

Briefing Paper: The next era of news media

Part 7 - Media ethics and digital defamation ([full paper](#))

Rise in digital defamation

Defamation refers to published material seen by more than one person that has lowered the reputation of an individual in the eyes of the public. Defamation can be defended by proving the claims were trueⁱ.

Social media platforms have made it easier and more common for defamatory comments to be published to a wide audience. However, there is a lack of clarity around media ethics and defamation law in the digital era. Australia's defamation law was last updated in 2005 and was not designed for social mediaⁱⁱ.

There were 609 defamation cases in Australia between 2013 and 2017. Of these, 16 involved Facebook posts, 20 involved emails, four involved Tweets and two involved SMSs. Over the five years, there was an increase from 17% to 53% of cases brought on digital publications. Media companies represented one in four of defamation casesⁱⁱⁱ.

A recent example was the case brought by former Treasurer Joe Hockey against Fairfax media. Mr Hockey was awarded \$120,000 for a poster and \$80,000 for two Tweets promoting an article in *The Sydney Morning Herald*^{iv}. Another example was the costly case against BuzzFeed for allegedly 'slut shaming' a federal MP^v. The University of Technology Sydney's Centre for Media Transition is calling for debate and legislative reform to deal with the growing trend^{vi}.

Social media publishers and hate speech

A recent case in the Supreme Court of NSW ruled that media outlets were responsible for "publishing" defamatory comments made by readers on their Facebook pages. The decision was in relation to defamatory comments made about former Northern Territory youth detainee Dylan Voller by members of the public on 10 Facebook posts published by *The Sydney Morning Herald*, *The Australian*, the *Centralian Advocate*, *Sky News Australia* and *The Bolt Report*^{vii}.

The ruling will mean media outlets that encourage engagement, particularly those that give fuel to hate speech, will need to dedicate more resources to moderating comments on social media. It could also have ramifications for the corporate sector. NewsCorp and others plan to appeal the decision^{viii}. If it is upheld, news media might begin to move away from Facebook as a publishing tool. Alternatively, they will need to work with social platforms to improve moderation tools. However, the cost of hiring community managers could be prohibitive for some businesses and stymie conversations.

The United Nations released its *Strategy and Plan of Action on Hate Speech* on 18 June 2019^{ix}. It recommended digital technology to be used to monitor activity and build support for counter-narratives. It also called for new forms of self-policing by social media platforms. Additionally, the UN supported the Christchurch Call for "governments and tech companies to eliminate terrorist and violent extremist content online", which included a commitment to "encourage media outlets to apply ethical standards when depicting terrorist events online, to avoid amplifying terrorist and violent extremist content"^x.

▶ **Who said what?**

University of Sydney Professor David Rolph, 22 October 2018^{xi}:

People are only entitled to the reputation they deserve, not the reputation they have.

Maurice Blackburn Associate Lawyer Patrick Turner, 22 October 2018^{xii}:

The temptation can often be to vent on these platforms. But we are seeing an increase in defamation against ordinary citizens rather than big media players... Be careful of what you say, share or tweet, particularly when someone can save a screenshot of what you've posted. Deleting the post might not absolve you.

University of Technology Sydney Professor Peter Fray, 6 November 2018^{xiii}:

Now is the time we start talking about this. It seems to me that people are becoming a bit addicted to defamation as a way of taking out your enemies. And that isn't, necessarily, what defamation is about.

News Corp spokesperson, 20 June 2019^{xiv}:

It defies belief that media organisations are held responsible for comments made by other people on social media pages. It is ridiculous that the media company- is held responsible while Facebook, which gives us no ability to turn off comments on its platform, bears no responsibility at all.

The Christchurch Call, 15 May 2019:

The events of Christchurch highlighted once again the urgent need for action and enhanced cooperation among the wide range of actors with influence over this issue, including governments, civil society, and online service providers, such as social media companies, to eliminate terrorist and violent extremist content online.

United National Secretary-General António Guterres, 18 June 2019^{xv}:

Around the world, we see a groundswell of xenophobia, racism and intolerance, violent misogyny, and also anti-Semitism and anti-Muslim hatred... Hate speech is in itself an attack on tolerance, inclusion, diversity and the very essence of our human rights norms and principles. More broadly, it undermines social cohesion, erodes shared values, and can lay the foundation for violence, setting back the cause of peace, stability, sustainable development and the fulfillment of human rights for all.

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ⁱ Young, E 2018, 'What is defamation and where do we draw the line in Australia?', *SBS News*, 22 October, accessed 3 July 2019, <https://www.sbs.com.au/news/what-is-defamation-and-where-do-we-draw-the-line-in-australia>

ⁱⁱ Smiley, S and Lavoipierre, A 2018, 'Why dozens of Australians are suing over emails and posts on Facebook or Twitter', *ABC News*, 7 November, accessed 3 July 2019, <https://www.abc.net.au/news/2018-11-07/social-media-defamation-cases-costly-and-time-consuming/10470924>

ⁱⁱⁱ Young, E 2018, 'What is defamation and where do we draw the line in Australia?'

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- ^{iv} The Centre for Media Transition 2018, 'Trends in digital defamation: defendants, plaintiffs, platforms', p. 68, UTS, March, accessed 3 July 2019, https://www.uts.edu.au/sites/default/files/article/downloads/Trends%20in%20Digital%20Defamation_0.pdf
- ^v Cornwall, D 2019, 'Husar and BuzzFeed to enter mediation', *The Australian*, 5 April, accessed 27 June 2019, <https://www.theaustralian.com.au/business/media/husar-and-buzzfeed-to-enter-mediation-talks/news-story/2877c37ec9d320ffd6cf43e7b0533e69>
- ^{vi} The Centre for Media Transition 2018, 'Trends in digital defamation: defendants, plaintiffs, platforms', p. 81.
- ^{vii} Douglas M 2019, 'Can you be liable for defamation for what other people write on your Facebook page? Australian court says: maybe', *The Conversation*, 25 June, accessed 26 June 2019, <https://theconversation.com/can-you-be-liable-for-defamation-for-what-other-people-write-on-your-facebook-page-australian-court-says-maybe-119352>
- ^{viii} Editorial 2019, 'Overhaul defamation laws after odd Facebook ruling', *The Australian*, 26 June, accessed 3 July 2019, <https://www.theaustralian.com.au/commentary/editorials/overhaul-defamation-laws-after-odd-facebook-ruling/news-story/4714efdb00ed94090aa4f183bb4f3280>
- ^{ix} Guterres, G 2019, 'Remarks at the launch of the United Nations Strategy and Plan of Action on Hate Speech', United National Secretary-General, 18 June, accessed 3 July 2019, <https://www.un.org/sg/en/content/sg/speeches/2019-06-18/un-strategy-and-plan-of-action-hate-speech-remarks>
- ^x Christchurch Call 2019, 'Christchurch Call: to eliminate terrorist & violent extremist content online', New Zealand Ministry for Foreign Affairs and Trade, 15 May, accessed 3 July 2019, <https://www.christchurchcall.com/>
- ^{xi} Young, E 2018, 'What is defamation and where do we draw the line in Australia?'
- ^{xii} Young, E 2018, 'What is defamation and where do we draw the line in Australia?'
- ^{xiii} Smiley, S and Lavoipierre, A 2018, 'Why dozens of Australians are suing over emails and posts on Facebook or Twitter'.
- ^{xiv} Editorial 2019, 'Overhaul defamation laws after odd Facebook ruling'.
- ^{xv} Guterres, G 2019, 'Remarks at the launch of the United Nations Strategy and Plan of Action on Hate Speech'.