Centre for Media Transition

Hi there

There's been a win for journalism this week with the decision of an appeal court in NSW to overturn an order which would have forced 60 Minutes, the *Sydney Morning Herald* and *The Age* to hand over draft copies of an upcoming investigation to a subject of their investigation. The cosmetic surgeon Joseph Ajaka sought the original order because he believed the groups reporting would give rise to a defamation or injurious falsehood. Ajaka was granted an injunction in May which stopped the program and newspapers publishing their stories before Ajaka's lawyers looked at what they intended to report. That has now been overturned.

On the topic of courts and their decision-making: Sacha Molitorisz takes a look at what's at stake in the Federal Court's decision to award former NSW Deputy Premier John Barilaro damages in his battle with Google, arising from YouTube videos by the comedian Jordan Shanks (aka FriendlyJordies).

A review of the Australian Code of Practice on Disinformation and Misinformation has just been announced and Michael Davis looks at how the Code has tried to balance freedom of speech with addressing online information disorder. Michael also explains in this video how the Code came about and what it aims to achieve.

Ayesha Jehangir is looking at the very quiet shut down of the federal government's anti-terror taskforce set up in 2019 to counter violent extremism online, and what that means for the growing concerns around an increase in far-right extremism.

And finally, we say farewell to our wonderful interns who helped our First Draft team monitor and assess the deluge of bad information coming at us online during the recent federal election campaign. Esther Chan speaks with them about the experience.

Monica Attard
CMT Co-Director

When digital platforms defame

It's been yet another big week in defamation law, otherwise known as the law of lowered reputations.

On Monday, former NSW Deputy Premier John Barilaro won $715,000 in his defamation suit against Google, owner of YouTube. The matter concerned videos posted to YouTube by Jordan Shanks under the name Friendlyjordies. Barilaro also sued Shanks personally, but that matter was settled. In the case against Google, however, Federal Court Justice Stephen Rares found that Barilaro had been left 'traumatised' following a campaign of 'relentless cyberbullying', and awarded aggravated damages.

As Justice Rares wrote, 'I share Mr Barilaro's incredulity at Google's unjustifiable persistence in failing to apologise to him for publishing indefensible imputations that it never had any basis to allow Mr Shanks to publish or keep online. Accordingly, I am of opinion that Google's failure to apologise has aggravated the damages substantially.'

Barilaro v Google isn't the first Australian case to find that a digital platform can be sued for defamation. In 2018, the High Court held in *Trkulja* that Google could be found to be a 'publisher' for the purposes of defamation law, and that Google's search results and autocomplete predictions were capable of being defamatory. That was a case brought by a plaintiff distressed to find that searches on his name returned results suggesting he was connected to Melbourne's underworld. What's more, last month the High Court heard *Google v Defteros,* an appeal from a Victorian case in which a lawyer who represented gangland figures was awarded $40,000 in defamation damages. The lawyer successfully argued that Google's search results returned a link to an article in *The Age* from 2004 reporting that he had been arrested on conspiracy to murder charges, even though these charges were later dropped. Whatever the court finds, the judgement is likely to set a highly significant precedent.

And then on Tuesday, the day after Barilaro's big win, orders were made in a defamation suit brought against posts made on a Twitter account run by 'PRGuy17', which ardently supports Victorian Premier Daniel Andrews. The difficulty is, the PRGuy17 Twitter account is anonymous. On Monday, Twitter was ordered to hand over information including the email and IP addresses linked to the account, leading to spirited debate about the value of online anonymity.

The *Defamation Act* was amended last year, with further reforms on the way, but some of the most significant developments are coming from the courts, and they're coming fast.

Sacha Molitorisz
Senior Lecturer, UTS Law

The DIGI code review – a missed opportunity?

This week, the lobby group DIGI announced a review of the Australian Code of Practice for Disinformation and Misinformation which it administers. One aspect that the review will consider is whether the code is 'meeting community and industry needs to balance concerns about misinformation and disinformation with freedom of expression.' This vexed issue is central to both the objectives and operation of the code, and it is critical that it is appropriately addressed, particularly because the previous government's proposal to provide ACMA with greater oversight powers is still on the table.
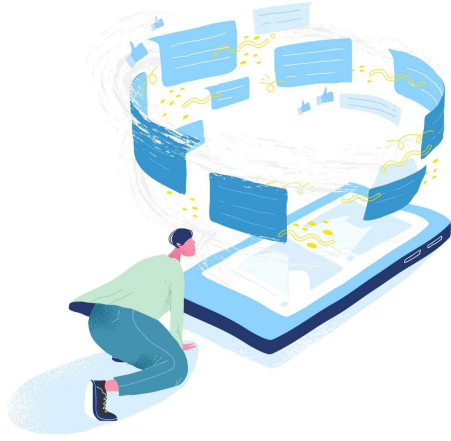
There are larger debates to be had about the desirability of, and appropriate mechanisms for, regulating online information. For now, I want to look at a particular issue: the distinction between disinformation and misinformation and the inclusion of the latter in the code. Disinformation is typically interpreted as deliberately false or misleading information designed to harm individuals or society; while misinformation is false or misleading information spread without such nefarious intent, but which nonetheless may be harmful. It is a somewhat artificial distinction that often collapses in practice. This was one reason that, while the ACCC had recommended a code limited to disinformation, the ACMA argued that it should be extended to encompass both disinformation and misinformation.

The ACCC's reason for excluding misinformation was precisely the importance of safeguarding free speech and freedom of choice. Critically, the ACCC had recommended a mandatory code, with the enforcement provided via an independent regulator that would consider complaints that met a high threshold of serious public detriment. By contrast, the ACMA was responding to the government's request for a voluntary code, and advocated a low threshold, with platforms to be given the flexibility to implement different measures in accordance with the risk of harm.

The code we ended up with is an uneasy combination of these approaches. Misinformation was included, but the threshold remains high, with only material that is likely to cause 'serious and imminent harm' subject to the code. There is nothing in the code that mandates the censorship of false or misleading content; indeed, the code explicitly rejects this in its first guiding principle on the freedom of expression.

DIGI has raised both the inclusion of misinformation and the harm threshold in its review paper. While these are important questions given the code we have, the lack of consideration given to the broader context is something of a missed opportunity.

The wicked nature of the problem, as Molly Montgomery of the Brookings Institution describes it, is perhaps the most striking aspect of trying to address online information disorder. The problem cannot, and should not, be solved by drawing boundaries around a particular type of content that is near-on impossible to identify in real time. Expanding the code beyond a narrow focus on misinformation and disinformation towards the broader improvement of the online information environment would be a step in the right direction.

Michael Davis
CMT Research Fellow

And while we're talking DIGI...

The disinformation code must be viewed as an ongoing, iterative process. As mis- and disinformation tactics and issues develop and change, this cannot be a static document. Shutting down the internet is not an option and people want to remain connected through social media. Therefore, collaborative input from industry stakeholders ranging from human rights experts to industry and digital researchers is crucial. Empirical research and feedback will help to shape the path forward for decisions to be made to improve the code. I have always advocated for a multi-pronged approach - including not only from the platforms, and governments, but also audience empowerment from a news literacy approach. Please offer your expertise in the spirit of developing an effective code for its planned review via DIGI's website.

Anne Kruger
Disinformation Code Complaints Sub-Committee member

On being prepared

The current national terrorism threat level indicator on the Australian National Security website reads, 'Credible intelligence, assessed by our security agencies, indicates that individuals or groups have the intent and capability to conduct a terrorist attack in Australia.' Universally, threat is a combination of three elements – hostile intent, capability and opportunity – also called the threat triangle. In this regard, if we are to go by the National Security's threat assessment, then Australia is just an opportunity away from a terrorist attack. Yet, after the recent Buffalo supermarket shooting in the United States, the Australian government has quietly dissolved the anti-terrorism taskforce.

The taskforce was set up following the Christchurch terror attack in 2019, and was made up of Australian security agencies, internet service providers and social media companies to help monitor and counter online extremism from far right and white supremacy groups in Australia.

Far right extremism is not only a security issue, but also a threat to social cohesion. In Australia, far right online communities are more likely to explicitly call for violence and harassment especially against marginalised communities. There is evidence that Australian society has become more accepting of extreme viewpoints in social and political discourse. Additionally, the threat of a violent extremist event in Australia has increased. Yet, it is still undisclosed and unclear what led to the winding up of such an important taskforce, exclusively dedicated to monitoring and countering extremism online. The taskforce made some recommendations to the government in June 2019 on proactively removing terrorism-related and violent material online. Yet in May 2021, it was disbanded, shifting its responsibilities to the eSafety commissioner and the Department of Home Affairs, both of which already have a lot on their plate, and which is akin to deprioritising an issue of major public concern.

The change was not announced to the public, and the broader debate remains alarmingly missing from mainstream media, raising the question of whether Australia is truly prepared for a large-scale ideologically motivated attack? We do consider ourselves a safe country, and rightly so, but in the light of how sophisticated extremist groups have become in crafting their narrative online, and the vigorous growth of digital platforms, trivialising the possibility of an incident is risky and dismissive.
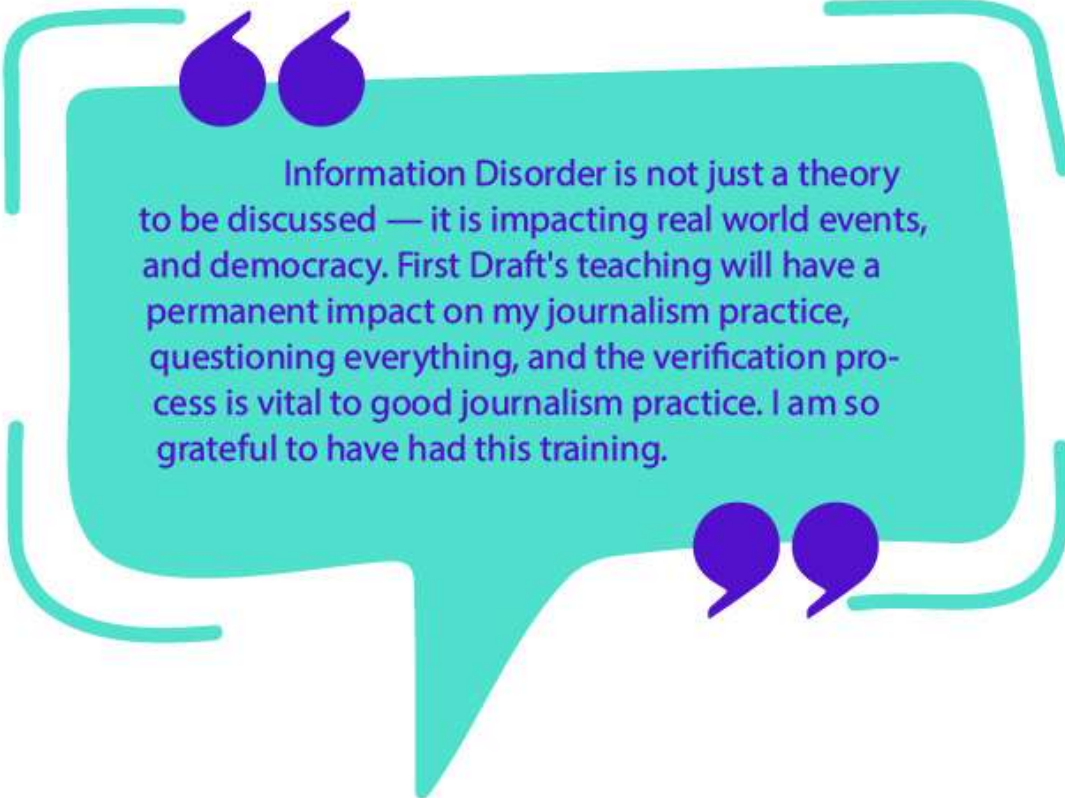

Ayesha Jehangir
CMT Research Fellow

Farewell interns - and thank you!

First Draft's APAC team started preparing for this year's federal election last October with a series of misinformation training and simulations for over 130 journalists and media practitioners from 18 national and regional mastheads. Members of the collaborative project, dubbed CrossCheck Australia: election watch, were briefed on our findings on election

narratives, trends and tactics.But our pre-election research was energised by four dedicated interns (funded by Meta Australia) from UTS journalism and law. Here's what they learned about information disorder and what it means to their journalism practice:
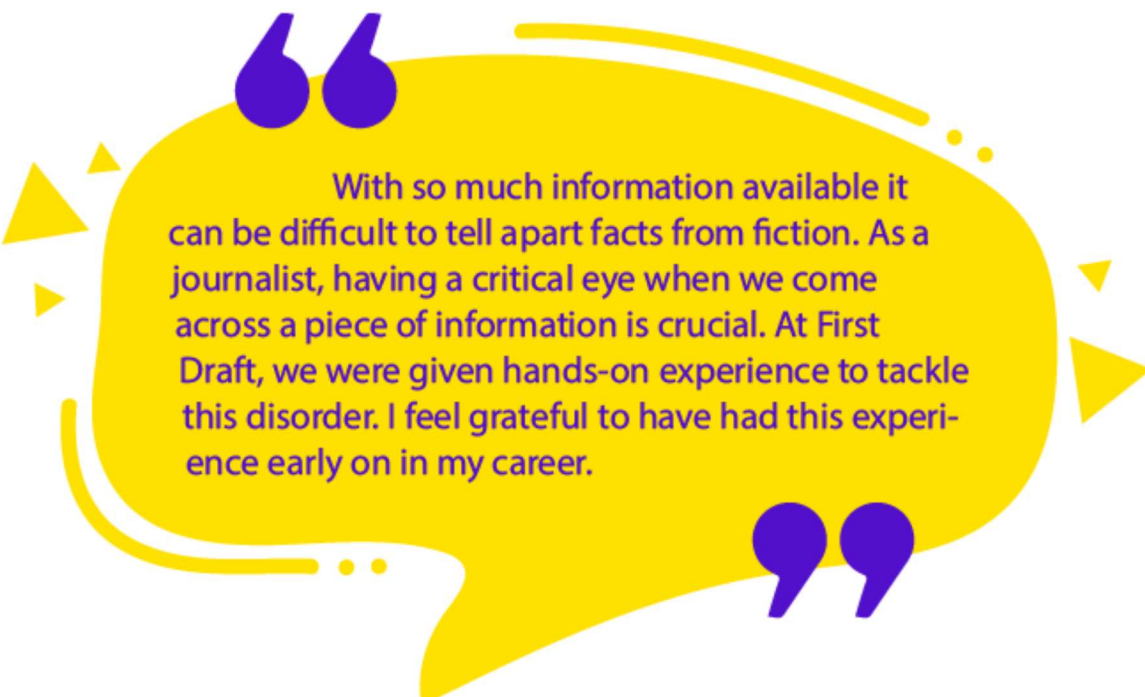
Lisa Edser (Master of Advanced journalism UTS Faculty of Arts and Social Science)

> Information Disorder is not just a theory to be discussed — it is impacting real world events, and democracy. First Draft's teaching will have a permanent impact on my journalism practice, questioning everything, and the verification process is vital to good journalism practice. I am so grateful to have had this training.

Krutika Kale (Master of Advanced journalism
UTS Faculty of Arts and Social Science)

"
With so much information available it can be difficult to tell apart facts from fiction. As a journalist, having a critical eye when we come across a piece of information is crucial. At First Draft, we were given hands-on experience to tackle this disorder. I feel grateful to have had this experience early on in my career.
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Maryam Mahvash (Bachelor of Communication (Digital and Social Media); Bachelor of Laws, UTS Faculty of Arts and Social Sciences and Faculty of Law

Information disorder is a complex and oftentimes fine-drawn issue that requires urgent action. There is power in repetition. With algorithmically sorted feeds and targeted advertisements, it doesn't take long for individuals to become caught up in an echo chamber of falsehoods. The verification process is of critical importance and is essential to the preservation of ethical journalism practice today.

Daniel Lo Surdo (Bachelor of Communication (Digital and Social Media); Bachelor of Laws, UTS Faculty of Arts and Social Sciences and Faculty of Law
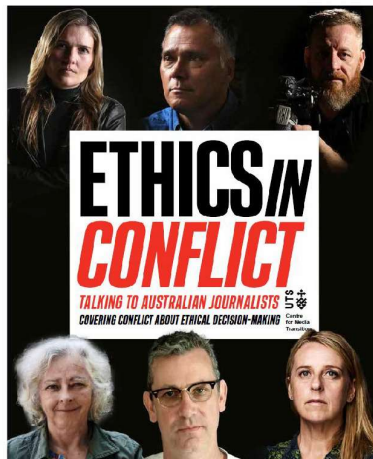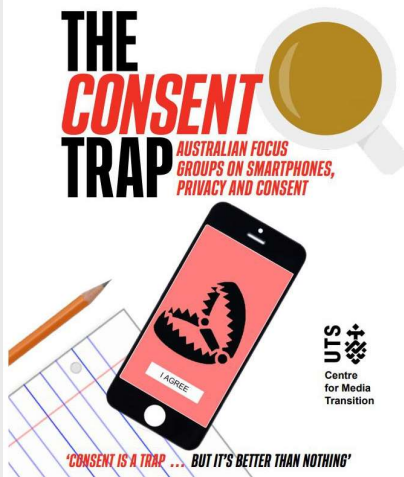
> " While working on the Cross-Check election project, I found information disorder to be increasingly rife, wide-ranging and ambiguous, which will undoubtedly continue as digital media expands and associated legislation fails to keep up. While this might be a frightening reality, it is an opportunity for journalists to grow in their role as the fourth estate, and to be a figure of trust that people can depend on when making educated decisions. "

Esther Chan
UTS First Draft Bureau Editor

Please visit our website for more information about the Centre .

THE CONSENT TRAP
AUSTRALIAN FOCUS GROUPS ON SMARTPHONES, PRIVACY AND CONSENT

I AGREE

'CONSENT IS A TRAP … BUT IT'S BETTER THAN NOTHING'

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ETHICS IN CONFLICT
TALKING TO AUSTRALIAN JOURNALISTS
COVERING CONFLICT ABOUT ETHICAL DECISION-MAKING

UTS Centre for Media Transition

REGIONAL NEWS MEDIA

State of play

UTS Centre for Media Transition

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.