

Hi there

From injury to insult



In this issue of our newsletter, Derek Wilding outlines CMT's feedback on the proposed Stage 2 Defamation Reforms, one aim of which is to clarify the liability of digital intermediaries for third-party comments. This is a pressing problem for Australian news media after the High Court's Voller decision last year.

Anne Kruger examines the steep rise in disinformation associated with anti-government protests in New Zealand, which had been going on largely unnoticed

by the Australian media until Avi Yemini hit the spotlight.

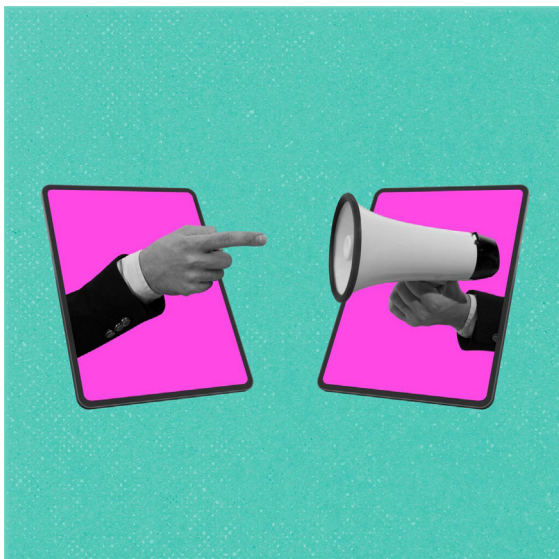
Speaking of Avi Yemini, Chris Hall looks at the rapidly growing viewership of young independent journalists on social media, suggesting that the fuss over whether these upstarts are really journalists is by the by.

And in a week where the death of the Queen has led to an outpouring of emotion – both positive and negative – Sacha Molitorisz asks how we decide which insults bear repeating.



Michael Davis
CMT Research Fellow

No change to the Voller decision?



The second stage of the national defamation reforms is nearing its end. New protections are proposed for digital intermediaries including ISPs, search engines and social media. Most importantly for some, the reforms also remove liability of news organisations for user comments posted on their social media sites. Or do they?

While the Defamation Working Party's [background paper](#) suggests that 'digital intermediary' will include forum

administrators that present pages on which users post comments, a group of defamation lawyers [says](#) that the proposed amendments protect 'tech giants' but don't work for news publishers. If that's right, the reforms would not address the issue arising from the High Court's decision in [Fairfax v Voller](#) last year which confirmed that news publishers are liable for third party comments.

All of this is being worked through in the form of [Model Defamation Amendment Provisions](#) that would need to be agreed by this joint state and federal working group and then adopted by the states and territories in amendments to their Defamation Acts. CMT is making a submission on the proposals in which we say (in summary):

1. We support the proposal for ISPs, caching services and data storage services to be given an immunity that stops them from being characterised as publishers under defamation law.
2. We also broadly support the idea that search results should not give rise to a defamation action.
3. On the question of liability of social media services and forum administrators for third party comments – and this includes news publishers – we support a 'safe harbour' combined with an extended innocent dissemination defence where the safe harbour is not available. The safe harbour would protect the service or publisher in circumstances where the identity of the person who posted the comments can be ascertained.

Of course, the value of any safe harbour or extended defence is seriously undermined if, as the defamation lawyers suggest, the amendments only protect social media providers and not forum administrators. It's worth noting here that the lawyers strongly object to any safe harbour for social media and forum administrators, just as they object to an immunity

for ISPs and other 'mere conduits', instead preferring a more limited defence.

We hope that the Defamation Working Party takes a more expansive approach to the new protections, rather than simply amending the existing defence of innocent dissemination. But whatever approach they choose, it's crucial that the drafting covers forum administrators and addresses the Voller problem that plagues news publishers.



Derek Wilding
CMT Co-Director

Aotearoa on the radar



A renewed wave of protests planned for outside New Zealand's parliament last month largely went unnoticed by the Australian media. That was until [Avi Yemini's](#) name began trending on Australia's Twittersphere. The reporter for the Rebel News website was making known he had been denied entry into New Zealand to cover upcoming anti-government protests.

Investigations into how it came about are still to fully play out, and Yemini has consulted his legal team. But it serves as an opportunity to revisit concerns by [disinformation researchers](#) in New Zealand about the formation of – and implications from – the protest movement.

From all accounts, including that of Prime Minister Jacinda Ardern, the August 23 rally outside parliament was peaceful. News [reports](#) counted about 2000 anti-government protesters who had gathered 'to vent their frustration on a range of issues nearly six months after protesters were forcibly removed from the grounds of the legislature.'

The relative calm contrasted with the earlier three-week occupation of parliament which began when Covid-19 protest convoys [from both ends of New Zealand](#) arrived in Wellington in February. National Party justice spokesperson Paul Goldsmith told [RNZ](#) in March, that New Zealanders saw 'an unprecedented occupation and trashing of Parliament's grounds and its surrounding streets, followed by a fiery and riotous conclusion.'

New Zealand-based [The Disinformation Project](#) researchers analysed a steep rise in mis- and disinformation circulating online surrounding the movement. They concluded a grave warning they gave in November 2021 had been ‘fully realised’ during the February–March Parliament protest: ‘anti-vaccination and Covid-19 mis- and disinformation were being used as a Trojan Horse for the norm-setting of far-right ideals...’ and individuals including Prime Minister Ardern, ‘were consistently targeted with extremely misogynistic, vulgar, violent, and vicious commentary and content.’

Consider the months leading up to those protests – there was a shift to Covid-19 Alert Level 4 across New Zealand, and the Omicron outbreak – a perfect breeding ground for discontent. The Disinformation Project researchers noted this ‘exacerbated, entrenched and expanded domestic information disorders studied since the start of the pandemic.’

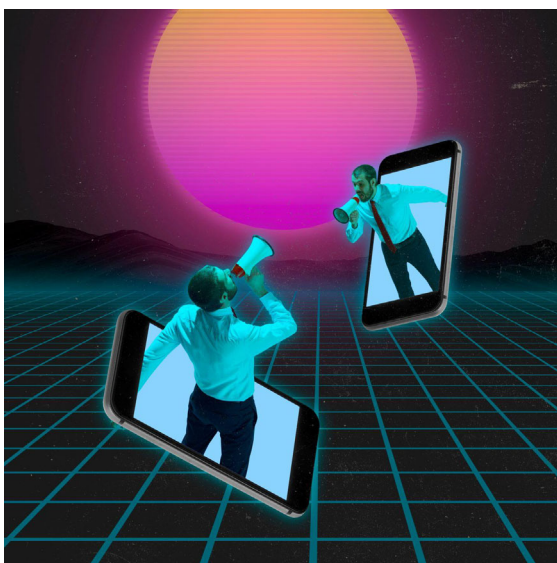
The February protests also went largely unnoticed in Australia where the ‘[Convoy to Canberra](#)’ was in motion which, along with the Wellington protests, took inspiration from the Canadian trucker convoys.

New Zealand is expected to call its next general election before the end of 2023 so any future protests will likely be on the radar – both in Aotearoa and from Australia.



Anne Kruger
CMT Associate Professor

The rise of platform journalism



Journalism plays an [important role](#) in democratic societies. As articulated in the [ACCC's Digital Platforms Inquiry](#), this role includes holding power to account, campaigning for social goals, and facilitating debate and the exchange of ideas. But who decides whether someone is a journalist or not? Before social media platforms it was uncontroversial that journalists were people reporting for large media organisations. Recently, however, youtubers have emerged on the periphery of journalism, and they are making inroads

towards becoming accepted by mainstream audiences. This is occurring in the wider context of news avoidance and [low trust in news media](#), with many people [criticising “the MSM”](#) as failing in its societal function.

[Avi Yemini](#) and [Jordan Shanks](#) (at friendlyjordies) have both amassed large audiences on YouTube, both have numerous articles written about them in mainstream media, and both have experiences with courts related to their journalistic activities, as [plaintiff](#) or [defendant](#) respectively. Avi Yemini and his supporters [say he is a journalist](#), others [say he is not](#). [Politicians](#) have called Jordan Shanks a journalist, yet in *Barilaro v Google*, Justice Rares slammed the friendlyjordies content relevant to the case as [“poison”](#).

Avi Yemini and Jordan Shanks are not the only youtubers building audiences with journalistic content. Relative newcomers such as Leonardo Puglisi and the teenaged team at [6 News Australia](#) are beginning to make an impact, even [interviewing prime ministers](#). But like Yemini and Shanks, the teenagers’ status as journalists has not gone [unquestioned](#).

Discussion around who are journalists can get heated. It can also have legal consequences. For example, it is unclear whether the identity of the confidential whistleblower in friendlyjordies’ video [The Baddest MP: Dutton](#) would be protected under shield laws.

I propose getting around this issue by focussing on content, not people. [Platform journalism](#) is an emerging form of journalism that combines the norms and routines of social media platforms (e.g. calls to action, dramatic sound effects, conversational mode of address) with journalism ideals and original investigation. If a YouTube video presents an original investigation into a public-interest issue, with verifiable facts, with a minimisation of harm, and the creator is not anonymous, then it is performing the role of journalism, irrespective of whether it uses youtuber norms or those of traditional television journalism.

The emergence of platform journalism is likely to continue and expand and will continue to shape how audiences are informed. To move past controversies and arguments over who is a journalist it may be better to focus on content.



Chris Hall
CMT PhD Candidate

And in today’s **!#*#!*** news...

As far as insults go, ‘dumb’ is on the mild side. And in many contexts the word ‘dog’ is pretty harmless too. But if it’s an Indigenous woman who combines the two in a social media post about a recently deceased English monarch...



Last week, on the day news broke of the Queen's death, Newcastle rugby league star Caitlin Moran posted her insult on Instagram, and the backlash was immediate. 'Perhaps the most reprehensible thing I've ever seen connected to rugby league,' said radio host Ray Hadley, thereby sparking a backlash of his own suggesting that Moran's post was surely not as bad as the assaults and family violence reported all too often about male rugby league players.

Some news outlets decided Moran's post, which she deleted after about eight hours, was too offensive to publish. [Nine's Mark Levy](#) called the post 'disgusting' and 'too offensive to repeat'. And on Saturday, [the Daily Mail wrote that](#), 'The post included a photo of the Queen along with a message that Daily Mail Australia has chosen to not publish due to the insensitive nature of it.'

Not that the post was hard to find – naturally, Moran became [a highly searched topic on Google](#). And on Tuesday, Moran was issued a one-game ban by the NRLW because her 'public comments have caused damage to the game'. By this stage, the words 'dumb dog' were often being included in reports about the incident, including by [the Daily Mail](#). Others, however, avoided the epithet, including [the ABC](#).

In reporting the post, should journalists include the offending words, or withhold them? Here codes of conduct don't provide any clear guidance. The MEAA Journalist Code of Ethics prescribes, 'Do not suppress relevant available facts.' It also tells its members to, 'Respect private grief and personal privacy.' Crucially, however, the succinct MEAA code is silent on whether to publish an epithet that some consider offensive. And, of course, it has no guidance whatsoever about reporting on royals. The [Australian Press Council General Principles](#) and the [Commercial TV Industry Code of Practice](#) are clearer, and turn on the 'public interest'. The APC prescribes: 'Avoid causing or contributing materially to substantial offence, distress or prejudice ... unless doing so is sufficiently in the public interest.'

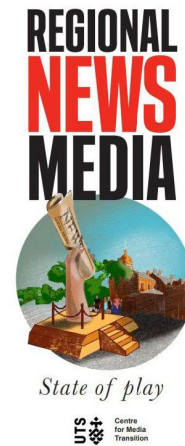
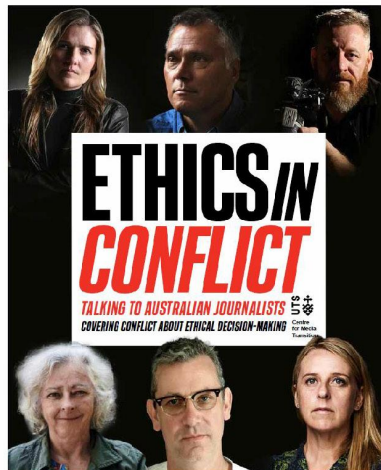
Meanwhile, Indigenous sports stars are often themselves the target of slurs and abusive posts, as Adam Goodes and Latrell Mitchell can attest.

It's a tricky issue. On the one hand, the public deserves the facts. On the other hand, re-publishing an insult has the potential to cause more harm. In this case, there's also history. As [Moran's coach said](#), 'The relationship between Indigenous people and the monarchy is a complicated one.' When it comes to deciding which insults to publish, newsrooms will need to have some robust conversations if they want to work towards developing good, consistent ethical practice.



Sacha Molitorisz
Senior Lecturer, UTS Law

Please visit our [website](#) for more information about the Centre.



The Centre for Media Transition and UTS acknowledges the Gadigal and Guring-gai people of the Eora Nation upon whose ancestral lands our university now stands. We pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these places.



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