that in carrying out a survey at any given time, one finds that while there are similar outcomes, it is a slightly different outcome each time. That is because it depends on how many people subscribe at the time of the analysis, what is happening to advertising, how much RTE is charging for it and what variables go into the model. It will always be a little different. What we propose here is a kind of methodology for starting to have a sensible discussion about what payment flows might be possible. It would really be down to the team to negotiate the outcome. It would not be down to the analysts and consultants. This gives one a sense of what might be at risk and at play.

People may be thinking in looking at the figures that €18 million is a lot for Virgin to pay to RTE for example. Let us skip right to page 11 as we are running out of time, albeit there is a great deal more in the presentations. We encourage members to ask any questions. They might be wondering what €18 million to even €30 million means in the context of the overall market. We did a very simple exercise at the top of page 11. We looked at the licence fee. This is what we are calling the licence fee for television as opposed to other services which are funded by the licence fee. This is taking RTE's TV spend plus Sound & Vision and TG4 all grouped as being the TV licence fee. The committee will not recognise it from most of the published figures. We then set the advertising market, not counting sponsorship, at approximately €184 million in 2016. Sponsorship is approximately €12 million. Regarding subscription, nobody reports any of these numbers properly so nobody really knows. However, we have a pretty good sense of these things and we think it is approximately €560 million in 2016 and €30 million in other areas, such as Netflix, Amazon and some of the new entrants to the Irish market. That is a short €1 billion. It is a big number next to the €18 million we discussed for the fees that might be paid by Virgin to RTE.

Keep in mind that there is also further detail below the line before going to the final page, which is that not only RTE but many other people charge for advertising in the Irish market. In addition to RTE and TV3, there are the opt-out channels. I am sure everyone has thought a great deal about those. That market was worth almost nothing a few years ago but it is now worth €40 million. Of that, we think approximately €25 million is paid to Sky for its channels. Those are channels that have opt-out Irish advertisements and no Irish content to speak of. We will return to that issue. They are taking money out of the market. Put that against the context of talking about perhaps €18 million in the example we gave earlier. It gives a sense of the order of magnitude of this.

It is also worth asking about what would happen if payments were made. If the end game is the sustainability of the public service model in Ireland, and we have talked a great deal about the licence fee and other elements, what happens to this money? Does it sustain the market for public service outcomes? One proxy for public service outcomes in our book is how much origination is being funded in a local market, particularly one which is a smaller nation that has a linguistically porous border with a big market that is able to export channels such as E4 and others that have come into the market with no commitment to content expenditure.

We basically added it up. Again, these matters are not properly written up anywhere so we

had to make some assumptions, and we will be happy to have a discussion with Sky, let alone the committee, on these issues. We know the expenditure of Sky on content for the UK and Ireland. It is a big number - £3.3 billion was spent by Sky last year on content. Of that, £2 billion is for sport. There are other categories such as movies, acquired content and so forth. We then did a *pro rata* analysis of that to the size of the Irish market, which is shown in that column. We then took Sky at its word, because it suggested that it spends £20 million in the Irish market on original content. It is not a number that we recognise, and it is fair to say that many people in the industry do not recognise it, but let us say that it is the right number. That would mean that out of every euro Sky generates in revenue, 5 cent is spent on original content in Ireland. The equivalent number for Virgin would be 20 cent on the euro and if that extra euro went into the RTE ledger it would be 83 cent. In other words, 83% of the attributable revenues RTE generates is spent on original content. It is likely, if one looks at the historical perspective if nothing else, that something that gives the possibility of having funds flow to RTE will have better outcomes than if the money stays with the platforms that do not invest appreciably in local content.

There is a great deal of detail in the back of the pack showing how the model works, and we provide many observations on the UK market. I believe what has happened there is of interest to the committee with regard to decisions on retransmission, prominence in navigation and priority issues around channels and listings. I will be happy to have a conversation on that, but I will conclude the formal element of the presentation now.

**Chairman:** I thank all of you for your contributions. I will ask my questions and then call on Deputies Dooley and Stanley. Perhaps the witnesses will take note of the questions as they are asked. There will probably be some for everybody in the audience.

My first question is for the representatives of the Department and the BAI regarding the levy order. I note that the last levy order was made in 2010. Have there been any reviews of that order over the past seven years, given that the BAI has been struggling to maintain a sufficient level of working capital? A concern has been raised by RTE about the fact that the BAI levy will be partly funded by the television licence fee receipts. Will that result in a further reduction of TV licence fee receipts for the public service broadcasters? The Department's representatives might wish to reply on that genuine concern. On the issuing agents appointed by the Minister, what function will they have if they do not have any powers to bring proceedings for offences under sections 147(3) and 148? How will that work?

I thank the representatives for their presentations on the retransmission fees and on what is happening internationally. Would it be fair to say that there is a mutual benefit between the broadcasters and the platforms? A survey of members of the public on how they would react if they no longer had access to free-to-air services has been done. Some of them said they would want a discount. That is where the risk of the negotiations arises. There will be many risks involved. I note TG4's concern about the electronic programme guide, EPG, and the priority given to channels in the event of transmission fees being charged. How would that impact? Is it possible that other TV platforms could move public service broadcasters down the priority list? What safeguards could be put in place in that regard, because that is a huge part of our public service broadcasting obligations? People are already paying for their television licence, so they might feel that they would be paying twice. The witnesses alluded to this. Some of the customers in the survey said they would like a discount. They are already paying for it in one respect. Perhaps they would comment on that. Who would calculate the transmission fee or how would that happen? Is there a view on that if transmission fees were in place?

Perhaps the witnesses will bank those questions as I will now call on Deputy Dooley.

**Deputy Timmy Dooley:** I thank the witnesses for their presentations. They are helpful for us in trying to move this legislation forward. My first comments will be to the Department's representatives. The comments are somewhat political but the witnesses are representing the Minister. I presume they are here to present his views and ideas, rather than necessarily the Department's views. The scale of the problem facing public service broadcasters is enormous. In Dublin Castle last Friday, there was a public hearing from many different parts of the sector and it was clear that public service broadcasters are facing an enormous problem and that time is effectively running out. Legislators must ask themselves whether they believe in public service broadcasting and, if they do, whether they are prepared to commit to the challenge they face to address that, which is principally in terms of providing the appropriate funding.

To be honest, this legislation is tinkering around the edges. It is short term. From the Minister's perspective it might be a way of kicking the proverbial can down the road, beyond the length of his mandate. If the Minister and the Government were serious about addressing the deficit in the funding of public service broadcasting, there would have been a far more comprehensive legislative measure and they would use the facilities of this committee to engage with stakeholders. However, we are being asked to engage with stakeholders, and the stakeholders are here today, for something that is effectively bread and butter. There is nothing in this. Even the retransmission piece is not part of it and is kicked out at the end. The legislation is a sham. It fails to address the crisis that exists and which was addressed well last Friday. It is just using the committee to front end the minor elements that might be somewhat contentious, although there are no real contentious issues here. That is my opening comment, although I still have some questions about it.

The TV3 piece in head 3 and others is straightforward. Like the Chairman, I have a concern about the BAI being funded. It definitely requires more funding but funding out of the TV licence in advance of there being any increases in the revenue from TV licences is regrettable. RTE outlined the potential cost, and although it is important to take the burden from local and community radios, heaping it back on an already overburdened and underfunded public service broadcaster is not the way to go. Will we get some assurance that this will effectively be new money coming from an increase in the collection of licence fees and it will not apply until after the roll from the licence fee increases significantly?

I have questions about the appointment of a third party licence fee agent. Will the witness tell us how that will pan out? What are the bursaries to journalists on local radio stations about? In principle, it is a nice idea but it does not address the crisis facing local media in general, whether it is print or local radio. Could we look at addressing that in a much more comprehensive way? The retransmission fee should be addressed as part of this Bill and I strongly advocate that the officials go back to the Minister to reconsider it. This is a question to RTE and its agents. It is really looking for the capacity to negotiate. That is all. Very helpful information has been provided to us. It is useful to us but more relevant to RTE in terms of developing its negotiating position, which is fine. I think all it is asking of the Legislature is to let us have a free hand in negotiating with the dominant player. This is all good information but it should not require much more input from us. We can bring in the stakeholders and I am sure they will kick up a fuss, talking about the impact it will have on viewers. I assume they will talk of passing on the cost to the consumers in an effort to frighten the horses. It is a matter that RTE can negotiate with them. It does not want to lose any viewers, as laid out in the documentation, which is being made public. It is clear that the body is constrained in terms of what can be charged to platforms.

What I am getting today is we must go back to the Department and Minister. They need to step up to the plate and address the crisis facing public service broadcasting. Frankly, with the pace of change and rate of development of technology, we will otherwise still be scratching our heads when the market will have moved on. Public service broadcasting will not be in a position to invest in the creative sector. We heard much about that on Friday. There is a benefit provided to culture and history from home-grown programmes. It will be too late if we do not move quickly. It is very clear time is not on our side. The retransmission fees seem to be the most important element, although they are not talked about, and we should allow the company to negotiate and figure it out. We do not have to involve ourselves and we have enough to do. We do not have to deal with what is paid or not paid, or what is viewed or not. We should let it on with the business. It clearly needs to be done.

**Deputy Brian Stanley:** I thank the delegations for coming before us and giving the presentations. It has been worthwhile and the engagement on Friday was also worthwhile. This is essentially about money and sustainability. I would like to mention language for a moment. The engagement on Friday was very good and I do not know about anybody else, but the phrase “consumers consuming products” conjures for me the image of machines in a factory, with material going in one side and coming out in another shape. Perhaps we could speak of people accessing programmes or citizens viewing or listening. That would be helpful. Language can sometimes frame a debate.

I disagree a little with Deputy Dooley about the Minister’s responsibilities as we have a responsibility to ensure we get this Bill right. All of our guests today, including those from the Department, RTE and TG4, have responsibilities, but we have a big responsibility to ensure we get legislation right. We have reached decision time and we must make up our minds as to whether we want good quality public sector broadcasting, good programming and to ensure the quality of services that are there. By any standard, there are pressures.

There is a high rate of evasion in the collection of the licence fee and I am not sure we are coming at this from the right direction. Is there a better way of capturing the licence fee? I made some suggestions about this in the past and am happy to do so again as it is important. I am mindful of changes in technology. I might be a bit old-fashioned as I go home to look at the television, flicking between a few channels. That is about it. I know people access television in different ways. Perhaps we could be a bit more innovative in thinking about it.

As I understand it, what the Broadcasting Authority of Ireland is seeking would provide €1.6 million extra. Is the annual budget €3.2 million?

**Mr. Michael O’Keeffe:** Will I indicate our annual budget?

**Chairman:** I will allow the Deputy to finish his questions first if that is okay.

**Deputy Brian Stanley:** Why is the authority requesting the money now? I have concerns as it would be another slice taken from the licence fee. The copyright changes would be good as companies broadcast material without having to clear copyright.

The Department indicated the evasion rate in Britain fell after the BBC engaged commercial operators to collect fees. I have a concern about people like the Viper or people like him showing up at people’s doors to collect money. I am not arguing that the An Post system does not need to be fixed and I can see the problems in it. I am concerned about some of the people who might tender for the contract to collect this money or the methods they might use on dark

winter evenings, knocking on the doors of single parents to collect fees. This feeds back into my earlier point in that we might be looking at this the wrong way around. If we are looking at putting licence fee collection to a free-for-all, I would have concerns about it. Over what period did the evasion rate in Britain decrease? Were complaints procedures put in place if there was dissatisfaction with a company or contractor?

The retransmission fee and copyright changes must be the centrepiece of this process. I agree with Deputy Dooley about the fee. As I look more at this and how the sector it works, I can see it as an emerging gap in revenue for those who produce good quality broadcasting and new programming. Overall, we have a major responsibility with this Bill as we have reached a crunch point. This cannot be allowed to go on much longer. Like many other matters, the can has been kicked down the road. At this stage the can is fairly well battered. We need to sort this out. We should be a bit more careful with language and try to speak about people, as opposed to consumers.

**Deputy Eamon Ryan:** I thank the witnesses for the presentation. I echo the opinion that the forum on Friday was useful in advance of this discussion. I also echo Deputy Dooley's comments as a certain sense of urgency comes from this, certainly from the members of the committee who were present. There is a lot that is good in our broadcasting system and we want to protect it. It was suggested that we should take our time but I have a concern that we are not going quickly enough. On the question of transmission rights, my children, who are aged 14 and 17, have hacked into my email account and increased our subscription to Netflix, which they do on a regular basis because they want to go from a one-carry to a two-carry device. I will give out to them when I go home but they will put it back up again tomorrow. I believe the €30 million for Netflix is going to be much higher because it is changing at a rate of knots.

I was going home through UCD the other night and the bus shelters were advertising Now TV, and no-contract Game of Thrones. Mates of mine watched the Lions game on a €10 ticket and I feel we should have been renegotiating with Sky and Virgin five years ago because a negotiating position may go very quickly as companies move to the no-contract rule. My instinct is that we should get content providers to pay their fair share. It is not just about Rupert Murdoch. I listened to a lecture at the Institute of International and European Affairs by an academic from Princeton, Susan Crawford, a few years ago. She is an expert in how these networks are developing and she made the point very forcefully that the networks had to pay their fair share.

How many Saorview viewers are there? When are the negotiations due to take place with Sky and-or Virgin? What is the length of the deals with them - three years, five years, seven years? What will be different if we give the contract for the licence to someone other than An Post? What makes us think somebody else would be successful and produce a big increase in revenue? What additional powers would we want? The broadcasting powers made the system more lenient but does the Department have any other mechanism to increase recoverability?

It was reported in the papers recently that Facebook is looking at going into TV. What negotiations has Facebook had with RTE, or the BAI or others? Is there a prospect it will enter into the on-demand, no-contract TV world that seems to be evolving very quickly? Maybe the process has only started and it has not trickled down to Ireland yet. It is very unusual to throw open a piece of legislation to the committee. How come the Department has not taken a position on it? My advice would be to give the power to negotiate, though we should have done it several years ago.

**Chairman:** We have to be out of this room by 7 p.m. so I ask witnesses to be as brief as



possible.

**Ms Patricia Cronin:** The levy order has not been reviewed in recent years. On the legislation, the Minister has acknowledged that the sector is at a tipping point and has acknowledged the difficult financial situation facing everybody in the sector. Every piece of legislation represents a balance of many different things and the Minister was very conscious of RTE and the other players. As regards the BAI levy he is keen to do something for entities which are under pressure, such as local radio, and that is why the TV licence collection system is being put out to tender. This is a big undertaking for us as it has never been put out to tender. As Deputy Ryan said, we need to understand the full impact of what we are doing. The reason we have been careful about changing the legislation is that if we put it out to tender we could select a private sector player and it is not possible for them to avoid doing some reconversion so we would need to work out that bit of it. We did a market testing exercise, in the form of a request for information, RFI, to get a feel for the market and there were ten people who were interested in TV licence collection so we need to evaluate that and learn from it.

In answer to Deputy Dooley, I think the Minister does understand and we acknowledge that this is a short-term measure, with more fundamental things having to be done in the area. We are conscious of the degree of evasion and that is the first thing the Minister has decided to tackle by putting it out to tender. There is technology to enable us to collect the TV licence in a different way and Capita uses it in the UK. We did the RFI to learn what was out there.

**Deputy Timmy Dooley:** What is the timeframe? Ms Cronin said the Department was still waiting but when will it be right?

**Ms Patricia Cronin:** We received comprehensive responses from the RFI. It will be a tender on something that is quite sensitive so we are trying to get it right, rather than rushing it. The Minister will decide what the timescale is but we are working through what we learned from the RFI. We cannot do anything until the legislation is enacted because only An Post can do it at the moment. The timeline depends on the enactment of the legislation. We have to start designing the tender documentation and go out to the market but nothing can be awarded until the legislation is enacted.

The response from RTE on retransmission was very comprehensive and useful. There are other entities such as Sky who have a different view so the Minister was very keen for the committee to have a full evaluation of retransmission fees to inform him as to whether something on that subject should go into the legislation.

In answer to Deputy Stanley's question, if it goes out to tender we are keen to ensure the right sort of people get the licence. Any contract would be carefully crafted to make sure there were protections for people and there would be no free-for-all. The Minister is keen that the option of paying for the TV licence through the post office network will continue in any event. An Post is as entitled as anybody else to tender for this business and it is not out of the picture.

I was asked about additional powers and they can be looked at if necessary but we will do that when we look at the tender documentation. Other questions may be more appropriate for RTE.

**Deputy Eamon Ryan:** What is the proposed timeline for the Bill?

**Ms Patricia Cronin:** After this stage of the process I assume we will be back in the autumn. We have to go through detailed drafting with the Attorney General's office and bring it back to

Government to get detailed heads. We will be happy to look at any input from Deputies.

**Mr. Michael O’Keeffe:** There has not been a formal review of the levy but we have engaged with the various contractors over the period and have consulted on the manner in which it will be done. The levy is deemed by most people to be a fair system. They do not like paying it but the regulatory burden is based on the level of regulation and I do not believe anyone has an issue with the system. From that point of view it is fair. Will it result in a reduction to RTE? It will, although we are unsure of the actual figure. It is a 50% reduction in what they currently pay, but then the broadcaster would lose on the total. It would result in a reduction of somewhere between €1.4 million and €1.6 million. That would be the loss on the basis of what we are talking about.

Deputy Stanley referred to the current budget. We do not envisage the budget of the Broadcasting Authority of Ireland increasing. The budget is €4.8 million, give or take a little. That will not increase. The way the Bill would operate means that the levy would provide €2.4 million and the rest would come from the licence fee. We do not see this arrangement creating extra funds from BAI.

Deputy Ryan asked about re-transmission. We support the principle - we are clear on that. We talked about a regulatory impact assessment and international comparators. It is clear that much work has been done in this area and we should welcome that this work has been done. In any legislation of this nature the regulatory impact is important - I am not kicking to touch.

**Deputy Eamon Ryan:** There was something extraordinary for about €300 million in a week last week. It happened in the blink of an eye.

**Chairman:** Dee Forbes, do you want to come in next?

**Ms Dee Forbes:** Ms McCabe will comment on mutual benefit and paying for the television licence fee twice.

**Ms Aisling McCabe:** I will address the question around the mutual benefit. Mr. Horsman and Ms Forbes outlined in their opening statements how these are important platforms for RTE. We reach mass audiences through them and we generate commercial impacts.

Is the relationship mutually beneficial? The answer to that is “No”. There is an imbalance in the relationship. Mr. Horsman has demonstrated the scale of the subscription revenues in this market. The figure is €560 million.

Reference was made to the risk to platforms. Ireland has the highest pay-television market in Europe. Two thirds of Irish homes have a pay-television subscription. We pay on average €30 per month for a basic pack. The Irish free-to-air channels are the most popular within those packs.

This is about putting value back into Irish content. By comparison, within the US market approximately 2% of total subscription revenues go to re-transmission fees. We are talking about a negligible cost to the operator and probably nothing to the consumer.

You raised an important point about the priority of channels in the electronic programming guide and the safeguards for consumers, Chairman. That is close to our hearts. It is already under threat. We have talked about the changing interface. People can go in and see it, but it is difficult to find channels sometimes. My understanding is that currently there are no safeguards

in the legislation around prioritisation of channels on television interfaces. We negotiate that and sometimes they are difficult negotiations. We see that as part of the negotiation. If a platform knows that its audience or people or customers are watching certain channels then it is in the interests of the platform to keep those channels in a priority position. It is not for debate today but we believe that as part of public policy there is an important point to be made and for discussion with the BAI around regulation of prioritisation of access and findability of publically-funded and public service media content across all devices and platforms.

**Chairman:** Are you saying that the protection of the priority issue and the TG4's of this world should be done through negotiation or legalisation?

**Ms Aisling McCabe:** It has to be both.

Reference was made to double taxation. People are paying a licence fee as a contribution towards public service media. RTE is a dual-funded organisation. We have obligations to secure commercial revenue. I will go back to the earlier point. These platforms are getting money on the basis of not paying any intellectual property for Irish content. We have seen 83% of RTE revenue going to investment in Irish content and we want to put more into that. That is the point – it is not double taxation.

**Ms Dee Forbes:** Mr. Horsman will address the question regarding the calculation of re-transmission fees.

**Mr. Mathew Horsman:** It is not a question of recalculation in the sense that it should be the outcome of an open and free negotiation. Our work was meant to give a sense of the quantum possible given international benchmarks and consumer research. I do not believe anyone is arguing in favour of mandating a payment.

**Chairman:** Who would do it? Is it for an arbitrator? Who would come in? Would you ask the BAI, for example?

**Mr. Mathew Horsman:** There may be mechanisms or some scope for back-stop protections, like for example, the current must-carry arrangements, which are only going to be coming into their own, as it were. This is because now the copyright will go, one assumes, as it is going in the UK. The must-carry provision, which has always been there, has not been invoked in the UK because it has not been needed. This is because there was an exemption on copyright.

My only point about the quantum in terms of the calculation is that it will get calculated as a function of two willing parties, that is to say, the supplier and platform coming to terms. There are ways, unless either really absolutely stops and stalemates-----

**Deputy Timmy Dooley:** There is horse trading in this country. Spancil Hill is one place where it happens.

**Chairman:** Do you want to come in on this, Ms Bleahene?

**Ms Eleanor Bleahene:** It is not quite horse trading. We should bear in mind the provisions of section 77(11) of the Broadcasting Act 2009.

**Deputy Timmy Dooley:** They must be fair and reasonable.

**Ms Eleanor Bleahene:** Absolutely, we negotiate on the basis of FRAND, that is to say, fair, reasonable and non-discriminatory terms. What we are seeking by way of legislative amend-

ment is the ability to request payment terms with two particular words “and payment”. It is a simple amendment.

There are constraints to this. There are mutual benefits, including for a platform and content provider such as RTE. Our relationship is characterised by mutual dependency. We rely on each other. As Mr. Horsman and Ms McCabe have outlined, we can negotiate under the umbrella of FRAND.

**Mr. Pádhraic Ó Ciardha:** It is important to remember in all of this that all the funding we get goes to the independent production sector. This is about content creation. It is about real jobs and preserving and developing our culture.

Our station is called TG4 for a reason. It is because we could not find any prominence or findability 20 years ago – although it seems like a century ago now. It is very important that we have findability and prominence and that this is safeguarded by whatever means necessary.

**Deputy Eamon Ryan:** When do the next tranche of negotiations naturally occur?

**Ms Aisling McCabe:** Deputy Ryan has asked two questions. I will take that question first. Saorview is in 660,000 Irish homes. Of these, some 192,000 are primary homes, meaning they have Saorview as primary sets. Approximately 200,000 pay-television homes also have Saorview as a secondary box. The other homes are freesat.

Reference was made to the Sky negotiations. We have a deal with Sky that has several years to run, but we would only be dealing with any one platform at one time. I am keen to add that we have negotiations with platforms on an ongoing basis. They are generally professional and we have negotiations with the copyright holders as well.

**Deputy Eamon Ryan:** I do not wish to go into the issue of sensitivity, but can Ms McCabe give us an idea of the process for a cable network? How frequently does RTE negotiate? Is it a block for several years?

**Ms Aisling McCabe:** It is ongoing.

**Ms Eleanor Bleahene:** It is ongoing. Our tendency to negotiate is sometimes influenced by our ability to negotiate. The must-offer provision obliges RTE to provide its services to a network provider that would take in cable on fair, reasonable and non-discriminatory terms. Effectively, this means for free. We have a re-transmission arrangement with Virgin. That will be reviewed on an ongoing basis. Frankly, it is pending the outcome of RTE’s request for a legislative review of the proposals, the wording around must-offer provisions, the removal of the copyright and section 103 must-carry provisions.

As Mr. Horsman outlined earlier, this race has been run in the UK. It has been repealed effectively by the way of the UK Digital Economy Act. The European Court of Justice has said that the provision in question is inconsistent with the provisions of the information society directive. We have a similar provision in section 103. As it stands, Ireland runs the risk of having proceedings taken against it if the provision continues to exist on the Statute Book.

RTE takes the view that it is a no-brainer to repeal it. The repeal is long overdue. The European Court of Justice has already said that it is incompatible with the provisions of the information society directive.

**Deputy Eamon Ryan:** An interesting thing for me came out of the forum. I have a simple

thought in terms of how we pinch this investment in broadcasting - although “broadcasting” is the wrong word because we are referring to media.

One of the strongest arguments coming out of our event forum on Friday was that this is an industrial development strategy. This is because we want to be good in the independent sector in particular and in the whole creative sector as well. We have every reason to be good at it. As I said, we have an independent, high-quality journalism, media, current affairs and news system. TG4 and others have done much to start a nascent independent production sector. It is very much an industrial strategy and it seems that this is one of the political arguments to support broadcasting. Obviously, there are the democratic and other aspects to having a free and local press. In that regard, I know that the previous director general, Noel Curran, had very much opened the possibility of opening up the RTE archives to Irish industry, specifically the Irish creative sector, as one part of a new and ongoing strategy. If it were possible to fund RTE more securely, would that still be considered one of the possibilities in the context of the strategy that might be prepared? If so, it seems that an open-access archive system would go a long way towards supporting all independent creators.

I wish to return to sports rights but in the context of a creative industrial strategy. I would be interested to know how successful RTE’s GAAGO has been. I do not know what the figures are, and this is going into the other issue of whether or not one pays for TV sport, but it seems that putting GAAGO out internationally as a free service on an international player would fit into our national strategy and would justify much of our expenditure on some broadcasting if these kinds of games were available free to air globally. This would form part of an industrial enterprise strategy, which is one of the most important things we need to work on.

**Chairman:** Does Ms Forbes wish to come in at this point?

**Ms Dee Forbes:** Driving the industry forward and having a strong creative industries sector in Ireland is very important. Never has the time been so ripe for this to happen because I think we would all agree that we are seeing a resurgence in the quality of broadcast content around the world. We are in a golden era of television, and where else should that be happening to a large degree but here in Ireland? We are a nation of storytellers, we tell great stories and it is a shame that, because of funding, we are not really able to compete on the same level as the likes of Denmark and Israel, which have made really determined and concerted efforts to build that sector, as has the UK. Anything that will help us in this regard is welcome, and we are certainly looking at the matter. At a previous forum for Creative Ireland, I talked about coming up with the need for a contestable fund for Irish drama, for example. We need desperately to invest in that category - and others, by the way - to regenerate activity in it.

Deputy Eamon Ryan’s comments about the archive are very timely because this will all come out as part of that strategy, which is in development, and exactly where we intend to go with the archive will come out in September. The archive is hugely important to the strategy. We see the archive’s huge value, not just to RTE but also to the nation, so I agree with the Deputy’s sentiment that there is more in that. What we must do as part of our strategy is understand how we will fund the archive for the future and deliver that.

Finally, GAAGO, as a commercial entity and a venture we have together with the GAA, is doing pretty well. We would like to see more subscribers around the world but that is really down to people being aware of its availability. It is very strong in places such as the US and Australia. There is absolutely potential for growth but it is a pay proposition, given that it is a rights discussion with the GAA. We have a very good relationship with the GAA. It is some-



thing in which we see more potential to bring the national game around the world but it is a commercial enterprise.

**Deputy Eamon Ryan:** Lastly, was RTE happy enough with GAA doing a deal with Sky and RTE? Ms Forbes is saying she is happy enough that Sky is in the deal.

*Deputy James Lawless took the Chair.*

**Ms Dee Forbes:** That is a question for the GAA.

**Deputy Timmy Dooley:** I mentioned to someone on the way in here that it is a sad situation that has developed but that the people who feel disenfranchised are blaming RTE for the deal. They forget that it was the decision of Croke Park. I recall being a member of the committee at the time the deal was done. We brought the GAA in here and it was at pains to make the point that it was really about extending the reach of the games to the UK market and beyond. It has not transpired like that. I receive letters, emails and calls from people who say it is entirely unfair for elderly people who do not enjoy watching matches in pubs and do not have access to Sky. We hear of people in their late 70s and early 80s who are immobile and, in some cases, confined to wheelchairs, who love the Gaelic games and who like to see their counties play. Sadly, it was a very retrograde step taken by the GAA, in my view, aimed solely at generating increased profits at a time when Gaelic games were seeing a resurgence, generating much more revenue through additional deals. It was a step too far. I hope we have the GAA back before the committee in advance of the next round of negotiations. Perhaps the committee could undertake to facilitate this in due course. The GAA should, recognising its current position, seek to ensure that all games are available through RTE. This would further add to the expectation of Irish viewers about what public service broadcasting is and an organisation such as the GAA should play its role in that regard. It still will not change the outcome of the match between Clare and Cork at the weekend, but perhaps there are times when one would not want to see that.

**Ms Dee Forbes:** Deputy Eamon Ryan asked one other question about Facebook TV. Would Mr. Horsman like to make a general comment on that?

**Mr. Mathew Horsman:** I will make a quick observation on it. Facebook is indeed considering being a content provider for the next stage in its evolution. Hulu, of which the committee might have heard and which is, I suppose, kind of another US version of Netflix, is coming to the UK as a next step and possibly at the same time to Ireland, as is often the case. My observation is twofold. First, the trend is for so-called skinny bundles of content rather than fat bundles so the pay TV operators are also under some pressure. They are having to think about re-tiering and changing their propositions a little in order to meet the consumer resistance - sorry, the people's resistance - to paying additional funds for content. As a result, there is a little pressure going on even among the pay TV operators. The issue that comes back with Facebook and Google and the entry of Hulu, Amazon and all these other players into the market is that this will only get worse and more and more complicated for RTE. Right now, the joint 800,000 or 900,000 homes that take a pay TV operator service from the current offering bodies - Virgin, Sky and Eir - are important today and will be for some years to come. At the same time, there is the amplifying effect of these new entrants also coming in, demanding their RTE content. This issue of access by any player in the pay TV environment to these RTE services must be sorted out or else there will not be a sustainable model for RTE and other public service broadcasters. What is the point in having an intervention of the current size if the content cannot be found? That is the other point on this: it must be findable and it must be sustained.

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**Acting Chairman (Deputy James Lawless):** I will not say that we have exhausted all the questions but we certainly got through many of them in the past two hours. As it happens, that coincides nicely with the timing because we are due to finish by 7 p.m., which is coming on fast. I thank everyone for attending. This is the start of a process; there will be many more deliberations as legislation advances through the different stages. Even prior to that, we intend to meet at the next engagement with the other stakeholders, including TV3 and platform operators Eir, Sky, Virgin Media and Vodafone on the other side of the debate. They will come before us possibly at the start of the next term, if not before. I thank the witnesses. I know that a number of them participated in the forum on public service broadcasting which the committee held last Friday. I think it went extremely well. I know that a number of the witnesses were present so I thank them for their participation and input. The forum had a successful outcome and certainly informed the debate. It was interesting to hear the last speaker talking about Hulu and the like. I rely on my children to inform me about such developments, though they certainly seem indicative of the way things are going.

The formal business of the meeting is now concluded. As is normally the case with these meetings, the committee proposes to publish today's opening statements and submissions. Is that agreed? Agreed. This committee now stands adjourned.

The joint committee adjourned at 7 p.m. until 6 p.m. on Wednesday, 19 July 2017.