The difficulty with Google's submission is one of timing. At the time of the search results' publication – that is, when the search engine user clicks the hyperlink and comprehends the defamatory website – Google has not (and could not have) considered the interests of the *particular* user. It cannot therefore hold the relevant belief at the time of publication. For this reason, it is difficult to see the High Court concluding that Google's blanket belief, that all users searching Mr Defteros' name had an apparent interest in the search results, was reasonable.

Innocent dissemination

Google submitted that: (i) Mr Defteros' notifications contained 'materially' or 'egregiously' misleading statements; (ii) the function and purpose of the innocent dissemination defence is to permit a publisher time to consider its position and response; and (iii) a defendant should not be burdened with having to consider the defamation unless the notice is 'sufficiently square and proper'.

Mr Defteros responded that the notifications included the relevant website addresses and so were sufficient for Google to have identified the material the subject of the complaint.

In our view, Google's submission in this regard ignores the fact that it was provided with sufficient information to identify and remove the hyperlinks from its search results.

The initial "removal request" made through Google's standard process identified the offending URLs. It was only in responding to subsequent requests for further information that Mr Defteros' representatives provided inaccurate information. Nothing in the defence deprives a plaintiff of a cause of action or remedy on the basis that its notification contained inaccuracies, no matter how significant or whether deliberate or not, if the defamatory material has been brought to the defendant's notice.

Prediction

We expect that the appeal will be dismissed in a majority decision that will reaffirm the strictness of 'publication' in defamation law that was affirmed in *Voller*. Unless members of the Court develop the law, Google's prospects of success on its defences are also, in our view, marginal.

Such a decision may re-agitate calls for law reform in the vein of the lapsed and misleadingly-titled *Anti-Trolling Bill*, which has been convincingly derided in many different publications.

From our perspective, Google enjoys sufficient protection with the innocent dissemination defence and under the *Online Safety Act 2021* (Cth). Our current law strikes a fair balance between Google's commercial interests, the public's interest in having access to information, and individuals' interests in seeing their reputations protected.

Event Report: International Privacy and Data Developments with Bird & Bird

Anna Kretowicz (CAMLA Young Lawyers Committee representative)

Privacy. We all want it, especially in a world where data leaks and hacking seem to be happening with increasing frequency, and you think your phone is listening to you because you mentioned to your friend one time that you wanted an Oodie and now your Facebook feed is covered in ads for them. And not to mention the looming spectre of artificial intelligence.

The seminar was held remotely on the evening of 31 March by **Bird & Bird**, with an expert panel of Francine Cunningham (Regulatory and Public Affairs Director), Alex Dixie (Partner and Head of AdTech Practice), Sophie Dawson (Partner), Joel Parsons (Senior Associate) and Emma Croft (Associate). Attendees were given a global view of the trends, developments and forecasts in data and privacy law, with a special focus on the European Union and United Kingdom and how that landscape compares to Australia.

At a high level, the key trends in privacy and data were identified as increasing regulation, giving consumers more control, and cyber security. These changes will have implications across the technology, media and telecom (TMT) environment, affecting businesses, how media is delivered and how journalists can conduct their work.

Summarising the EU position, Francine identified the "Big 5" pieces of legislation in relation to data and privacy that, together, demonstrate a shift towards a "Data Access By Design" model. That is, there's a focus on mandating data portability, making data accessible to users and opening up the market to smaller players in business. Alex added that there is increasing regulation and enforcement of cookies in the UK, which is a predominantly political movement driven by privacy activism, high-profile regulatory decisions and key regulatory opinions.

Turning to Australia, Joel and Emma focussed on the *Privacy Legislation Amendment (Enhancing Online Safety and Other Measures) Bill 2022*, or the OP Bill, which is a direct response to findings made by the Australian Competition and Consumer Commission's Digital Platforms Inquiry in its Final Report of June 2019. Within that, the Online Privacy Code was identified as the key reform to watch out for, which will establish a code of conduct in relation to privacy practices of online platforms.

Privacy law reform doesn't stop there, though, with longer-term changes being explored in the *Privacy Act Review: Discussion Paper*, submissions for which closed earlier this year. That paper explores bigger picture reforms, like changes to the definition of "personal information", the journalism exemption and individual rights like a statutory tort of privacy.

When asked what the future holds, Sophie wrapped up the seminar by saying that it will be important to map and understand data and data practices, be ready for privacy and data portability changes, and generally, to stay abreast of the ever-changing legislative landscape and what it requires.

On behalf of CAMLA, the CAMLA Young Lawyers Committee would like to extend its thanks to Bird & Bird for hosting and leading the discussion with such a knowledgeable and engaging panel, and would like to acknowledge and thank Julie Cheeseman and James Hoy for their work in preparing the seminar.