

## Editors' Note

I know I say this every edition - but what a quarter it's been in the CAMLA space!

**Fairfax** and **Nine** have announced a \$4 billion merger that will create a massive integrated media organisation providing TV, online video streaming, print, digital and real estate advertising. **TPG Telecom** and **Vodafone Hutchison Australia**, Australia's third and fourth largest telcos, have confirmed their intention to merge. In the US, the DoJ is appealing the merger approval given to **AT&T** and **Time Warner**.

On the defamation front, following a seven-week trial, the Queensland Supreme Court ordered that **Alan Jones**, **2GB** and **4BC** pay \$3.75 million for defaming the **Wagner** family. **Rebel Wilson's** own massive defamation award from **Bauer Media** was reduced substantially by the Court of Appeal, in a decision that prompted her to seek special leave to appeal to the High Court. That court allowed **Milorad Trkulja's** appeal of a Victorian Court of Appeal decision on whether a search engine can be held liable for defamation from the results of a search. The High Court ruled unanimously that **Google** published the search results, and that the search results could convey one or more of the defamatory imputations alleged. And the **ABC** and **Fairfax's** truth defence in the defamation claim brought by Chinese-Australian businessman **Chau Chak Wing** was thrown out in its entirety, a decision that the media outlets have appealed.

The Federal Court ordered **Apple** to pay \$9 million in penalties for making false or misleading representations to customers with faulty iPhones and iPads about their rights under the ACL. **EU antitrust regulators** fined **Google** a record €4.34 billion and ordered it to stop using its **Android** mobile operating system (which powers about 80% of the world's smartphones) to block rivals, a ruling that Google has indicated it will appeal. **EU antitrust regulators** now have **Amazon** in their sights, investigating whether Amazon was using its merchants' data illegally to promote the sale of Amazon's own brand products similar to those of its merchants. This all, while **Apple** won the race against **Amazon**, **Alphabet** and **Microsoft** to become the world's only \$1 trillion company.

**EU** lawmakers have approved new **copyright** laws, which could force Google, Facebook and other tech companies to share more revenues with European media, publishers and other rightsholders, in a move that French President described as a "great advance for Europe".

In this edition, we follow up last edition's interview with Geoffrey Robertson QC with **Ashleigh Fehrenbach's** interview with another favourite British/Australian media barrister, **Tim Senior** of Banco Chambers. Our friends at Bird & Bird, **Sophie Dawson** and **Joel Parsons** talk us through **online platforms** and liability in defamation, as well as the "grapevine effect" which has received a fair amount of attention since the **Rebel Wilson** cases. **HWL Ebsworth's Amy Campbell** takes us through consumer law issues with **online reviews**, in light of the ACCC's case against **Meriton**. Some would say that two Campbells from HWL in one edition is too much; but not us. **Ishan Karunanayake** profiles Adelaide's media law legend, **Peter Campbell**. **Hall & Wilcox's James Bull**, **Dan Poole** and **James Morvell** guide us through a first date with a start-up, sharing some insight from their Frank Lab. **Minters' Michelle Hamlyn** describes the risks of playing host to other people's views online, in light of the recent judgment in the South Australian District Court involving Facebook posts, and Bakers' **Paul Forbes** and **Ann Hartnett** discuss class actions in the privacy arena. Shadow Minister for Communications, **Michelle Rowland MP**, gives us her views media policy. We're apolitical here at the CLB - of course - but we do enjoy politicians who quote heavily from old issues of this esteemed publication. And **HWL's Luke Dale** and **Niomi Abeywardena** talk us through legal issues arising from use of open source software components. We report on CAMLA's film and TV production seminar and the Young Lawyers' privacy essentials seminar. We advertise the Young Lawyers' **Speed Mentoring** and the **CAMLA AGM and EOY drinks** and we have photos from the **CAMLA Cup trivia night!**

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Victoria and Eli

seemingly drawn from the realms of science fiction, rather than from the courtroom, these statements are continually deployed in the assessment of damages in defamation litigation.

*Crampton v Nugawela*<sup>8</sup> is sometimes referenced as the origin of the phrase "grapevine effect".<sup>9</sup> That case concerned a letter provided to a small group of medical professionals defaming Dr Nugawela. Dr Nugawela, awarded \$600,000 by a jury, for both economic loss, and general damages, had relied on the grapevine effect in respect of the assessment of general damages. The defendant appealed, claiming the quantum of damages was manifestly excessive. Mahoney A-CJ said that in a professional grouping such as medicine, word travels fast. Formal allegations of lying and untrustworthiness of a member

of the profession would receive extensive coverage within that group, as it is a matter in which professional colleagues have a legitimate interest. A significant damages award was required to convince that group of individuals, amongst whom the defamatory message was transmitted, that the allegations were false, if the plaintiff was to face them again in future. This is the context in which the "grapevine effect" and "lurking place" observation were relevant, and they supported the large damages award.

### 3. How to grow a grapevine

There are several questions pertinent to the operation of a grapevine effect. Foremost, what is the evidentiary bar required to be met to establish a grapevine effect? Can it simply be inferred that some things will spread amongst members of particular communities, or need a plaintiff

adduce evidence from individuals who actually participated in republication? In practice, it appears to be subject to some flexibility.

The issue arose in *Roberts v Prendergast*,<sup>10</sup> where there was a direct challenge to the finding of a grapevine effect due to want of evidence. There was no reference to evidence of dissemination broader than the three individuals who read the initial defamatory statements. One of the three individuals who heard the defamatory statement, and conducted business with the plaintiff, expressed concern about the potential damage to his own business if word got out about the allegations concerning the claimant's business practices.<sup>11</sup> There was also evidence suggesting that the defendant had said he would be "telling everyone".<sup>12</sup> The witness's concern of word getting out,

8 (1996) 41 NSWLR 176.

9 See for example, *Seafolly v Madden (No 4)* [2014] FCA 980, [28].

10 [2013] QCA 47.

11 *Ibid*, [34].