UTS

Centre for Media Transition

Hi there

Nothing to see here

Gina Rinehart wants a portrait of her to be removed from a public gallery. She considers it unflattering. Ironically, though, her efforts have brought global attention: not only was Stephen Colbert amused, but it now looks as if the portrait may be displayed over New York's Times Square. The whole tussle has led to a range of interesting commentary, including from Jacqueline Maley in the *SMH*, who boiled it down to an issue of power: the power of the dollar versus the power of the paintbrush.

Today's newsletter is about power. Derek analyses X's win in the Federal Court, where the eSafety Commissioner failed to have an injunction extended that would have compelled the platform to remove all videos of the Wakeley stabbing. The matter probes just how much power the regulator should have to ban content. In other words, it's a classic free speech fracas.

Sometimes, power resides in obvious places. Last week, whistleblower David McBride was sentenced to more than five years in jail for sharing military documents with the ABC; this week, jailed Wikileaks founder Julian Assange was given a final chance to appeal against his extradition to the US. As Peter Greste wrote in response to McBride's jailing, 'Governments and their agencies wield awesome power.' Greste knows this too well, having been imprisoned in Egypt for his work as a journalist. Of course, journalists and

whistleblowers wield power too. The question is, how should all this power be balanced to best serve the public interest?

Sometimes, however, power is more diffuse, residing in less obvious places. This includes the recommender algorithms that determine so much of what we see online. In Europe, new laws give people the right to adjust the algorithms that serve up content on their social media feeds. Now an academic in the US has sued Meta to force the platform to allow him to adjust his Facebook Feed. I write about this curious case.

Meanwhile, Michael writes about the power dynamics behind the flurry of news about AI, including: the laws currently being proposed in California; this week's announcement of a mega-deal between News Corp and OpenAI; and Google's announcement that it will begin mixing ads into its new AI-generated search answers.

And Shaun Davies – who with Michael will be on a panel at humAIn next week - turns his attention to Scarlett Johansson and AI. Where Gina Rinehart wanted a visual likeness removed, Johansson wanted a vocal likeness removed. So far, Johansson has had considerably more success than Rinehart – not that this success has in any way slowed the seemingly unstoppable juggernaut that is AI.

Sacha Molitorisz
Senior Lecturer, UTS Law

Bishop video: eSafety prays for relief

It was the end of April when we last addressed the stoush between the eSafety Commissioner and X Corp over the banned video of Bishop Mar Mari Emmanuel being stabbed while preaching at the Assyrian Christ the Good Shepherd Church in suburban Sydney. At that time, we were sceptical about the need for what appeared to be a worldwide ban, and we were critical of the lack of detail about the Federal Court injunction sought by eSafety to give effect to its own removal notice. Now there's a public court file with so much information that perhaps only GenAI could hope to digest. But at least we have a better understanding of what eSafety was seeking – which Justice Kennett describes as its 'prayer for relief'. Here I cover aspects of His Honour's decision of 13 May refusing to extend the temporary

injunction he granted in April.

It was common ground in the case – and widely publicised – that although X had implemented geo-blocking in Australia, the video could still be accessed using a VPN. eSafety wanted to prevent this remaining form of access. At issue was the obligation imposed on a social media service under the Online Safety Act to take 'all reasonable steps' to remove from its service content that eSafety specifies in a removal notice. Removal means 'the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service'. Kennett J decided that making the video (at the nominated URLs) inaccessible to *all* users of X anywhere in the world was not a reasonable step in making it inaccessible to users physically located in Australia. As eSafety lost this argument, the injunction was not extended.

But there was another argument that eSafety hasn't lost – at least for now. This concerns the validity of its decision that the Wakeley video was 'Class 1 material' that should be banned as RC ('Refused Classification') content. eSafety said the video was Class 1 on the basis that it depicts matters of 'crime, cruelty and real violence' in a way that – in the terms set out in the Classification Act – 'offends against the standards of morality, decency and propriety generally accepted by reasonable adults' to the extent that it would likely be classified RC. In considering this, Kennett J looked at eSafety's reference to the designation by the NSW police of the event itself as an act of 'terrorism'. His Honour found this should not be part of the 'crime, cruelty and real violence' aspect, as the Classification Act deals separately with material that advocates or provides instruction for terrorist acts. But he did not see this as necessarily invalidating the notice (as an irrelevant consideration by an administrative decision maker) because eSafety also has an overall discretion whether to issue the notice if basic criteria are satisfied: the terrorism designation '… may confer particular meaning on the video in the eyes of some viewers. It may make the video more likely to be used as a recruiting tool or a means of intimidation by terrorist groups.'

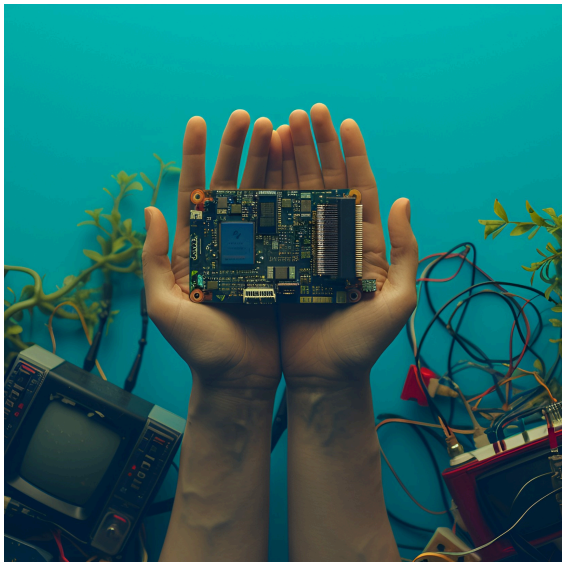
The terrorism aspect was something we discussed previously, along with the muddled explanation for why the content was seen to be so serious that it should be banned altogether. And the question of whether the content overall deserved an RC classification remains outstanding because X has also applied to the Administrative Appeals Tribunal for a merits review of eSafety's decision. X attempted to argue in the Federal Court that the decision to issue the notice was unreasonable because, 'The stabbing video … was simply not capable of being seen by a reasonable person as class 1 material' but Kennett J decided that was a matter for the AAT, not for him to decide at this stage. In finding that eSafety's decision that it was Class 1 was at least open, he also noted that 'it is certainly arguable that the depiction of violence in the stabbing video is not sufficiently long, detailed or otherwise impactful to warrant an RC classification'.

Remembering that this was only an interim decision on whether to continue the injunction and that the issues will be fully addressed at trial in July – and that the AAT will separately

consider the validity of the notice – there's still a lot to be resolved in a case that could set limits on the regulator's power.

Derek Wilding
CMT Co-Director

Zuckerman v Zuckerberg



Of all the fascinating court cases prompted by digital technology, one of the most intriguing has been brought against Meta this month by a US academic named Ethan Zuckerman. At issue is section 230 of the Communications Decency Act, which famously gives digital platforms immunity from liability for content posted on their services; but Zuckerman is invoking s 230 in a fascinating new way. In other words, it's Zuckerman v Zuckerberg in a case that could set a radical precedent.

As detailed by Mathew Ingram in the *Columbia Journalism Review*, Zuckerman is asking a court to allow users to employ third-party tools to filter and curate their news feeds. While s 230 is generally invoked to protect digital services such as Facebook, Zuckerman is arguing that it should also protect the makers and users of third-party tools. In other words, due to s 230, he argues Facebook should be prohibited from banning such tools. It's an entirely novel argument that has legal experts stumped.

Zuckerman was inspired by UK software programmer Louis Barclay, creator of a browser extension called Unfollow Everything. The tool effectively neutralised Facebook's algorithm, enabling users to curate their own feed with content from those friends and groups whose posts they really wanted to see. In the process, it also threatened to neutralise Facebook's profit model.

In 2021, Barclay wrote an article detailing what happened: 'This summer, Facebook sent me a cease-and-desist letter threatening legal action. It permanently disabled my Facebook and Instagram accounts. And it demanded that I agree to never again create tools that interact with Facebook or its other services.' Barclay's article was titled, 'Facebook Banned Me for Life Because I Help People Use It Less'.

In a digital world, algorithms are the code that determine which content we get to see.

Generally, these algorithms are opaque, giving users little control and giving regulators, governments and societies little insight into how they operate. That's changing, however, most notably in Europe, where the Digital Services Act is now law. It includes Article 27, 'Recommender system transparency', which prescribes that digital services 'shall set out in their terms and conditions, in plain and intelligible language, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters'. What's more, Article 38 mandates that 'very large' services 'provide at least one option for each of their recommender systems which is not based on profiling'. These are eminently sensible provisions.

And Australia? So far, there has been little government action on algorithms - but let's see what the newly-announced Joint Select Committee on Social Media makes of it all.

Sacha Molitorisz
Senior Lecturer, UTS Law

Searching for news

There's been big news in news and AI since our last newsletter, with Google announcing a long-expected integration of generative AI into its search engine and News Corp gushing over a deal it's made with OpenAI, also expected.

AI Overviews will allow Google to provide structured answers to complex search queries, and even respond to visual and video search prompts. The tool will also provide links where users can find more information. It will no doubt be a hit with users. Publishers are worried that the new tool will keep users in the Google ecosystem, allowing Google to further monopolise ad revenue (this week, Google announced that Overviews will, of course, deliver personalised advertising). According to Google, however, testing found that AI Overview links get more clicks than they would if they appeared as ordinary search results. A question to be asked here, of course, is which links will be prioritised by AI Overview. As publishers continue to ink deals with AI companies and, of course, platforms such as Google (if no longer Meta), there's a danger that rather than an internet that is open and accessible, we are increasingly corralled into walled gardens protecting proprietary information ecosystems.

There are further signs of that with News Corp's announcement that it has signed a global partnership with OpenAI. In a floridly worded press release, CEO Robert Thomson alliterated on its benefits: 'We believe an historic agreement will set new standards for veracity, for virtue and for value in the digital age ... We are delighted to have found principled partners in Sam Altman and his trusty, talented team who understand the commercial and social significance of journalists and journalism. This landmark accord is not an end, but the beginning of a beautiful friendship in which we are jointly committed to creating and delivering insight and integrity instantaneously.' News Corp clearly finds trust in Altman where others see brazen disregard for both intellectual property and the information commons.

Meanwhile, Google is threatening to pause further news investment across the US in response to the proposed California Journalism Preservation Act (CJPA). This comes after Google paused news investment in California in April and piloted removing links to Californian news sites. It puts a different spin on their claim that, as they roll out AI-augmented search, they will 'continue to focus on sending valuable traffic to publishers and creators'.

Google has called the proposal a 'link tax', but in reality, like the proposed federal US Journalism Competition and Preservation Act, it is more like Australia's News Media Bargaining Code in that it will force platforms and publishers to the negotiating table. There's a difference, which is that negotiations under the CJPA tie payment to a percentage of platform advertising revenue. Payment is then distributed to eligible publishers based on the proportion of user views that their posts or links receive on the platform, relative to other eligible publishers. The bill is being amended after feedback from consultation – including to avoid incentivising clickbait – and is likely to be re-introduced in June. It also contains a clause allowing publishers to bring civil action if a platform refuses to index or otherwise demotes their content; and it requires publishers to spend 70% of proceeds on employing journalists and support staff. There's also burgeoning regulatory action aimed at tackling platform power, with the FTC's inquiry into their AI investments and ongoing anti-trust cases brought by the Department of Justice potentially disrupting Google's hold over search and digital advertising.

Amidst all this, News Corp has managed to extend its US$100m content deal with Google, while News Corp executives have landed in Australia to outline the restructure of local operations, reportedly tasked with saving $65m by the end of the next financial year. News Corp Australia executive chairman Michael Miller will address the National Press Club on 6 June, with a speech titled 'Australia and Global Tech: time for a reset'. It will be interesting to see how the deal with OpenAI fits into that narrative.

Michael Davis
CMT Research Fellow

AI am Scarlett! No, AI am Scarlett!

Is the Centre for Media Transition as interesting as a flirty chatbot with a voice stolen from Scarlett Johansson? Judge for yourself next week, when the CMT will be front and centre at the humAIn conference for media and marketing executives in Sydney on Tuesday 28 May.

Two CMT folks will be on-stage for the panel session 'AI Read the News Today, Oh Boy' (and props to the organisers for that title): Michael Davis, who co-authored the Gen AI and Journalism report, and Shaun Davies (that's me), consultant on AI and media and part-time grad student working with the CMT.

We'll cover the implications of generative AI in the media. Michael will discuss some juicy moments from the report and I'm keen to talk about how newsrooms can keep themselves safe with human-in-the-loop workflows and robust safety metrics for any AI products they deploy. We'll be on-stage with Austereo's Melanie Withnall, who'll bring her coal-face perspective on working with AI in an actual newsroom, and Future Media author Ricky Sutton, a prominent advocate for newsrooms getting paid fairly when their data is used to train AI.

Scarlett Johansson probably won't be there, but she may come up in conversation. This week Johansson revealed that OpenAI's Sam Altman ardently pursued her for permission to use her voice in ChatGPT 4o. Presumably he was inspired by *Her.* When Johannson turned Altman down, Open AI apparently hired a soundalike to replicate her voice. You can read my reflections on the implications for copyright here.

The big question: should the vibe of an artist's performance – their tics and voice modulations and mannerisms - be protected under copyright law?

Shaun Davies
AI Consultant

We hope you have enjoyed reading this edition of the *Centre for Media Transition newsletter | The power of AI and Zuck v Zuck - Issue 9/2024*
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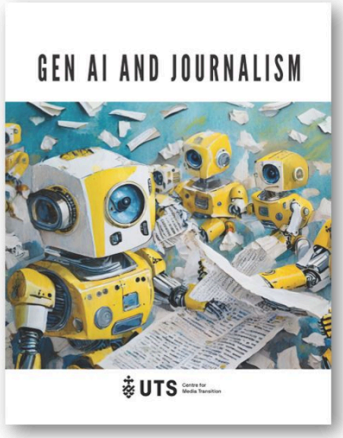

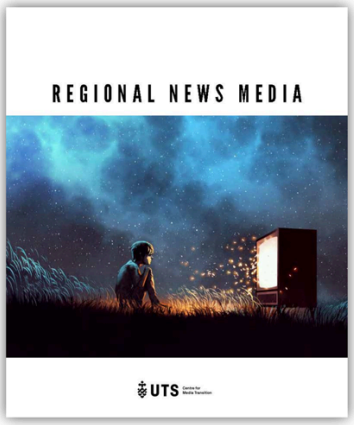

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We pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these places.