

Please Takedown Facebook (strike that, reverse it)

Hannah Marshall and Sophie Ciufu, Marque Lawyers, survey the social media landscape.

The EU (and the rest of the world, really) is popping currently with directives, cases and calls for reform and regulation addressing the legal, social and political obligations of digital platforms.

Recently, the Court of Justice of the European Union (ECJ) ruled that an individual has a legally enforceable right to be forgotten and France passed new copyright laws requiring service providers like Google to pay publishers for showing snippets of news articles in search results. Earlier this year, the UK released an Online Harms White Paper considering legislative measures to make digital platforms more responsible for online safety, illegal content and harmful behaviour, including imposing a statutory duty of care on digital platforms and setting up an independent regulator. Also, we can't go without mentioning Mark Zuckerberg's recent testimonial before US Congress, where he was pressed multiple times about Facebook's decision not to take down political ads, followed by Jack Dorsey's not-so-subtle announcement soon after that Twitter will ban political advertising globally.

The latest EU case has global implications. At the beginning of October, the ECJ held that the EU's e-commerce directive (Directive 2000/31/EC) can have global application.

We begin in Austria, where a politician sought an injunction against Facebook Ireland (which operates Facebook outside the United States and Canada, because #tax) after it refused to take down a statement publicly posted by another user that the politician claimed was defamatory. Eva Glawischnig-Piesczek wanted Facebook to take down the original post, as well as other posts with 'equivalent remarks', from the platform in Austria and worldwide.

The Vienna Commercial Court sided with Glawischnig-Piesczek and Facebook complied, but only in Austria. On appeal to the Austrian

Supreme Court, the parties referred the case to the ECJ for guidance. The ECJ ruled that service providers, such as Facebook, can be ordered by a court of an EU Member State to remove or block illegal content (including defamatory content), worldwide.

This is problematic for social media providers, because other countries are also passing their own laws regulating social media that may have conflicting effects. So, it is clear we are in a time where social media platforms are increasingly under the global microscope for their legal, social and political obligations, as are the media companies using them.

Back in Australia, there have been a heap of legal developments applying to digital platforms in the last year.

In February, the Council of State Attorneys-General formed a working group to conduct a review of the model defamation provisions and released a discussion paper that considered a variety of issues related to online and digital platforms and defamation, including whether to adopt the UK's 'single publication' rule and amending the innocent dissemination defence to deal with digital platforms.

In April, the Government swiftly passed (without debate, amendment, or input from anyone who may have had even a morsel of value to add) the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, making it a criminal offence for platforms not to report 'abhorrent material' to the Australian Federal Police once aware that the material is on their platform, and not to expeditiously remove the material.

The Act was passed after the livestreaming of the horrific attack in Christchurch, New Zealand. The Law Council of Australia reacted to the passing of the Act, calling it a 'knee-jerk reaction to a tragic event', stating that laws formulated in such circumstances 'do not necessarily equate to good legislation'. While

platforms should wear some social and legal responsibility for the materials they allow to be published (acknowledging the significant power these platforms wield), the Government should also address the underlying issue of where and from who this content is coming, and why. The Act only deals with the fallout of the dissemination of such content and does not address underlying issues, for example, of hate speech and incitement of violence that we are increasingly seeing in society, both online and offline.

In June, the Supreme Court of New South Wales held media companies liable for defamatory comments made on new stories on their Facebook pages, in the case of *Dylan Voller v Nationwide News, Fairfax Media Publications and the Australian News Channel*. The court determined that media companies were liable from the moment of the comment's posting, based on a hypothetical ability to filter and review, and if necessary block, each comment prior to it being made public. The decision is under appeal.

In July, the ACCC released its final report in the Digital Platforms Inquiry. It proposes a truckload of new regulatory measures targeted at Google, Facebook, and other platforms. They include changes to merger laws, codes of conduct, a code to counter disinformation, copyright take-down rules, and a bunch of general and targeted privacy reforms.

Needless to say, these cases and the continued attempts at reform and regulation will keep swirling around in Australia and the rest of the world, and the law's attempt to regulate the behaviour of social media platforms will only continue to develop into a complex and unnavigable mess.

The only effective approach would be a coordinated global one. As if that's going to happen.

Anyway, the robots are coming so does any of this even matter?