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Centre for Media Transition

Hi there

Inheritances, information and whistleblowing

What a week – for Prudence, Elisabeth and James Murdoch. Each walk away with a $AU1.7 billion payout for their place in the Murdoch family trust – the one which was meant to be irrevocable – putting new meaning on the latest trend of people bringing forward inheritances.

The deal ends a long battle by Rupert and Lachlan Murdoch to wrestle control of the trust which holds the shares of the entire News Corp global media empire. Murdoch senior has long wanted his eldest son Lachlan to control the company's future rather than his siblings (minus Grace and Chloe Murdoch who were included in the original trust but without voting rights). Now its future will be in 54-year-old, part time Sydney based Lachlan's hands alone. And few doubt that the companies' various outlets, including Fox News, The New York Post, The Wall Street Journal and of course all the News Corp Australian titles and entities, will remain conservative. Some say, very conservative as Lachlan Murdoch is believed to be more right leaning than his father.

Now there is a new trust, which includes the two youngest Murdoch children but not the older three siblings, and expires in 2050. The old trust which will now lapse was the result of Murdoch senior's divorce from his 2nd wife, Anna Torv who agreed not to claim 50% of Murdoch's extraordinary wealth if he agreed to place the wealth and future of his then smaller but growing global media company in a trust for the three children they shared and

Prudence, from his first marriage. It's a tale worthy of a Hollywood drama! Oh wait – Succession!

No doubt the drama will continue. Apart from any media business interests Elisabeth and James may wish to direct their inheritances towards, there's a family fracturing after years of powerplays. If you're interested in a very detailed look at the ins and outs of this family drama over the last decade, this in The New York Times (paywalled) is a great read.

Also, in our newsletter this week, Michael is looking at how the United States and the European Union deal with data and text mining copyright exceptions, after the bombshell suggestion from the Australia Productivity Commission that AI companies be given wider scope than currently available to use copyrighted material.

Tamara is looking at the latest move to water down our freedom of information laws which would wind back transparency of government behaviour. The government for its part says it deals with too many frivolous or 'spam' requests.

Susanne Lloyd Jones, one of our CMT research associates and a lecturer in the Law Faculty has conducted an interview with Cameron Stewart, national affairs reporter for The Australian on an idea that could revitalise the D-notice system. For those reading not old enough to remember what these were – D notices were issued by a committee made up of government and media representatives who agreed to not publish stories or certain information in the interests of national security. Have a listen to Double Take to hear Cameron talk about its prospects.

And finally, I'm taking a look at a proposal to establish a Whistle-blowers Ombudsman. Would that have helped Richard Boyle, who blew the whistle on what he claimed was illegal ATO behaviour. Boyle was charged but escaped a jail term after a plea deal accepted last week by the courts.

Monica Attard
CMT Co-Director

The productivity omission

When it was released last month, the Productivity Commission's interim report, Harnessing Data and Digital Technology, caused a furore amongst news publishers and the creative industries. The point of most contention was the statement that it was considering whether, in order to take advantage of the potential productivity gains of

generative AI, Australia should introduce a copyright exception for text and data mining (TDM).

The report calls for feedback on the issue, including on the question of what types of uses should be considered fair. But with responses to the report due next week, there is much to be considered about whether we should justify an exception on the basis of productivity gains when there is good reason to doubt whether those gains will be as transformative as AI companies would have us believe. Particularly when this might be at the expense of news, which has clear public-interest value. As AI experts Arvind Narayanan and Sayash Kapoor write, 'the history of AI is littered with overoptimism about its capabilities and utility'. It may provide incremental gains, but nothing worth betting the future of the publishing and creative industries on.

What is clearer is that requiring AI companies to remunerate producers for training AI on their content would present a potentially insurmountable barrier to the commercial viability of generative AI. Anthropic's decision a fortnight ago to settle a class action over the use of pirated books to train its AI models was driven by existential fears. If successful, the action could have resulted in damages topping US$900 billion, well exceeding its annual revenue of $5 billion. Tellingly, Anthropic, like other notable, pure AI companies, makes no profit at all. But we should not expect publishers and creative industries to provide their work for free so that AI companies can profit.

Indeed, this principle underpins TDM exceptions to copyright that have been established in other jurisdictions, many of which rule out commercial use. But the Productivity Commission underplays this in the survey of TDM exceptions that it puts forward in support of establishing one in Australia. It notes, for example, that there are two TDM exceptions in the EU's Directive on Copyright in the Digital Single Market, one for scientific research and the second for general use, and observes that the recent case of Kneschke v. LAION 'endorsed the view that the TDM exception extends to cover AI training'.

Yet this decision has been criticised. As a recent report for the European Parliament argues, applying TDM exceptions to generative AI stretches the purpose of the directive, which emphasises the need for a 'well-functioning and fair marketplace for copyright'. Importantly, the general-use exception permits reproductions and extractions of *lawfully accessible* works. As European copyright scholar Eleonora Rosati argues, this does not mean the same as *publicly accessible*. Just because the content is on the internet does not mean AI companies are free to treat it as their own.

The Productivity Commission also argues that, because TDM is a non-expressive use of copyright material, a TDM exception would reflect the principle that 'copyright law protects

the expression of ideas and information and not the information or data itself'. But it is not clear that generative AI is non-expressive in the relevant way. As the European Parliament report argues, generative AI does not merely extract information or identify patterns in its training, but also synthetically reassembles expressive content. Similarly, the US Copyright Office draft report on generative AI training found that the expressive content produced by generative AI is likely to go beyond the boundaries of fair use to the extent it competes in the same market with the copyrighted works it is trained on.

A further omission from the Productivity Commission report is acknowledgement of the potential for unfettered access to online content—particularly public-interest journalism—to undermine the supply of the quality data that generative AI models need to be useful. This may be, in part, motivating their deals with news companies. But, as we explore in our recent report on GenAI and Journalism, those deals are likely to be on their terms.

Michael Davis
CMT Research Fellow

FOI reforms: efficiency or secrecy?

For those expecting the Albanese government to deliver on early election promises that *it* would be more transparent than the previous Coalition administration, they may have to wait a bit longer. Rather than improving transparency, proposed amendments to the freedom of information framework appear to be eroding it and making it more difficult to hold government accountable.

The bill reforms the *Freedom of Information Act 1982* (FOI Act) and the *Australian Information Commissioner Act 2010*, with several changes that the government says will address processing delays, backlogs and an increase in vexatious and automated requests.

Among them is a prohibition on anonymous or pseudonymous FOI requests, requiring applicants to declare their identity, including when making submissions on behalf of others. Agencies will have the power to reject vexatious or frivolous applications and

decline to process requests deemed an abuse of process.

A discretionary 40-hour processing cap is included, placing an upper limit on how much time can be spent on a single request. And application fees will be reintroduced, and expected to be between $30 and $58 each, with waivers for financial hardship and personal information requests.

Controversially, the bill expands exemptions for Cabinet documents. Under the current legislation, documents may be exempt if submitted for the 'dominant purpose' of going to Cabinet. The amendments, however, have changed this to 'substantial purpose.'

Critics argue the reforms will curtail, rather than expand, public access to government information. The Centre for Public Integrity says it 'spells trouble for public integrity and our democracy' and calls fee reintroduction 'a retrograde step.'

Application fees were abolished in 2010 so the FOI process could be part of a 'pro-disclosure culture' and to 'build a stronger foundation for more openness…' Their restoration risks creating a chilling effect, discouraging journalists, researchers, and ordinary citizens from lodging requests, particularly for complex investigations that exceed the 40-hour cap and be refused outright.

While the bill addresses perceived abuses that may be used to target ministers or public servants – from vexatious or frivolous applicants – the restriction on anonymous requests, could impact or even deter vulnerable individuals and whistleblowers fearing reprisal.

Curiously, it is not only when a request is deemed to be vexatious or frivolous that it can be refused, but if it is 'likely [to] have the effect of, harassing or intimidating or otherwise causing harm (or a reasonable fear of harm) to another person.' Helpfully, the Explanatory Memorandum offers an example of this applying to requests targeting someone who has a domestic violence order against the applicant. But the extent to which this rule may be used in practice is a little unclear. How will 'likely' be assessed? What's the threshold of harassment, intimation or harm? Could it be relied upon as a convenient excuse to block uncomfortable requests?

Perhaps the most contentious change is the expansion of cabinet confidentiality. As the Centre for Public Integrity notes, the Robodebt Royal Commission recommended repealing the Cabinet exemption to improve accountability after finding that secrecy hindered public understanding of the scheme. But the bill expands the exemption, and broaden the range of documents that may be considered ineligible for release.

Something I find odd is that the government has partly justified the reforms because 'public servants spent more than a million hours processing FOI requests.' That sounds like an ungodly amount of work, and as someone who's spent most of my professional career in an office, I sympathise. But mightn't a more obvious solution, one more in

keeping with the spirit of open governance, be to improve processing systems instead of restricting access? Law firms, for instance, have invested heavily in advanced, often AI-powered document management and discovery tools to streamline vast volumes of information. Perhaps the government could do something similar?

Tamara Markus
CMT Researcher

Whistleblowers get an ombudsman

This week public consultation on new reforms to our whistleblower laws opens, whilst the government considers strengthening oversight of the system with a whistle-blower ombudsman to provide more protection for those looking to allege wrongdoing but who – with historically just cause – fear the repercussions.

The ombudsman would have oversight of the Public Interest Disclosure Act, which is meant to protect whistleblowers, though whether it does is disputed given how unsuccessful its protections have been when tested in the courts. The ombudsman would have dispute resolution and investigative powers to help.

All of this, though unrelated, comes as ATO whistleblower Richard Boyle avoided conviction and a jail sentence last week, some 7 years after exposing aggressive debt collection practices. Boyle took his allegations against the tax office to the ABC's Four Corners program in 2018. In placing Boyle on a 12-month good behaviour bond, Judge Liesl Kudelka in the District Court of South Australia said she found Boyle had "engaged in criminal conduct because you genuinely believed at the time that what you were doing was justified for the greater good. However, therein lies the slippery slope."

Judge Kudelka went on to say that there was "no room in our society for individuals to be able to take the law into their own hands to dispense their own sense of justice," and that by blowing the whistle on the ATO, Boyle had undermined the integrity and accountability of the commonwealth public sector that he was seeking to protect. It's a tough gig, the judge said.

“I think it should be recognised that making such a disclosure is not an easy, simple or straightforward thing for an individual to do.” Well, not when you can have the book thrown at you and face a jail term for exposing the unlawful practices of your employer, and not when, as Boyle did, you have gone through all the steps under the Public Interest Disclosure Act and made internal disclosures which were dismissed. The ATO also tried to gag Boyle, with an offer of settlement in 2018 which he refused. It was then he went to the ABC. A few days before Four Corners aired Boyles allegations, the AFP raided his home and the Commonwealth Department of Public Prosecutions drew up a list of 66 criminal charges, only 24 of which proceeded. In the end Boyle accepted a plea deal with the charges reduced to just four related to the actual disclosing of information.

Would the now under consideration Whistleblower Protection Authority Bill 2025 (no 2) which is unlikely to pass the Senate, or a Whistleblower Ombudsman which will sit in the Office of the Commonwealth Ombudsman have helped Richard Boyle? Neither seem likely to relieve the tension between exposing wrongdoing and the illegal steps a whistleblower needs to take to do so.

Monica Attard
CMT Co-Director

Back to the future: a new D-Notice system?

Relations between successive governments and the media over national security reporting are, by definition, fractious. The tension is arguably necessary for a healthy democracy. It is therefore unsurprising that there have been multiple attempts to soothe the media and government relationship around national security reporting with a voluntary D-Notice system. In the wake of the Chinese Embassy bugging scandal by the Australian intelligence services in the 1990s, former Prime Minister Paul Keating is said to have proposed a renewed D-Notice system to the media.

They were a secret but voluntary arrangement between the government and the media

introduced in 1952 to increase control of how media covered national security issues – such as nuclear testing, the whereabouts of Vladimir and Evdokia Petrov, and reporting about the Australian Secret Intelligence Service (ASIS). They petered out by the early 1980s.

In response to reporting on Operation Neath, a counter-terrorism story broken by Cameron Stewart reporting for The Australian in 2009, former Attorney-General Robert McClelland attempted to broker a deal between the media and law enforcement agencies around national security reporting. After the AFP raids on journalists from News Limited and the ABC in 2019, the Parliamentary Joint Committee on Intelligence and Security in its review of press freedom raised the need for more cooperation and trust between government and the media on national security. The Independent National Security Legislation Monitor briefly canvassed suggested options for cooperation in his review of secrecy offences but noted that there were low levels of trust between the media and government.

D-Notices surfaced again in 2023 when the Age and Sydney Morning Herald reported that Mike Pezzullo, the former Secretary of the Department of Home Affairs, had advocated for their return in secret text messages. Now, the Australian Strategic Policy Institute (ASPI) has reignited discussion with a reimagined D-Notice committee. Rebecca Ananian-Welsh, writing for ASPI, argues for a 'structured space for dialogue between government and media.' Henry Campbell and John Coyne floated a 'unique Australian alternative' to the UK's Defence Security Media Advisory system.

In the CMT's *Double Take* podcast this week, we talk to Cameron Stewart, Chief International Correspondent at The Australian newspaper, and one of Australia's most respected and experienced national security journalists, about what it's like reporting on matters of national security in Australia and whether a reimagined D-Notice system could build trust between the media and government.

You can listen to the latest episode of Double Take 'Reporting on National Security: D-Notices or Not?' on our streaming platforms below.

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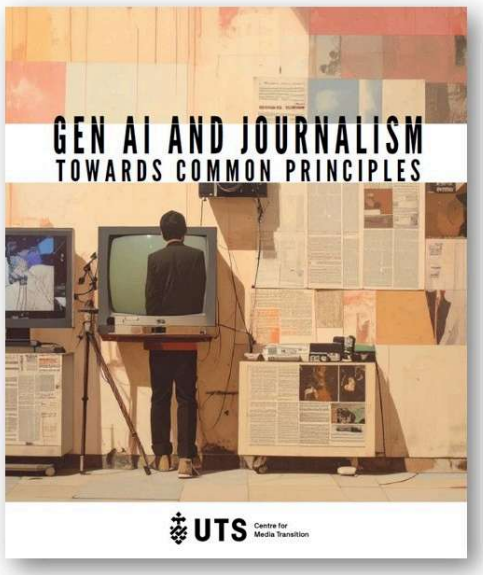
Susanne Lloyd-Jones
UTS Law lecturer



If you'd like to learn more about how newsrooms are adopting generative AI -- or not – you should check out our latest report *GenAI and Journalism: Toward Common Principles*. We found that lower use of Gen AI in Australian newsrooms seems in part to be driven by a perceived lack of benefit relative to the resources needed to implement it effectively, as well as a deep concern for the integrity of news.

Learn More

We hope you have enjoyed reading this edition of the *Centre for Media Transition newsletter* - Inheritances, information and whistleblowing - Issue 16/2025
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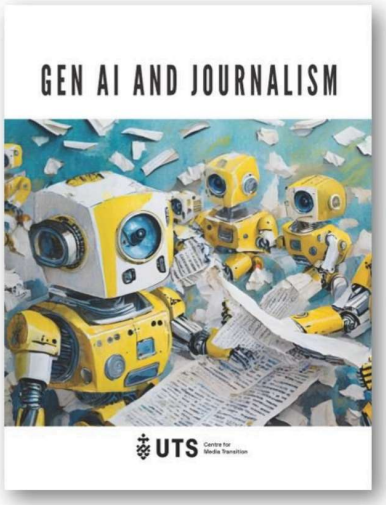

The Centre for Media Transition and UTS acknowledge the Gadigal and Guring-gai people of the Eora Nation upon whose ancestral lands our university now stands.
We pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for this land.