

Fake news and the media factor

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When Australian actress Rebel Wilson sued Bauer Media for defamation there was a collective gasp by the media, not only because of the size of the damages (\$4.5 million), the largest defamation damages award in Australia's history, but also because of the wider implications such an award would have on the industry.

Not surprisingly, Bauer Media appealed the verdict and the original judgment was overturned. Instead, Wilson was awarded \$600,000. Still a fortune to many people, but it represents just 13% of the original damages award.

The Appeal Court ruled Wilson had not sufficiently proved she suffered a financial loss because of the defamation. For Wilson, there might have been a modicum of moral victory, but after costs, there won't be much left and (given) she promised to donate the proceeds to charity, the charity (and the ethics of Australian journalism) will ultimately be the poorer in the wash-up of this case.

Bauer Media, which owns tabloid magazines *Woman's Day*, *People*, *NW* and *OK!*, is a huge international corporation with the financial muscle to defend itself against litigation. Their stable boasts more than 600 magazines and 50 radio and TV stations, with revenue from the Australian operations reported at \$224.3 million in 2018.

Despite the special damages component of the original award being overturned on appeal, the judgment will act as a warning to publishers of the need to investigate and fact-check stories. The case will open the way for a "plaintiff with an international reputation to seek compensation in Australia for economic loss manifesting in a foreign jurisdiction by way of a grapevine effect over the internet," writes Sophie Dawson from Bird & Bird.¹ Further:

The concept of the "grapevine effect", which originated in a pre-internet age as a shorthand to describe the tendency of defamatory material to move through society ... appears to have taken on a new significance in a digital age when communications can travel quickly across the world via the internet and reach [vast] audiences.

In this instance, while the headlines (and accompanying stories) might not have resulted in a financial loss for Wilson, from a wider moral perspective, they don't

pass "the pub test". The more sensational and salacious, the more magazines sell. Shame on us then, as consumers, for buying into the baloney.

Wilson might be glad Bauer Media is not publishing fake news about her anymore, but one look at the magazine headlines shows they have not stopped reporting fake news stories. The particularly galling and invasive ones are those claiming pregnancies that do not exist, feuds and cheating spouses. All very personal issues that are (frankly) nobody's business but their own.

When journalists start messing with people's lives by writing fake news stories, it is no wonder some celebrities are fighting back. Who wouldn't want to protect their brand in a fickle world where one's personal brand can make or break a career or turn the tide of public opinion?

Those that subscribe to the tall poppy syndrome will argue Wilson is a celebrity who "flogs her wares" in the public domain and is (therefore) fair game, but how would the average person like it if misinformation was written about them or someone they cared about? How would they like it if they were pursued down the street by paparazzi, whose only aim is to get a photo they can sell to the highest bidder? Or have groups of media camped on their footpath, thrusting a microphone in their face every time they leave the confines of their home? The average person wouldn't like it, and neither should they.

Well-known here and overseas, Australian actors John Jarratt and Geoffrey Rush both claimed they were defamed by the Sydney *The Daily Telegraph* after the tabloid published stories alleging rape (Jarratt) and inappropriate behaviour (Rush). Rush was awarded \$2.9 million and Jarrett is going ahead with a defamation action against *The Daily Telegraph* after being cleared of rape charges. "No man should have to go through what I [have gone] through," Jarratt told reporters outside court.² Both actors have lamented the damage to their reputation and career. And no matter that both have been cleared of wrongdoing, unfortunately, when mud is flung, some inevitably sticks.

Freedom of the press is to be supported and encouraged, but not at all costs. The rise of fake news is overtaking the media at such a rate that a reasonable

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person should question the validity of every “true” story they read. And when that fake news incites violence and civil disobedience, it is time to hit the pause button.

What happened in Nigeria’s Plateau State³ after horrific photos began circulating on Facebook on 23 June 2018 is an awful example of what happens when fake news is published. The photos unleashed violence in a region of Nigeria that was already unstable, between young Berom men (an ethnic minority) and Fulani Muslims.

The images depicted gory scenes of dead children, bloodied corpses and homes that were burnt to the ground. But the images had nothing to do with the violence that was happening there at the time; they were from completely unrelated events. What resulted were violent and bloody reprisals against the Fulani Muslims.

The police and the army laid the blame squarely at the feet of the fake news circulating on Facebook.

Facebook and other social media platforms are (increasingly) coming under scrutiny for their role in the spread of fake news. After CEO (Mark Zuckerberg) visited Africa in 2016, there were 16 million Facebook users in Nigeria. By 2018, that number had grown to 24 million.

More users mean more content, and according to the police in Plateau State, a lot of those contents are false, misleading and dangerous. Facebook claimed to have employed fact-checkers in the wake of the Nigerian bloodshed, but that amounted to just four people on a platform used by 24 million Nigerians every month.

A British parliamentary report by the Digital, Culture, Media and Sport Committee (DCMS)⁴ published in February 2019 denounced Facebook and its executives as “digital gangsters”, claiming the tech giant had broken privacy and competition laws. The report accused Facebook of “purposefully obstructing” its inquiry and failing to tackle attempts by Russia to manipulate US elections.

The DCMS report called for social media sites like Facebook to be brought under regulatory control, arguing: “Social media companies cannot hide behind the claim of being merely a ‘platform’ and maintain that they have no responsibility themselves in regulating the content of their sites.”⁵ The UK is not the first country to tackle the social media platforms head-on.

Germany, a country once reviled for its attempts at ethnic cleansing, passed a law in January 2018 forcing tech companies to remove hate speech within 24 hours or face a €20 million fine (roughly AUD32 million). The fine is not enough to send a company the size of Facebook into receivership, but it sends a signal that there will be zero tolerance to the publishing of hate speech.

Rod Sims, the chair of Australia’s competition regulator (the Australian Competition and Consumer Com-

mission), says Facebook “has the capability to deal with the proliferation of fake news on the platform, but the social media behemoth is instead ‘palming off responsibility’ to protect its bottom line.”⁶

Sims was referring to the death tax claims circulating during the last federal election. He said the bogus material should have been removed from the social media platform.

So, what is fake news?⁷ According to Mind Tools there are two kinds:

- *Stories that are not true* — They are deliberately invented to make people believe something false, to buy a certain product or to visit a particular website.
- *Stories that have some truth but are not 100% accurate* — For example, a politician attends a conference, but a news story reports that he or she was there to criticise policy rather than support it (a Mind Tools example). This kind of fake news is biased and aims to convince readers of a certain political or ideological viewpoint.

Then there are those who claim a factual story is fake news simply because it does not fit in with their viewpoint. Political campaigns are a case in point — as Sims alluded to — using scare campaigns with spurious claims simply to influence voters.

If more people took the time to delve deeper into the content published in all forms of media, they would be better informed and less inclined to click the “share” icon. Unfortunately, in this present-day world of instant gratification and shares and likes, many do not, and that is the conundrum.

The spread of fake news is nothing new. The 1997 movie *Wag the Dog* was a black comedy starring Robert De Niro as a spin doctor and Dustin Hoffman cast as a Hollywood producer who fabricated a war to distract voters from a presidential sex scandal. When Hoffman’s character makes waves, he ends up dead because his usefulness to the government ends. Given the movie was released months before the Clinton–Lewinsky sex scandal, it was prophetic in some ways with political commentators and critics comparing that scandal with the movie.

The phrase “wag the dog” has been around since the 1870s and is used in a political context to create a distraction. However, with the advent of platforms like Facebook, Twitter and so on, the ease with which fake news spreads is immediate. Almost anyone can publish stories and photos regardless of the authenticity of the information.

By way of example, there is a bloke in Portland, Maine (US) who writes deliberate fake news stories and publishes them on the internet. Then he sits back and

watches the reaction. Called the godfather of fake news by BBC News, he has already written more than 30 fake amendments to the US Constitution alone. He makes up a controversial incident, the topic of which can vary, then frames it as breaking news.⁸ Who knows why he does it, but he seems to get away with making up stories. At least for now.

The term “fake news” appears to have gathered momentum during the last US presidential election campaign and been used with impunity by President Donald Trump ever since.

In the business environment, fake news can have a negative impact on workplace behaviour, resulting in rumours and suspicion. Before anyone clicks the “share” icon, there are a few questions to help separate fact from fiction:⁹

- Is the publisher a trusted source? Is it a professional, well-known news agency or a blog?
- What is the URL? If it ends in something strange like “.infonet” and “.offer” rather than “.com” or “.com.au” (for example), chances are the source is suspect.
- See who else is reporting the story.
- If there is any doubt that the story is real, avoid sharing it with others. By doing so, rumours could spread and may damage the professional credibility of the person sharing.

Old mate in Maine might be getting away with making up stories, but the Bauer Media vs Rebel Wilson and Rush/Jarrett vs Sydney’s *The Daily Telegraph* cases show there can be repercussions for media platforms in this country. Will these cases result in a flood of litigation against powerful companies like Bauer? Or is defamation litigation only an issue for the rich and famous? Only time will tell.



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Footnotes

1. S Dawson, Bird & Bird “Rebel Wilson’s High Court defamation bid fails, bringing Wilson v Bauer to an end” (*Lexology*, 30 November 2018) www.lexology.com/library/detail.aspx?g=764dacfc-246c-4e79-a253-d8b00442c870.
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5. DCMS, above n 4, at 10 para 14.
6. K Murphy “Facebook could tackle fake news but chooses not to, regulator says” *The Guardian* 13 August 2019 www.theguardian.com/australia-news/2019/aug/14/facebook-could-tackle-fake-news-but-chooses-not-to-regulator-says.
7. “How to Spot Real and Fake News” (*Mind Tools*, 7 September 2018).
8. A Subedar “The godfather of fake news” *BBC* 27 November 2018 www.bbc.co.uk/news/resources/idx-sh/the_godfather_of_fake_news.
9. Above n 7.