

Hi there

## The holy grail



Governments around the world seem focused on regulating technology and all appear to be searching for the holy grail – regulation that can stop harms, mitigate against concentrations of platform power, and protect the public interest online whilst preserving free speech. Existing laws and regulations are battling against a tide of technological development – the latest, generative AI. But is regulating technology any different to regulating any other public behaviour?

At a recent Policy and Internet Conference at the University of Sydney, Professor Johanna Weaver of the ANU Tech Policy Design [Centre](#) said she thinks the answer to that question should be ‘no’ because getting technology regulation right needs the same framework that other regulation uses, with the same aim - to ensure our collective and individual futures.

So, what’s the framework for good policy making? It’s surprisingly simple – for tech and all else, at least according to Professor Weaver.

The core principle to keep in mind, she says is that designing tech policy is a journey, not a destination – the problem is constantly changing so the response has to move with it, making delegated and regulatory powers very important. She also thinks a well-defined outcome is a problem half solved – therefore, keeping an open mind is important. And good tech policy creates clarity and certainty, which means that even bad policy that delivers certainty is actually good. Finally, consultation is not a ‘step’; it’s vital and consulting with people outside the tent is key.

Professor Weaver thinks these core principles for designing policy to protect the public from the pernicious aspects of technological development should make the exercise if not

easier, then more productive for governments – and handily, create a future in which people, tech and the planet thrive. Her advice should come in handy for the federal government as it sifts through submissions from those inside and outside the tent on the [draft bill](#) to give ACMA more power to regulate what kind of information the digital platforms carry.

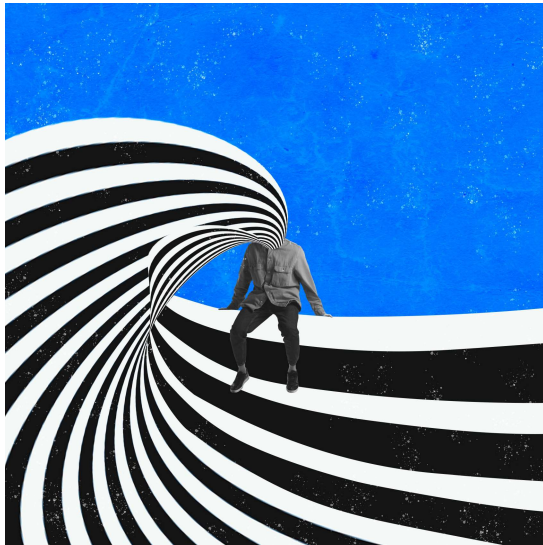
Also, in our newsletter this week Tim takes a look at the US site 538 – once a darling of the start-up scene – which has been absorbed by Disney’s ABC and is now a shadow of its old self.

Derek is looking at the increasingly fractured state of our supposedly national defamation laws. And Ayesha examines the potential of AI to change the way reporters cover refugees and detention centres – especially with the use of AI generated images.



**Monica Attard**  
CMT Co-Director

## Defamation and daylight saving



I went to Brisbane on the worst weekend of the year. No, not the football grand finals, but the day the clocks go forward. I lost an hour coming back without having gained an hour going up.

In summer, the different time zones can be annoying, but daylight saving is understandably a state issue. Can the same still be said for defamation? South Australia has said that it only supports ‘aspects’ of the [Stage Two defamation reforms about digital intermediaries](#), while

Western Australia and the Northern Territory still haven’t adopted the Stage One reforms that came into effect in other jurisdictions in 2021.

There’s a number of features to the Stage One and Stage Two reforms, but let’s recap on what, in the main, they mean for media freedom in Australia.

First, there’s the new ‘public interest’ defence which is currently being tested in actions such as the [ABC’s defence of its reports about Heston Russell](#) and [Nine’s defence of its reports on Dr Munjed Al Muderis](#). And, as [media lawyer Michael Bradley told us](#), the public interest defence would have been run by Crikey against Lachlan Murdoch on the ‘unindicated co-conspirators’ piece, had that matter proceeded to trial.

Another benefit that arises at the outset of a defamation action is the ‘substantial harm’ test that should weed out lesser claims to reputational damage. At the other end of an

action, there's the reigning in of damages through clarification on how the cap on damages works. And we shouldn't forget the introduction of a 'single publication rule' that changes the way the limitation period works so that publishers won't be endlessly liable for a new action every time someone downloads an old article.

That's all in Part One. Two weeks ago, the Standing Committee of Attorneys-General (SCAG) announced that the states and territories had – largely – reached agreement on the Stage Two reforms on intermediary liability. When they take effect next year, these changes will go some way towards addressing the open liability of publishers for third party comments on their social media sites by extending the innocent dissemination defence, providing they have a complaints system and take action when notified. The Stage 2 reforms will also introduce a limited exemption from liability for search engines.

It's hard to see how these reforms have been resisted by some states and territories. It was almost 30 years ago that the media ownership rules changed to allow 'national' TV networks to develop. For some time after that, media companies struggled with mismatched state and territory defamation laws, before a uniform scheme was introduced in 2006. In an era when the struggle should be focused on the regulation of multi-national digital platforms and generative AI, it doesn't seem too much to expect that Australian lawmakers could agree on a standard approach to defamation – one that supports local and original news and commentary and recognises how investigative journalism can be hampered by inconsistent and outdated defamation laws.

Does our fragmented approach to daylight saving tell us anything about our now fractured model for national defamation laws? While my friend in Brisbane is resigned to living without the benefits of daylight saving, her parents have devised their own plan. This otherwise conservative couple living in a Brisbane bayside suburb has taken the unusual step of turning all the clocks forward an hour, giving them an extra hour of daylight in the afternoon and alarming guests who aren't forewarned. There's no real equivalent in the world of defamation. Is it time for the national scheme to become federal?



**Derek Wilding**  
CMT Co-Director

## Visualising the unimaginable

[Exhibit A-i: The Refugee Account](#), a collection of photographs featuring asylum seekers detained in Australian offshore processing centres will be showcased as part of the [PhotoVogue Festival 2023](#) in Milan. Now in its eighth year, the festival has previously highlighted captivating photographs that address global social justice issues.

What makes this collection of 130 refugee photographs particularly intriguing is that there are no photographers nor subjects involved. In Australia, coverage of detention centres and detainees is a complicated process as journalists and photographers are restricted from visiting detention centres, and detainees are prohibited from taking photos and



videos.

The Exhibit A-i project is the brainchild of Maurice Blackburn, an Australian social justice law firm, which has employed generative AI to bring the testimonies of 32 former detainees to life. This visualisation portrays their experiences in detention centres between 2011 and 2020, generated using information collected during 300 hours of interviews about the conditions and incidents inside the camps.

These photographs were then uploaded to Shutterstock, an online image bank where they are featured alongside traditional photojournalism resources. However, the use of these visual resources is not without consequence. In May of this year, [Amnesty International came under fire](#) for sharing AI-generated images on social media to support their reports on the [2021 protests in Colombia](#). These fabricated photos were later used by digital activists to document human rights abuses committed by Colombian police during the unrest. In a separate instance, a far-right political party in Germany has been [using AI-generated images to promote hate](#) against refugees and migrants. In Ireland, a news article on refugees that featured AI-generated images received [backlash from the national journalists' union](#), who expressed concern over journalists using AI as a substitute for genuine journalism.

With restricted access, the journalistic witnessing and visual documentation of the stories of asylum seekers is a challenge. The debate on whether AI can revolutionise how we present and report news about refugees is just beginning, and projects like Exhibit A-i demonstrate its potential of AI. However, considerable effort will be required to ensure that AI can represent these stories without dehumanising refugees and spreading misinformation based on exaggerated and misinformed descriptions.



**Ayesha Jehangir**  
CMT Postdoctoral Fellow

## Moderating cancellation at 538

The US news site 538 has long been a kind of digital success story where a blogger, [Nate Silver](#), became a new kind of news source, one specialised in the statistics of politics, specifically polling and elections. As a digital native organisation, they produced [content](#) with an eye to new formats, networked media, multi-modal approaches, and active and direct engagement with readers. That meant including news comments, which they did consistently.

But as with other digital native media [organisations](#), they did not disrupt the media





landscape as much as get absorbed by it – first into the [NYT](#), then [ESPN](#). 538 remained an innovative digital native producer, presenting content that provided some diversity of media types and content and remaining multi-modal with comments on nearly every news story.

However, as is typical with increasing ownership consolidation through mergers and acquisitions, 538 hasn't fared that well from its various new ownership structures. Following the lapse of Nate Silver's

contract as well as other layoffs [earlier in the year](#), 538's current holder – Disney's ABC – has fully absorbed 538's 'brand' as a column on their own news [website](#), conforming to the forms and features of its typical product offerings, with none of the [streaming conversations](#), [podcasts](#), or [provocations](#) that are perhaps most emblematic of the 538 'brand'. More starkly, the news comments that were a mainstay under their articles, almost exclusively frequented by an enduring small gaggle of vitriolic combatants, have completely disappeared, an oddly consistent decision for broadcasters.

Here again, in another small anecdote for the pile, there is a demonstration of what research has long suggested: rather than offering a lifeline, media consolidation shows little capacity to augment media diversity and even less inclination to try.



**Tim Koskie**  
CMT Researcher

## Double Take



For this episode of Double Take, CMT Research Fellow Dr Michael Davis speaks to Professor Charlie Beckett, the founding director of Polis at the London School of Economics--a thinktank for research and debate around international journalism and society.

Charlie is leading the JournalismAI project, a global initiative encouraging the responsible adoption of AI in news organisations, and capacity building in all newsrooms to counter inequalities. With

the support of the Google News Initiative, JournalismAI has just released a global survey of what news organisations are doing with AI. Charlie was also Lead Commissioner for the

LSE Truth, Trust & Technology Commission, which set out to identify the causes of media misinformation and develop a new policy framework.

In this episode, we're talking about the risks and opportunities generative AI brings to news organisations around the world, including the kind of moral panic generative AI has stirred up. Listen in [here](#).



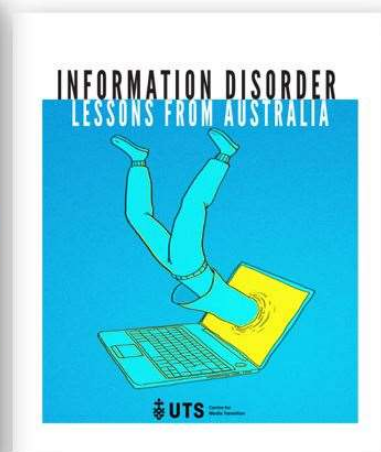
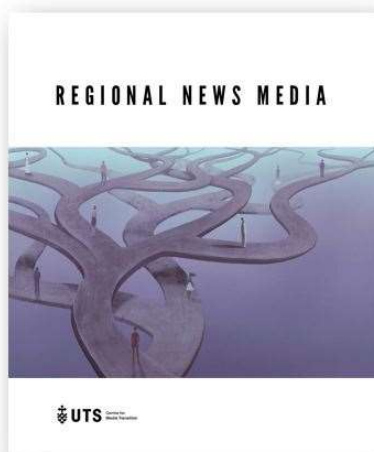
**Alexia Giacomazzi**

CMT Events and Communications Officer

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