

# Centre for Media Transition



Hi there



Along with many other media related organisations, CMT notes with sadness the assassination attempt this week on Salman Rushdie in New York. Rushdie, who has lived for 30 years under the threat of a fatwa issued by the former Iranian Supreme leader, the Ayatollah Ruhollah Khomeini, was about to speak on media freedom and freedom of speech when he was attacked.

That Rushdie's life remains at risk highlights the importance of media freedom, imperilled in Afghanistan which this week marked one

year of rule by the Taliban which seized power in Kabul after the US withdrew from the country. Ayesha Jehangir takes a look at the state of media in Afghanistan after a year in which the Taliban has diminished the ability of local reporters to work without fear.

Also this week, Michael Davis looks at whether there are any protections available to us outside of disinformation regulation, after the recent US defamation verdict against misinformation monger, Alex Jones. Derek is looking at the emergence in the last week of not one but two ways of protecting online intermediaries, especially search engines, from liability under defamation law. Stevie Zhang dives into some of the false narratives around the monkeypox virus. And finally, I talk to Meta's Josh Machin about what news publishers here can expect following the company's decision in the US to walk away from news content.



**Monica Attard**  
CMT Co-Director

## Defamation relief for digital intermediaries?



It's been a slow build for reform of Australia's defamation laws. The latest round started in early 2019, with a new public interest defence for journalism, a 'substantial harm' test and other changes coming into effect in the middle of last year.

But changes to the treatment of online intermediaries – search engines, social media and others – were deferred to a second round of reform. The need to follow through on this aspect was emphasised last year with the High Court's decision in the

Voller case that saw news publishers held liable for defamatory content in third party comments posted on Facebook.

Last week the reform of intermediary liability took a new turn with the publication by the Meeting of Attorneys-General (MAG) of possible changes to the state and territory defamation laws. Then on Wednesday the High Court handed down its [decision](#) in Google's appeal against earlier Victorian decisions in a case brought by George Defteros. The High Court found Google was not liable where it just provided a link in search results, in response to an unprompted user query, to an article in The Age. The [MAG paper](#) recommends exemptions for 'mere conduits' such as ISPs and for search engines. The search exemption would apply when providing automated search results based on a user query, as long as the search engine provider doesn't gain some benefit from promoting the content. It also recommends some protection for other digital intermediaries including social media services as well as 'forum administrators' - and this includes the news services who were the subject of the [Voller decision](#). There are two (alternative) proposals – an innocent dissemination defence and a safe harbour defence – either of which might involve the intermediary taking reasonable 'access prevention steps'.

Under the innocent dissemination approach, an intermediary will only be liable if they fail to respond to a complaints notice and prevent access within 14 days. Under the alternative safe harbour approach, an intermediary is covered if the complainant knows who posted the material so they can take action against them. This information may be provided by the intermediary if they have the poster's consent; failing that, the intermediary can still claim the defence by preventing access to the content.

It remains to be seen how the Defteros decision affects the proposed legislative amendments, but both represent progress in the balancing of reputation and free speech.

Submissions on the legislative amendments are due on September 9 to:

[defamationreview@justice.nsw.gov.au](mailto:defamationreview@justice.nsw.gov.au)



**Derek Wilding**  
CMT Co-Director

## No hiding from decency



It's difficult not to indulge in a little schadenfreude over the US \$45 million in punitive damages recently [awarded against](#) Alex Jones, chief conspiracy monger of fake-news site Infowars. However, a cap on damages in Texas law means that Jones will be required to pay only [10 per cent](#) of that figure, on top of \$4.5 million to the plaintiffs, the parents of victims of the 2012 Sandy Hook school shooting whom Jones called 'crisis actors' in a US government false-flag operation. During the trial, Jones [himself admitted](#) that Sandy Hook was '100% real',

and even acknowledged that to claim otherwise was irresponsible and harmful, in the process revealing his business model to be essentially the same as the infamous Macedonian fake-news farms that [profited from politicised click-bait](#) during the 2016 US election campaign.

In 2018, several large advertisers [pulled their ads](#), most [major platforms](#) banned Jones's channels, and [Paypal](#) stopped processing his payments for promulgating hate speech. It didn't affect Jones's earnings – from 2013, when he [reportedly made US \\$10 million](#), Jones had begun to pivot from advertising and subscriptions to merchandising, launching a range of Infowars-branded alternative medicines and dietary supplements. But the switch to snake oil has also run up against [Federal Trade Commission vigilance](#) over misleading claims about their potential to treat Covid-19.

Defamation and consumer law have thus provided Americans with some protection against the unscrupulous promulgation of misinformation. Aside from this, there is only the will or [otherwise](#) of digital platforms to meet community expectations.

In Australia, too, we have the protection of defamation and consumer law (including the ACCC's [just-announced](#) focus on scams on social media). We also have DIGI's

disinformation code, currently under review. Outcome 2 of the code commits signatories to disrupting advertising and monetisation incentives for propagating disinformation, such as by implementing brand safety and verification tools or restricting advertising to fake-news sites. But the code's signatories are limited to the major social media platforms and search engines – unlike the EU code which boasts a wide range of signatories including advertising bodies. Indeed, the European Commission has called for [new players from the online information ecosystem](#) to join, including e-payment services, e-commerce platforms, and crowd-funding/donation systems.

This is too late to stop Alex Jones, but it might help stop the next snake oil salesman from damaging democracy in the pursuit of self-enrichment.



**Michael Davis**  
CMT Research Fellow

## A struggle for information



On 15 August, I joined an informal discussion on Afghanistan's current political and human rights situation to mark the country's first year under the Taliban, which unlawfully took power, overthrowing then President Ashraf Ghani's government. The discussion was held on Twitter Space, a platform feature introduced in late 2020 to let users have live audio conversation.

Whilst open to the public, the forum was primarily joined by Afghan activists and former journalists – both in the country and

in exile – who shared their stories of loss and suffering, everyday Taliban corruption and brutality, and the chaos in Kabul and other cities. They complained that international media coverage was either insufficiently researched or misrepresentative; and while there are countless stories to tell, there was hardly anyone left to tell their stories to the world, accurately and without fear – a concern also raised at CMT's [symposium on 'Who should tell stories about conflict?'](#)

It is near impossible for many remaining local Afghan journalists to continue reporting due to draconian surveillance and censorship by the Taliban. According to Reporters Without Border, Afghanistan has [lost over 60% of its journalists](#) over the last year under the Taliban. This year, the country also fell 34 places on the [Global Press Freedom Index 2022](#), currently

sitting at 156 on the list of 180 countries studied for the report. Another new study by the [Committee to Protect Journalists](#) presents a predictably grim picture of the state of media in the country, containing first-hand accounts of Afghan journalists on the job or on the run.

For many, social media has become a safe haven, fostering a connection between the personal and political. In these online 'public spheres,' Afghans – young and old – are building their own 'networked societies' that are self-representative, deliberative, and engaging, and have a huge potential to mobilise people for action. Despite being an emotional roller coaster ride, these Twitter space discussions show that amidst the [intimidation and harassment](#), forced resignations, assault, [kidnappings](#) and killings, Afghan journalists and activists have not yet lost hope, and are trying to continue reporting, with extreme caution of course.



**Ayesha Jehangir**  
CMT Postdoctoral Fellow

## Homophobia fueled by monkeypox misinformation



With more than 38,000 cases [reported](#) in over 90 countries worldwide as of August 16, monkeypox has rapidly become a [global health emergency](#). The viral disease [can be spread](#) in a variety of ways, including through the sharing of bodily fluids or touching contaminated items or surfaces. A [paper](#) published in the New England Journal of Medicine in July found 98 percent of the 528 cases recorded in 16 countries between April and June were gay or bisexual men, and 95 percent of the people with infection were thought to have caught the disease

through sexual activity.

This disproportion has caused misunderstanding that the virus could only be sexually transmitted — it is not — or that only men who have sex with men are at risk.

Disinformation narratives that perpetuate harmful stereotypes against gay and bisexual men are now emerging. Most recently, [a report](#) that an Italian greyhound owned by a gay cohabiting couple in France had contracted monkeypox (the first possible case of human-to-dog monkeypox infection) led to unfounded [insinuations of gay men participating in bestiality](#). Twitter comments by right-wing figures [Tim Pool](#) and [Andy Ngo](#), each followed by

more than a million users, sparked suggestions the couple to be [charged with animal abuse](#).

These echo a narrative that circulated earlier this year alleging that children were contracting monkeypox after being abused by LGBT people. A Daily Mail article titled '[US records first two CHILD monkeypox cases: California toddler and an infant in D.C. were likely infected by 'household contacts' and both had contact with gay or bisexual men, CDC chief says](#)' prompted calls for [investigations](#) and [arrests](#). The claim, bolstered by figures with a large social media following such as US [Congresswoman Marjorie Taylor Greene](#), have further stigmatised gay or bisexual men.

LGBT community members have warned that these narratives could lead to real-world harm, especially given comparisons between early measures (or a perceived lack thereof) during this monkeypox outbreak and the [AIDS crisis of the 1980s](#), which was also once [rumoured](#) to be a 'gay disease'.



**Stevie Zhang**  
CMT Researcher

## Meta worries!



Despite assurances from Meta, the owner of Facebook, that the deals it's struck with news outlets, in the shadow of the News Media Bargaining Code, are safe, you'd forgive Australian news editors if they're feeling insecure about the future. Meta [has told](#) American news outlets that news is no longer its priority, and it won't be paying for content to run on Facebook's News Tab.

In the US, Meta is indicating a shift to 'creative initiatives', having negotiated a number of three-year deals with news media

companies worth more than US\$100m, not dissimilar to the agreements negotiated here in Australia with news producers to run content on the Facebook News Tab. The money flowing to news media is significant: Meta and Google paid out an [estimated \\$200m](#) to small, medium and large Australian media organisations to avoid being designated to negotiate. Whilst the US is considering similar legislation to the Code, none has yet been enacted which perhaps indicates Facebook is keen to get out of news before becoming compelled to pay for it by law.

It's worth noting that of the two platforms the Code is aimed at, Facebook was more strident than Google in its criticism. There was Facebook's 2021 decision to remove all news from the platform, if briefly. More recently, Meta's head of partner development, John Severinson upped the ante, telling a [UK House of Commons Inquiry](#) into local media 'I think one of the learnings from the Australian arrangement is that it does not solve or attempt to solve the underlying issue, in that the business models of journalism online are broken and need to transition to a new reality.' Instead, said Severinson, the government should be encouraging the development of new business models, which is not altogether bad advice. Commercial deals with publishers should encourage collaboration and innovation between tech platforms and publishers, said Severinson, adding that the deals in Australia do not.

Meta's US decision comes as the Australian code is being reviewed by the Treasury Department, a year after its introduction and coincides with Meta's first ever [quarterly revenue](#) decline. What it means for Australian news outlets when their current deals expire, is anyone's guess. Meta may well say all current deals are safe. But the future is another country, especially in the tech world.

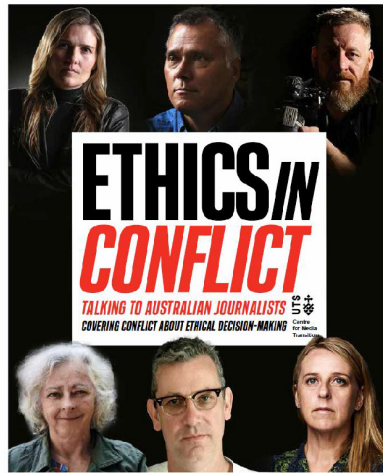
Josh Machin is Meta's Australian Head of Public Policy. He says what's happening in the US shouldn't be viewed as a portent of what might happen in Australia. Listen below:



**Monica Attard**  
CMT Co-Director



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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