

Editors' Note

Welcome back, dear readers! 2018 is well underway, and as always this area has been abuzz. Where to begin? **Disney** bought the bulk of **21st Century Fox's** business, including its film and TV studios as well as its 39% stake in Sky. 22 February has come and gone, so the **mandatory data breach notification scheme** has come into effect. **Suppression orders** have been getting a lot of press, with News Corp reporting on the number of orders made per state in 2017. According to reports, Tasmania had two orders made; Queensland 10; the Northern Territory 43; South Australia and NSW, 179 and 181 respectively - and **Victoria**, 444 suppression orders. This comes as the Victorian government is reviewing the *Open Courts Act 2013*.

Geoffrey Rush is suing the **Daily Telegraph** for defamation, after it was reported that another actor complained that the actor engaged in inappropriate behaviour during a production of *King Lear* for the Sydney Theatre Company. **Craig McLachlan** is suing **Fairfax** and the **ABC**, after they reported on allegations that he sexually harassed former colleagues. **Seven West Media** is no longer seeking an order that **Amber Harrison** be punished for contempt.

Copyright rightsholders in the US are pleased with the result in *TVEyes v Fox News*, which held that a service that enabled viewing whole programs in 10-minute segments was not transformative enough to be Fair Use. **Spotify** is being sued for \$2 billion in copyright infringement. **Taylor Swift** has successfully shaken off a copyright claim that her song infringed *3LW's Playas Gon' Play*, with a US judge considering that the "original" work's lyrics lacked the requisite level of creativity to be protected by copyright. In respect of such lyrics as "playas gonna play... haters gonna hate", the Judge reportedly said: "The concept of actors acting in accordance with their essential nature is not at all

creative; it is banal." Judges gonna judge, we suppose. Back home on the copyright front, the Government introduced the *Copyright Amendment (Service Providers) Bill* into Parliament, has received submissions, and is due to report on 19 March 2018. The Bill proposes to extend **safe harbour**, about which proposal there is more information inside. The Government has separately announced a review of the **siteblocking** provision in s115A of the Copyright Act, with submissions due by 16 March 2018. The Australian Site Blocking Efficacy Report commissioned by the **Australian Screen Association** suggests that there has been a 53% decrease in the use of blocked sites since the siteblocking provision came into effect.

In this edition, our friends at **Norton Rose Fulbright** have written about the **ACCC's inquiry into digital platforms**, as well as on **restraints on media merger consolidation**. Speaking of Norton Rose Fulbright, we welcome (and profile) new CAMLA president **Dr Martyn Taylor**, and talk to him about what is in store for CAMLA in 2018. Privacy and data protection guru, **Peter Leonard** gives Part One of his insights into the **data breach notification scheme**. **Gilbert + Tobin** consider whether **robots are able to collude** under Australian competition law. **HWL Ebsworth** comment on the recent and the proposed changes to the *Copyright Act*, as well as the regulation of **cryptocurrencies**. And **Clayton Utz** explores how a recent Federal Court decision may have made things easier for IP rightsholders to use **preliminary discovery**.

All that makes for happy reading, but not, if you are a #younglawyer, on **14 March 2018**, when you should be at **King & Wood Mallesons** for the **CAMLA Young Lawyers Networking Event** (more details inside).

Victoria and Eli

What is the focus of the inquiry?

The focus of the Inquiry is on the impact of digital platforms on the state of competition in media and advertising services markets. Particularly, the impact of these platforms on the supply of news and journalistic content, and the implications for media content creators, advertisers and consumers.

Under the Government's Terms of Reference, the ACCC must consider:

- the extent to which platform service providers are exercising market power in commercial dealings with the creators of journalistic content and advertisers;
- the impact of platform service providers on the level of choice and quality of news

and journalistic content to consumers;

- the impact of platform service providers on media and advertising markets;
- the impact of longer-term trends, including innovation and technological change, on competition in media and advertising markets; and
- the impact of information asymmetry between platform service providers, advertisers and consumers and the effect on competition in media and advertising markets.

In its Issues Paper, the ACCC has identified that it will also consider any underlying structural and behavioural issues in the relevant markets to determine whether there are competition issues. The ACCC will examine:

- whether network effects increase barriers to entry and deter effective competition from taking place;
- whether platform companies can leverage their dominance through tying or other unilateral conduct to enhance their market position, including through their ownership of personal data;
- whether transparency in media reporting and advertising has been reduced, through the use of advanced algorithms to process user data and deliver targeted content; and
- whether the advertising revenue shift away from traditional media companies could impact the creation of journalistic content and lower the quality of journalistic content.