



Hi there

## The paradox of free speech



In NSW, Monday marked 'freedom day'. However, restrictions didn't ease for everyone. [In some regional areas](#), the new rules meant a *tightening* of restrictions.

Apart from everything else, Covid-19 has given us a masterclass in the nature of freedoms and rights. It's shown us that freedoms and rights can never be absolute, but must always be balanced against one another. During the pandemic, freedom of movement has periodically been restricted so that collectively we have a better chance

of enjoying the freedom to stay alive. Similarly, sometimes our entitlements to privacy have been dialled back, including in the shape of QR code check-ins, so that contact tracers have the best chance of protecting the freedoms that attend public health.

Here we have a paradox: freedom is best achieved by imposing limits on freedom. In fact, freedom *demand*s limits. As political philosopher [John Rawls](#) wrote, 'The precedence of liberty means that liberty can be restricted only for the sake of liberty itself.' Laws against homicide are a good example, as are speed limits. These restrictions on liberty - don't kill! don't speed! - keep people free from acts of violence and recklessness.

The same is true when it comes to media and freedom of speech. In Australia, freedom of speech is a fundamental principle that underpins our society. (And unfortunately, Australian

law doesn't protect it [nearly well enough.](#)) However, even freedom of speech needs limits, including against malicious falsehoods.

Last week, the [Prime Minister](#) came out firing, angered by rumours about a member of the [Deputy Prime Minister's family](#) circulating on social media. PM Scott Morrison called social media 'a cowards' palace' and signalled a willingness to pass world-leading legislation, including [by designating platforms as publishers](#). And the PM's rhetoric leaned heavily on freedom.

'Cowards who go anonymously onto social media and vilify people and harass them and bully them ... do so with impunity,' [Morrison told reporters](#) in Canberra last Thursday. 'Now that's not a free country where that happens. That's not right. They should have to identify who they are ... People should be responsible for what they say in a country that believes in free speech.'

In other words, anonymous bullies currently have too much freedom, and limits need to be set. The trick is knowing where to set those limits. Which speech should be deemed unacceptable? How should such speech be discouraged or prohibited? And who should be held accountable? The poster? The sharer? The platform? After all, anonymity isn't always bad. As well as a cloak for cowardly trolls, anonymity can be a defence for vulnerable users, such as women eager to contribute to public debate without opening themselves up to sexism or misogyny.

In this week's freedom-themed newsletter, Derek Wilding looks at anonymity and defamation, Tim Koskie explores the need for positive exemplars on social media, and Prue Clarke celebrates journalists [Maria Ressa and Dmitry Muratov](#) winning the Nobel Peace Prize. 'It will be a decisive decade for journalism,' said Reporters Without Borders' Christophe Deloire after the win. 'Democracies are weakened by disinformation, by rumours, by hate speech.' In the interests of freedom, what the world needs now is fewer social media bullies and more journalists like Ressa and Muratov.

So read on, for freedom's sake. And if you're in the mood for a podcast, this week on [Fourth Estate](#), Monica talks to the outgoing head of ABC News, Gaven Morris. His announcement two weeks ago that he wouldn't be renewing his contract at the end of this year was no shock to those inside the ABC – [as Morris admits](#), it's been a bruising time to be an ABC news executive.



**Sacha Molitorisz**

UTS Lecturer in Law/FASS

# Resolving online defamation disputes



Sacha referred above to anonymity in online comments. There are arguments for and against, but anonymous commenting is one reason why the Law Commission of Ontario in its 2020 report, [Defamation Law in the Digital Age](#), said that the contemporary publication environment requires the law to change.

Defamation law has evolved in a way that serves to recompense public figures for reputation-damaging imputations conveyed in mass media publications. There have

always been exceptions to this, but the Law Commission's report shows that an environment characterised by anonymous authors commenting via digital platforms is distinctly different from life in the 20th century (or the 19th, or the 18th, ...). For a start, the analogue world didn't offer the participation opportunities that bring many more speakers into the forums of public debate. But also, if things go wrong in this environment, complainants may not be interested in prolonged legal proceedings in a high stakes gamble for [Rush-style damages](#). They might just want the false review or the online attack taken down.

This is the first important insight of the Ontario review: it's not appropriate to leave this to the common law to address on established principles over time. Parliaments need to step in.

The other finding of interest to us here at the CMT is the proposal for a notice and take-down regime to by-pass court action. The Ontario review was seeking to address various aspects of the law of defamation – including some that were covered in the recent round of Australian law reform – but it was also driven by the observation that 'there is currently no practical legal remedy available to many Ontarians victimized by online defamation'. To address the problem of liability for third party content, under the Ontario model an 'intermediary platform' - including a news organisation hosting third party comments – would pass on a defamation notice to the person who posted the content. The platform would need to take down the part of the content in dispute if it's not possible to pass on a notice or there is no response within a short period of time.

As the Ontario review notes, notice and take-down regimes have been developed in other fields of law and in other jurisdictions, but under this proposal platforms would not be considered to be 'publishers' and they would not themselves need to assess the content of user posts. This last aspect recognises concerns about private companies making value judgements on the legality of user content. The Ontario review describes current arrangements as 'discretionary, unaccountable and non-transparent', noting that 'Internet platforms are not well-equipped or appropriate decision-makers here'.

Under the Ontario model, if the person who posted the content *does* respond in a short period of time, the matter would be pursued by the complainant directly or it could be the subject of online dispute resolution. Anonymity would be maintained where possible. There is much more to the proposal, which sits within a more comprehensive review of defamation law in Ontario, and does not displace more conventional defamation actions in appropriate cases. In our view it deserves consideration as the Australian states and territories undertake [the second stage of defamation law reform](#). In Australia, the law as it stands is not serving the interests of complainants or publishers. In recent days there has been talk of a crackdown on social media services that might see them assume the responsibilities of publishers. The Ontario model takes the opposite approach, offering a swift and effective remedy that is not geared towards financial compensation, but that retains damages as an option where the scheme is not complied with.



**Derek Wilding**  
CMT Co-Director

## Move fast and fix things



When we engage online, we often face a substantive lack of good examples. This is unfortunate. As news organisations have learned in the decades of transitioning to online media and Web 2.0, telling people how they *should* act is a crucial and overlooked component of moderating behaviour, to the extent that encouraging community was at one point seen as a growing role for [journalists](#).

Online, our guidance is extraordinarily dominated by what *not* to do. [Health misinformation](#) is a major growing concern for the Australian government, but their [guidance](#) for interacting with health advice is overwhelmingly, almost comically, focused on 'not'. What is the message here? 'What we expect from you is not to do things.' Mission accomplished?

If we want to see good behaviours, we need to ask for them, and media organisations have shown some of the power of positive modelling. Note the night and day difference between comments on *The Daily Mail* and *The Guardian*. Not accounting for different readerships,

these differences can be tied pretty easily back to the decisions they make moderating their community – community standards focused on [avoiding liability](#) vs those focused on [being inclusive and thoughtful](#). Even the commenting box is distinct: ‘Share what you think’ vs ‘Join the discussion’. Meanwhile, *The Sydney Morning Herald* regularly publishes [letters](#) to the audience on the kinds of behaviours they want to see – alongside ‘don’t do this’, there’s a ‘do this instead’.

There’s trepidation on the internet about proposing an idea. Whenever a new idea is raised, legions of users promptly line up to knock it down. The internet has long revered an ethos of disruption, as encapsulated in Facebook’s now-abandoned motto, ‘Move fast and break things’. Rather than piling on to this gnashing destruction, perhaps it is time for a bit of ‘do this instead’?



**Tim Koskie**  
CMT PhD Candidate

## Journalism for peace



News that the Nobel committee had awarded its prestigious Peace Prize to Maria Ressa and Dmitry Muratov brought a rare moment of joy in newsrooms across the world. Muratov and his courageous reporters at *Novaya Gazeta* have led the scrappy band of independent news outlets that have kept a spark of democracy alive in Vladimir Putin’s Russia. They have paid a heavy price. Six of *Novaya Gazeta*’s journalists have been killed on duty, including [Anna Politkovskaya](#) in 2006.

Ressa is known for a decade-long stint as CNN’s dogged Indonesia correspondent, and more recently for [Rappler](#), the muckraking online news organisation she started with three equally fiery women in her native the Philippines in 2011. *Rappler* has relentlessly exposed the misdeeds of the regime of President Rodrigo Duterte, including extra-judicial killings and brutal intimidation. Duterte has tried to bury Ressa under a blizzard of lawsuits. She has only evaded jail thus far with help for legal bills from international donors and the clout of her famous lawyer, Amal Clooney. Ressa has become the closest thing journalists have to a rock star,

inspiring us all, by example, to fight for truth and ‘#holdtheline’ against authoritarianism.

The prizes are a rebuke to Putin and Duterte but also to Mark Zuckerberg. Like many low-middle income countries, the Philippines relies heavily on Facebook for access to the online world. Ressa has become one of the company’s most powerful critics. A [report](#) released this year by the International Center for Journalists and UNESCO found that for every Facebook comment in support of Ressa, 14 others attacked her. Some called for her [rape](#) and [beheading](#). Facebook did little to stop it even after Ressa presented evidence that much of the abuse was being directed by Duterte’s trolls.

As Ressa [told](#) the *New York Times*’ Kara Swisher in 2019: ‘Facebook is now the world’s largest distributor of news and yet it has refused to be the gatekeeper, and when it does that, when you allow lies to actually get on the same playing field as facts, it taints the entire public sphere.’



**Prue Clarke**  
CMT Regional Researcher

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



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.

[Privacy Statement](#) | [Disclaimer](#) | [Unsubscribe](#)

UTS CRICOS Provider Code: 00099F

This email was sent by University of Technology Sydney, PO Box 123 Broadway NSW 2007, Australia