Centre for Media Transition

Hi there

The government's grand designs

Like a home builder rushing to get their grand design finished and habitable by Christmas, the government is frantically hammering away. With the Reps and the Senate in their final sitting days of the year, reports are being delivered and legislation is being tabled. And predictably, much of the work is happening in the media and tech space.

Yesterday, the government introduced legislation to ban social media for kids. Of all the interventions, this is among the most ambitious and contentious. 'This reform is about protecting young people and letting parents know we've got their backs,' said Communications Minister Michelle Rowland. 'Social media has a social responsibility for the safety and mental health of young Australians.' Certainly, academics cite reliable evidence that social media harms young people, but a ban? Plenty are dubious. As Teal MP Zoe Daniel told Parliament, a ban for children may mean there is less impetus for platforms to enforce rules and standards: 'There may be an unintended consequence that the platforms actually become less safe.'

Earlier this week, the Parliamentary Joint Select Committee on Social Media and Australian Society released its Final Report. With Daniel as a Committee member, the Report covered the prospect of a ban in good depth, canvassing a spectrum of opinions. Ultimately, it did not recommend a ban for kids. Instead, it recommended (among other things) that the government: introduce a statutory duty of care for platforms; implement greater privacy protections for children; and ensure that a regulatory framework affecting young people be co-designed with young people.

In today's newsletter, we don our hard hats and get involved in the construction. First, Derek unveils a new CMT report that explores two promising potential approaches: a levy on digital platforms to fund public interest journalism; and a must-carry obligation mandating that prescribed digital services carry news content. Next, Kieran investigates the proposed duty of care for digital platforms, wondering how it might interact with a social media ban and the prospect of digital IDs. Then we shift our focus to the changing news ecosystem: Chris looks at the latest audience exodus from both X and legacy outlets; and Alexia unveils our latest podcast with Fintan O'Toole, who gives a warning about the complicity of some mainstream media in undermining democracy. Indeed, last week Peter Greste and the Alliance for Journalists' Freedom held a media freedom summit in Sydney with speakers including Justice Michael Lee and the ABC's Kim Williams, where a recurring theme was the need for journalists to raise their standards and develop a coherent code of conduct across the industry. Here, too, policymakers should take note.

Of course, the grand design that is Australian media policy is an ongoing project. It won't be finished by Christmas. Media will keep changing, and so too law and policy will need to keep changing. However, the law and policy currently under construction have the potential to be a significant addition to the larger edifice. This part of the build has potential to deliver something fit-for-purpose and long-lasting. On the other hand, it could end up as the law and policy version of the UK's Chesil Cliff House, an 18-month project that took 11 years and cost the owner his fortune and his family. If you have a spare $10million, it's still on the market.

Sacha Molitorisz
Senior Lecturer – UTS Law

Finding a way forward for Australian news

Today, CMT releases a new report that explores two ways of supporting Australian news. It responds to developments in the operation of the News Media Bargaining Code (NMBC) – in particular, the likely imminent failure of a key plank of the NMBC.

The first round success of the NMBC was seen in agreements that Google and Meta

made with Australian publishers three years ago. By entering these agreements, the platforms were able to avoid 'designation' by the Treasurer, meaning that the formal scheme for mandatory bargaining and adjudication under the NMBC was never engaged. But the first cycle of agreements started to expire earlier this year and Meta announced that it – unlike Google – would not be embarking on a second round. It also said that if the government proceeded to designate it under the NMBC, it would consider removing news from Facebook in Australia.

Meta's departure from the Australian news market would not only leave a revenue gap for publishers who had funding in the first round; it would mean these and other news businesses relying on distribution through Facebook could have their business model severely disrupted.

This is the policy problem addressed in our new report. We commissioned Julie Eisenberg, a consultant who has worked in senior legal and policy roles including with news media, to look into two other approaches. The first – an industry levy – is an idea we raised back in the development of the NMBC in 2020. The second – provisions to ensure continued presence and accessibility for news content or services such as a must-carry rule – has been raised more recently in industry discussions over the future of the NMBC. Both were addressed in the Second Interim Report of the Joint Select Committee on social media and Australia Society, published last month.

Our report looks in detail at local and international examples of levies and must-carry type rules. Julie has identified a number of design elements that would need to be considered if developing one or both of these mechanisms for the Australian environment. This is likely to be as a package of measures and could exist as additions to the NMBC, rather than as a complete replacement.

From the outset, CMT has encouraged consideration of a levy on digital platforms as an alternative to mandatory bargaining. But when we started this latest research, I had some reservations about the suitability of 'must-carry'. This research has convinced me that we probably need both. We already require telecommunications companies to contribute to the cost of providing universal service in Australia, and we require pay TV to invest in Australian drama; this rationale could be applied to digital platforms for news. And by looking at the must-carry approach within a broader context of content rules that already apply in Australia and overseas, the report shows that policy mechanisms to promote media presence on digital platforms need to work alongside a scheme for remuneration of news content. We need trusted news sources to be present, visible and discoverable, just as we want Australian drama to be available on entertainment platforms. It seems Meta

has decided to disregard the social obligations it has as a key distributor of information in Australia. The risks that come with this decision and with other practices that reduce the visibility of reliable news sources deserve the attention of policy-makers.

We're publishing the report today to allow its ideas to be considered as industry and government continue to analyse the effects of Meta's withdrawal from the NMBC, and ahead of anticipated policy changes in the new year.

Derek Wilding
CMT Co-Director

An internet with a duty of care

The Minister for Communications, Michelle Rowland, has announced that the Australian government will introduce a 'digital duty of care'. The duty of care approach was strongly advocated for in the CMT's submission to the review of the Online Safety Act and forms a key recommendation of the review's final report, which the government has received but not yet made public.

The announcement of a digital duty of care follows the government's decision that it will push forward with banning all children under 16 from social media – a contentious proposal. Taken together, they represent a radical new approach to Australia regulating online spaces.

What is a digital duty of care?

A duty of care is a legal principle most clearly established in the 1932 negligence case of *Donoghue v Stevenson,* known to torts students across the common law world as the 'snail in the bottle' case. While we do not know exact details, the government will likely impose some anticipatory and preventative ('ex-ante*'*) obligations on digital platforms to protect users from harm. For instance, platforms may be compelled to address and improve systems and processes by considering principles such as 'safety by design' or 'child rights by design'.

The potential for flexibility makes a duty of care appealing for online regulation. As noted in our submission, such an approach can be adapted to different platforms, circumstances and harms. It moves to prevent harm instead of redressing an ever-increasing number of specific harms after they occur. It also allows platforms to identify how to adapt the

systems that they know best.

Such a duty is no magic bullet, and the specific form it takes will have wide-ranging implications. For example, the UK has adopted multiple overlapping duties of care in its *Online Safety Act* . While multiple duties might offer greater clarity for platforms in addressing specific harms, this approach risks harms falling through the cracks or new harms not being captured. How the duty is enforced and the transparency measures in place to monitor compliance are also crucial.

The duty of care also raises some questions when considered in conjunction with the social media age ban. For instance, to whom is the duty owed? With children effectively off social media, there would be less incentive to make these platforms child-friendly or child-safe. Indeed, a duty of care in its own right may require a platform to introduce age limits. A blanket age limit – which will effectively require all users to verify their age – seems a blunt approach unless there is some further motivation for age verification.

The government's announcements triggered a re-read of Lawrence Lessig's book Code Version 2.0. Lessig argued during the early days of the world wide web that cyberspace's architecture - its code - created new dynamics, allowing for effective internet regulation through four regulatory 'modalities': law, social norms, market forces and code. In particular, his comments on the role of identity and traceability caught my eye:

'Even if the government can't force cyber citizens to carry IDs, it is not difficult to create strong incentives for individuals to carry IDs. There is no requirement that all citizens have a driver's license, but you would find it very hard to get around without one, even if you do not drive … The point is obvious: Make the incentive to carry ID so strong that it tips the normal requirements of interacting on the Net. In the same way, the government could create incentives to enable digital IDs, not by regulating individuals directly but by regulating intermediaries. Intermediaries are fewer, their interests are usually commercial, and they are ordinarily pliant targets of regulation.'

It seems almost prophetic.

Kieran Lindsay
CMT Research Officer

New media's latest Xodus

Last weekend *The Guardian* opened its account on BlueSky, not long after officially leaving X. The departure seems to mark yet another exodus from Elon Musk's social media platform, both by journalists and non-journalists. In past emigrations, including when Musk bought the platform in 2022 (back when it was still called Twitter), millions of people signed up to Mastodon. This time though it may be more significant, as even die-

hard X users finally find a reason. *The Guardian* said bluntly it was sick of the 'racism and conspiracy theories'.

As with previous exoduses, Mastodon has seen a spike in signups and a jump in monthly active users. And this time BlueSky was ready, having dropped its restrictive, invite-only policy earlier in the year. On Wednesday BlueSky's CEO announced that the platform had hit the 20 million user mark.

What does this mean for news media audiences? In some ways, very little. About one in 10 Australians use X for news, which is about the same proportion as before Musk bought Twitter (though those figures are from before this current 'Xodus'). Millions will likely stay on X. But millions have also moved to BlueSky and Mastodon. Meanwhile, people seem to be leaving mainstream media in vast numbers too. If anything, all this is just the latest example of our increasingly fragmented news media ecosystem.

Chris Hall
UTS HDR Student

When media makes politics

In this episode of Double Take, Monica speaks with Fintan O'Toole, an *Irish Times* columnist, advising editor at *New York Review of Books*, and winner of the European Press Prize, Orwell Prize and the Robert Silvers Prize.

O'Toole has bracing views on how the media covered the U.S. election, and how changes in the media landscape have paved the way for monumental shifts in US politics. Notably, the recent election of Donald Trump – again! O'Toole points to the galvanisation of disaffected young men - traditionally a non-voter base - through new media. Problematically, when legacy media organisations share content on new media platforms, they are far less successful than digital natives at attracting eyeballs.

Legacy media, he thinks, needs to catch up. To begin with, it might need to rely less on polls. O'Toole points out that while polls are still useful, they have consistently failed as predictive mechanisms, and they discredit legacy media where it cannot risk failing informationally. Also, sheer repetition doesn't work anymore – expecting audiences to be enraged by what enrages the media is not going to work. The sustained focus on Trump as felon was based on such wishful thinking.

And as far as self-examination goes, the truth is that legacy media has been responsible for a lot of the sludge in politics, he notes, citing Murdoch. Collectively, we need legacy media to differentiate itself from corrupt media by promoting the ethics of journalism; otherwise, O'Toole tells us, legacy media will end up a junior partner in the practice of corrupting democracy.

Listen to the conversation here.
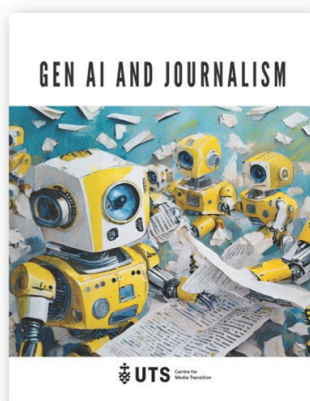
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We hope you have enjoyed reading this edition of the *Centre for Media Transition newsletter* | The government's grand designs and a way forward for Australian news | *Issue 22/2024* **ISSN 2981-989X**

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REGIONAL NEWS MEDIA

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.