USE OF SOCIAL MEDIA CONTENT IN BROADCASTING:

PUBLIC AND BROADCASTER PERSPECTIVES

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FOREWORD

The impact of social media on our society has been significant and its influence on contemporary culture, and particularly the media industry, continues to evolve. In our role the BSA must keep pace with rapid changes in technology, the rise of social media platforms, developing social dynamics, and the shifting legal landscape.

In the broadcasting context, we are seeing an increasing number of complaints that raise issues about the use of social media content in broadcasting. In particular, we have considered privacy complaints regarding the republication, by mainstream broadcasters, of content created and shared on social media platforms by 'prosumers' (those who are producers and consumers of social media content).

We became concerned that there may be a double standard at play – are broadcasters held to a higher standard by the public when it comes to republishing social media content? If so, is this justified given a strong public culture to capture and share information? Should we develop guidelines to assist broadcasters when dealing with social media content?

As part of the Broadcasting Standards Authority's role, we undertake research to inform and guide the development of the broadcasting standards system. Given our concerns, and the absence of research on the questions raised, we commissioned research on community attitudes and broadcaster expectations on the use of social media content in broadcasting. We hoped the research would help us start a conversation about these issues.

This research was carried out, and this report prepared, by Dr Kathleen Kuehn, Victoria University of Wellington, and Katrine Evans, Hayman Lawyers, with focus groups made up of members of the public conducted by Colmar Brunton.

Clear findings emerged from the research. Despite a strong sharing culture by members of the public, New Zealanders hold broadcasters to a higher standard than they apply to themselves regarding use of social media content. In particular, the research highlights that the public do not consider that broadcasters can take any social media content and use it in the broadcasting context. The public share information on social media expecting that it will remain in the context in which they published it. They do however also acknowledge that in some cases public interest will justify the republication of social media content, for example for the purpose of disseminating information in emergency situations. Issues of consent and privacy are core concerns that need to be addressed. Based on these findings, we see an opportunity to work with broadcasters to develop guidance about how and when to republish social media content that might affect personal rights of individuals.

We believe this research will assist the Authority and guide its future decision-making. We hope it will also be of use to a wider range of organisations beyond the broadcasting sector that also grapple with issues related to social media. We see this as an opportunity to ignite a conversation in which many people can take part.

On behalf of the Authority members, we would like to thank in particular Kathleen and Katrine, as well as Colmar Brunton, for conducting this research. We also thank the broadcasters who contributed to the report, and particularly wish to thank the members of the public who participated in the focus groups, for giving us their time and thoughtful opinions.

Peter Radich, Chair
July 2017

EXECUTIVE SUMMARY

In common with other media regulators, the Broadcasting Standards Authority ('the Authority') is increasingly faced with deciding privacy complaints about republication of content that individuals have created and shared on social media platforms. Common examples include republishing photographs or video of crime or accident victims, radio hosts reading out tweets or commenting on Instagram messages, or replaying footage or accounts about public figures.

The Authority commissioned us to explore:

- what privacy standards members of the public expect of themselves and others when they act as 'prosumers' (both producers and consumers of content) on social media platforms; and

- whether those standards differ from how broadcasters are expected to behave.

We conducted both empirical and desktop research, from the perspectives of our two distinct disciplines: sociology and law. The Authority commissioned Colmar Brunton to run focus groups with the public and worked with us to design the discussion questions and format. We also sent a questionnaire to broadcasters, asking about their policies and practices around sourcing and republishing social media content.

Until now, little has been known about the attitudes and behaviours of social media prosumers in relation to content regulation in New Zealand. This study aims to help to fill the gap.

Findings

Our main findings are:

- Members of the public expect broadcasters to observe stricter privacy standards than they apply to themselves or to other prosumers of social media content. They see this as appropriate, because broadcasters can publish information very widely, and what they publish is highly credible. Broadcasters therefore have greater potential to cause harm than individuals do.

- However, there is an increasing level of potential legal liability for individual publishers who breach the privacy of others, for instance in the area of harmful digital communications. Prosumers are still relatively unaware of this. While it is true that broadcasters can cause serious or different harm by republishing social media content and that this justifies regulation, individuals can also cause very significant harm to others by what they choose to capture and publish on social media.

- The reasons why people behave the way they do on social media are complex and evolving. In particular, individuals seek out different platforms to fulfil different gratifications. Platform affordances (for instance technical features) can have a major impact on expectations of privacy.

- The expansion of content sharing features through social media means that communication is becoming much more visual than before. Many users capture content with the intent to publish. Photos are used not only to connect with friends and family and share experiences, but to share knowledge or help to build a broader network. Publishing what we see is an increasingly ubiquitous and often unconscious social norm.

- There are some generational differences around capture of content for social media use. In particular, younger people tend to communicate with or through photos rather using photos as a record of an event.

- However, younger people do not care less about privacy, though older people persist in thinking that they do. Users of all ages are concerned about lack of control over personal information online, and are sometimes cynical or fatalistic about the chances of protecting themselves. But many users, especially younger users, demonstrate a strong knowledge of, and willingness to use, privacy protective techniques.

- Individuals often imagine an audience for what they publish, and attempt to calibrate their content accordingly. However, people often underestimate how broad the actual audience might be. This means that they do not necessarily appreciate the effect on privacy that their content might have. They share information expecting it to remain within the context in which they are publishing it, but the complexity of the environment makes this difficult: each item of information reaches or involves others in the social network. Rather than expecting to maintain contextual integrity, it is better to recognise that privacy protection needs to be networked: all actors have a part to play.

Guidance for broadcasters

- Newsworthiness is the principal filter that broadcasters employ when deciding whether to source, solicit or republish information created by members of the public. Broadcasters also recognise the need to protect privacy and employ various techniques to try to do so.

- There appears to be a particular need for guidance for broadcasters about the ability to republish information that individuals have shared on publicly accessible social media pages, or footage of events captured in public places. Contrary to common assumptions, there is no carte blanche to republish such material.

- The starting presumption with information that is publicly accessible is that expectations of privacy will be low, and that rights of freedom of expression will easily permit republication. However, this presumption can be offset by considering the context in which the information was shared on the social media platform and the audience for which it was intended. Taking information out of its original context can significantly affect its impact and the message that it conveys, and can therefore create new and different intrusions into privacy. Intellectual property considerations and the practicability of gaining informed consent may also play a part.

- Where individuals have taken steps to protect their information against wider public access, such as by using privacy settings, the presumption is reversed. Broadcasters should not access or reuse that information unless there is a genuine and legitimate public interest that is strong enough to offset the high expectations of privacy involved.

As the technical features and social dynamics on social media platforms continue to change, privacy norms and perceived violations evolve, as well. We hope that this report provides some insights that are useful to the Authority when considering privacy complaints that come before it. We also hope that it provides a platform for broadcasters and the Authority to develop guidance about how and when to republish social media material that might affect personal privacy, in an increasingly convergent media environment.

1. AIMS AND METHODOLOGY OF THIS RESEARCH

The Broadcasting Standards Authority ('the Authority') has commissioned us to conduct research into public and broadcaster attitudes about privacy in social media content and then apply our insights to its work in interpreting the broadcasting standards.

In particular, we have focused on whether the privacy standards that people expect of themselves and others as prosumers (producers and consumers) of social media content differ from the privacy standards that are expected of traditional broadcasters. If so, we ask how this might affect the types of complaints coming before the BSA and the way in which the current broadcasting standards apply to them.

We started with two hypotheses:

H1: The public holds broadcasters to higher privacy standards than the public applies to individuals/other platforms when it comes to content collection and publication.

H2: Individuals may believe that they or others should be able to record material or publish it online even when that intrudes into privacy, but may believe that broadcasters should not be able to republish that material.

Until now, little has been known about prosumer attitudes and behaviours in relation to content regulation in New Zealand. This is a shortcoming in policy discussions on the issue, and this study aims to help to fill the gap.

We have approached our research questions with the benefit of our two distinct disciplines: Kathleen as an academic sociologist with particular expertise in digital media, and Katrine as a specialist privacy lawyer with a long-standing interest in media law issues. We undertook empirical research through discussions with broadcasters and through use of focus groups with members of the public. The Authority engaged Colmar Brunton to select and run the focus groups, and the Authority staff discussed the structure and questions for the focus group discussions with us. We have then analysed the results, and applied what we have learned to the legal context in which both individuals and broadcasters operate.

'Do the privacy standards that people expect of themselves and others as prosumers (producers and consumers) of social media content differ from the privacy standards that are expected of traditional broadcasters?'

We were engaged to create this report as a resource that the Authority can use when considering decisions under the existing privacy standards, and that broadcasters will find useful for their decision-making processes. The Authority and broadcasters may wish to draw upon this report as they develop new standards and appropriate guidelines applicable to the ever changing media landscape.

Context

In 'Exploring Digital Convergence'[1] the Minister of Broadcasting, Amy Adams, set out a range of new opportunities and challenges presented by technological convergence. A key aspect of that paper was the significance of recent changes in how audiences consume media content. Many of the newest sites through which content is now accessed are themselves sites of convergence. For instance, Facebook not only enables various modes of communication (voice and text) but hosts user-generated photo or video uploading, national emergency broadcasts, a news feed service and most recently its 'Facebook Live' real-time video streaming service.

The issue is not simply one of technology: it has major social and cultural effects. The interactive features of digital platforms enable new types of audience participation as individuals become prosumers of content. Participatory culture – one reliant upon user-

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1   'Exploring Digital Convergence: issues for policy and legislation', Ministry of Culture and Heritage et al (Wellington, 2015) at http://convergencediscussion.nz/wp-content/uploads/2015/08/Exploring-Digital-Convergence-Issues-for-Policy-and-Legislation-2015-08-27.pdf.

generated content – now makes up a major part of the media landscape. As distribution platforms are no longer a barrier between producers and consumers, anyone with the tools and digital literacy can now create, modify and upload media content to the web.

Information sourced and published by individuals on social media channels provides a rich stream of news, opinion and comment on which traditional broadcasters can draw for material. It ranges from the relatively innocuous (such as amusing videos of holiday mishaps or children's antics) to dramatic footage of natural disasters and the reactions of people caught up in them. It also includes highly confronting material such as the footage recorded on Facebook Live of the Nice terrorist attack, murders recorded in real time by witnesses (or even, most recently, by perpetrators), war scenes, and information about local victims of crime or suicide. Events at the more serious end of the scale are clearly newsworthy, but broadcasters can face some hard choices about what, if anything, to show – particularly when unedited information is still circulating freely online.

When broadcasters re-use material from social media, the effects on individuals who feature in that material also vary widely. Some individuals welcome the wider publicity of their material or their involvement in events. For others, use of social media material by broadcasters

'...anyone with the tools and digital literacy can now create, modify and upload media content to the web.'

can come as an unwelcome surprise and can be highly distressing. For instance, family members of people who suddenly attract headlines may experience a degree of exposure to public view that they did not anticipate when they initially posted material about themselves online for their network of family and friends to see. Dealing with the media at the same time as going through trauma has always been hard, but reuse of social media can provide even wider opportunities for attention and comment. This includes negative comment about people's behaviour and even ongoing harassment on those people's own social media accounts.

'When broadcasters re-use material from social media, the effects on individuals who feature in that material also vary widely.'

Is a double standard at work?

Freedom of expression and freedom of the media are fundamental principles underpinning our relevant laws and the operation of our democracy. However, within that framework, broadcasters are subject to relatively strict content regulation, including being governed by broadcasting standards as well as by general statutes and common law. This content regulation includes specific obligations to protect the privacy of the individual, and imposes some legitimate limits on the right to freedom of expression.[2]

This type and level of regulation is different from the law to which individual publishers or the online platforms that they use are subject, even when airing or circulating the same material. However, as we note later, it is perhaps not as different as we sometimes assume.

'Freedom of expression and freedom of the media are fundamental principles underpinning our relevant laws and the operation of our democracy.'

Whether the economic realities of convergence should dismantle the longstanding content requirements imposed on broadcasters by regulators is an important and urgent point of debate, especially as the lines between 'offline' and 'online' media, or who counts as a 'broadcaster,' continue to blur. 'Scarcity of the airwaves' justifications for regulation may be less applicable in today's technological environment, but debates about the special role of traditional media and the impact of their actions remain. While some change is occurring, empirical research shows that New Zealand audiences continue to consume traditional media with more frequency and for longer periods of time than other media.[3]

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2   In New Zealand, see the Broadcasting Act 1989, particularly section 4(1)(c), and the Broadcasting Codes of Practice produced by the Broadcasting Standards Authority in consultation with media organisations.

3   'Where are the Audiences?' (2016). *New Zealand On Air*. Accessed 18 May 2017: http://www.nzonair.govt.nz/research/all-research/where-are-the-audiences-2016.

Resolving that debate is beyond the scope of this paper. Instead, our research set out to pull together information that may help with one element of the discussion. Essentially, our question was whether the frameworks that individual people use to decide whether to capture and then publish information about themselves and others on social media and the law that governs them is radically out of step with what broadcasters can do with that social media content, and if so whether people think that is justified.

We have been conscious of the need not to fall into the trap of treating 'online media' as its own monolithic entity. Instead, the research accounts for how different 'cultures of participation' across various online distribution platforms and networks inform audience attitudes about content standards. Just as the Authority distinguishes content regulation across radio, free-to-air TV and pay TV, it is also worth granting 'online media' their own set of distinctions as understood and experienced by those who use them. Online cultures of participation can then be compared with the cultures surrounding traditional broadcast outlets, enabling a clearer picture of where the differences actually lie.

The relevance of the research for the Authority

In terms of its core functions, the opportunities and challenges presented by technological convergence mean the Authority is likely to receive an increasing number of complaints about breaches of privacy that arise from broadcasters sourcing or republishing material from social networking sites. Other standards, such as fairness, accuracy and balance, may also be affected.

The Authority will determine those complaints under the broadcasting standards that exist at any given time. Those standards have recently been revised and republished[4] but the Authority and broadcasters review the codes regularly.[5] In addition, the pending law reforms may provide the opportunity to supplement the Codebook with new guidelines for use in the social media context. However, in the immediate term, we have focused more on identifying the issues that arise for decision under the existing standards, and how those standards can be interpreted to deal with problems relating to social media content.

We hope that the research will also be useful for broadcasters themselves, and to policy makers and other stakeholders who have to manage similar issues.

Research methodology and structure of this report

Empirical research: focus groups

The concept for this research was framed by the Authority. We also had some assistance from Authority staff in framing research questions and scenarios to ensure that they reflect situations that arise when broadcasting standards are considered.

The Authority engaged Colmar Brunton to work with us to set up focus groups with members of the public. The purpose of the focus groups was to establish what social norms and expectations individual social media users bring to their decisions to both capture and publish content online. Authority staff also provided input in the project's overall framing, methodology and focus group questions. Many of these decisions considered the study's relevance to other agencies concerned with acceptable standards of the republication of social media content in New Zealand society.

The discussion was wide-ranging. It often focused on people's decisions about capturing and publishing information about themselves, which gave us insights into how prosumers perceive their audience and what their expectations of privacy in the content of their communications might be. We were also particularly interested in how people make decisions about posting and viewing content involving other individuals and whether they perceived any legal or ethical obligations with what they were doing. We briefly explored the expectations that they have of broadcasters in the sourcing and re-publishing of social media content.

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4   The new Codebook came into effect on 1 April 2016 after a broad consultation process.

5   Broadcasting Standards Authority *Statement of Performance Expectations for the year ending June 2017*, p. 10.

As part of the focus groups, we used four content-specific case studies (some real, and some hypothetical) to drive the discussion around processes and practices of capturing, publishing and republishing social media content. We designed the case studies to reflect some key aspects of the Authority's privacy principles, including intrusions into solitude and seclusion, public figures and events in public places, publishing information about identifiable people, and the extent of legitimate public interest.

The case studies were:

1. **Grief or Trauma:** Filming of tragedy, such as accident scenes.
2. **Sexual content/humiliation/reputation:** for instance a couple visible from the street having sex in their office building.
3. **Public figures behaving badly:** Photos of a sports star drunk and acting disruptively in a public place or private party.
4. **Photographs taken from social media sites:** Members of the public who become the subject of news stories.

Sociological analysis

Kathleen considered the results of the focus group discussions in depth, and in the context of the academic literature on social media participation and behaviours. Her analysis is set out as part 2 of this report.

Empirical research: broadcaster questionnaire

We had hoped to have a separate focus group with broadcasters, but it was not possible to organise this within the timeframe of the focus group part of the research. Instead, we sent out a general questionnaire to broadcasters and asked for either written responses or oral discussions.

We did not receive enough responses to be able to perform any statistical analysis on the results, but several broadcasters provided us with detailed and valuable information about how they work and how they make decisions. Since broadcasters are more likely to republish visual information from social media, the questionnaire was rather more relevant to television or online channels that display video than to radio. However, with increasing moves to multimedia channels, traditional radio broadcasters are also encountering many of these issues and several radio broadcasters participated. They were particularly able to assist with the broader aspects of the research, such as how they source information and make decisions about publication, whether they experience difficulties with the current legal standards, and where they most need guidance.

Broadcasters' answers were confidential to us. We have drawn on them in a non-attributed way in this report, but have not shared them with the Authority or with other stakeholders.

Legal analysis

Katrine then considered the material submitted by the broadcasters, and applied it as part of an analysis of the legal environment that applies to individuals and to broadcasters. That analysis of law and broadcasting practice is set out as part 3 of this report. It also draws on the experience of other media regulators that face similar issues regarding collection and reuse of social media content, including the New Zealand Press Council and equivalent regulators overseas. While the regulatory frameworks will differ, and each body has to work within its own jurisdiction, it is useful for the Authority to take into account how other regulators approach the topic.

The final part of the report pulls together some general points that the research suggests broadcasters and the Authority could usefully continue to consider as this field develops.

2. UNDERSTANDING SOCIAL MEDIA USERS

The Authority engaged Colmar Brunton to organise, facilitate and report on a series of focus groups with members of the public. Colmar Brunton's detailed report is contained in the Appendix to this report.

This section of our report uses the Colmar Brunton analysis as a starting point, but then adds to it and offers some different perspectives in places. Our analysis is based on attendance at the focus groups, on review of the transcripts of conversations and the participant diaries, and on the academic literature that is relevant to the discussions.

'Social media was defined as any platform that enables individuals to create and share content or to participate in online social networking activities.'

The majority of our findings are consistent with Colmar Brunton's analysis. However, we contend that more work must be done to establish correlations between Colmar Brunton's user typology, behavioural territories and privacy attitudes and behaviours. While the identified territories map onto existing research, the conclusions drawn about these territories' relationship to privacy attitudes would require significantly more empirical work to support those claims. That being said, the Colmar Brunton report remains a useful tool for understanding how focus group participants make sense of their social media activities, and their beliefs about broadcasters' republication of social media content.

Our discussion defined social media as any platform that enables individuals to create and share content or to participate in online social networking activities. 'Active' social media users were defined as having some familiarity with one or more social media platforms, including (but not limited to) Facebook, Instagram, Snapchat, Twitter, and YouTube.

Who are social media users and what do they post (and why)?

A Typology of Social Media Users

From our focus groups, Colmar Brunton constructed a matrix of social media behavioural profiles. The matrix is based on two different coordinates:[6]

- *Level of engagement:*
    a. Active 'prosumers' (producers and consumers of content)
    b. Passive 'consumers' of content

- *Direction of engagement:*
    a. A strong 'self-focus' (intrinsically motivated)
    b. An outward focus on 'others' (extrinsically motivated).

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[6] See Colmar Brunton Report, p. 83.

The matrix identifies six behavioural 'territories' to describe different types of social media users and their attitudes toward privacy.
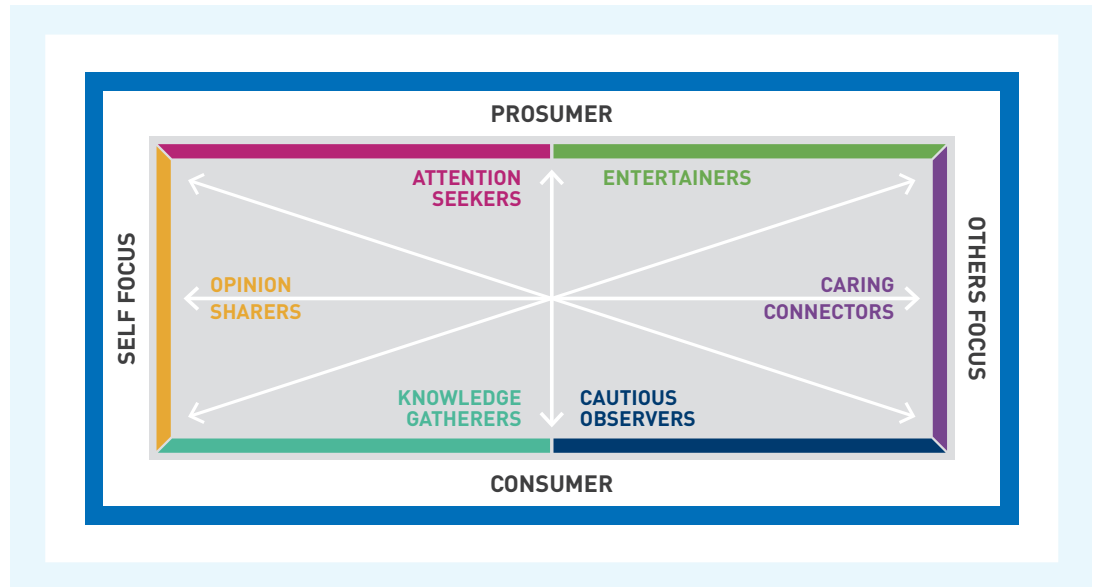
1. **Entertainers** (high-level prosumers with outward focus on others)

   - Primarily use social media to fulfil hedonic gratifications[7]
   - Few privacy concerns

   "I shared a picture of a Christmas tree made out of cats or whatever and people think 'whoa'... It was pretty funny, and anyway, I shared it with my friend and she was just like, 'oh my gosh – that is me. I've just got so many cats'."

   Younger, Active, Hawke's Bay

   "Because people who are reading it are going to feel uplifted hopefully, and it's something they can share and enjoy and feel happy about."

   Older, Less Active, Auckland

2. **Caring Connectors** (high-level prosumers with outward focus on others)

   - Primarily use social media for *social interaction* and connection
   - Strong privacy concerns

   "I think it's just a good way of keeping in touch, knowing about other people's thoughts and feelings and what interests them and seeing family and friends' photos and keep track of their activities and feel like you know the ones that aren't in Christchurch, I'm still part of their life etc."

   Older, Active, Christchurch

   "I don't feel bad if I haven't called a friend for a year and then we catch up because we sort of know what's been going on."

   Older, Active, Wellington

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7   My interpretation of the findings departs from the Colmar Brunton report here as entertainers exhibit qualities beyond mere 'entertainment' to include habitual, empowerment and social interactive gratifications, as well.

3. **Cautious Observers** (low-level content producers who consume with outward focus on others)

- Primarily use to consume content for *cognitive, informational purposes* (for instance motivated by desire to keep up with others' lives without sharing their own)

- Strong privacy concerns

"I'm on social media quite a bit, but people that I know don't possibly know that I'm on social media. More lurking as it were, rather than posting stuff out there."

Younger, Less Active, Wellington

4. **Knowledge Gatherers** (low-level content producers who primarily consume content for the self)

- Primarily use for *cognitive or informational purposes* to *self-empower* or fulfil personal needs

- Privacy attitudes not identified

"I had by nature been an information junkie since the year dot and the thing about social media is that it feeds that information junkie society, with all sorts of information offered."

Older, Active, Wellington

5. **Opinion Sharers** (high-level, self-focused prosumers)

- Primarily use for purposes of *debate, self-expression* (personal identity) and *empowerment*

- Privacy attitudes not identified

"During the elections, you know when you share something it's a bit passionately political or something… if they don't agree with you politically, they might get a bit angry."

Younger, Active, Hawke's Bay

6. **Attention Seekers** (high-level prosumers with strong self focus)

- Primary emphasis on *personal identity* and *social interaction.*

- Few privacy concerns

"… to portray that I've achieved something and then I want to share that with the world. A little bit of 'look at me.'"

Older, Active, Wellington

Typologies are by no means exhaustive. Users often engage in multiple roles across and between social media platforms depending on their motivation and goals. The Colmar Brunton typology loosely maps onto existing classifications of social media users, but its attempt to assign privacy attitudes to these classifications threatens to invalidate the matrix. The typology identifies engagement level and directional focus as its coordinates, but the resulting categories also interpret these correlations in terms of *uses and gratifications* (see below) and *privacy attitudes*.

The result is a restrictive matrix of behavioural 'territories' that do not necessarily represent the complex ways people use different social media platforms to satisfy a wide range of needs.

The matrix also makes claims about how each behavioural territory regards privacy. Yet scholarly research has long shown that there are discrepancies between privacy *attitudes* and actual privacy *behaviours*. Many people tend to self-report being concerned about privacy and engaging in privacy-protective behaviours but in experimental settings, willingly reveal private or personal information.[8] Research specific to social media has found no correlation between one's stated privacy concerns and their online information sharing practices.[9]

In other words, people don't always do what they say they do. There is a discrepancy between people's *attitudes* about privacy and actual information sharing practices. The Colmar Brunton typology's correlation between privacy attitudes and social media usage requires more empirical research to substantiate.

A review of the focus group data reveals that many of the participants fit all terrains across any given day, but aim to maintain the same level of privacy across each depending on other variables (eg, the platform used to publish content; or the *imagined audience* one is publishing content for). The typology imposes specific *motivations* onto the various behavioural territories, even though *uses and gratifications* vary according to context, need and platform.

For example, 'Entertainers' might primarily utilise social media for hedonic purposes, but even 'entertainment' serves habitual and interactive functions that would be difficult to prioritise though a qualitative study. Likewise, 'Knowledge Gatherers' may be motivated by cognitive gratifications, but this gratification-seeking is often social in nature. Neither Entertainers nor Knowledge Gatherers reported such drastically different approaches to privacy, either.

The framework's six territories are useful if privacy claims are eliminated and if the typology is understood on a continuum rather than mutually exclusive user types. Alternatively, participants might be more reliably categorised alongside existing typologies that offer a slightly more fluid approach to understanding social media use.

For example, a study of over 5,000 social media users across four major Norwegian social networking sites identifies five distinct social media user types based on a matrix of *participation level* (intensity of use) and *participation objectives* (mode of use; direction).[10] This typology maps closely onto our findings, yet is much more flexible in its categorisation:

1. **Sporadics** (low-level; information-seekers; check status/messages)

2. **Lurkers** (low-level; less for info and socialising/connection-seeking than entertainment)

3. **Socialisers** (active users; social connection and relationship maintenance is the priority)

4. **Debaters** (active; used to engage, produce content; discussions and self-expression)

5. **Actives** (active in all aspects/modes of participation; heavy producers/ content sharers).[11]

8   See Hargittai & Marwick, 2016.

9   Acquisti & Gross, 2006; Dwyer, Hiltz, & Passerini, 2007; Hargittai & Marwick, 2016.

10   Brandtzæg & Heim, 2011.

11   Li & Bernoff's (2008) typology similarly finds six kinds of social media users: *inactives, spectators, joiners, collectors, critics and creators*. Social media user typologies map closely onto earlier studies about internet users, which included: *lurkers (observers of others' participation), socialisers (those who engage with others), personal connectors and transactional community members.*

User motivations: a uses and gratifications approach

Social media is, by definition, social. Yet user motivations vary as individuals seek out different platforms to fulfil different gratifications. The theory of 'uses and gratifications' (U&G) is one of the primary ways media scholars theorise social media usage.

Uses and gratifications theory is based on the belief that media audiences actively select or engage with media content to satisfy particular needs.[12] It takes a user-centric view of media consumption and creation. A U&G approach isn't about what media do to people but how and why individuals select or use certain types of media. It assumes audiences are aware of the interests and motives, and that these expectations drive choices and need gratification.[13] While little research has been conducted on Aotearoa New Zealand social media users, our findings are consistent with international research findings on American, European and Asian audiences.

'Uses and gratifications theory is based on the belief that media audiences actively select or engage with media content to satisfy particular needs.'

The gratifications associated with social media usage fulfil social and individual, intrinsic and extrinsic, needs. Research suggests that intrinsic (personal enjoyment) are a stronger predictor of social media usage than extrinsic (usefulness) motivations, which our findings also support.[14] A summary review of U&G scholarship suggests social media usage fulfils the following dominant gratifications:[15]

1. **Cognitive:** information acquisition; learning or knowledge fulfilment; satisfying curiosity; a form of surveillance to derive information about others.

2. **Hedonic / entertainment:** aesthetic or joyful experience; laughs/humour; escapism; relaxation; diversion.

3. **Habitual:** passing the time.

4. **Social interaction:** companionship; relationship maintenance; social interaction; inclusion; strengthening interpersonal communication.

5. **Personal identity:** self-expression; self-fulfilment; recognition; forging connections with others; value formation.

6. **Remuneration:** future rewards; payment; job prospects; economic incentives.

7. **Empowerment:** ability to exert influence or power over others, including accountability from organisations/companies, etc.

Most studies identify social connection and relationship maintenance as the dominant predictor of social media use. Yet cultural variations, platform affordances and individual psychological characteristics[16] can also influence motivations for social media use.[17]

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12 Katz, Blumler & Gurevitch, 1973.

13 Alhabash, Chiang & Huang, 2014.

14 Lin and Lu, 2011. Pre-internet media gratifications can be generally summarised by content (information, entertainment) and process (passing time, escapism) (Stafford, Stafford and Schkade, 2004). Social gratifications now make up a third dimension that is internet-specific and distinguishes motivations from 'old media' gratification.

15 Need fulfilment is not static but varies according to user, platform and immediate or long-term needs. The technical features of some platforms, for example, create and fulfil different needs than others. See: Alhabash, Chiant & Huang, 2014 citing Lenuge, 2009; Courtois et al. 2009; Duffy 2015; Ha et al; Kuehn & Corrigan, 2013; Papachrissi & Mendelson, 2011; Park, Keep & Valenzuela, 2009; Papacharissi 2007; Kuehn 2013; Wang & Fasenmaeir 2003.

16 At least one study argues that risk takers have a greater tendency towards self-expression, entertainment and information sharing than risk avoiders, who were comparatively motivated by entertainment, socialisation and self-expression.

17 A study of Taiwanese Facebook users found entertainment to be the highest motivating factor driving Facebook use (Alabash et al).

While all seven gratifications were referenced at some point across the focus groups, using social media to stay in touch with family and friends, for relationship maintenance or to strengthen and expand one's existing social network seems to be the primary motivation reported by our participants. Participant diaries, which documented examples of content each person had recently posted, also support these findings.[18]

The social norms around capturing user-generated content

The visual turn

Social media's diversification of content sharing options means communication is becoming much more visual than before. Our findings support recent research about the 'visual turn'.[19] The rise of online photo sharing has largely facilitated this turn as the practice of capturing content is increasingly motivated by its potential for publication. Many users *capture* with the intent to *publish*.

Two distinct processes define consumer photography/videography: photo making (capture) and photo sharing (publication).[20] The process of photo making (capture) preserves an event or object in time; photo sharing (publication) builds community by engaging one's social network. Focus group participants generally distinguished 'capture' from publication; they do not necessarily publish everything they capture, nor do they only capture with the intent to publish.

However, recent research suggests that decisions about what to capture are increasingly motivated by the decision to publish. Focus group discussions supported this trend and most of the conversations initiated about *capture* were seamlessly conflated with discussions around *publication*. This is evident in the following example, where one group explains how someone capturing a video of a private moment between strangers already anticipates the response from its publication:

> R2: "Why is there a person taking the video and everyone else be okay with that?"
>
> Q "Why do you think?"
>
> R3: "They thought it was funny."
>
> R6: "They want the likes."
>
> R4: "Attention."
>
> R2: "They think it's funny."

Active, Younger, Auckland

In the above example, participants assume that the reason for *taking* the video (capturing it) can be explained by the videographer's motivation to obtain the social gratifications ('likes', 'attention') derived from its online publication. Capturing and sharing, therefore, are mutually bound practices: social media users now increasingly capture with a pre-determined intent to publish. The potential gratifications are conceived in advance and can inform the decision to take a picture or record a video in the first place. For whom social media users intend to publish content is also relevant here, but the question of audiences will be addressed later in this report.

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18 Importantly, the qualitative nature of focus group design means we did not attempt to quantify user motivations to a statistical level or construct correlations between attitudes, behaviours and use at an individual level. Future behavioural research might look at the correlation between other behavioural predictors on self-expression and information-sharing activities. Such studies might inform the extent to which certain behavioural characteristics (such as risk taking) might positively predict those most likely to post controversial videos.

19 The visual trend cuts across personal and professional avenues as ordinary people, public figures and businesses circulate images for a wide range of social, cultural and economic purposes. See: Oeldorf-Hirsh & Sundar 2016.

20 Miller & Edwards, 2007; Oeldorf-Hirsh & Sundar, 2016.

Generational differences around capture

Our participants reported many of the same uses and gratifications for capturing photos and videos, but some generational differences emerged. Older participants restricted capture to historically 'traditional' subject matter – significant moments, milestones or special events. Young people do the same but also reported a wider range of photo and content-sharing practices. There is also a perception from older participants that younger people live life 'through a lens':

> *"We live through our eyes for the moment and [younger generations] live through their camera."*

> **Older, Less Active, Hawke's Bay**

Younger users reportedly agreed with the belief that capturing and posting photos/videos is an increasingly ubiquitous, habitual and often unconscious social norm:

> *R2: "It's just what happens now. It is just what you do."*
> *R3: "It is definitely just what happens now..."*
> *R2: "It is the norm."*

> **Younger, Active, Hawke's Bay**

The habitual readiness to capture informs online communication's visual turn. Many young people now communicate *with* and *through* photos rather than *about* them.

Implications: capturing practices and technological change

Technological change introduces new uses and gratifications that in turn shape technology's use. Social media has enhanced photography's social function. The decision to capture and then share content is part of the social ritual of community building and friendship, just not one bound by time and space. Social gratifications likely motivate capture even when content may be deemed 'inappropriate', 'controversial' or potentially violates the privacy of others. As photos also play a role in identity and self-presentation, individuals use pictures to influence others' perception of themselves. The potential gratifications that content *sharing* fulfils thus partly informs the decision to capture content in the first place.[21] The motivations for capturing content are increasingly tied to its publication.

Publication: social norms and expectations

Like other modes of social media communication, sharing captured photos is primarily conducted for social purposes: social connection, relationship-building and maintenance. Other motivations for online photo-sharing include affection; attention-seeking; disclosure; habit; information-sharing and social influence.[22]

A more recent study finds photo sharing on social media is used to showcase one's experiences and seek out those of others; to connect with others; and reach out to a broader network as a form of knowledge sharing or information exchange.[23] These findings correspond to how our participants summarised their photo sharing practices:

> *"I don't tend to write posts on sites like Facebook, instead I prefer to post pictures and videos. I will generally post a picture or video if I thinks it's either a good snapshot of me, or me with my friends, or if it was just something I liked that I thought other people would like, too."*

> **Younger, Active Auckland**

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21 The way social media platforms present shared content also influences photo-sharing practices; for example, social media is increasingly viewed as a space to share *recent* photos to create distant closeness, visual co-presence or some other social motivations and less about documentation or memory preservation. As social media norms continue to shift in the direction of being social 'in the moment', the considerations and motivations that underlie decisions about what to publish/share will also change.

22 Malik, et al.

23 Oeldorf-Hirsch & Sundar, 2016.

The close relationship between capture and publish is not unique to the digital age but is altering this relationship with some significance. In pre-digital times, sharing one's 'home' photos/videos served a social function, namely building bonds and sense of community. Photos were a means of sharing stories *about* the photos with others physically co-present.[24]

In the digital age, we can share in the absence of others. Innovations in digital and mobile photography enable 'distant closeness' – the ability to inform others about our lives without the need for direct interaction;[25] mobile photo-sharing facilitates *'intimate visual co-presence'* – a shared visual context that individuals are jointly aware of even when physically apart.[26] Digital technologies have altered photography's story-telling function: we now tell stories *with* images rather than *about* them.[27] A young user discusses how she communicates with images through Snapchat in a way that exemplifies this shift:

> *"I use it as communication with my friends, like I would take a picture of the drink bottle and I would just write – are you coming to Zumba tonight?"*
>
> **Younger, Active, Hawke's Bay**

In this example, photo sharing is not about the image itself but as a means of social engagement through the image. To communicate through pictures requires their more frequent or habitual *capture*. Communication's visual turn therefore partly explains the 'readiness' to capture, as discussed by both older and younger participants. Being 'always on' and 'in the moment' facilitate *distant closeness* and *visual co-presence* more seamlessly. Sharing photos over social platforms like Snapchat or Facebook Messenger enables people to experience daily life together. Other participants reported posting pictures or content as a 'conversation starter' that others might relate to, or will spark social engagement with a wider network.[28] This applied to both older and younger users:

> *"Well it's a way for me to keep in touch 'cause I'm from Holland originally, I've got still friends that I went to school with over there and we share photos and our lives basically through Facebook. When you're busy it's a bit hard to do it through Skype because you haven't got time to sit down all the time. They post things and I can see what's going on in their lives and they can see mine which is a really nice way to go."*
>
> **Older, Less Active, Christchurch**

Rather than cataloguing personal memories, online photo sharing provides a more efficient way for people to share personal experiences with a broader network and to co-construct group memories with others. Online photo sharing also enables users to expand their networks beyond existing ties to an informal or wider audience. It is not just about closing distance but establishing new networks in the process.

'sharing captured photos is primarily conducted for social purposes: social connection, relationship-building and maintenance.'

'photo sharing is not about the image itself but as a means of social engagement through the image.'

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24   Much like its historical antecedents, consumer photography and 'home videos' were a way to document life, create and stimulate memories, to organise and understand the world. Traditional subject matter featured 'special' moments (birthdays, family gatherings, holidays) with friends and family — rarely strangers or those unknown by the photographer. As markers of cultural membership, they transmitted information about the self to others, helping establish a sense of community 'around shared events, contexts, and ideals' (Oeldorf-Hirsh & Sundar, p. 626. See also: Clalfen, 1987).

25   Van House, 2006.

26   Ito, p. 3.

27   Makela et al; Kurvinen; Kindberg et al cited in Miller & Edwards, p. 2.

28   Importantly, mainstream media share this goal of social engagement and similar aims to be perceived as socially 'relevant'.

But our participants do not always capture the content they publish. So what kind of content do the participants share?

Content identified by participants as acceptable or 'appropriate' to publish includes:

- Awareness-raising issues, news

- Credible, reliable, valid information

- Inoffensive entertainment, humour

- Achievements, milestones (birthdays, graduation, engagement)

- Social events, celebrations (holidays, good times)

- Photos of scenic locations, leisure activities

- Deals, promotions, contests.

Content identified as unacceptable / inappropriate to publish:

- Untrue, unfounded (gossip)

- Demeaning, harmful to others (humiliates, bullies)

- Cruel to others (including animals)

- Offensive, obscene

- Puts things like work or relationships in jeopardy

- Overly personal.

Our participants indicated that publication decisions are informed by shared social norms of appropriateness. For many, publishing practices are developed over time; they are a *learned behaviour* informed by trial and error, interpersonal communication, or other social and cultural processes.[29] Having learned from past mistakes, participants often *self-censor* to avoid embarrassment or conflict.[30] Few claimed to capture and publish content about strangers, although social desirability may have played a part in this response.

> Q: *"Is there a difference between posting stuff that involves you and your friends maybe? Or strangers? Does it matter?"*
>
> R3: *"Yeah. I don't think I would ever [do that]. Like I post a lot myself and put up photos of myself. I don't think I have ever actually taken someone else's. Even if I take a photo of a group, I never post it online because I know if I put tags on, people might not like it…"*
>
> R4: *"I'm probably a bit different, like I don't mind. With all that privacy of strangers and stuff, I would never post a picture of just someone I didn't know. Like, it might be a bit mean, but if my friend was doing something stupid I would obviously post it. But I would never post something of a friend [who] I don't really know that well…"*
>
> **Younger, Active, Auckland**

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29   See Colmar Brunton Report, p. 81. Consistent with existing research, our participants learned to make more conscientious publication decisions after learning from past mistakes. In this sense, regret is a functional emotion. Negative experiences serve to remind people of past errors that in turn, prevent mistakes in the future.

30   For comparative findings, see Hargittai & Marwick, 2016. See also: Sleeper et al. (2013); Vitak, Blasiola, Patil & Litt, 2015; Makela et al; Kurvinen; Kindberg et al cited in Miller & Edwards, p. 2.

When deciding what to publish, users make strategic decisions about content, audience and platform. Depending on the gratification sought, publication decisions are informed by not just the imagined audience but the platform affordances that will best reach this audience.

Imagined audience

When posting content, social media users often envision an 'imagined audience' for the consumption of that content. An imagined audience may be general/abstract or targeted and quite specific.

> *"I considered the people who were going to see this and maybe like or comment on this."*
>
> **Older, Less Active, Auckland**

> *"I share things that I think people who I'm friends with would find interesting, or maybe controversial."*
>
> **Older, Active, Wellington**

The audience one imagines might also be a smaller group of acquaintances who'd find a shared experience 'relatable':

> *"I think you think of people when you...you know...I shared a wine [post] with a bunch of the girls in Blenheim and obviously, wine and them makes sense. I think they thought it was funny. And then they can also think back to a really bad party, that was quite a good one."*
>
> **Younger, Active, Hawke's Bay**

The imagined audience helps users navigate the 'context collapse' social media engenders. Social media are environments comprised of individuals from various life spheres that might not normally overlap (eg, extended family, employers, friends, church groups). These different social contexts are also governed by their own interpersonal and behavioural norms, and have different expectations of content *appropriateness* and *relevance*.[31] Imagining an audience for each status update or shared photograph informs decisions about what kind of content to publish. It assists in maximising the content's utility for others and thus achieving the gratifications sought.[32] Audience considerations work to secure *validation* and *approval* from the 'right' people or, conversely, to mitigate negative judgement from others.

'When deciding what to publish, users make strategic decisions about content, audience and platform. Depending on the gratification sought, publication decisions are informed by not just the imagined audience but the platform affordances that will best reach this audience.'

> *"I've got a friend who constantly posts kind of meme type things about marijuana and I think they're hilarious but I will never comment or repost them because of my boss might see that and think what's this guy on? You don't know if they're watching and what they may think of you."*
>
> **Younger, Active, Auckland**

31 Litt, Eden, and Eszter Hargittai."The imagined audience on social network sites." *Social Media+ Society* 2.1 (2016). See also: Arkin, 1981; Burgoon et al., 1989; Farnham & Churchill, 2011; Litt & Hargittai, 2016; Nissenbaum, 2009.

32 Hampton, Goulet, Marlow, & Rainie, 2012; Marwick & boyd, 2011; Quinn, 2014.

Imagined and *actual* audiences do not always align. Social media users might imagine a specific sub-audience when publishing content, which may lead them to make disclosures that are irrelevant or inappropriate to the rest of the wider network (or even those outside their network).[33] As one study found, social media users tend to imagine sub-audiences as 'people who would likely be the least judgemental such as friends and family, and people who they thought would like or agree with their posts, perhaps neglecting those who may be less forgiving'.[34]

'Importantly, participants gave no indication that they considered broadcast media to be part of the audience they imagined when publishing content.'

This finding has implications for our own study. If people typically post for friends and family, how do others from within or outside their network perceive their published content if they come across it? Much like our study, participants did not discuss their imagined audiences to include law enforcement, enemies, strangers or the mainstream media – who may have been part of the participants' actual audience at some point. If users do not have such audiences at the fore when they share, this could explain why they do not alter their content or engage in privacy behaviours for potential but unimagined groups.[35]

Our participants reported audience considerations as a key part of what informs their publication decisions, which is also consistent with their photo-sharing practices. Importantly, however, they gave no indication that they considered broadcast media to be part of the audience they imagined when publishing content.[36]

Again, understanding who users envision as their audience when publishing content helps explain the kind of content social media users publish and why. It is also useful for understanding how privacy is managed and what happens when these processes break down. If we want to understand publication decisions, we need to have a better idea about who everyday people are thinking about when they share content on social network sites. The imagined audience often differs site to site.

'If we want to understand publication decisions, we need to have a better idea about who everyday people are thinking about when they share content on social network sites.'

Platform affordances

Publication practices vary by social media platform.[37] The technical features of a platform (*'platform affordances'*) influence participation norms and thus the site's overarching culture of participation. Participation norms have direct implications for content sharing practices, social engagement and privacy.

Platform affordances are integral to our participants' decision-making processes around content publication. Individual site cultures foster different sharing practices and engender different attitudes towards 'appropriateness'. There are certain kinds of publication practices that a user engages on Snapchat but not Facebook or Twitter, for instance.

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33   Litt & Hargittai, 2016.

34   Litt & Hargittai, 2016.

35   Litt & Hargittai, 2016, p. 9. Mainstream media have long used concept of the imagined audience in their work in broadcasting decisions and employ a range of strategies to reach those audiences. Following the recommendations of social media researchers, this also does not let users off the hook. There is potential for further research on how we can get social media users to think more critically about their audiences.

36   This conclusion is drawn largely from the absence of participants' identification of broadcasters as a possible audience.

37   See Colmar Brunton Report for a full explanation of site differences, pp. 88-90.

Facebook: Identified as the most ubiquitously used social media platform (which corresponds to national statistics on social media usage),[38] our participants saw Facebook's platform affordances to construct a different set of social expectations than others. Its technical affordances, for instance, enhance its perceived *credibility and accountability*. Facebook users are more of a known entity; the platform does not allow anonymous accounts. For many, this provides a sense of greater accountability for not only the content posted, but the user who published it:

> *"I don't know about you guys, but in my opinion, if something was said on Facebook and the same thing was said on Tumblr, I would probably believe it more on Facebook... Probably because of the widespread use of Facebook, there are so many people that use it... there's more accountability to users on Facebook whereas Tumblr you are kind of hidden behind an anonymous [account profile]..."*

Younger, Active, Hawke's Bay

Technical features like 'Timeline', 'Memories' and 'Photo Albums' encourage the documentation of personal or shared memories, which can be later viewed or recalled. As a result, Facebook is more like a visual diary than 'ephemeral' content-sharing platforms like Snapchat, where shared content disappears after a limited time. Meanwhile, interactive features like Comments, Reactions, or Messenger encourage the publication of personal and informative content that will engage others.

Perceptions of privacy also differ. Facebook enables users to customise content and profile visibility, unlike other platforms that offer either/or settings only (eg, Instagram or Twitter). Some participants perceived these affordances as giving users more control over privacy than other platforms:

> *"I think with Facebook you kind of have a lot of control and if something goes up and you are not happy with it you can take it down. And I think because you are in control of your account, unless someone tags you in something which you can then untag if you are really unhappy with it and you are kind of in control of it a little bit more than some other [platforms]."*

Younger, Active, Hawke's Bay

Others felt Facebook offered little control or privacy, were uncertain about who could access content (via friends of friends or screen shots) or where the content ends up.

> *"Privacy settings are different on each... If you're a friend of a friend and you've liked something, then that comes up forever. I'm forever going 'how did that get on my page?' And then I realise because some friend of a friend liked it and then it's on my page and it's quite obscene and offensive and I don't like it. Because you don't know what other people's private settings are. You know what your privacy settings are, but you don't know what theirs are. So if they liked a picture of you, you're not necessarily convinced that it's not going to go everywhere"*

Older, Active, Wellington

The perceived credibility, permanence and potential privacy of Facebook content also means user profiles are more carefully curated than on other platforms.

> *"Like if you message someone a selfie on FB it's probably a really good selfie, but on Snapchat it's just like whatever..."*

Younger, Active, Hawke's Bay

38   Media Trends 2016: How New Zealanders Consume Newspapers, Magazines, TV, Radio & Digital Content. *Nielsen* (June 2016). Accessed 18 May 2017: http://www.nielsen.com/content/dam/nielsenglobal/nz/docs/reports/2016/nielsen-media-trends-report-2016.pdf.

Research on University-aged Facebook users has shown that negative, inappropriate or deviant presentations of the self are relatively uncommon on the platform because their networks are known and likely to hold users' behaviour to account.[39] Content published to Facebook is therefore more *considered* in terms of how it reflects on one's self-image.

Snapchat: Unlike Facebook, Snapchat is an example of 'ephemeral social media', where content auto-deletes after a short period of time.[40] Recent research demonstrates that Snapchat's platform affordances construct a vehicle primarily for entertainment or 'fun',[41] which puts less emphasis on Facebook users' attention to credibility, accountability and self-image. These studies show that users tend to share mundane experiences with close ties and associate Snapchat with a more 'positive mood' than texting, email and Facebook (but not face to face communication).[42] Snapchat users report paying closer attention to Snapchat content than archived content, and do not see it as a tool for sharing or viewing photos but spontaneous experiences with trusted social ties.[43] In fact, in one study they report a higher level of closeness with the people they Snapchat with than face-to-face, email, Facebook, Twitter, and Instagram interactions.[44]

Our participants largely echoed these findings. They described Snapchat as a tool for capturing and sharing life 'in the moment', not as an archive, visual diary or memory recall. It is also a space for sharing quotidian moments with close ties. Participants described Snapchat as *'harmless fun'*.

> R5: *"...it's just for friends... it's not like I Snapchat anyone I don't know – it doesn't really lend itself to that. Or following people you don't know because..."*
>
> R6: *"Except celebrities and you can't promote yourself on Snapchat unless you just put your name..."*
>
> R2: *"I think I maybe have like four people on Snapchat and at least two of them are family."*

Younger, Less Active, Wellington

> *"Like some people treat their Facebook quite seriously, but no one really has a serious Snapchat I guess."*

Younger, Active, Hawke's Bay

Snapchat's technical features contribute to participatory norms that prioritise entertainment and humour over more tightly crafted modes of self-presentation (eg, photo editing features encourage playfulness or otherwise 'embarrassing' selfies). In addition to automatic photo deletion and the ability to individually filter recipients encourages less curated content, the absence of a 'like' button means validation or approval are not at the fore. Snapchat is instead the platform where capturing and sending less socially acceptable content is a more acceptable participation norm.

> *"[Snapchat is for]...kind of the naughty pictures that you know will disappear after 10 seconds... like this guy has got a really big bum. Not that I've done that, but you know... But you feel a little bit better knowing that the picture is going to disappear."*

Younger, Active, Hawke's Bay

39 See Hum et al., 2011; Zhao et al., 2008.

40 Joseph B. Bayer, Nicole B. Ellison, Sarita Y. Schoenebeck & Emily B. Falk (2015): Sharing the small moments: ephemeral social interaction on Snapchat, Information, Communication & Society.

41 Katz & Crocker, 2015; Roesner, Gill, & Kohno, 2014; Utz, Muscanell, & Khalid, 2015.

42 Bayer et al; Piwek, L., & Joinson, A. (2016)."What do they snapchat about?" Patterns of use in time-limited instant messaging service. *Computers in Human Behavior*, 54, 358-367.

43 Bayer et al, 2016.

44 Bayer et al, 2016.

"Well, people can't judge you on Snapchat. That's the beauty of it. If you go for a job, they'll look up your Facebook profile or whatever because that's there... So if you put heaps of stuff on Facebook of... cats... people will judge you based on that. But on Snapchat the photo just deletes itself and the photo is gone."

Younger, Active, Hawke's Bay

Accountability, permanence and privacy expectations are less of a concern than sites like Facebook, where platform affordances and audiences are constructed much differently. While participants acknowledge screenshotting Snaps is always possible, it is also generally understood that such practices signal a violation of the platform's social norms.[45] There is a general perception that the short-lived content remains between friends and will not be publicly shared. The comparatively closed network means content sharing is based more on interpersonal trust than sites like Facebook.

Summary: publication practices

The above discussion of imagined audiences and platform affordances demonstrate how publication behaviours on one platform are not necessarily acceptable on another. Different platforms encourage different behavioural norms and expectations around privacy. These norms and expectations in turn, influence the kind of content a user decides to publish.[46] Any attempt to regulate publication or republication practices will want to consider differences in platform contexts and practices.

People alter the way they communicate with others based on context and audience.[47] Levels of disclosure define human relationships: what we choose to share with our romantic partners constructs a very different relationship than what we share with colleagues or family. Privacy, therefore, is fundamental to relationships as it provides the necessary context for love, friendship and trust.[48]

'Privacy, therefore, is fundamental to relationships as it provides the necessary context for love, friendship and trust.'

Managing privacy – and thus relationships – has become increasingly difficult in a world where technology's ever-changing features make the regulation of personal and private boundaries more challenging.[49] Context collapse intensifies this challenge, as individuals have more relations to manage within the same space. This is particularly true of sites like Facebook, where the privacy settings of one person can unintentionally (or unknowingly) violate the privacy of another. Imagining an audience before posting content is therefore one way of reducing the cognitive load of managing so many people's expectations in one space.[50] 'It serves as a guide for what is appropriate and relevant to share when an actual audience is unknown or not physically present.' [51]

Yet different social media platforms construct different privacy environments. In addition to the publishing motivations already discussed, privacy considerations also play a significant role in how one uses social media.

45 Nearly all focus group members who used Snapchat discussed screenshotting as a privacy issue. This sentiment deviates from a recent study on adult Snapchat users in the US that found screenshotting practices are not generally viewed as a violation of the sender's trust or privacy but a common and expected Snapchatting practice. See: Roesner F., Gill B.T., Kohno T. (2014); Sex, Lies, or Kittens? Investigating the Use of Snapchat's Self-Destructing Messages. In: Christin N., Safavi-Naini R. (eds) Financial Cryptography and Data Security. FC 2014. Lecture Notes in Computer Science, vol 8437. Springer, Berlin, Heidelberg.

46 Conversely, Instagram is a comparatively archivable photo sharing site used to showcase aspects of one's identity or personal brand. Many users have profiles that display just a narrowly focused version of the self rather than a broader portrayal common to Facebook, while a smaller user base also means less pressure to navigate context collapse. Instagram's technical features are limited compared to Facebook's, but direct messaging, comment replies and 'likes' induce social interaction around content. Content is largely organised and searchable by hashtags, but only if accounts are public.

47 Goffman, 1959.

48 Charles Fried & Robert Gerstein.

49 Marwick & boyd, 2011; Marwick & boyd, 2014; Vitak et al., 2012.

50 Dunbar, Litt & Hargittai, 2015.

51 Litt & Hargittai, 2015, p. 1.

Social Media Users

Overview of privacy expectations

Attitudes and beliefs about privacy are complicated and conflicted. Participants were quite cynical about privacy and their ability to manage it. They saw *total privacy* as technically impossible, but believed it was one's personal responsibility to manage their own privacy nonetheless. Participants were aware of potential privacy risks that social media present, and most had personally experienced some privacy violation on social media or knew someone who had.[52] They identified concrete strategies for managing privacy but had less clear ideas about the technical and legal limits of privacy management. Their discussions about who can access content, who owns it and the legal terrain of privacy issues were at times largely speculative, if not uninformed.

'Different platforms encourage different behavioural norms and expectations around privacy.

People alter the way they communicate with others based on context and audience.'

This high level of privacy *awareness* but low-level technical and legal literacy around privacy maps onto existing research of social media users. Social media users in this study exhibit an acute awareness of digital privacy issues and engage in a range of privacy management strategies, but they do not necessarily exhibit a sophisticated understanding of privacy's technical or legal dimensions.

However, this does not mean social media users don't care about privacy. They do. What they perceive is a lack of control over the online environment, which is different from 'not caring'. Our findings confirm existing research that find most people understand and care about the potential risks associated with online information disclosure.[53]

Participants were quite cynical about the potential to be private in the age of social media. On the one hand, there is a general sense that privacy no longer exists in the digital age. Some participants expressed suspicion around institutional spying by the SIS, Five Eyes or 'Big Brother', while others acknowledged their own complicity in a surveillance culture.

> *"Big brother isn't watching, we are telling big brother everything..."*

> *"Everyone's got one of these. And with one of these, everything you do is recordable. So watch yourself... walking down the street, if you're walking funny, somebody will record you. Or whatever you're wearing, somebody will record you and somebody will post it on social media."*

Older, Less Active, Hawke's Bay

There is a general sense that anything published online becomes 'public domain' and is therefore "fair game". This refers both to content access (who can view published content) and *ownership* (who has rights to it). The general sense is that once content is published, it is permanently accessible – regardless of the privacy settings or strategies put in place.

> *"So I came home drunk 5 o'clock Sunday morning, did the old drunk tweet. Luckily it was nothing... but if you do something, expect it to be spread far and wide... That's completely in the public domain. That's freehold now if somebody wants to do something with it."*

Older, Active, Wellington

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52 see Colmar Brunton Report, p. 11.

53 Hargettai & Marwick.

In this context, privacy expectations are viewed as one's 'personal responsibility'. There is a strong belief that it is up to the individual to engage the technical affordances of social media's privacy settings and self-censor as necessary.

> *"You know you are not putting yourself in those positions where you go 'OMG, like far out, I have put that up there, how do I get it back?' You know you haven't got that stress because you are already making a conscious decision before you post something..."*

Younger, Less Active, Christchurch

> *"If I'm not careful enough in what I put up there then it serves me right."*

Older, Active, Wellington

> *"If you post it publicly, you are throwing [privacy] out the window."*

Younger, Active, Hawke's Bay

The overarching view of privacy amongst the social media users we interviewed might be summarised in terms of *control*. Users implicitly understand that unlike other modes of communication, digital communication is easily replicable, shareable, searchable, archivable and thus 'permanent'. Even where users put privacy protections in place, they acknowledged extraneous and unanticipated factors can compromise these efforts: be it ever-changing and difficult to understand privacy settings, confusing technical features, the opaque practices of institutions (eg, surveillance by the state, marketers, law enforcement, employers), or the behaviours of others.

Privacy management strategies

Participants identified a range of technical, formal and creative strategies to manage privacy online. These findings map onto similar studies that identify strategies for limiting access to content and personal information.[54]

Technical strategies:

- Routinely updating privacy settings;
- Culling followers / deleting friends no longer in contact with;
- Setting up oneself as 'unsearchable' so one's user profile cannot be easily found;
- Restricting visibility to select audiences (via privacy settings, using private messaging) or manually filtering content;
- Setting 'tagging' restrictions and approvals.

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54 Strategies not mentioned by our participants but that appear in other privacy research include the use of 'social steganography' which is the practice of cryptic writing so that only targeted audiences understand; or 'subtweeting' / 'vaguebooking', which is the practice of encoding drama in a passive aggressive way. Marwick & boyd, 2014; Vitak et al, 2015.

Formal strategies:

- Establishing agreements with friends/family about capture, tagging or publishing practices;
- Using a previous name (eg, maiden name);
- Deleting posted content;
- Constrained usage / self-censorship.

Creative strategies:

- Posting photos *after* a holiday to offset burglaries;
- Using alternative image for photo (eg, a jandal).

Many of these same privacy management strategies and concerns were reported by both older and younger groups alike, which confirms existing privacy research that finds little variation between the privacy concerns of adults and younger people.[55] When speaking about generational differences, our focus groups reproduced the persistent myth that younger people do not care as much about privacy as adults. In fact, some studies have found that younger users actually engage in greater privacy-protective behaviours on social media and mobile app environments than older cohorts.[56]

'Protecting the privacy of others is an extension of existing privacy management strategies, and sometimes involves a more formal negotiation of content-sharing permissions.'

While participants believed privacy maintenance is a matter of personal responsibility, they felt an obligation to preserve the privacy of others as well. Participants had no trouble identifying personal experiences where someone published content that violated their privacy or the privacy of others. These social considerations are important because it demonstrates that participants recognise privacy on social media is fundamentally *networked* and thus lies outside individual control.

> *"You don't know what other people's privacy settings are."*
>
> **Older, Active, Wellington**

> *"You don't know who your friends are going to share [content with]."*
>
> **Older, Less Active, Hawke's Bay**

Protecting the privacy of others is an extension of existing privacy management strategies, and sometimes involves a more formal negotiation of content-sharing permissions. Some participants reported striking spoken agreements with friends and family around publication processes (eg, not posting or tagging others in photos), particularly of children or other vulnerable groups. Others had informal or unspoken agreements with members of their network and negotiated publication practices on an individual basis.

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[55] Hoofnagle, King, Li, & Turow, 2010; Madden, Lenhart, Cortesi, & Gasser, 2013; Marwick & boyd, 2014.

[56] See: Blank, Bolsover, & Dubois, 2014; Madden et al., 2013; Madden & Rainie, 2015; Jones, Johnson-Yale, Millermaier & Perez, 2009. The perceived benefits of online self-disclosure for younger people is, however, theorised to be different from older users, which partly explains why younger generations are more likely to share more personal information over social media. This does not mean that younger people do not care about privacy but rather that informational disclosure may not be a useful metric for understanding privacy concerns – at least not one that can be universally applied (see Harggitai & Marwick, 2016).

"It depends on what sort of friendship you're at or whatever. Like if me and my work colleagues went to Wellington for a concert or whatever, we would all have to agree that it goes up on a page because it's about all of us. But if it was just me and my friend... well obviously we share all the photos of everything that we do together because we are best friends or whatever. Then she shares my stuff and I share photos..."

"Like you know the relationship that you have with that person, so you kind of know whether they are okay with it or not."

Younger, Active, Hawke's Bay

Protecting others' privacy is a social expectation motivated in part by empathy but perhaps more so by the understanding that participants themselves are equally vulnerable to the actions of others. Participants expressed following basic social rules and moral standards when it comes to publishing content that involves informal ties or strangers, not just those close to them, with several stating they would never publish photos of strangers or casual acquaintances.[57]

Contextual integrity and networked privacy

Deciding what to publish involves an evaluation of not just the content's appropriateness but its appropriate *distribution* or flow. Some of the social expectations guiding these norms are learned over time. Privacy scholar Helen Nissenbaum identifies these as the informational norms of 'contextual integrity'.[58] Informational norms are characterised by two types: social norms around the *appropriateness of content* and the *distribution of information*.

'Deciding what to publish involves an evaluation of not just the content's appropriateness but its appropriate distribution or flow.'

Norms of appropriateness dictate what information about someone is 'appropriate, or fitting, to reveal in a particular context' (eg, is it allowed or expected to be revealed?)[59] and 'the movement, or transfer of information from one party to another or others' (ie, does the distribution of information transgress contextual norms of information flow?).[60]

Nissenbaum sees contextual integrity as the 'benchmark of privacy' because privacy is only maintained when both types of norms are upheld.

"Contextual integrity ties adequate protection for privacy to norms of specific contexts, demanding that information gathering and dissemination be appropriate to that context and obey the governing norms of distribution within it... public surveillance violates a right to privacy because it violates contextual integrity."[61]

All contexts are governed by informational norms – what we share, or expect to be re-shared. In many cases, 'appropriating information from one situation and inserting it in another can constitute a violation.'[62] Our participants had no shortage of examples of how this has played out, and the strategies they listed indicated that both content and distribution factor into their privacy management practices.

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57 It is likely that *social desirability* played some role in the discussion of publishing content featuring strangers, as participants often discussed memes, viral videos or instances of social media content featuring strangers – that is, that nobody wanted to be seen to step outside the socially accepted behaviour. It seems unlikely that no participant has ever captured, published or shared content of someone they did not know.

58 Nissenbaum, H (2004). Privacy as contextual integrity. Washington Law Review, 79, 101-139.

59 Nissenbaum, p. 120.

60 Nissenbaum, p. 122.

61 Nissenbaum, p. 101. Advocates of public surveillance justify it on the grounds of personal freedoms including speech rights, action and the pursuit of wealth. The reigning defence in cases of public surveillance is the common legal standard of whether it occurred despite the individual's presumed 'reasonable expectation of privacy'. Two conditions that test this principle are whether the person involved demonstrated an expectation of privacy, and whether that expectation of privacy would be deemed reasonable by society (Nissenbaum citing US ruling by Justice John Harlan, p. 117).

62 Nissenbaum, p. 122.

One critique of viewing contextual integrity as privacy's benchmark is that while the flow of someone's personal information to another context may be how a privacy violation is experienced, it assumes that individuals are always fully aware 'of the social context in which privacy disclosures take place.'[63] But on social media 'information is intrinsically intertwined; photographs contain multiple subjects, messages have senders and recipients, and people share information that implicates others.'[64]

This complexity speaks to the nature of '*networked privacy*,' which is a way of thinking about privacy that acknowledges 'individuals exist in social contexts where others can and do violate their privacy.'[65] If privacy cannot be protected individually or technically, it 'must be negotiated socially'.[66] This explains why, despite participants' claims about privacy as a personal responsibility, they still readily acknowledged that any number of technical, social and contextual complexities can undermine even the strictest self-regulation.

> *'All contexts are governed by informational norms – what we share, or expect to be re-shared. In many cases, appropriating information from one situation and inserting it in another can constitute a violation.'*

Our participants supported one study's research claim that "[p]rivacy in social media cannot be entirely maintained and established by individuals, as it is not wholly dependent on individual choices or control over data."[67] For example, a user can be made visible even if they 'protect' themselves through available technical measures. Participants spoke extensively of the way affordances like Facebook's 'tagging recommendations' can make a person visible even in photos they opted not to be tagged in, or the way certain privacy settings can make users visible outside one's immediate network. They identified violations that involved a lapse in info-sharing etiquette, such as being tagged in inappropriate or unflattering photos, sharing photos without permission or taking content out of context.[68]

> *"[On] a night out with my friends, you know they're all drunk and I don't drink, and they're taking photos and I was taking photos, and then they posted up on Facebook the next morning, and I'm worried about people at my church, like thinking that I'm drinking, I'm like 'can you not tag me in the pictures, don't tag me', ...I'm a Sunday school teacher at church, so I don't want, you know, people to think that I'm going to teach these kids you know, teaching these kids about how to live good, clean lives and I'm out at night drinking and partying."*
>
> **Older, Less Active, Auckland**

As this story demonstrates, the social contexts in which information is created and shared "are co-constructed by those present and shaped by the affordances of the social technology in play".[69] This makes applying blanket rules to social media particularly difficult. Context and social norms are intertwined in a complex way with networked privacy.

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63 Marwick & boyd.

64 Marwick & boyd, p. 1064.

65 Harggitai & Marwick, p. 3737.

66 Marwick & boyd, p. 1061.

67 Marwick & boyd, p. 1062.

68 Our participants mainly reported privacy violations as conflict or embarrassment relating to or caused by one's social circle (eg, family, friends, romantic partners) as opposed to institutions (eg, law enforcement, government, technology companies, marketers or mainstream media).

69 Marwick & boyd, p. 1062.

Unlike Nissenbaum's theory of contextual integrity, networked privacy does not assume that people have all the information they need about social contexts when sharing information about others, or even that there are fixed boundaries around particular contexts to be known. Networked privacy demonstrates that social contexts are fluid and shift from platform to platform, user to user; they are co-constructed by user interactions and platform affordances. Because context is not stable, therefore, it may not always be the case that because contextual integrity is lost, a privacy violation *necessarily* occurred. Individuals may interpret contexts differently; some actors may have more control over the context than others or in ways others can't anticipate (eg, mainstream media; marketers; settings). Contexts can also be destabilized and collapse in unexpected ways (via technical errors; breakups; revenge, etc). Even content meeting informational norms of appropriateness can, as one participant explained,"break up relationships [or] create awkward situations" in certain contexts.[70]

So while participants acknowledged using a range of strategies to manage privacy online, they recognised this is not always enough. Participants thereby recognise the networked nature of privacy. What these discussions illuminate, and as other research has shown, is that in a networked environment no actor can assert total control over the privacy context.[71]

'Participants... expect mainstream media to maintain a professional orientation and report newsworthy stories that serve the public interest.'

Recognising privacy as *networked* usefully explains why social media users actively try to preserve privacy while believing privacy cannot be totally controlled. This awareness also highlights privacy's individual and social dimensions, which suggests that legislation centred on the protections of individuals or property rights may no longer be enough to safeguard a networked public: a *social response* may be required.

Re-publication and expectations of broadcasters

Audience attitudes about mainstream media

Participants generally upheld normative expectations of news media. They expect mainstream media to maintain a professional orientation and report *newsworthy* stories that serve the public interest. Mainstream news media's 'purpose' is to '*inform', 'be a reputable source of information'*, 'to report the facts' and abide by content standards of decency and appropriateness. Participants expected media to act ethically and in the public's interest, regardless of whether they were within their legal rights to re-publish social media content.

While some participants saw the re-publication of social media content as 'lazy' or unprofessional, the groups generally understood sourcing this content as a necessary means of competing in a changing media landscape. They recognised that terrestrial broadcasters face new competitive pressures from social media firms entering the news arena.

Many of our participants perceived the economic imperatives to remain profitable as a reason for what they saw as a decline in the quality and ethics of reporting. They discussed re-publishing social media content to cut costs (eg, time efficiencies, sourcing stories, obtaining quotes or visuals) and increase audience share. As the Colmar Brunton Report found, some participants "suspect the commercial realities of remaining profitable means the focus shifts to maximising audience reach (or generate hits) and the corresponding lift in advertising revenue". [72]

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70 For example, one woman's daughter posted a group photo with male friends that caused relational conflict with the men's wives because of the other women featured in the photo. In another case, members of one's social network became upset after learning they had not been invited to a wedding only after someone who had been invited posted the wedding announcement on Facebook.

71 Marwick & boyd (2014).

72 Colmar Brunton report, p. 27

"I feel like the rush to be the first one to pick something or have the most updated you know, with the photo and stuff, means that they will just take whatever they can and just pump it out…"

Younger, Less Active, Christchurch

"…people watch it because they find it entertaining, so it is selling news."

Younger, Active, Hawke's Bay

"I think [media] would do anything for a story."

Older, Less Active, Hawke's Bay

Others attributed the importance of timeliness to media reporting and the competition presented by social media's real-time affordances as a reason for re-publishing social media content. In this sense, it becomes a matter of staying relevant. For some, this is merely a 'sign of the times':

"And news is like a giant competition. All the news channels are fighting to get stories first, so not getting permission could speed up your thing faster and get the images from the internet is faster…"

Younger, Less Active, Wellington

"Yeah, but that's modern news media isn't it? They want to get the news straight away."

Older, Active, Wellington

"People say they are lazy if they pick it up from social media, but I just think it's the modern way. The speed that we expect media these days. Like as soon as the earthquake struck, I'm on twitter #eqnz – you want it there and then. You don't want to wait until the 6 o'clock news the next night. I just think that they are having to adapt. I don't think badly of them because of that."

Older, Active, Wellington

"I kind of think, if it's out there and it's relevant then they should share it anyway. Because they can't compete otherwise."

Older, Active, Wellington

Sourcing content: a moral, not legal, issue

While participants might understand the wider economic context that mainstream media faces, they still generally believed that broadcasters had an ethical – although not necessarily legal – responsibility to obtain the appropriate level of consent for republishing social media content.

Some believed consent should be mandatory, although they debated if consent should be obtained from the individual who captured the content, the person who published it, the individual(s) featured in it or the platform owners (eg, Facebook, Snapchat). No consensus was reached on the issue of from whom consent should be obtained. However, most agreed that the media had an ethical obligation to at least try and obtain permission, and at the very least to make the subjects of re-published content unidentifiable (eg, via blurred out faces, name suppression).

'I just think it's the modern way. The speed that we expect [to receive] media these days. I just think that [broadcasters] are having to adapt. I don't think badly of them because of that.'

The difference between *legal rights and moral/ethical responsibilities* was a reoccurring theme in our discussions about broadcasters' re-publication and sourcing practices. The reigning agreement seemed to be that just because broadcasters are within their legal right to publish publicly accessible social media content, doesn't mean they necessarily *should*.

While they assumed laws are already in place that govern republication and/or sourcing issues, no single participant had any clear knowledge of what these laws might be. Some assumed that existing privacy laws are 'probably outdated' and in need of review, while others stated that anything that fell within existing broadcasting standards is legitimate to re-publish. Much like their knowledge of privacy laws, participants were also not clear on current broadcasting standards. Members in all groups expressed (if not admitted) a lack of knowledge around the legal parameters of privacy and broadcaster rights.

Most participants concluded that even in instances where re-publishing content may be legal, if it fails to meet the 'public interest' standard then it is likely neither moral nor ethical, and thus not worthy of republication.

The public interest

Participants frequently referenced the concept of 'public interest' as a litmus test for whether republishing social media content was appropriate.[73] For some, the wider public interest may take priority over other people's privacy. However, participants had different interpretations of what 'public interest' means.

On the one end are those who defined public interest as content interesting to the public.

> *"…to say public interest, I think really what we're talking about is public salaciousness or similar… you know it's like, 'hey guess what happened, guess why John Key resigned', or similar."*

Older, Active, Christchurch

This interpretation follows what scholars refer to as a 'consumer' or 'market model' approach to the public interest.[74] A consumer model views the media's responsibility as giving audiences (the 'consuming public') what they want.

The main goal of broadcasters, then, is to capture audience share by supplying the most desirable – but not necessarily informative – programming.

The second interpretation of 'public interest' is based on a public sphere or democratic model of understanding that invokes a range of normative expectations about media's wider social role. This view is centered on a belief that the media's primary commitment is to audiences, not advertisers. As what people enjoy as consumers is often significantly different from what they say is important to them as citizens, this model of understanding sees the media as a purveyor of information that will 'benefit society' on some level:

'A consumer model views the media's responsibility as giving audiences (the "consuming public") what they want.'

> *"…public interest to me is when I'm told something, that as a member of the public, I'd benefit from or enhances my life or similar."*

Older, Active, Christchurch

> *"I think public interest can be what benefits the public, what the public should know about, need to know about."*

Older, Active, Christchurch

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73   See Colmar Brunton Report, pp. 35-36.

74   See: Curran, J. (2011). *Media and democracy.* (London: Routledge). Taylor & Francis.; Hirst, M., Phelan, S. & Rupar, V. (2012). *Scooped: Journalism, politics and power in New Zealand.* (Auckland: AUT Media/JMAD). Schultz, J. (1998). *Reviving the fourth estate: Democracy, accountability and the media.* (Cambridge: Cambridge University Press).

To summarise, the commercial model identifies audience ratings as the primary indicator of meeting the public interest, while the public sphere model approach prioritises an informed citizenry. Credibility and reputation are often tied to this perspective:

> *"I feel like [the news] is more reputable sort of source of information where the general public comes to be informed."*
>
> **Younger, Less Active, Wellington**

Arguments favouring the public interest point of view often arise in response to moral panics about offensive or inappropriate content, such as that made available by the internet. From this perspective, regulating broadcasters is justified because it ensures at least some space to access higher standards of discourse and entertainment.

Contextual considerations

Participants' beliefs about broadcasters' re-publication of social media content were neither unanimous nor concrete. They generally believed re-publishing social media content is 'fair game' if that content is publicly accessible, posted to a public platform, happened in a public place or is a matter of 'public interest'. In most cases, participants held the view that privacy remains one's personal responsibility, so any republication of a private act caught online shouldn't have been put up or actioned in the first place.

> *"If you post something publicly, that's like, I see it the same as just walking down the street and just shouting it out, like if it's fully public. So then the news can report on what you say down the street."*
>
> **Younger, Active, Hawke's Bay**

> *"I suppose if it's put out in the public arena, put out on a public forum then they have the right to report on it."*
>
> **Older, Less Active, Hawke's Bay**

> *"If it was like an ISIS thing and ISIS has put a video up on whatever YouTube or whatever... the News would grab that because it's public knowledge."*
>
> **Younger, Active, Hawke's Bay**

> *"They just need to learn that there are eyes everywhere... there are people with cameras everywhere."*
>
> **Younger, Less Active, Wellington**

However, participants had difficulty defining clear distinctions between 'public'. and 'private'. They also acknowledged that *contextual considerations* and the *networked* nature of privacy made personal responsibility for privacy in all situations incredibly complex. Context was key for most participants. Every group acknowledged there are 'grey areas' when it comes to deciding what constitutes public or private information, and whether information is shareable:

> **"I suppose if it's put out in the public arena, put out on a public forum then they have the right to report on it."**

> *"I think it's very hard to draw or write one solid rule for everything. I think it really does depend on the situation."*
>
> **Younger, Active, Hawke's Bay**

The discussion of 'grey areas' and contextual considerations become clearer when participants were asked to evaluate re-publication practices via case-specific 'scenarios'. These scenarios included the republication of: 1) A public figure behaving badly; 2) a recording of consensual sex in a publicly visible place; 3) the republication of one's personal social media photos or profile pictures; 4) a scenario of grief or trauma.

Public figures behaving badly

According to our participants, public figures (eg, celebrities, politicians or other high profile people) have fewer rights to privacy than everyday citizens. Moreover, public figures should *expect* less privacy and a higher level of scrutiny because of their status.

This expectation stems from the belief that public figures are subject to contractual or 'legal' codes of conduct that require them to *'forgo [their] right to a certain amount of privacy'*. Participants believed public figures *'know the rules before going into it'*, receive *'media training'* about appropriate public behaviour and *'should know better'*.

Others believed public figures are subject to fewer privacy protections because as role models, they set examples to younger generations and should thus be held accountable for their actions. Several groups discussed celebrities (namely, sports figures) as representatives of New Zealand (with frequent reference to the Aaron Smith airport public bathroom debacle, news of which had only recently broken). Overall, participants construct a much different and much more extensive imagined audience for public figures than they do for themselves.

> *"Yeah, we do operate under different morality in a way because you are representing your team, country more or whatever it is. Is that right? No. You've ended up where you are and you now have a sort of different set of rules that you have to [follow]..."*
>
> **Older, Active, Wellington**

> *"He knows that he is publicly well known so he does have a standard to uphold... You should consider your organisation's reputation as well as your own when you are going public and doing things."*
>
> **Younger, Less Active, Wellington**

For some, this extends to public figures' associations (eg, family and friends), even if it's not 'fair'. One participant gave the example of John Key's son as someone for whom public scrutiny 'should be expected'.

Still, these comments don't mean the participants believe that the private moments of public figures or their associates *should* be captured and published, just that they should expect it or 'should have known' that they might be. This doesn't make it moral or illegal, but just 'the way it goes'.

> R3: *"If he's like, oh, I can get away with this and nobody is going to see then he obviously doesn't live in this century. Because there are people with cameras everywhere."*
>
> R2: *"It's not right, but it happens. That's basically the way it goes."*
>
> **Younger, Less Active, Wellington**

As savvy media consumers, the participants recognised this kind of scenario as following the script of a celebrity *scandal* or *'gossip'*. The participants were sometimes less critical of the social media user who initially captured and published the 'bad' behaviour than the media's power to propel yet another non-event into a scandal. Participants recognise that the media would republish this content from social media only because it featured a public figure, will serve as a 'juicy' story and feed the media's commercial imperatives:

> *"It's just the media trying to get more viewership basically. It's just like* Stuff *using click tiles, they are just trying to get more views which is rubbish."*
>
> **Younger, Less Active, Wellington**

> *"It's such a waste of media time and resource."*
>
> **Older, Active, Wellington**

Participants also criticised republication as a tool for public shaming. Both mainstream and social media were discussed in terms of their *'excessive'* and *'over the top'* coverage becoming a tool for moral policing:

> *"He got a trial by the media about it pretty much... it's effectively slander."*
>
> **Younger, Less Active, Wellington**

> *"Yeah, it's sort of death by social media isn't it, and I think that's unfair."*
>
> **Older, Active, Wellington**

> *"Now we don't have the policemen to do that so we use the social media [to enforce] our morals."*
>
> **Older, Less Active, Hawke's Bay**

Participants were more willing to accept republication if the activity occurred in a 'public' (as opposed to 'private') place, and if the recording served as necessary 'evidence' of disruptive, harmful or dangerous behaviour. But in most cases, evaluating the 'public' nature of the place served more as a litmus test for whether the recording was legal as opposed to moral/ethical or a public interest issue. Participants also generally agreed that while audiences might be interested in the content (the consumer model of public interest), it is not necessarily in the public's interest to know (democratic model). The scenario might serve the latter if the public figure crossed a legal, moral or ethical boundary, or if the captured content might serve as a 'deterrent' to similar behaviour. Merely being drunk in public was not enough to warrant broadcast and a 'waste of time' for most participants.

Sexual content / office tape

The responses in this scenario match closely to the public figure scenario. Much like the latter, individual responsibility dominated the discussion. Participants believed the couple shared in the responsibility for having sex in view of others and, by default, for the media scandal that followed. Many comments echoed those attributed to public figures; namely, that they 'should have expected' or 'should have known' something like this could happen, particularly because they were viewable from a public place.

> *"They should have known that there would be something like that."*
>
> **Younger, Active, Hawke's Bay**

> *"They must have known they could have been seen. They should have known..."*
>
> **Younger, Less Active, Wellington**

Some understood the impulse to record a sexual act in public view, although only one participant admitted he would have captured it on video for the purpose of showing others.

> R3: *"If I saw that over there, I would get out my phone and start videoing it."*
> R1: *"Oh my god has anyone else seen this – you'd tell people – oh my goodness."*
> R3: *"Yeah, I'd take it on my phone."*
> R1: *"Nah, I don't know if I would record it, but somebody else probably would."*
>
> **Younger, Active, Hawke's Bay**

Participants discussed the scenario as an example of another media scandal. They acknowledged that individuals who captured the original footage may not have anticipated its republication. They imagined the original intent as a humorous moment experienced between friends, and captured for sharing with friends not present (much like the discussion above). They blamed mainstream media for 'exploding it up' and exceeding these original intentions.

In 'an ideal world', respondents believed that the couple should have been held accountable for their actions, but that it wasn't mainstream media's job to ensure that happened. Unlike the public figures example, the assumption here seems to be that mainstream news is not the place for moral shaming - social media will do the job as well.

'In an ideal world, respondents believed that the individuals involved should have been held accountable for their actions, but it isn't mainstream media's job to ensure that happens. Mainstream news is not the place for moral shaming – social media will do the job just as well.'

> R2: *"Don't broadcast it."*
> R4: *"Just don't broadcast it."*
> R1: *"Actually say true news."*
> R3: *"They have to also take responsibility because they shouldn't have done it at work, do you know what I mean."*
> R2: *"I agree."*

Younger, Active, Hawke's Bay

Again, as savvy media consumers, participants perceived this scenario as a sensationalised, non-newsworthy event scandalised for revenue-generating purposes. Participants took a largely cynical view; they did not see it as acceptable, but expected and accepted:

> *"I think news stations should be taking more the line of public interest, factual situation and things like that that are in the public interest. Rather than these people had sex in an office, let's take the mickey out of them. That's not their job – there are satire websites and satire shows for that purpose. That's not the news sources purpose."*

Younger, Less Active, Wellington

> *"Media will often publish things like that to create a sensation and talk around it... Well they do it all the time."*

Older, Active, Wellington

> R3: *"They're just trying to get money."*
> R2: *"It's not news."*
> R3: *"It's not news, but..."*
> R4: *"It's gossip."*

Younger, Active, Hawke's Bay

> R5: *"The news was that it was so public."*
> R4: *"That's what happened and it went viral around the world... So news was reporting about that more than the actual event, wasn't it?..."*
> R1: *"That's a very clever way of publishing it really, isn't it? We are just reporting that this has gone viral..."*

Older, Less Active, Hawke's Bay

Participants noted that if the event was truly newsworthy, it could have been reported without republishing the actual footage:

> R1: *"They didn't need to show what they were doing, it was obvious in the video."*
>
> R2: *"But it gets more people watching the news."*
>
> R5: *"That's true, and that's what it's all about."*

Younger, Active, Hawke's Bay

Participants' evaluations of whether mainstream media's republication of the sex recording violated the subjects' privacy, however, were confounded by several contextual factors. These 'grey areas' made it difficult to take a clear stance on whether republication of the tape is acceptable. As one participant summarised:

> *"In a situation like this, you are always going to be on the that fence. There's a pro and a con to everything, privacy or not."*

Younger, Active, Hawke's Bay

The contextual factors included:[75]

- Confusion around the legalities of filming sex that occurs in public;

- Uncertainty over laws governing the recording of a sex act at all;

- The nature of the workplace as public or private;

- Uncertainty over privacy laws about recording and/or publishing activities of strangers taken in a public place;

- The degree to which the couple had a 'reasonable expectation of privacy';

- The potential to be recorded by security cameras;

- The public visibility of a private act;

- Possible personnel policies that would make the act unacceptable.

It seemed as though participants were looking for justifications for what made the act 'wrong' - or illegal - in order to determine whether or not republication violated the privacy of the individuals involved. The fact is that too many contextual 'grey areas' undermined the participants' ability to come to a concrete decision about broadcasters' rights to republish the footage. Moreover, the personal, reputational and professional damage the event caused to those involved added yet another dimension to weigh up, and informed the participants' inability to draw consensus on the issue.

The way participants spoke about the scenarios and contextual ambiguities of public and private are a clear example of how context is a fluid and unstable construct. As we saw, the various contextual considerations held different meanings for different people based on their own capture and publication practices, social norms, their perceived sense of agency, moral stance, and so on.

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75 A study on the international news media's coverage of the Christchurch sex romp scandal, on which this scenario is based, found the media to focus on these grey areas, as well. See: Kuehn, K. M. (2016). An 'Office Sex Romp' and the Economic Motivations of Mediated Voyeurism. In H. Mandell and M. Chen (Eds.) *Scandal in a Digital Age*, pp. 119-130. (London: Palgrave MacMillan).

Perhaps the only concrete conclusion to draw here is that participants believed republication was *legal* but not moral, ethical or appropriate. But those opposed to its republication were not necessarily opposed to its capture. Instead, most felt that the tape's wider *publicity* took things too far.

Photos appropriated for use

This scenario evaluated rights to privacy around mainstream media's republication of photographs taken from social media. Participants were comparatively less divided on this issue than other scenarios, and a range of contextual considerations informed opinions on its appropriateness. Privacy settings and ownership rights were the two most common considerations discussed.

Participants generally felt that private photos were off limits for republication. Private photos constituted those that a social media user protected from public view behind the platform's privacy settings. Some saw taking private photos as a"massive breach of privacy"; others "stealing". The user clearly intended for those photos to remain private to his or her social network and not for public view. Personal responsibility here is also key: it is the individual user's responsibility to manage settings to prevent photos from circulating.

Participants generally felt it more acceptable to republish publicly available photos, such as a Facebook user's profile picture. While their public accessibility makes them 'fair game' for republication and technically legal, participants felt that consent from the photo owner would be a 'courtesy' or matter of 'politeness' before rebroadcasting.

> *"It really does depend on what [privacy settings] that person chose. In saying that, even if they were shared publicly, I think the media outlet should have made their best attempts to try and get the person's consent first even though they didn't necessarily have to with the current rules as they stand."*
>
> **Younger, Less Active, Wellington**

> *"If I posted it on Facebook, fair game. Dumb. If you don't want it used, simply pull it."*
>
> **Older, Active, Wellington**

> *"I think the vibe around the table is that if you post it public, it's fair game, but my personal opinion is yes, it is fair game but morally it's not."*
>
> **Younger, Active, Hawke's Bay**

Participants felt mainstream media should attempt to obtain consent before republishing photos of ordinary citizens, but again debated from whom permission should be sought: the subject of the photo, the photo owner or possibly the platform itself (most were biased towards the photo subject(s)). Overall the discussion pointed to a lack of clarity over photo rights on social media.

In some cases, the public interest overrides the need to obtain permission, such as in emergency situations where consent is not practical (eg, missing person story, criminal cases). Depending on the context, consent for photos would be expected from a legal guardian or family members before use. Participants did not expect permission to be obtained from public figures.

Social Media Users

An exception to the 'fair game' argument is the use of photos for commercial purposes or when contextual integrity is violated. Speaking to the informational norm of content appropriateness, participants argued that taking a photo's content out of context or using an 'incriminating' or 'inappropriate' photo that might bias audiences against the subject is an inappropriate republication practice. Photos should be 'neutral' or 'non-biased' and selected to fit their purpose (eg, not for humiliating or embarrassing the subject).

A second consideration is the informational norm of distribution or flow. Participants suggested that when a public or private photo is re-purposed outside its original intended use it would be perceived as a privacy violation.

> "I was kind of thinking that when you put up your picture up on Facebook on your profile page, you're not considering that it is going to be used in another context and that's what's happening when it's used in [media]… so you are kind of putting it up there for fun or people are doing their pouty, sexy faces and stuff like that and then, bam. It's been used in a story about… You're not thinking about it though when you're putting it up there. So you're unhappy when it's used in a completely different context."

Older, Less Active, Hawke's Bay

These moments complicate 'self-responsibility' claims, as participants are forced to acknowledge that even controlled, self-determined and harmless decisions can end up violating one's privacy (NB: This is also a good example of where *networked privacy* picks up on the shortcomings of *contextual integrity* as a benchmark for privacy). It also highlights the implications of *publicity*. It is one thing to *be in public*, and something else entirely to be made public or publicised. However, ensuring that the contextual integrity of a photo is preserved can serve as a useful measure for broadcasters when evaluating a public photo's republication in the media.

Grief & Trauma

The grief/trauma scenario evoked the most negative response from participants who almost unanimously agreed that the capture, publication and re-publication of such content is likely to be inappropriate in most contexts. Few saw a public interest value in a video of a grief/trauma situation in and of the footage itself.

Participants' cynical attitude towards media again informed much of their expressions. They described republication as 'disrespectful' and for 'shock value' only, since reporting could happen in absence of the footage:

> "I feel like the media shouldn't have to use the content if even the police were saying to the bystanders don't take the photos… it can be deemed as disturbing content… Like TV doesn't have to take a photo or show the pictures of the actual crash."

Younger, Less Active, Wellington

'An exception to the 'fair game' argument is the use of photos for commercial purposes or when contextual integrity is violated…

…participants argued that taking a photo's content out of context or using an 'incriminating' or 'inappropriate' photo that might bias audiences against the subject is an inappropriate republication practice.'

Empathy for the victim and the victim's friends/family, processual considerations (eg, next of kin notifications, minimising trauma) and basic human decency all informed reasons for rejecting the republication of an accident scene. As per the scenario's reference to filming someone dying in a car accident, participants generally considered the victim's *lack of control* over the situation a key consideration. The victim's lack of agency, control and choice are the primary points of distinction from the other scenarios.

> R3:   "They don't have a choice."
>
> R2:   "They don't have a choice and he's dying. Who would want to be filmed while they were dying?"
>
> **Younger, Active, Hawke's Bay**

Some believed those who captured the footage should be held legally accountable for stripping victims of this choice:

> "It's voyeurism and it's sick, actually… and I believe that a person that is in extreme pain or dying should actually have dignity of dying in private, rather than it being out there and people actually profiting out of it one way or another, whether it's emotionally or you know monetary whatever. If they end up dying, then they'll prosecute a whole heap of those photographers and stuff."
>
> **Older, Less Active, Christchurch**

Most agreed that if textual or verbal descriptions sufficed, there remained no need for photos or video content of a physical scene:

> R5:   "We don't need to see the photos."
>
> R1:   "And even if it was blocking the road, we don't need to see the physical scene."
>
> R2:   "Just talk about it."
>
> **Younger, Active, Hawke's Bay**

> R3:   "There are much more tactful ways that the media can present the fact. It's unnecessary, it's disrespectful…"
>
> R5:   "…what they should do is just describe it through voice, not through video."
>
> **Younger, Less Active, Wellington**

In terms of *legality*, some believed the public setting of filming on a public road legitimised capture and republication from a legal, but not moral or ethical, perspective.

> "So because it's in a public place, unfortunately we don't have any control over it. So I guess it's a moral thing rather than a legal thing…"
>
> **Younger, Active, Hawke's Bay**

'Another consideration is the informational norm of distribution or flow. Participants suggested that when a public or private photo is re-purposed outside its original intended use it would be perceived as a privacy violation.

The grief/trauma scenario evoked the most negative response from participants who almost unanimously agreed that the capture, publication and re-publication of such content is likely to be inappropriate in most contexts.'

Some contextual considerations applied. If the capture intended to serve as a source of documentation of how things unfolded, as a means of assisting emergency services (eg, location-finding) or some other form of evidence, then *capture* — but not necessarily republication — may be justified. In these cases, the *intent* involved when capturing and republishing held considerable weight in determining appropriateness. If capturing to illustrate questionable conduct of police or emergency services or to raise a larger social or political issue (eg, to highlight racial tensions, police violence, animal rights) than participants agreed that the issue — not the footage itself — needs to be the purpose or focal point of the media's coverage.

Conclusion

Original hypotheses

Our study began with the following two hypotheses, which have respectively been confirmed and partially confirmed by the research.

H1: The public holds broadcasters to higher privacy standards than the public applies to individuals/other platforms when it comes to content collection and publication.

The research demonstrates this hypothesis as: *Confirmed*.

"I would hold them to a higher level because they can touch more people than we can with what they say..."

Older, Less Active, Hawke's Bay

"Mainstream media should follow some type of code of conduct and they are professionals that should be held to a higher standard than the average Joe Bloggs with his smartphone... Yeah, their reach is way higher, way further so they should be more responsible with it..."

Younger, Active, Auckland

H2: Individuals may believe that they or others should be able to record material or publish it online even when that intrudes into privacy, but may believe that broadcasters should not be able to republish that material.

The research demonstrates this hypothesis as: *Partially confirmed*.

Participants reported being concerned about privacy and used a wide range of strategies to manage personal information online. They reported taking formal and informal steps to protect the privacy of others, particularly children and other vulnerable groups. While social desirability may have played a part in their responses, participants reported that they actively and consciously tried not to violate the privacy of others, including strangers. They exhibited regret when they did.

However, while they did not necessarily report having more 'rights' to publish privacy-invasive content, participants recognised that the networked nature of privacy means different rules apply across different networks and context. What might violate someone's privacy if republished by mainstream media might not be deemed as privacy-invasive when shared amongst personal networks (and, possibly, vice versa). Informational norms are negotiated differently between *networked* publics as opposed to 'the public'.

Given the scenarios presented, participants believed mainstream media should not republish social media content unless in the public's interest to do so.

Media regulation

Mainstream and social media hold the power to exact shame and punishment that is symbolic and permanent, which is why they matter. But unlike social media, mainstream media have access to other fields of power – the state (eg, law enforcement, government) and judiciary – which invests them with more power than ordinary prosumers holding the same footage. So while some participants wrote off the media's republication of social media content as 'old news' by the time it reached broadcast, this view fails to consider mainstream media's power to contextualise content beyond its original presentation.

Taking the 'office sex romp' scenario as an example, we see how mainstream media used its powers of access and investigation to aggressively expand the story beyond its original context, intensifying the privacy invasion, coverage and its reach for those involved.[76]

Users are cognisant of social media content's economic value, particularly content that elevates a story into a scandal. While many believed New Zealand media operated with a comparatively higher level of integrity than media in other places in the world, most of the participants exhibited a general sense of apathy or cynicism towards mainstream news. Most also had a generalised belief that commercial media prioritise profit over public interest and will resort to sensationalism and scandal even at the expense of people's privacy.

Acknowledging that most of what the media do is legal but not ethical or moral, participants expressed the hope for a clearer set of technical and legal regulations that will better protect people's privacy. Although generally confident of their need, participants were not totally sure how broadcasting standards should be defined to consider the complicated contextual considerations of contemporary privacy issues.

> *"The media need to have some regulations and codes of conduct. Not only that but we should know what they are."*
>
> **Older, Less Active, Hawke's Bay**

76 This included digging up contextual information absent in the original video via routine journalist norms. Seeking interviews, identifying acquaintances and witnesses revealed details about the man's marital status and children, while follow-up stories later reported the woman's move to England, ensuring the story's permanence with her overseas."Christchurch Sex Romp Woman Leaves New Zealand", *TVNZ*, March 31, 2015, accessed September 7, 2015: https://www.tvnz.co.nz/one-news/new-zealand/christchurch-sex-romp-woman-leaves-new-zealand-6273746.

However, some of the suggestions made by participants included:

- Requiring consent from the content producers and/or subjects featured in social media content the broadcaster wishes to republish;

- Attributing sources to all content, particularly where consent is not obtained;

- De-identification of subjects featured in republished content;

- Pre-broadcast warnings for disturbing or offensive content;

- A public information campaign that explains BSA standards, what they are and how they are made;

- A public information campaign about existing legal parameters around privacy and the ethics of social media capturing practices;

- Content deemed 'offensive' or 'inappropriate' should not be shown unless it is contextualised as a public interest story.[77] The public interest test affirms the story's use value (utility) over its exchange value (shock value; sensationalism). Or, simply, *'does the good outweigh the harm?'*

- Requiring the media to re-evaluate a story's "newsworthiness" in terms of a democratic model of the public interest, not that the content is newsworthy merely because it has gone viral in the first place. Speaking to this last point, a participant said:

> *"You would want [the news] to show a video of racism and then talk objectively about why it is bad or whatever. You wouldn't want the news to not show that sort of thing."*

Younger, Active, Hawke's Bay

Recognising Privacy as Networked

Nissenbaum's informational norms of contextual integrity may be a useful rule of measure for republication decisions. Does the republication stand up to the informational norms of content appropriateness and appropriations of distribution and flow? If at least one of these norms is violated, then it is likely the republication will be experienced as a privacy violation.

Taking a networked view of privacy should also inform future technical and legal policies if we accept that social media constructs a networked public, and that neither individual choices nor technical affordances are enough to protect privacy in this context. Recognising privacy as networked acknowledges that an individual conceptualisation of privacy no longer speaks to the realities of the digital age; it must consider privacy's networked and contextual components.

'Acknowledging that most of what the media do is legal but not ethical or moral, participants expressed the hope for a clearer set of technical and legal regulations that will better protect people's privacy.'

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77 For example, several participants raised the issue of news media's capture and publication of heavily intoxicated young people at the Melbourne Cup. In this case, participants felt that broadcasting the pictures for the sake of spectacle alone is not acceptable. However, if contextualised as a story about drinking issues or some broader social problem then the photos are appropriate to the public interest.

This approach retains the importance of individual responsibility, yet is more flexible to the contextual realities of contemporary privacy management.

A more human and ethical approach to privacy should, by extension, inform broadcasters' approach to republication. Journalism's very existence hinges on perceptions of credibility; balancing matters of privacy over the public's 'need to know' informs this credibility.

The tendency to republish social media content for self-serving purposes (ie, profit, competition) at times overrides or undermines this balance.[78] In some scenarios, it might be that the public's need to know is valid but then undermined by how the story is conveyed (eg, as sensational or 'gotcha' journalism). Borrowing from the ethics-based 'communitarian' approach to journalism, broadcasters might prioritise not only ethical and moral (over legal) considerations in republication decisions that recognises privacy in social rather than individual terms. Such an approach to journalism is one that reflects precisely the concerns of our participants.

> "[A communitarian approach is one] in which the focus is on the community's good as a whole rather than on the individual rights of each citizen [and] urges journalists to consider morality as holistic, inseparable from considerations of the individual role, and to place at the centre of their approaches to journalism a basic human decency: no harm to innocents, telling the truth, honouring promises, generosity, gratitude, and making reparations for wrong action."[79]

This perspective has a levelling effect on journalists who become part of the citizenry they serve, which speaks to social media's decentralised structure, anyway. In the digital age, journalists too are part of 'networked publics',[80] potentially even those of our participants. Recognising this connection might hopefully "permeate [journalists] understanding of, and empathy for, people and their concerns for privacy."[81]

'Recognising privacy as networked acknowledges that an individual conceptualisation of privacy no longer speaks to the realities of the digital age; it must consider privacy's networked and contextual components.

A more human and ethical approach to privacy should, by extension, inform broadcasters' approach to republication.'

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78   For example, where the republished footage distracts from the actual issue being covered, or negatively affects how the story is conveyed.

79   G. Richardson & R. S. Fullerton (2016). Media's role in the Rob Ford 'Crack Tape' Scandal. In H. Mandell & G. M. Chen (eds.), *Scandal in a Digital Age* (pp. 145-160). London: Palgrave-McMillan, p. 153.

80   Again, networked publics are the spaces and audiences bound together through technological networks, and unlike 'the public' are not bound by time or geographical space. The potential audience is unknown and unknowable, making it difficult to always know to whom one is presenting the self when publishing content online.

81   Richardson & Fullerton, p. 153.

3. THE LEGAL CONTEXT

This section of our report has three main themes:

- First, what are the actual practices of broadcasters when deciding whether to collect and republish personal information sourced from social media?

- Secondly, what do existing broadcast standards say about how broadcasters should handle social media content, and is there additional useful guidance from comparable regulatory or ethical schemes elsewhere?

- Finally, does the law in fact hold individuals to a lesser standard than broadcasters?

We are conscious that the lines between broadcasting, on demand, online and print are becoming increasingly blurred and that piecemeal models of media regulation and gaps in coverage are a product of the convergence environment. For example, the BSA currently only regulates 'broadcasters' as narrowly defined by the Broadcasting Act.[82] Television, radio and online programmes that have previously been broadcast are covered. Certain on demand programmes (that have not previously been broadcast) are expected to come within the BSA's remit under proposed law reforms.[83] Specific broadcasters' online news and current affairs publications on the other hand are currently subject to oversight by the Press Council, which operates on a self-regulatory model.[84] Online content from other broadcasters is regulated only by the general law.

This research project cannot resolve issues relating to scope and form of media regulation; these are a matter for more detailed policy considerations and, ultimately, for law reform. We note though that some of our broadcasters expressed concern and a little confusion about the different rules that apply to them, particularly those who are relatively new to multi-media environments or who are contemplating entering that field.

The Authority already liaises closely both with the Press Council and with its overseas counterparts. We support continued close liaison, to enable discussion of this fast moving field of practice. Strong consistency between the BSA and the Press Council is also desirable in a convergent environment, at least to the extent that each body considers it appropriate given their different jurisdictions. Even if the complaint or decision making processes are different, creating or maintaining a common view of how to manage areas such as reuse of social media content will reduce compliance costs for broadcasters, and lead to better outcomes for the public. When it comes to managing privacy harms that arise from social media content, liaising with the Privacy Commissioner's office and with NetSafe will also be of assistance.

Broadcasting practice often involves careful decision making

As the analysis in part 2 of this report makes plain, some of the focus group discussions illustrated a strongly cynical view that, driven by financial considerations, broadcasters and other journalists frequently fail to meet expected privacy standards. At the *theoretical* level our participants accepted that broadcasters face commercial realities and that reuse of social media content was a natural and common part of managing the business of delivering news in a fast-paced environment. However when it came to discussing *actual examples* they often became more critical of what they perceived as the media's part in reporting on and amplifying aspects of those stories, to the detriment of personal privacy.

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82   Broadcasting Act section 2, definitions of 'broadcaster' and 'broadcasting'.

83   See media release by Broadcasting Minister Amy Adams, 22 August 2016.

84   The Press Council can consider online content from the major national broadcasters: TVNZ, MediaWorks, SKY Network Television, Māori Television, NZME Radio and Radio New Zealand.

We wanted to discover whether these assumptions had any basis in reality. We therefore asked broadcasters to explain how they make decisions to collect and publish what can broadly be termed user-generated content ("UGC"), some of which is sourced from social media.[85] Given the privacy focus of the research, we were particularly interested in material containing personal information. We focused mostly on video and still images, but other uses of social media content occasionally feature in broadcast material and in complaints (for instance reading out and discussing Twitter or Facebook posts as part of a radio show) and are therefore also relevant to the study.

We received only a limited number of responses, and so cannot provide a comprehensive view of broadcasting practice in New Zealand in this area. There will be a range of reasons why some broadcasters chose not to respond including lack of time, perceived irrelevance or existence of higher priorities – it certainly does not suggest that there must be gaps or flaws in those organisations' practices.

The responses that we did receive were invariably helpful and thoughtful (including those who told us that they do not use social media content), and a handful were detailed. We have therefore been able to use those responses to make some general points about how broadcasters consider privacy when engaging with issues about repurposed UGC.

The responses were confidential to us: we undertook that we would not attribute comments to particular broadcasters and we have not shared the responses with the Authority though some of the broadcasters may have done so. Since our sample was small, we have also not named the broadcasters that we approached or who responded, since to do so could serve to attribute comments to individual organisations.

Importantly, the broadcasters that responded to us mirrored the context-based principles that our focus group participants saw as important, including:

- having newsworthiness as the primary consideration when deciding whether to collect and republish and keeping public interest in mind throughout the process;

- deciding not to publish graphic or highly intrusive images unless they are an essential element of the story;

- issuing warnings about broadcast content;

- pixilating or otherwise de-identifying individuals to protect privacy where appropriate;

- taking active steps to verify accuracy of content;

- taking steps to get consent either from the author or the subject of the information where practicable (though practicability is a real issue, particularly in the timeframes available for news);

- being cautious about accessing information from non-public sources.

Actual broadcaster practices may therefore go part way towards refuting assumptions made by our focus groups, or at least allaying their concerns.

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85   We are aware that there are different possible definitions of UGC, and that some researchers prefer to restrict the term to video and photo content, to avoid it becoming too broad. It is an awkward label, but it is in reasonably general use (including by several of our broadcaster respondents). In the absence of a concise term that is clearer, we have adopted it here.

At the same time, it is evident that – as with all journalistic content – a significant degree of judgement is involved. Our focus groups also illustrated a range of views about how to handle personal information. Broadcasters are therefore unlikely to make what people might perceive as the 'correct' judgements all the time, and complaints are likely to become more frequent. Some broadcasters suggested to us that they would welcome additional guidance from the Authority on what was acceptable.

'All broadcasters stressed that newsworthiness is the starting point - and the key criterion - for sourcing information from social media, as from elsewhere.'

Sourcing information

All broadcasters stressed that newsworthiness is the starting point – and the key criterion – for sourcing information from social media, as from elsewhere.

There are different avenues for acquiring that content. Broadcasters may:

- ask the public to send in their own content, for instance in relation to particular events (some of which they may also have posted to their own social networks);

- search social media sites for material to support an existing story;

- scan trending stories to see what is potentially newsworthy.

The last technique does not in itself create privacy problems. Trend information is available to anyone with the software or ability to acquire it. It is only when the broadcaster more actively acquires content that privacy issues tend to arise: either by setting up a system allowing or encouraging submission of content, or mining social media for information that is then followed up or broadcast.

However, of course, trending information on social media is not, by definition, all 'newsworthy' either (at least in the democratic sense of the term). It shows what a social media provider's algorithms define as a topic that people are viewing, sharing and commenting on. At best it shows what people are interested in. However, there is a distinct step from that to saying that something is of legitimate public concern. Trending news is also susceptible to manipulation and error.[86] It is a potential lead, nothing more, and needs to be approached with the same degree of scepticism and checked as thoroughly as any other lead.

Receiving content from the public

Broadcasters told us that they (as with print journalists) prefer to source images and other information for themselves, or to use information supplied by news agencies. The material is captured in a way that fits the needs and the ethos of the broadcaster from the start, and it avoids many of the problems that they otherwise face with verifying whether second-hand information is correct.

However, in the modern 24-hour news, current affairs and entertainment industry, it is not always possible to be on the spot as events unfold. Seeking information, including images or footage, from people who are on the scene is therefore useful, at least as a stopgap measure.

'...in the modern 24-hour news, current affairs and entertainment industry, it is not always possible to be on the spot as events unfold. Seeking information, including images or footage, from people who are on the scene is therefore useful, at least as a stopgap measure.'

Submitting non-personal information (such as photographs of floods or other natural events) is common and raises no privacy issues.

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86   See for instance a relatively recent article in *Slate* (a Washington Post-linked organisation) about difficulties with Facebook's trending news algorithms: http://www.slate.com/articles/technology/future_tense/2016/08/how_facebook_s_trending_news_feature_went_from_messy_to_disastrous.html.

"…if there's a particular incident of interest, we may place a call to action at the end of an online story asking our audience to send in material they have recorded (eg, with big weather events). That content may or may not then be used in a broadcast."

It is only where the information may also involve people (eg, CCTV or cellphone footage of an incident) that privacy considerations come into play.

Broadcasters will generally require people that submit UGC to agree to terms and conditions, including that the broadcaster can decide whether and how to publish it, and that the submitter warrants that the information does not breach the rights of others. As part of our broader research, we found different models for these terms and conditions on broadcaster websites.[87]

Broadcasters have obvious practical and risk-management reasons to control content that the public submits to them, such as managing copyright issues. From a privacy perspective, requiring in-time agreement to clearly written terms and conditions (not simply terms and conditions at the bottom of a website page) is also useful to send a clear message about what broadcasters will find valuable and may consider republishing. It is an opportunity to underpin some of the messages that our focus groups had, for instance about the need to respect situations where people are particularly vulnerable.

For instance, terms and conditions could discourage people from sending footage of situations involving grief or trauma unless they think is a particularly strong reason for the wider public to know.

Training and support for staff: getting the filters right

A couple of our responders commented that as well as having written policies that staff are required to follow, they provide training and support to their journalists who are seeking or operating with UGC.

This makes sense and is good practice. While the ultimate editorial decision lies with senior editors, properly trained staff can help to filter out material that will not pass the test, can be selective about what they search for, or will know to escalate questions for legal or senior editorial consideration. Informed filtering reduces unnecessary 'noise', reduces the effort required to get material to air or online, reduces risk, and speeds the process up.

The training that we were told about largely focuses on the different factors that will help to determine whether the material is suitable for use. With the exception of intellectual property questions, they are no different from the factors that apply to material that the broadcaster creates itself:

"Does the item create a negative impression? Were any participants properly informed of the nature of their participation – and provided with a fair and reasonable opportunity to comment? How was the content/footage obtained? Has it been edited? Is the broadcast of the content/footage justified in the public interest? Do we have the right to use it?"

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87   Note that these terms and conditions will cover not only use of content on broadcast channels but also (and in practice principally) on the broadcasters' online channels. See for instance SKY Television's general terms and conditions at https://www.sky.co.nz/terms-of-use: though they are generally not relevant to UGC. NewsHub's terms of use more explicitly cover such content: http://cdn.mediaworks.co.nz/mediaworks/Content/Documents/MediaworksTermsOfAccess.pdf?v=0. They also require users to indemnify the network against liability if the UGC breaches the conditions. TVNZ 1 has a button for "tell us your story", that provides an easy mechanism for submission of content. Users have to verify that they have met the terms and conditions (a short, accessible, plain English list, which is linked from the submission pane): see https://www.tvnz.co.nz/one-news/sendusyourstory/termsandconditions. Māori TV has a specific section of its terms of access for when users send in content: http://www.maoritelevision.com/terms-access. The terms of use on the RNZ website does not appear to cover UGC at all and there is no separate privacy policy, but there may be in-time messages for anyone submitting content or posting comments.

As well as the legal questions, it also helps to make sure that the material fits the ethos of the station and is appropriate for the audience:

> "...there is a social media expert who manages our pages. ...we have a strict social media policy that reflects our brand values, decency and what is of interest to our audience."

Checking integrity of information

The accuracy and balance standards are most obviously engaged when information is incorrect, but using inaccurate information about individuals raises other risks too including in defamation and breach of privacy. While a defamation action can be defeated by demonstrating that the defamatory statement was true, or that an opinion was founded on true facts, a claim for breach of privacy (including under the broadcasting standards) covers both true and false information. This recognises that collecting or publishing true information can be a serious intrusion into a person's private life and can cause as much damage as a false publication.

The other way in which integrity of information might affect the operation of the privacy standards for broadcasting is that it is harder to claim that there is legitimate public interest in publishing inaccurate information.

Publishers need to take particular care with negative information about individuals. Research consistently suggests that negative information is memorable and persistent in a way that positive information is not.[88] The more credibility the purveyor of that information has, the greater the potential for lasting damage. And in the internet era, the chances of 'today's news being tomorrow's fish and chip paper' are diminishing.

Issues of accidental inaccuracy and deliberate "fake news" are as old as news coverage itself. However, the problem may have never been larger due to the ever-increasing volume of self-produced content; the ease with which it can be shared and edited; and the prevalence of organised production and distribution of inaccurate information, whether for commercial or attention-seeking purposes (eg, click bait), for political purposes (eg, seeding misinformation to influence elections) or for other reasons (including criminal purposes).

Members of the public who share social media content may find it hard to distinguish between legitimate and fake content. Our willingness to believe information that is served up to us is influenced by many factors including perception bias (a tendency to believe information that confirms our existing views); the echo chamber created by social media platform algorithms that show us more of what we have demonstrated an interest in before; and whether content has been shared by trusted contacts (despite the fact that those contacts may not have checked the information either). Some guidance materials and smart tools are starting to emerge to help people distinguish legitimate from non-legitimate material (one simple and potentially useful example is running a Google image search). Digital literacy programmes such as that supported by UNESCO (with the backing of mainstream media) will also assist.[89]

> '*Publishers need to take particular care with negative information about individuals. Research consistently suggests that negative information is memorable and persistent in a way that positive information is not. The more credibility the purveyor of that information has, the greater the potential for lasting damage. And in the internet era, the chances of 'today's news being tomorrow's fish and chip paper' are diminishing.*'

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88 For a discussion on negativity bias, see for instance Clifford Nass "The Man Who Lied To His Laptop: what machines teach us about human relationships" (2010, Penguin Books).

89 http://unesdoc.unesco.org/images/0018/001871/187160e.pdf.

Individuals can be liable for some types of inaccurate publications, such as defamatory or commercially misleading publications. However, beyond that the reality is that individuals have relatively few obligations to make sure that information on their social media sites is factually accurate. In contrast, both the law and social norms place significant expectations on our media organisations to make sure their facts are correct. It is one of the distinguishing features of the news media: they are supposed to be reliable, informed and fair.

Media organisations therefore have to be alive to the potential for inaccuracy when they source information from social media sites where the authors (or sharers) are under less onerous obligations to check the information.[90] The recent high profile nature of "fake news" (including in recent international elections) may have served as a wake-up call to those who had previously not invested in newsroom capability to deal with the problem. Our responses certainly suggested that New Zealand broadcasters apply a variety of methods to check information.

'Media organisations have to be alive to the potential for inaccuracy when they source information from social media sites where the authors (or sharers) are under less onerous obligations to check the information.'

A few of our responders gave us some insights into how these issues are managed by New Zealand broadcasters.

UGC that is sourced through news agencies has already been through a verification process and is therefore seen as reliable. Our broadcasters tended not to see it as necessary to perform other checks to make sure it is legitimate content.

However, information submitted directly by members of the public or sourced from social media sites requires additional verification. Several responders commented that verification issues are referred up the chain of command, for instance to the head of department.

One of our broadcasters provided us with the checklist that they give to staff. That checklist closely mirrors the regulator guidance and research reports that we found.

Broadcasters need to check for warning signs including:

- the age of the information – the persistence of information on the internet means that it is easy to inadvertently source information that is old and therefore risks being misleading;

- whether the poster has a history of hoaxes or trolling – this will tend to ring alarm bells about integrity;

- whether the poster may be pushing a particular agenda, which will bias the content;

- whether the information has already been published in other contexts – is it what it claims to be; has it been edited in a misleading way; does it have links to undesirable content elsewhere?

- Whether there are independent sources that can confirm the legitimacy of the information – this may not be necessary for innocuous information, but anything that has the capacity to damage individuals should be subject to additional checks and approval.

The Legal Context

The responder quoted the National Communication Association's Journalists' Manual:

"Remember: you are starting with a finished product, and working backwards to determine the veracity of the material. … If you have suspicions of authenticity, you should corroborate eyewitness accounts and talk to the content provider. It is standard practice to refer up around user generated content, especially in regards to authenticity."

As well as verifying content, it is also important to clearly *identify* material as UGC. Failure to do so can be misleading. The audience will be likely to give the material greater credence if they think it is the broadcaster's own content, and may not recognise that the author could have had their own motivations (for example a political agenda) for creating the content. Requiring clear labelling is a useful backstop measure, to complement the other filters that broadcasters apply in the selection process.

A key finding from a Tow Center report from 2014 was that newsroom practices about clear labelling fell a long way short of what was expected.[91] We have not conducted a similar review of newsroom practices here, so cannot comment on whether New Zealand broadcasters meet best practice. However, we note that clear labelling is capable of being an important factor in determining whether information has been presented in a factually accurate way.

Broadcasters, like our focus group participants, identified a number of other contextual considerations that affected whether they would publish social media content. These focused on the existence of public interest, and on how public the information already was.

It was unsurprising that broadcasters clearly identified these contextual considerations as they feature strongly in the broadcasting standards as well as being key considerations in the business of producing the news. However, as we will see, social media content creates some new challenges for applying the broadcasting standards, and it is not always easy for broadcasters to see where the line of acceptability will be drawn.

'Broadcasters, like our focus group participants, identified a number of other contextual considerations that affected whether they would publish social media content. These focused on the existence of public interest, and on how public the information already was.'

Republishing information that is in the public domain

Broadcasters generally assumed that information that was sourced from a public social media page (that is where there were no privacy settings applied) could be republished without breaching the privacy standard, unless there were particular issues dictating that the privacy interests were disproportionately high.

This is mirrored in most of the relevant cases that the Authority has decided, though, as we will discuss, there are some subtleties that the broadcasters did not mention. The Codebook also reflects that the fact that something is in the public domain suggests it is less likely that there are reasonable expectations of privacy, but that it will depend on context:[92]

"In some circumstances, there may be a reasonable expectation of privacy in relation to information even though it is in the public domain."

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91 Claire Wardle, Sam Dubberley and Pete Brown "Amateur Footage: a global study of user-generated content in TV and online news output" http://towcenter.org/wp-content/uploads/2014/04/80458_Tow-Center-Report-WEB.pdf.

92 Guidance about the privacy standard: "reasonable expectations of privacy": See the Codebook at guidance note 3.1, page 59.

For example, the case of *Hyde and Television New Zealand Ltd* [BSA 2016-076] illustrates that it is hard to protect information that is already widely available, for instance through other broadcast channels. The case involved a photograph of 'A', All Black Aaron Smith's partner, which was apparently taken from her Facebook page. It was used in a news broadcast about the incident in which Mr Smith was filmed entering an airport toilet with another woman. The photograph had been used by several media outlets, which had also named her. TVNZ opted not to name her, but showed the photograph.

The Authority commented:

> *"In general, a person will not have a reasonable expectation of privacy in relation to matters of public record, including, for example, matters that have recently been given widespread media coverage. ... Several media outlets referred to A, publishing her name and the same photograph used in the 1 News item."*

The Authority did not uphold the privacy complaint, as A had frequently been photographed in public with Mr Smith, and there was nothing inherently intrusive about the photograph. However, if publishing the photograph had divulged new information about A or had been particularly intrusive, it is possible that the outcome might have been different. The fact that other outlets have already published the material will not always serve to excuse a broadcaster's actions.

The earlier case of *Elborn and Television New Zealand* (BSA 2015-014) is less nuanced, and is potentially more controversial because of the sensitive subject matter. It showed footage of the Christchurch couple who were filmed by members of the public having sex in their office building. The Authority found that the couple were identifiable, but declined to find a breach of privacy. Unedited footage was circulating widely online, their identities were already known and the broadcaster had taken steps to blur the couple (possibly for decency reasons as it was broadcast before the watershed, as well as for privacy reasons). The Authority also referred to the Privacy Commissioner's public comments that people had few expectations of privacy in situations where their actions were clearly publicly visible.[93]

The principle of allowing republication of public domain information is generally sound (it is also reflected, for instance, in various principles of the Privacy Act).[94] However, it is best seen as a rebuttable presumption. For instance, it is worth noting that clause 2 of the Editor's Code of the UK press regulator, the Independent Press Standards Organisation ("IPSO") makes it clear that existing publication is not a slam-dunk argument:[95]

> *"Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information. ... A public interest exemption may be available."*

The case cited to illustrate the point was an example of a woman's Instagram post that had a picture of a cup of coffee with an 'unusually frothy topping'. The woman had commented that it resembled a penis. The Daily Mail republished the photograph and named her. IPSO did not uphold the complaint. Her Instagram page was not set to private at the time, so the photo was accessible. However, this was only one factor. More importantly, the photograph also did not disclose any private information about her: it was just an amusing anecdote.[96]

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93 See for instance http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11395296. However, the subsequent blog post on the Commissioner's site was more equivocal: https://www.privacy.org.nz/blog/sharing-images/. No complaint was brought by either party.

94 See definition of "publicly available publication" in section 2; also principle 2(2) which allows an agency to collect information if it is publicly available; and principle 11(b) allowing disclosure if the source was a publicly available publication (though note the discussion below under the "Privacy Act" section).

95 IPSO Editors' Handbook, Clause 2 "Privacy" at page 28: *Ward v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02168-14.*

96 As above, at page 29.

ACMA, the Australian broadcasting regulator, also sees privacy settings (or lack of them) as only one factor to consider. In a case involving publication of information taken from a Facebook tribute page for a murdered woman its media release said:

"The ACMA made it clear that while it considers the use of privacy settings is an important consideration when assessing material from social network sites, the actual settings are not determinative. In each case, the ACMA will assess a licensee's compliance with its privacy code obligations having regard to the specific circumstances of the broadcast."

In that instance, the tribute page was public and the photographs were not sensitive. The broadcast also included a picture of the woman's 14-year-old nephew and a comment he had left on the page, but this also was not a breach as the broadcast did not disclose sensitive information about the health or welfare of the boy.[97]

It appears that various factors will dictate whether a privacy claim should still be upheld: that the fact that it is in the public domain, unprotected by privacy settings or that others have already published is not an automatic licence to compound the issue.

These factors include:

- Where the information has entered the public domain in clear breach of confidence or otherwise in breach of someone's rights;

- Where the individual is particularly vulnerable;

- Where the broadcast creates material harm to the individual concerned, over and above what the general publicity is already likely to have caused;

- Where the broadcast puts its own, materially different or additional, slant on the information;[98]

- Where the situation involves grief or trauma.[99]

A very recent privacy case from the Authority illustrates that the fact information is already public is not the end of the story. In *Rickard and Television New Zealand Ltd* [BSA 2016-098] (19 April 2017), photographs of the victims of the bus crash that killed members of a visiting Tongan school band were taken from a public social media page. The Authority commented:

"…we consider that the platform of a public Facebook page, where members of a community [are] connected by a common bond, differs to the platform of national media. While these photographs were available publicly on a Tongan community Facebook page, broadcasting these images in a national news item widened the potential audience beyond the community with whom the photos were shared."

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97 Media release by ACMA 19 December 2011, in relation to case 137/2011. See also ACMA's "Privacy guidelines for broadcasters", September 2016.

98 An example is *Ihaia and IM and MediaWorks Radio Ltd* (BSA 2015-074) where the radio hosts invited people to send in Instagram pictures of women who were "do-nothing bitches", then proceeded to contact one clearly identifiable woman and talk to her on air.

99 For instance, see the Press Council decision of *Rivett and family v The Press* (case number 2487): http://www.presscouncil.org.nz/rulings/bob-rivett-and-family-against-the-press. Mr Rivett's daughter had died in a tramping accident. Despite the family's express wish for privacy, there were attempts to contact them. The Press also took a photograph from the daughter's public Facebook page. It had not been included in the Police media release. The Press Council commented that the public nature of a Facebook page does not exempt a newspaper from the obligation to give special consideration to people suffering grief or trauma. At the least, the paper should have checked whether the family had any objections to publication of the photograph. Compare *O'Halloran v NZ Herald* (case number 2166) where the family had supplied and approved the photograph of the deceased woman with her infant son.

Though it does not use that language, the Authority is effectively considering the effects of contextual collapse (see the discussion in part 2 of this report) – that is, that normal audiences for different types of communications tend to overlap on social media, and that this needs to be moderated in some way to manage privacy interests successfully. If the original audience for the social media post is radically different from the audience reached by the broadcast, it suggests that a considerable degree of caution is needed, as it can change the privacy impacts considerably.

We suggest it is worth articulating that both platform affordances and the original audience are specific factors to consider. Even this is not decisive, however: as the discussion about imagined audiences in part 2 of the report shows, people often imagine the least judgemental audience when they publish information on social media. Broadcasters need to do the opposite – they need to imagine a highly judgemental audience, and, at the same time, fulfil their role to provide information in the public interest. Either way, both a contextual privacy and a networked privacy approach would suggest that the broadcaster cannot simply rely on the public nature of the information but needs to make fresh decisions in line with the standards.[100]

The key factor in the decision itself was the vulnerability of the crash victims in hospital, where some of the photographs were taken. It was also important that the hospital images were not fleeting or taken from a distance. The Authority acknowledged the care that the broadcaster had taken to be appropriately culturally sensitive, and the public interest was undoubted, but it found a breach of privacy nonetheless.

In conclusion, definitions of what is a 'public' and what is a 'private' domain are not immutable and reuse of social media content challenges some of our traditional preconceptions about the nature of the space in which we are operating. An article from New York Times journalist Amanda Hess in 2014 makes the point well: she quotes fellow journalist Garance Franke-Ruta as saying:[101]

> *"I think there's a distinction to be made between what's public, what's private, and what's ethical. … The implicit definition of 'public' that's being bandied around seems to be anything that's technically possible to access without breaking a law. But obviously, our definitions of public and private are social constructs. It's important for us to keep negotiating where that boundary is."*

Some other rules of thumb

It is common for media organisations to consider publishing personal information about individuals that those individuals have not consented to, that they do not wish to be published, or even that may actively cause them damage. Many of the judgement calls that broadcasters have to make therefore revolve around whether the information should be published despite the privacy interests or rights involved.

The 'public interest' – which is well established as something of legitimate public concern, not something that is merely interesting to the public – is often the key determinant both in broadcaster decisions and also for the Authority.[102]

However in practice, that line is not always a bright one. Where social media content supplements news stories, the question of public interest is likely to be straightforward. However, where it is used for entertainment purposes it may be "newsworthy" in the

100 See also the NPR Ethics Handbook (http://ethics.npr.org/tag/social-media under the heading "Social media outlets are public spaces", though the comment occurs in the context of a warning to journalists to watch what they themselves publish: *"The line between private and public activity has been blurred by [social media] tools. Information from a Facebook page, blog entries, and tweets – even if they're intended to be personal messages to family or friends – can be easily circulated beyond the intended audiences."*

101 Broadcasting Standards Authority, 'Broadcasting Standards in New Zealand: Codebook' (April 2016) at 61.

102 "Is All of Twitter Fair Game for Journalists?" at www.slate.com (March 19, 2014) – on the topic of 'How reporters can ethically navigate social media'.

very general sense that it is something that fits the ethos of the particular broadcaster and is attractive to the target audience, but this is not likely to be sufficient to outweigh any clear privacy problems.[103] The "consumer" versus the "democratic" model of public interest (as discussed in part 2 of this report) is very much a reality for everyday decision making. It was not always plain from the broadcaster responses which they meant when they were discussing how they source and select social media content based on "newsworthiness" considerations.

As well as considering broader questions of public interest, broadcast standards tend to carve out some "rule of thumb" areas where publication is likely to be acceptable despite privacy interests. However, as always in this field, the context or existence of particular factors can affect whether the material has crossed a line between acceptable intrusions into privacy and unjustified publication. Those boundaries are often not clear cut at the best of times, and sourcing information from social media is creating some new challenges.

'The "public interest" – which is well established as something of legitimate public concern, not something that is merely interesting to the public – is often the key determinant both in broadcaster decisions and also for the Authority.

However in practice, that line is not always a bright one.'

Public places

Generally it is easier to justify publishing information about events in public places. For example it is common for people to film themselves or others at sporting events, concerts and other public activities, and upload that information to their social media pages. This type of material may be used to supplement broadcasters' stories of those same events (though it is probably more common to feature this type of UGC in print or online media).

Broadcaster definitions of "public place" vary: some include all publicly accessible places and others exclude private property of any kind. Context is also important:

> *"if it's the public domain and not a private or non-public location eg, private home or business address…"*
>
> *"…we consider who has access to the venue and whether that access is restricted. For instance, although a restaurant may technically be private property, we wouldn't necessarily treat it as a "private place". … On the other hand, while we would generally assume that a church is a public place, this would not necessarily be the starting point in the context of an intimate wedding at that church."*
>
> *"where events are filmed in private venues but are posted to public pages on social media sites, we view any claim to privacy as being significantly undermined."*

Expectations of privacy tend to be lower in public places, as people are aware that they are within view of strangers and are likely to act accordingly. This approach makes sense: being too restrictive about collection or use of information in public places would be likely to place unreasonable restrictions on freedom of expression. If we are not in fact engaged in a private activity or in an embarrassing situation, the ability to control what information others capture is limited.[104]

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[103] This is particularly obvious in cases such as *Stokes and NZME Radio Ltd* (2016-045) where a radio station that is noted (and enjoyed) for its irreverent and joking style crossed a line of acceptability by assuring a caller that she was off air where she was in fact being broadcast live. The caller wanted to complain about comments about her famous cricketer son, and the hosts used it as an occasion to make fun of her. The hosts were unrepentant. The Authority awarded $4,000 damages and $4,000 costs to the Crown as a penalty for behavior that was a serious breach of standards. The Press Council also upheld a related complaint against an opinion column by one of the hosts in the NZ Herald (case number 2516).

[104] See for instance *Rainford v Mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04459-15*. A worker at a fast food drive-through window was photographed and the image was put on social media in the context of a story about a giant rat. The photo was republished by the Mirror newspaper's website. The fact that the woman was visible to people in the vicinity, that it was a public place, that she was not engaged in a private activity and that the information was already on social media were all factors in the decision not to uphold her complaint.

Of course, we are increasingly aware that images of where we are and what we are doing could be captured in a more permanent way, for instance on CCTV, or via someone else's smartphone or wearable device on the street. But awareness that it *could* happen does not equate with expecting that it *will* happen. While expectations of privacy are lower in public, they still exist.

For instance we may well not expect the focus of attention to fall on us, let alone to have information about us widely published. If we are singled out from the crowd in a way that we do not expect (for example we are featured on a social media site in relation to a wardrobe malfunction or other episode that may then be shared or broadcast for entertainment at our expense), we can experience significant embarrassment and loss of dignity. [105]

Whether that is managed as a privacy consideration, or a fairness question, is a question of degree and context. If it meets the test of being "highly offensive to a reasonable person of ordinary sensibilities", then there is justification to treat the unwanted publicity as a privacy issue, despite the public nature of the place in which it occurred.

For instance the case of *Ranfurly Village Hospital Ltd and MediaWorks TV Ltd*[106] involved rebroadcast of privately shot cellphone footage of a man, Q, who had fallen outside a rest home: the allegation was that the rest home workers were slow to respond. Q was in obvious distress at the time, and subsequently objected to the broadcast of the footage. It was only the fact that Q was not identifiable beyond those who would have known about the incident that saved the broadcaster from a finding of a breach of privacy. As it was, the complaint about unfairness was upheld. The Authority commented at paragraph 65:

> *"While there was public interest in the story as a whole, and specifically in reporting concerns about Ranfurly's response to the incident, this did not extend to the use of the cellphone footage. Where an elderly person falls over and hurts himself in a semi-public place, a degree of solitude can be expected. It is a situation calling for discretion and sensitivity, given the potential impact on that person's dignity and wellbeing. While that person may suffer embarrassment in the presence of bystanders, broadcasting the footage on national television is a substantial unjustified further exposure. At a time when mobile footage is increasingly being used by the media, we express our view that such footage must be used with caution, taking into account the interests of, and potential harm flowing to those featured."*

Public figures

Broadcasters agreed with our focus group participants that public figures have – and should have – less control over whether information about them is published, particularly if they are acting in way inconsistent with their official role or public persona:

> *"First we examine their role and secondly we consider the context of the situation where the info was collected. Example would be an event that is open to the general public."*

There is a broad approach to the definition of public figures:

> *"Public figures are generally people in elected office, acting in a representative capacity for an organisation/entity/etc, or who are in the public eye for some other reason (eg, high profile celebrity or sports figure)."*

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105 For instance a customer in a café was surreptitiously filmed enjoying his dessert. The picture was published with a caption that was intended to be amusing, as part of a review of the café. IPSO's predecessor, the Press Complaints Commission, decided that he had a reasonable expectation of privacy: he was not visible from the street, and customers were entitled to expect to sit in the café without worrying about photos being taken and published. It is not clear whether the same conclusion would be reached if a third party had published the photo on social media first, but the implication is that a privacy complaint would be taken seriously. *Tunbridge v Dorking Advertiser*: www.pcc.org.uk/cases/adjudicated.html?article=MjA3NA.

106 *Ranfurly Village Hospital Ltd and MediaWorks TV Ltd* [BSA 2014 034].

"A public figure is anyone who [purports] to represent a group of people, holds a public position, or put themselves in a position of being a public figure/celebrity. We publish information about public figures when it is a matter of public interest. This assessment is managed by senior staff in the newsroom led by the HOD."

'...simply because someone is a public figure does not necessarily make everything about their lives fair game, including material found on social media. Their privacy expectations will be lower, but all this means is that the public interest may not need to be particularly high to outweigh those privacy interests.'

Where public figures court attention, including by posting content to social media, that content tends to be seen as publicity and therefore as generally fair to republish, though other considerations will still come into play:

"If a public figure is posting content about themselves to social media sites ... that content is viewed as publicity and broadcasters consider that they have more leeway in their ability to use such content."

"We will assess whether someone in a public role (or who is a public figure) will anticipate a greater level of interest in them and therefore anticipate greater media attention. Decisions as to whether to publish ... are made by ... balancing privacy against legitimate public interest ..."

In legal terms, this makes sense. There is a reasonably strong presumption that they have impliedly consented to the information being republished. That presumption can be offset in the individual circumstances, but it is a useful starting point.

Greater care is required when using third party material about public figures. Some of our broadcaster comments simply referred to the BSA standards as the guideline for whether to publish. Others were more explicit:

"When it comes to third party footage ... a higher bar is applied. The news room will consider the context of the footage, why it might be important and whether it raises concerns around wrongdoing."

It is clear, though, that simply because someone is a public figure does not necessarily make everything about their lives fair game, including material found on social media. Their privacy expectations will be lower, but all this means is that the public interest may not need to be particularly high to outweigh those privacy interests.

Relevant factors include:

- Whether the information involves apparent wrongdoing or hypocrisy;

- Whether they have taken the trouble to carve out areas that they wish to keep private (eg, celebrities who keep their children out of the public eye);[107]

- Whether they are in a particularly vulnerable situation (for example experiencing grief or trauma, or seeking medical assistance);[108]

- Whether the information is connected with their role.

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107 See for instance *Murray v Express Newspapers plc* [2008] EWCA Civ 446, where JK Rowling took a case to protect her children from being photographed, even when they were in publicly accessible spaces.

108 For instance in *Campbell v Mirror Group Newspapers*, there was little difficulty about publishing information that Naomi Campbell was a drug user: she had publicly stated that she did not take drugs, and the newspaper was entitled to set the record straight. However, it was not permitted to publish a photograph of her outside her Narcotics Anonymous meeting: this went beyond what was necessary to redress her hypocrisy and she was in a particularly vulnerable situation (as were others potentially featured at that meeting).

If there is no apparent link between the information (eg, marital difficulties or health status) and the reason for which the person is a public figure (eg, acting as an MP) some additional public interest is likely to be required to justify publication (for interest that their situation could seriously affect their ability to carry out an important public duty):[109]

> *"It is well established that public figures, and others who seek publicity, generally have lower reasonable expectations of privacy **in relation to matters pertaining to their public roles.**" (emphasis added)*

Importantly, the fact someone is a public figure does not mean their partners, children, other family members or friends are equally 'public property'. As the Authority went on to say in the *Hyde* decision (at para 18):

> *"...it does not automatically follow that the partners or families of public figures are also public figures. While allegations about a public figure may be considered newsworthy, broadcasters ought to give due consideration to the protection of the individual privacy interests of the public figure's partner and family and others close to them."*

The *Hyde* case illustrates how social media sites are a particularly rich and tempting source of information about people's family and connections. Looking at public information for story leads or fact corroboration is one thing, but taking and publishing information about non-public figures more widely is another.

For instance, friends and family who happen to feature alongside public figures on social media pages do not necessarily expect to become the subject of wider public attention, or for their photograph or information about them to be removed from the context in which it was first shared. Implied consent cannot be assumed simply because a person happens to feature on a social media page, particularly if they were on the periphery when the image or information was published and are now being put more at the forefront of the discussion. They might not even have known about or consented to the original publication.

Broadcasters should actively ask themselves whether the context in which the original publication occurred is so different that it would be unjustified – absent any public interest that is strong enough to outweigh the person's privacy interests – to extract and use that information.

> '*Broadcasters should actively ask themselves whether the context in which the original publication occurred is so different that it would be unjustified – absent any public interest that is strong enough to outweigh the person's privacy interests – to extract and use that information.*'

Sourcing information from a non-public social media account

While information on public social media pages is seen as relatively open to republication, the situation changes when the social media user has taken active steps to protect their privacy (generally by using privacy settings). One broadcaster that regularly sources social media content answered categorically that it would not source information that was protected in this way. Some others also said they would not do so, though we note that they tended to be organisations that rarely if ever sourced information from social media in any case.

However, a couple of other broadcasters that very regularly use social media content were more equivocal. The context, for them, is a question of newsworthiness: is the value of the information so great that it outweighs the fact that the person has taken active steps to protect information against wider access? They implicitly acknowledged that the public interest has to be stronger than normal to defeat a privacy claim in such circumstances.

109 *Hyde and Television New Zealand Ltd* [BSA 2016-076].

Even if the information is published in a reasonably large social media group, it may nonetheless be considered private as the person has taken steps to protect themselves against wide access. An example from the print media arena is the Irish Press Council case involving publication of information and pictures about a woman who was struggling with post-natal depression. The material had been taken from a Facebook group of which the journalist was a member. The Irish Press Council commented:

"Even allowing for the large size of the particular Facebook group, the article was a breach of [the privacy principle]."

Interestingly, it found that acquiring the information from Facebook in this way was obtaining information through misrepresentation or subterfuge. The journalist had received the information as a member of the private group, not in their capacity as a journalist.[110]

An example provided by IPSO in its Editors' Handbook shows the public interest defence at work. A police officer had made insensitive comments about the death of a man during the G20 protests. They were taken from a Facebook profile that was not publicly available, but publishing was seen as being in the public interest, probably because of the objectionable nature of the content and the standards to which we hold the police.[111]

If the information was originally protected by privacy settings but has already been widely published in other media, this is also relevant: as discussed earlier it may be easier to justify republication, at least in some form.[112] Even the broadcaster that said it would not access information from private pages commented that it would consider publishing information that has become public through sharing by others (though the decision whether to do so would be subject to normal editorial control).

However, we suggest that a considerable degree of caution is required about republishing material where the original author or information subject had taken steps to assert that the material was private:

- The fact that other media – or other publishers – have chosen to publish the material does not necessarily deprive the person of "reasonable expectations of privacy".

- Every publication is capable of disclosing the material to a different audience.

- Repetition may well compound the harm experienced by the person.

- Subsequent publishers should not be able to take advantage of wrongful behaviour by others if the publications that put the material into the wider public domain were themselves arguably in breach of privacy standards or law.

If the original author or information subject has taken steps to assert that the material was private (such as by applying privacy settings), the starting point should therefore be to respect those expectations of privacy. Valid exceptions to this position would be where the public interest is strong enough to justify the publication, or where the broadcast will not in fact add to any harm that the information subject is already likely to have experienced.

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110 http://www.presscouncil.ie/Decided-by-the-Press-Ombudsman/a-woman-and-independentie.

111 Page 30: *Goble v The People:* www.pcc.org.uk/cases/adjudicated.html?article=NjA4MQ.

112 Note that this did not succeed in the UK case of *Rocknroll v News Group Newspapers Ltd* [2013] EWHC 24 (Ch) per Briggs J. An interim injunction was granted to prevent a newspaper from publishing photos of the claimant partially undressed at a party. The photos had been obtained from a third party's Facebook account where they were accessible by that person's 1,500 friends, but were then made available to the public at large when the account's privacy settings were changed. The fact that the photos had been posted on Facebook did not preclude the operation of the claimant's privacy rights. The court's view was that the factors relevant to internet publication were no different from anything else: it was a question of fact, degree, and proportionality.

In 2012, the BSA dealt with a complaint involving material taken from private Facebook messages, which the radio show host improperly accessed when the complainant had unintentionally left her page open on the host's cellphone. He then proceeded to read excerpts from some of the messages on air. The Authority could not uphold the privacy complaint because the woman was not identifiable. However, it strongly disapproved of the host's actions:[113]

> "... we nevertheless wish to make some general comments about the behaviour of the host and his use of social media. The right to broadcast material publicly carries with it a degree of responsibility in terms of the selection of content for broadcast, the way information is obtained, and the manner in which content is broadcast. This responsibility also requires reasonable consideration of anyone who might be affected by a broadcast. ... The methods used by the host to obtain the information ... and his subsequent decision to broadcast commentary on that information, were wrong. ... When broadcasters disseminate material on public radio they must be conscious of audience expectations and we think that broadcasting commentary on someone's private affairs, in these circumstances, was inappropriate."

Consent

As mentioned earlier where a celebrity is posting information about themselves to their public social media account, broadcasters are likely to see it as publicity material, and therefore assume that there is an implied consent to republish the information. People who send content in to broadcasters are also at least impliedly (and usually expressly) consenting to its reuse.

In most other instances, however, broadcasters prefer to approach the person. This is not only for purposes of consent: there is often a wish to interview them for news purposes:

'If the original author or information subject has taken steps to assert that the material was private (such as by applying privacy settings), the starting point should be to respect those expectations of privacy.'

> "We always try to track down the author/person [responsible] for content, particularly to elicit further information or to interview them. If consent is refused, but content remains accessible on a social media profile which is available to the public, we will assess on a case by case [basis] as to whether or not we use the content for the purposes of news reporting."

Broadcasters were particularly conscious of the need to protect children. Not only is parental/guardian consent required but also, under the BSA and Press Council rules, the best interests of the child must be considered.[114]

There are significant practical issues with seeking consent:

- the broadcaster may ask for consent or for comment, but individuals often do not reply;

- if third parties are represented in the material, the broadcaster may have no means of contacting them

- it may not be possible to determine who the original creator of the content is.

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113 *IG and Radio Tarana* [BSA 2012-088].

114 See also *NS and SKY Network Television Ltd*, BSA 2015-032 at para 14ff: the story was of public interest, but the information about the child could have had seriously negative repercussions for him and there was no need to identify him as part of the story. The Authority found a breach of his privacy and awarded $1,500 compensation.

In those cases, broadcasters need to decide whether to publish despite lack of consent. Relevant considerations include:

- *"the imperative of speed when publishing breaking news events"*

- the strength of the public interest

- the potential negative effect on featured individuals, including vulnerable individuals.

If people are being asked for consent, it will be important that that consent is informed. This can also be relevant to considerations of fairness. Consent requirements apply equally to situations involving social media content as where individuals are filmed by broadcasters in the normal way.

Informed consent, under the Codebook, is where a person:[115]

- Is aware that he or she is contributing to the broadcast

- Understands the true context and purpose of the contribution

- Understands the nature of the consent and its duration

- Freely agrees to contribute.

Intellectual property and consent

Asking for consent also ties in with considerations of how to manage intellectual property concerns, such as copyright.

Guidelines published by journalism organisations or regulators overseas often place significant reliance on intellectual property considerations, when advising whether broadcasters and other journalists can use UGC. While privacy considerations are normally assessed separately, the existence of intellectual property rights in the personal information can affect whether it should be published: if publishing the content breaches the law, it is more likely to be seen as a breach of privacy as well, or at least unfair and unjustifiably intrusive.

Sourcing information from news agencies can provide broadcasters with a degree of comfort:

> *"When content is sourced from news agencies we will partially rely on the comfort provided in the contract around rights to use the copyright, but our editors will also undertake their own assessment of the content against NZ media laws and the rules of the Press Council and BSA."*

Broadcasters told us that they tend to credit the original author where their identity is known, and where it is practicable to offer a credit. For instance a single photograph may appear with the photographer's name, but it may not be practical in the time available to credit each author in a montage of short clips or photos.

Where information is posted to a public social media account, some broadcasters act on the basis that the individual had the right to post it without necessarily performing additional checks. One responder commented that they tend to embed content from Facebook or Instagram:

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115 Broadcasting Standards Codebook, at 60.

Another responded that they rely on the fact that the platform's terms and conditions (eg, Facebook) will prohibit people from breaching copyright or violating the law.

Both of these broadcasters demonstrated that they apply other checks as well, to ensure that the material will meet the required standards: in itself therefore, it does not necessarily cause any difficulties with privacy. However, the risk of intellectual property infringement will remain a concern. Reliance on an author's compliance with platform terms and conditions is problematic: social media users frequently fail to observe the rights of others. Embedding content rather than republishing is also not a shield against liability if the original content was infringing.

Importantly for broadcast practice, the interpretation of the "fair dealing" provisions of the Copyright Act can help broadcasters to decide whether to publish information. While written material requires a sufficient acknowledgement, photographs, images and sound recordings used to report on current events do not require an acknowledgment: agencies can report on current events relatively freely.[116]

The concept of fair dealing can be a complex one. However, since this issue goes beyond the privacy focus of our research and we are not specialists in intellectual property, we have not commented further on it here. We also note that broadcasters and other publishers should check the terms and conditions of the social media providers to see whether mining or republishing of information is permitted at all.

Less of a legal double standard than people may assume

Both individuals and broadcasters see a double standard at work

As illustrated in part 2 of this report, our focus group participants were strongly inclined to hold broadcasters to higher standards than those that they apply to themselves or other individuals. They saw the media as having greater power, relative credibility, reach and access to other (amplifying) sources of information than individuals do. They therefore considered that broadcasters could do more damage than individual online publications could, and expected them to be more restricted in what they published.

However, the focus groups suggested that people generally have little knowledge of the law that applies either to themselves or to broadcasters. They were therefore operating on assumptions rather than knowledge. They were aware that broadcasters had to abide by laws, including broadcasting standards, but were unaware of the content of those standards, or the degree to which certain calculations were questions of law, or simply questions of ethics.

As far as individual liability was concerned, filming of grief or trauma was the only area where our participants were more inclined to suggest that a legal response was required. They did not reflect awareness of laws that govern individuals, and when engaging with social media rarely appeared to consider whether the law permits them to collect and publish information about others. Instead, they adjusted their behaviour depending on what they perceive as general rules of courtesy and social acceptability, and by the perceived value of the information either to themselves or to their audience. Some responses suggested that they do not turn their minds to the possibility of republication beyond their intended audience. They are more likely to be concerned about a negative reaction from the community, than to be concerned about any potential for legal action.

116 Section 42 of the Copyright Act 1994: http://www.copyright.org.nz/viewInfosheet.php?sheet=338 . It is not necessarily comparable with some of the difficulties that have arisen overseas: http://www.broadcastlawblog.com/2014/02/articles/digital-and-social-media-legal-issues-for-broadcasters-exercise-care-in-using-internet-content-on-your-digital-properties-and-why-fair-use-is-not-always-a-defense.

Even if they turn their minds to the law, they tend not to know what that law is.

In contrast, and unsurprisingly, all broadcasters who responded were aware of their responsibilities under broadcasting standards, and were familiar with the potential for other laws (such as copyright law) to apply. All accepted that they had to comply with broadcasting standards, and expressed little or no difficulty in doing so.

However, some challenged whether it was appropriate to hold individuals to a lower standard.

> "…[t]o the extent that there is a perceived double standard, it cannot be justified in today's society. The rise of social media and the ability for content to 'go viral' in an online environment means that members of the public now have a platform to cause harm on a scale that was previously only available to national broadcasters."

'…broadcasters also recognised that the law is not the only thing that matters. Just as individuals use social media to establish their online personality, decisions whether to publish social media content also need to fit a broadcaster's own values and corporate reputation.'

The harm that individuals as well as the media can cause with social media content is recognised in a new chapter in the major UK textbook on privacy and the media:[117]

> "… given the distinctive characteristics of publication via social media - instantaneous, readily accessible by both recipient and onlookers (in particular via mobile phones and other hand-held devices), cumulative, persistent, viral, potentially global in reach, continuous and, unless arrested, permanent - … misconduct is apt to produce in its victims powerful feelings of humiliation and despair, not least on account of the perception that their embarrassment is being served up for the gratification of thousands of others."

It is worth noting briefly here that the broadcasters also recognised that the law is not the only thing that matters. Just as individuals use social media to establish their online personality, decisions whether to publish social media content also need to fit a broadcaster's own values and corporate reputation. For instance, one said:

> "… we have a strict social media policy that reflects our brand values, decency and what is of interest to our audiences."

Individuals have a greater exposure to liability than people might expect

It may come as a surprise to individuals and broadcasters alike, therefore, that there is not as much difference as they might think between the legal standards applied to broadcasters and the legal standards applied to individuals.

This is because, as a general matter, broadcasters and individuals have to comply with the same underlying legal principle – that they should not collect or publish personal information about others in a way that would be highly offensive to an ordinary reasonable person.

This applies to social media as much as to any other publication medium. While different statutes or causes of action might apply, those laws are all based on similar understandings of what privacy is, what matters are particularly deserving of protection (largely to prevent harm) and when it will be justified and proportionate to either limit freedom of expression or to limit the scope of personal privacy.

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117 Tugendhat and Christie, *The Law of Privacy and the Media* (eg, Nicole Moreham and Sir Mark Warby (3 ed, 2016) chapter 15: Privacy, the internet, and social media (G Busuttil, F McMahon and G de Wilde) 15.02.

The differences – which are enormously important in practice – lie, more in access to methods of enforcement, the potential effectiveness of taking enforcement action and the financial and emotional costs of taking action. In particular, it is free and straightforward to take a privacy complaint against a broadcaster to the BSA. In contrast, taking action against an individual in the courts is expensive, uncertain and more resource intensive.

Traditionally, therefore there was a relatively small chance that an individual could be the subject of legal action for what they publish online. However, that is changing. The Harmful Digital Communications Act and greater access to the Privacy Commissioner's complaints mechanisms are two recent features that increase the chances of individuals being held to account for what they do on social media or other communication channels.

The common law applies equally to individuals and broadcasters – at least in theory

There are several causes of action that make individuals liable for what they publish online and that may be relevant in cases involving intrusions into privacy or publication of information about them.

Some of these also apply readily to broadcasters (such as defamation, breach of confidence or breach of the privacy tort). Others are much more likely to govern individual behaviour than that of broadcasters (proceedings under the Harassment Act, the Harmful Digital Communications Act, or – to a limited extent – the Privacy Act).

Yet while broadcasters are usually acutely aware of the common laws that govern their behaviour, individuals may be unaware that they could be the subject of court action in relation to what they collect and then publish on social media.

As the following discussion demonstrates, when it comes to privacy, the principles that apply to individuals who publish are very similar to those that apply to broadcasters under the privacy standards.

However, the likelihood of individual publishers being the target of proceedings is relatively slim except in situations where the damage to the victim of the privacy breach is particularly egregious, or where the victim has deep pockets and/or a public reputation to preserve.

The privacy tort and breach of confidence

Unlike defamation, which protects against publication of false information about people, the privacy tort does not distinguish between information that is true or information that is false. It is therefore relatively useful as a means of dealing with social media content.

New Zealand's forays into developing a common law tort of breach of privacy started in the mid-1980s, when the High Court first acknowledged that the cause of action was arguable here.[118] A few intervening cases (most involving news media companies and, in one case, a film company[119]) provided additional support for the existence of the tort. However, it was not until a final injunction was granted in the case of *P v D* (preventing publication by a newspaper of information about a public figure's mental health) that the courts granted a remedy on the basis of privacy alone.[120] The later Court of Appeal decision in *Hosking v Runting*[121] then firmly established the tort of wrongful publication of private facts as part of the New Zealand legal landscape.

118 *Tucker v News Media Ownership* [1986] 2 NZLR 716 (HC).

119 *Bradley v Wingnut Films Ltd* [1993] 1 NZLR 415 (HC).

120 *P v D* [2000] 2 NZLR 591.

121 [2005] 1 NZLR 1 (CA).

122 See the Supreme Court decision of *Rogers v Television New Zealand* [2008] 2 NZLR 277.

The exact formulation of the tort is still open to some question[122] but it largely mirrors the way in which the privacy standard is defined by the BSA, and the questions that the Authority asks when addressing the impact of the Bill of Rights Act. Indeed, the *Hosking* court directly referred to the BSA standards of the time, both when considering the elements of the tort and considering how to appropriately recognise freedom of expression.

While privacy is not a stand-alone right in New Zealand's Bill of Rights Act, the *Hosking* court expressly recognised that it can be a justifiable limitation on the section 14 right to freedom of expression and crafted the parameters of the tort accordingly. Essentially, there needs to be a public disclosure of information about an individual, in which that individual has a reasonable expectation of privacy (or, as the *Hosking* court put it, where publication would be highly offensive to a reasonable person of ordinary sensibilities). Consent to publication will be a defence, as is the existence of a sufficiently high legitimate public interest.

Tucker, the original court decision establishing privacy, is notable for two other features. The first is that Justice McGechan denied Mr Tucker a permanent injunction because it would have been futile to prevent publication. The details of his identity and circumstances had been published by some other media organisations, including overseas. Mr Tucker could not demonstrate that further publication would cause him sufficient additional harm to meet the high threshold for obtaining the injunction. If publication were going to have the serious effect on his heart condition that he claimed it would, that harm would already have occurred as a result of the existing publicity.[123]

Secondly, Justice McGechan acknowledged that private facts can in some circumstances become public again over time. The BSA standard also reflects that public information is not necessarily public for all time. This attitude has significant support from recent overseas developments, and applies despite the persistence of information on the internet. For instance, the European Court of Justice *Google Spain* decision[124] established a right to request that search engines operating in Europe should not return links to outdated information on others' websites (more usually and concisely – though rather inaccurately – called the "right to be forgotten").[125]

While events that occur in the public domain, such as filming people on a public street (eg, *Hosking* itself, which involved a paparazzi-style photograph of Mike Hosking's twin daughters in Auckland) will generally not attract liability in New Zealand,[126] that may change if the individual involved is in a particularly vulnerable situation: see *Andrews v TVNZ*,[127] which involved a broadcaster filming and recording voices of a couple in a car wreck. The Andrews' claim ultimately (and somewhat puzzlingly) failed but on the grounds that the content of the broadcast was not "highly offensive" (that is, there were no particularly intimate or sensitive things said) not because they were in a public place. The court agreed that the couple had a reasonable expectation of privacy that

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122 See the Supreme Court decision of *Rogers v Television New Zealand* [2008] 2 NZLR 277.

123 Note also the debates on the availability of injunctions, or the inclusion of a "public interest proviso" where publication has already occurred or may occur at such a level as to render an injunction futile: eg, *Mosley v News Group Newspapers* [2008] EWHC 1777, and the discussion in Tugendhat & Christie's *The Law of Privacy and the Media* (above n 117, at page 563 ff).

124 *Google Spain v Gonzalez* CJEU, case 131/12.

125 The new General Data Protection Regulation in the EU refers to it as "the right to erasure."

126 Though note that this was doubted in *Television New Zealand Ltd v Rogers* [2007] NZSC 91. Compare also cases decided in the context of European-influenced human rights jurisprudence: eg, *Murray v Express Newspapers plc* [2008] EWCA Civ 446, [2009] Ch 481, where the Court held that an infant child arguably had a reasonable expectation of privacy against being photographed on a public street.

127 [2009] 1NZLR 220.

their conversations would not be captured and published to those beyond immediate earshot:[128] a relevant point for individuals as well as broadcasters who choose to film accident scenes on their cellphones.

More recently, the New Zealand High Court has recognised a tort of intrusion into seclusion.[129] Unusually in the reported tort cases, this was a case involving two individuals: Ms C and her former flatmate Mr Holland, who surreptitiously filmed her through a hole in the ceiling while she was having a shower. He kept the photos to himself. They were never published, so the wrongful disclosure tort could not apply. Mr Holland was liable under criminal law (intimate covert filming[130]) but this does not provide remedies to the victim, so taking an action in tort was appropriate. The Court accepted that intrusions into solitude are actionable, describing that aspect of privacy protection as:

> " … entirely compatible with, and a logical adjunct to, the Hosking tort of wrongful publication of private facts. They logically attack the same underlying wrong, namely unwanted intrusion into a reasonable expectation of privacy."

The action for breach of confidence, on which the English tort of misuse of private information has been founded,[131] has similar overtones. An action for breach of confidence may be a particularly useful alternative to a privacy case in relation to republication of information about people received as a result of a data breach (allowing the organisation that experienced the breach to bring proceedings, rather than relying on affected individuals to do so). The anonymous blogger who republished the spreadsheet of Canterbury earthquake claimant information that EQC had emailed externally in error is a case in point.[132]

It is also useful in cases in which obviously confidential information is published, but the individual is not identifiable from that information – identifiability being a standard legal pre-requisite for a privacy breach, under both the BSA standards and the Privacy Act and probably also the New Zealand privacy tort. An exception – which would possibly have been more cleanly decided under breach of confidence - is the Timaru case of *L v G* involving intimate photographs taken consensually but then published in an adult magazine. The victim was not identifiable, but the obviously wrongful actions of the defendant led the court to accept her claim.[133]

While few of the privacy tort cases have involved action against individuals, there is no *legal* reason why such action could not be taken, for instance in relation to republication of personal information on social media sites. As long as the elements of the tort are met, that is enough, as with defamation cases where 'individual v individual' proceedings are more common.

Also, while legitimate public concern is a complete defence to a privacy or breach of confidence action, an individual respondent is far less likely than a media organisation to be able to show that the defence exists. Broadcasters, as we have seen, take newsworthiness as their starting point. They may not always get that calculation right – and not all concepts of newsworthiness equate with true public interest (what is interesting to the public versus what is of public interest). However, the fact that they have an in-built filter provides them with a better chance of successfully defending a claim.

<div style="text-align:right">The Legal Context</div>

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128 See *Andrews* at para 66.

129 *C v Holland* [2012] NZHC 2155.

130 Section 216G of the Crimes Act 1961.

131 See *Campbell v MGN Ltd* [2005] UKHL 61; [2005] 1 WLR 3394, and subsequent cases.

132 See for example *Earthquake Commission v Unknown Defendants* [2013/ NZHC 708.

133 *L v G* [2002] NZAR 495. The plaintiff's occupation as a prostitute also – correctly – did not undermine her rights to privacy, confidentiality and control over images of her body: the defendant's attempts at arguing that she had fewer rights failed.

The reason why there are so few court cases where action is taken against individuals rather than media organisations for breach of privacy is almost certainly down to the cost and effort required:

- Any court action is expensive, and relatively unused causes of action tend to raise the costs further.

- It is hard to represent oneself in a case such as privacy tort proceedings: the assistance of a lawyer (with attendant fees) is highly desirable.

- There is the risk of exposure to significant awards of costs if the case fails.

- The fact that court proceedings are public – so one has to give evidence and be cross examined in a public forum – is also a barrier to action.

- In New Zealand we do not culturally see litigation as a first resort, so it is likely to attract attention when people use that mechanism to resolve a privacy disputes.

- The amount of effort required to mount a court case – including grappling with the rules of evidence and procedure is considerable.

The result is that people need to be very determined, and have either legal aid or independent financial means to proceed with a privacy case. The same is true of defamation, breach of confidence, or breach of copyright.

Where the person who has breached your privacy is not well off, the potential to recoup compensation and a contribution to legal costs may not be worth the effort. Except in the most extreme cases, like Ms C, it is likely that the majority of cases will continue to be against organisations that may be seen as having deep pockets, such as broadcasters, rather than against other individuals.

The existence of theoretical legal liability at common law is therefore unlikely to influence the actions of people who publish information about others on social media.

The Harmful Digital Communications Act ("HDCA")

In contrast, the new harmful digital communications legislation has a much greater potential to address severe privacy invasive behaviour, and therefore over time (as there is greater publicity given to breaches) to provide incentives for more acceptable behaviour both online and in other forms of digital communication such as text messages. While the Act can apply to legal persons as well as natural persons, it is not particularly likely to be directly relevant to traditional broadcasters in New Zealand: but it does firmly govern the actions of individuals. Even more than that, it creates criminal offences that carry a potential prison sentence.

The HDCA was passed in 2015 to fill gaps in legal protection where there was evidence that significant harm was occurring, including privacy harms. Much of the discussion around the Act focused on the problems of cyberbullying, including some high profile cases both here and overseas of inciting young people to commit suicide. The Act does not only focus on cyberbullying, however: it applies to any form of harmful digital communication, including severely privacy-invasive publications on social media.

There are two broad aspects to the Act. One, which came into force in July 2015, creates criminal liability for a few particularly egregious types of online publications, including posting a digital communication with the intention of causing someone harm (defined as serious emotional distress) and that does in fact cause harm.[134] Posting a digital communication includes posting information about the person (whether truthful or not) and posting an intimate visual recording of another individual.[135]

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134 Section 22(1).

135 Section 4: interpretation of "posting a digital communication."

A Law Society conference paper earlier this year noted that by the end of 2016, there had been more than 89 criminal charges files under section 22 of the Act and seven people had been jailed. Most of these cases involved so-called 'revenge porn' (where explicit photos are published online to hurt a former partner after a relationship breaks up, but not all).[136] For instance, a man was jailed for 11 months after he sent sexually explicit material featuring his girlfriend to her mother who disapproved of the relationship – he intended to upset the mother, and thoroughly succeeded. The judge commented:[137]

> "… in this day and age broad dissemination of such material is just at the touch of a button … in my view not to imprison you would send totally the wrong message to you and others who might embark on this sort of behaviour."

A variety of factors influence whether a post would cause harm. They are equally interesting when considering what might be "highly offensive and objectionable to a reasonable person" in a broadcasting environment (a key factor required before a breach of a privacy standard will be found).

The statutory factors include:[138]

- The extremity of the language used;

- The age and characteristics of the victim;

- Whether the digital communication was anonymous;

- Whether the digital communication was repeated or a one-off;

- The scope of the circulation;

- Whether the information is true or false;

- The context in which the digital communication appears.

The only case to go to the High Court so far dealt with the interpretation of 'serious harm'. It is particularly notable for the Judge's comments that the *totality* of the effects that digital communications have on the victim have to be taken into account when considering whether serious harm has occurred.[139] For example if there were a series of communications, each event in isolation may not quite meet the threshold, but in combination they may clearly do so. The nature of the information and the intensity and duration of effects are relevant, and the context of the communication is also important (for example, the material was potentially linked to a pornographic website).[140]

'The totality of the effects that digital communications have on the victim have to be taken into account when considering whether serious harm has occurred.'

The broad point is potentially relevant in the broadcast environment too though the content of communications is likely to be very different. It shows how important it is to consider the wider effects of publishing the material. What may not have quite met the threshold for "highly offensive" material in the context of the original social media post may cross that threshold once it is broadcast on national television or radio.

The Legal Context

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136 Sally Carter, Rick Shera and Ben Thomas "The Harmful Digital Communications Act 2015 – two years on" (Cyberlaw conference – Applying Cyber to the Real World, New Zealand Law Society, April 2017, 21, at 22).

137 *R v Tamihana* [2016] DCR 240.

138 Section 22(2).

139 *New Zealand Police v B* [2017] NZHC 526 at 35.

140 *Police v B* at 37-41.

As well as the new criminal offences, the HDCA also provides civil law protection which came into force in November 2016. It sets out a series of ten communications principles,[141] several of which are closely connected with privacy interests.[142] If a complainant believes that a communication infringes one or more principles, they can seek the assistance of NetSafe (which has been appointed as the "approved agency" under the Act) to investigate and try to get a speedy resolution to the matter for instance to get material taken down to reduce harm. If the matter cannot be resolved informally and the breach of the communication principles is "serious", the complainant can take a case to the District Court, which can make a variety of orders against either the author or the host of the content.

The authors of the Law Society paper mentioned earlier note that between November 2016 and February 2017, NetSafe had received 516 complaints under the Act, and the District Court had received seven applications for orders.[143]

Far from being immune from legal action in contrast to broadcasters, therefore, the HDCA shows that individuals are starting to have to meet some strict standards when their social media and other digital publications breach privacy in a serious way and cause real damage to others. More than that, there are accessible and (at least to begin with) free avenues of complaint that individuals can use to take action against others. Expensive court action is rarely needed.

It is still early days for the legislation though and as yet many people may be unaware that their own obligations with publication are stricter than they might think.

The Privacy Act applies to some actions of individuals

In addition, when the HDCA was passed, it also amended various provisions in the Privacy Act that had made it difficult to take action against individuals who collected or published highly harmful information as part of their family life, their friendships or otherwise in relation to their personal affairs.

There are two aspects to the changes. First, the Privacy Act had previously allowed individuals or organisations to disclose information without breaching the usual disclosure principle (principle 11) as long as they had sourced it from a "publicly available publication". This included material sourced from a public website, or a publicly available social media account. As a result of the amendment, however, the exemption from the principle only applies if "in the circumstances of the case it would not be unfair or unreasonable to disclose the information."[144]

Secondly while the Privacy Act governs the activities of individuals as well as organisations, section 56 states that if someone collects and publishes information solely or principally for personal, domestic or family reasons, he or she will generally be exempt from having to comply with the principles of the Privacy Act. This includes many social media publications, including family photographs, social events and so on.

However, an individual now loses the protection of the section 56 exemption if collecting, using or disclosing the information would be "highly offensive to an ordinary reasonable person".[145] The individual will then have to show that they are allowed to collect or disclose the information under the privacy principles (which reflect broad public interests) or that the disclosure has not caused or will not cause harm at a level that

141 Section 6.

142 For instance principle 1 states that a digital communication should not disclose sensitive personal facts about an individual; principle 3 states that it should not be used to harass an individual; principle 6 states that it should not make a false allegation; and principle 7 states that it should not contain a matter that is published in breach of confidence.

144 Principle 11(b).

145 Section 56(2).

would be an "interference with privacy" under section 66 (including serious emotional distress. Of course, if a collection or disclosure meets the "highly offensive" threshold so as to invalidate the usual domestic affairs exemption, it seems self-evident that the requisite level of harm in section 66 will usually have been met. It is also highly likely that a breach of a privacy principle will be able to be made out.

The changes to the legislation mean that the Privacy Commissioner can investigate complaints about a range of harmful activities that were at least arguably beyond his jurisdiction before. He expressly does not have jurisdiction over broadcasters as far as their news activities are concerned[146] but he can now assist in holding individuals to account, including for harmful social media content.

It is free to take a complaint to the Privacy Commissioner, and the processes are very accessible. For instance, one does not need a lawyer. While the Privacy Commissioner cannot make legally binding orders, the complainant will also have recourse to the Human Rights Review Tribunal once the Commissioner's investigation is closed, whether the complaint is upheld or not. The Commissioner can put meritorious unresolved matters on a track to the Tribunal as well, by referring them to the Director of Human Rights Proceedings. The Tribunal can make a variety of orders, including orders for compensation for harm of up to $350,000.

The Tribunal has considered one case of improper access to and republication of social media content.[147] While not strictly on point, it raises an interesting set of facts.

Mrs Hammond baked a joke cake for a party for a friend who was leaving the company they both worked for (Mrs Hammond had also left). The cake was iced with rude comments about the company. A picture of it was posted to a private Facebook group. The company intimidated a junior employee who was a member of the group into giving them access to the photograph. It was then copied and distributed to the woman's new employer, and pressure was put on that new employer to fire her (she left, as her position became untenable). It was also distributed to recruitment companies in the area to affect her chances of obtaining employment elsewhere.

The company unsuccessfully suggested that publication on Facebook automatically put the information into the public domain. The Tribunal did not discuss the point in detail, however, as the method of obtaining the information and the subsequent distribution of it were so obviously deliberate and outrageous. A landmark damages case at the time, Mrs Hammond was awarded a total of around $168,000 including loss of wages, legal costs and more than $90,000 damages for hurt and humiliation.

Again, therefore, the Privacy Act creates greater obligations on individuals than they might be aware of. It further narrows the gap between the standards that broadcasters are required to observe, and those with which individuals have to comply, including in relation to social media content.

Conclusions

In part 2 of this report, we found that the public holds broadcasters to higher privacy standards than the public applies to individuals or other platforms when it comes to content collection and publication. There was also some substance to the related hypothesis that individuals believe that they or others should be able to record material or publish it online even when that intrudes into privacy, but believe that broadcasters should not be able to republish that material.

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146 See section 2: definition of 'agency' at (xiii). There is some doubt about whether entertainment activities come within the definition of news activities (since it refers to news and current affairs); so even if the Commissioner is generally content to leave the BSA and Press Council to manage areas that are clearly within their control – on the principle that they provide an adequate remedy for the complainant (see section 71(1)(g) of the Privacy Act) it is at least possible that the Commissioner might assert jurisdiction over some activities that currently fall through the cracks between the BSA and the Press Council.

147 *Hammond v Credit Union Baywide* [2015] NZHRRT 6.

Broadcasters also expressed a belief that there is a double standard. This was not apparently in the context of a plea for greater tolerance for broadcasters, but the ability for individual publishers to create significant privacy harm for others creates some difficulties. Having a lower standard for individuals creates resource implications for broadcasters to carefully check and manage the social media content that they collect, since they cannot rely on individuals to have taken the same care; and it partially undermines some of the justifications for stricter media regulation – that is, the strength of the impact of broadcast content.

'Ultimately, privacy and freedom of speech are both recognised and valued aspects of our law and should limit one another only to the extent that is necessary, effective and proportionate in the circumstances. Finding that sweet spot can be a hard task, and dealing with the prevalence of information capture and communication and the dynamics of social media is a pressing question in today's media environment.'

The law itself however operates on the same fundamental privacy principles whether the situation involves an individual, organisation, or media publisher. Recent developments have started to narrow the gap between the technical legal liability that individuals and broadcasters might face: indeed, some laws create the risk of criminal liability and imprisonment for particularly outrageous behaviour by individuals. In practice, the chances of facing legal action are relatively low for individuals, but are not unheard of – and those chances are growing as easy access to targeted legal remedies and complaint mechanisms increases.

Media regulators expressly have to consider the application of the Bill of Rights Act when developing standards and making their decisions on complaints – particularly the right to freedom of expression in section 14, and the demonstrably justified limits on expression, such as the right to privacy. However the laws that have developed to govern individuals also, in one way or another, have to consider the same issues. For instance, Parliament will receive a section 7 BORA report before it passes a Bill such as the Harmful Digital Communications Act that impacts on speech; the courts (as public authorities) have to develop the common law in a way that takes account of relevant aspects of the Bill of Rights Act;[148] and a regulator like the Privacy Commissioner or court may need to take the Bill of Rights Act into account when deciding how to apply the requirements of a statute to an individual fact situation.

Ultimately, privacy and freedom of speech are both recognised and valued aspects of our law and should limit one another only to the extent that is necessary, effective and proportionate in the circumstances. Finding that sweet spot can be a hard task, and dealing with the prevalence of information capture and communication and the dynamics of social media is a pressing question in today's media environment.

The public as yet has relatively little awareness of the potential to face legal complaints for what they post on social media. However, that situation will change as more cases are brought to the complaints bodies or the courts, and as publicity spreads about the ramifications for individuals if they fail to protect privacy – at least at the most serious end of the scale.

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148 This is the so-called 'horizontal effect' of human rights legislation like the Bill of Rights Act: it technically only governs the actions of public authorities, but in fact has a significant impact on resolution of private disputes.

4. CONCLUSIONS AND RECOMMENDATIONS

In a field that is so fact specific and contextual, it is hard to create hard and fast recommendations for change or for consideration. We have included a few lists of factors to consider in various places in our analysis above. However a few general points also emerge from our research:

01

It is not only acceptable but is increasingly necessary for broadcasters and the Authority to take account of the context in which the original social media publication appeared, including considering what audience it was intended for. Platform affordances should affect this calculation as well as other factors. Removing an item from its context can change the tone, change the purpose for which the content was created and create significantly greater effects on the individual than might be obvious at first sight.

02

This does not undermine the general principle that it will often be acceptable to republish information that is in the public domain (for example information that is not protected by privacy settings). However, the issue about republishing information that is already public appears to be the point on which broadcasters need most guidance. Our research shows that it is not, and should not be, a free-for-all. Proportionality needs to be the governing principle. Broadcasters should therefore be cautious about making too general a plea that the information is public. It is only a starting point, that is relatively easily offset by factors suggesting a person's privacy interests are seriously (rather than more trivially) engaged – for instance that it reveals sensitive information about them, that it exposes them to ridicule or contempt, or that they are in a vulnerable situation.

03

Broadcasters need to continue to distinguish clearly between material that is of legitimate public concern and information that is merely interesting to the public. The ready availability of social media content, the competition with online platforms for audiences and advertising, and the demands of the 24/7 news cycle, increase the chances that a 'consumer' model of newsworthiness rather than a traditional democratic model will gain traction. There is nothing wrong with providing 'consumer' material, but only information that is truly of legitimate concern is likely to offset significant privacy impacts.

Conclusions

04

It is also important to continue to develop new practices around managing social media content that minimise the risk of mistakes and harm to individuals. Seeking consent to reuse of social media information (where practicable, and whether or not required by intellectual property law), having clear terms and conditions for people submitting content, validating content carefully, and clearly labelling information that has been sourced from social media or sent in by users are all useful techniques that broadcasters can engage to assist. Each factor is unlikely to be determinative, but may be relevant in deciding whether the broadcaster has met the standards expected of it, when the Authority is faced with a complaint.

05

Where the complaint involves an assessment of several incidents, it is the totality of harm that matters, not separate harm caused by separate incidents.

06

It is important to create as much consistency as possible between the approaches of the different bodies that deal with collection, publication and republication of social media content. The Authority should therefore continue to liaise closely with the Press Council and with their respective overseas counterparts; and also with the Privacy Commissioner and NetSafe. Situations that arise in one jurisdiction are very likely to be replicated in other jurisdictions. Consistency can also help to minimise confusion, limit compliance costs for media organisations, and avoid forum shopping.

5. APPENDIX
COLMAR BRUNTON: PRIVACY AND SOCIAL MEDIA

CONTENTS

EXECUTIVE SUMMARY

THE NEED FOR RESEARCH

As part of its statutory mandate, the Broadcasting Standards Authority (BSA) commissions research that is relevant to and informs the broadcasting standards system. As such, BSA has commissioned research to explore the subject of an individual's right to privacy (and fairness) and its interface with attitudes in New Zealand to social media usage.

The research will draw on data from a number of sources, of which this document is one. The aim of this research module is to use focus groups to establish what social norms and expectations individual online publishers and users bring to their decisions to both capture and publish content online, and to review published material, particularly content involving other individuals. It also explores the expectations social media users have of broadcasters in sourcing and re-publishing social media content. The underlying question guiding the research asks how (and if) content standards ought to be applied to broadcasters' use of social media and whether that reflects a double standard when compared with social media publishers.

RESEARCH APPROACH

Given the objectives are exploratory in nature, a qualitative approach was utilised. Eight focus group discussions (with 48 participants) were undertaken with social media users, in a range of locations across New Zealand (Auckland, Hawke's Bay, Wellington and Christchurch), from 22 November to 7 December 2016.

The focus groups were structured primarily around age/life stage and social media usage. Additional criteria of gender, ethnicity and household income were included to ensure diversity amongst social media users.

DEFINITIONS

The findings presented in this report are based on the views of the 48 interviewed adults, referenced throughout this report as 'social media users'. 'Social Media' refers to any platform that enables users to create and share content or to participate in social networking. 'Capture' refers to recording or documenting a moment via text, photography, video or audio recording. 'Publish' or 'post' refers to uploading user generated content to an online platform. Social media users exhibit different motivations and behaviours when capturing and publishing content; this is illustrated through the use of 'territories'.

KEY FINDINGS

Capture

This research identified a number of territories of social media behaviour, which reflect different motivations and corresponding attitudes and decision making when capturing content. There appear to be generational differences, including the perception that many younger people see life 'through a lens'. Many older social media users restrict their capture to what has historically been traditional photograph moments.

Publish/Post

Social media users often have agreed social expectations when posting content online. This could be explicit, in the form of conversations amongst friends and family to determine what is acceptable, or it may be more implicit, for example giving friends the option to tag themselves in photos.

Empathy is an overarching concept for many, asking themselves, *'how would I feel if that was me?'*

Appendix

When judging other people's right to privacy, personal responsibility is often cited at the core. Those who do not take reasonable steps to ensure their own privacy receive little sympathy if privacy rights are breached. This relates to the context the person puts themselves in, along with perceptions of complicit behaviour. Similarly, public figures are deemed to have lower expectations of privacy than members of the general public.

Conversely, there is a desire to protect the privacy of others if they are unable to do it themselves, with specific reference to children and those that find themselves in vulnerable situations (eg, accident victims).

Social media users suggest the concept of public interest may take priority over an individual's right to privacy. However, this is confounded by differing interpretations of what 'public interest' means. Many social media users interpret public interest as being content that the public would find interesting, (ie, use of the word 'interest' as an adjective). Others interpret public interest to be content that is in the interest for the public to know, whereby the public receives some benefit as a result of being exposed to the information, (ie, use of the word 'interest' as a noun).

Re-publish (by media)

Social media users assume the mainstream media are subject to regulations, but are unsure of what these are, or even what they should be. There is an expectation the mainstream media will undertake due diligence (ensuring authenticity, obtaining consent and fact-checking) before broadcasting any content, and this extends to content sourced from social media platforms.

Overall, social media users generally perceive it is permissible for mainstream media to broadcast content from social media if:

› It is factual information and has been authenticated/fact-checked.

› It is already in the public arena, put out on a public forum.

› It does not contain overly sensitive or personal information.

› It relates to public safety or public interest.

› Permission (consent) has been obtained.

  - If consent cannot be obtained, steps should be taken to edit content to ensure the anonymity of the subject is preserved.

  - Alternately, if consent cannot be obtained, content and images should be labelled/watermarked indicating unauthorised use.

However, social media users acknowledge the continually changing media landscape (along with increased competition) and the need to report promptly, to keep up with online competitors.

Social media users have a perception that once content has been posted online it is 'fair game' and any ownership or privacy rights have effectively been relinquished. As a result, the risk of being re-purposed is omnipresent, so the only way to avoid the re-purposing of your own content is not to post it in the first place.

THE NEED FOR RESEARCH

BACKGROUND AND OBJECTIVES

As part of its statutory mandate, the Broadcasting Standards Authority (BSA) commissions research that is relevant to and informs the broadcasting standards system. As such, BSA has commissioned two researchers to explore the subject of individuals' right to privacy (and fairness) in broadcast media, and its interface with attitudes in New Zealand to social media usage.

In consultation with the lead researchers, the BSA sought to conduct a series of focus groups to provide usable insights to input into this larger piece of work. The underlying question guiding the project is how (and if) content standards ought to apply to broadcasters' use of social media content, and whether there is a double standard for broadcasters compared with social media publishers.

This research aims to establish what social norms and expectations individual online publishers bring to their decisions to both capture and publish content online, particularly content involving other individuals. The research also explores the expectations social media users have of broadcasters in the sourcing and re-publishing of social media content.

The lead researchers have identified a series of potential research questions, structured around the following topic areas:

› **Capture**

- What factors motivate participants to record or document a private moment?

- What distinctions do they draw between 'public' and 'private' in these examples?

- Why do they do what they do?

› **Publish**

- What social expectations are related to what users decide to publish online?

- How do social media users decide what content to publish on which platform?

- How do cultures of participation around particular online platforms inform these decisions and the expectations users have around privacy?

- How do users judge other people's privacy when posting something?

› **Re-publish**

- When is it acceptable for a third party to take or re-purpose the content posted?

- What expectations do social media users have of content being re-purposed?

These questions provide the starting point for the research.

METHODOLOGY

As the primary objectives are exploratory in nature, a qualitative methodology was utilised. Qualitative research seeks to explore and understand viewpoints, rather than measure them. It does this by moving beyond demographic data to incorporate behavioural and psychographic aspects, to fully understand what 'moves and motivates' social media users.

The fieldwork incorporated two phases: 1) pre-task and 2) focus group discussions.

Given the ubiquitous nature of the internet and the use of social media for some, participants were asked to complete a pre-task. The pre-task sought to capture top-of-mind associations with social media and mainstream media. It also included a diary component for social media users to record their posting and sharing behaviour over the course of one week.

The second phase incorporated eight focus group discussions (with 48 participants) conducted in a range of locations around New Zealand. The focus groups were structured primarily around age/life stage and social media usage.

Sample

The sample frame is detailed in the table below.

Target Audience	Auckland	Wellington	Christchurch	Hawke's Bay
18-29 years old: Active social media users	1			1
18-29 years old: Less active social media users		1	1	
30 years +: Active social media users		1	1	
30 years +: Less active social media users	1			1
TOTAL SAMPLE	8 Focus Group Discussions			

Across the sample, the following key criteria were also covered off to ensure a diverse representation of social media users:

› Mix of gender

› Spread of ethnicities

› Spread of life stage

› Range of household income.

Active social media users are defined as having a familiarity with one or more social media platforms, for example, Facebook, Instagram, Snapchat, Twitter, YouTube.

Focus group discussions were conducted from 22 November to 7 December 2016.

Topic guide development

Colmar Brunton developed a semi-structured topic guide[1] in consultation with the BSA and its research team.

Notes to this report

The findings presented in this report are based on the views of the 48 interviewed adults, referenced throughout this report as 'social media users'.

Given the qualitative methodology, purposive sampling was utilised, whereby participants were selected based on a number of key qualifying criteria, as outlined above. As such, this report uses terms like 'many', 'some' or 'few' to indicate strength of perception.

Any differences in findings by sample criteria (age/location/usage) have been highlighted where evident. If no comment is made regarding differences, then findings are consistent across the various groups.

Verbatim comments are used throughout this report to illustrate key findings. Verbatim comments also help to 'bring the research to life' through the participants' own words. Verbatim comments are attributed by the target audience group (Younger are those aged 18-29 years, and Older are those aged over 30 years) and interview location.

This summary report draws on the focus group analysis, with the intent that the lead researchers will use it as a data source in their final reporting.

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1   The topic guide is provided in the appendix.

COLMAR BRUNTON
A Kantar Millward Brown Company

CONTEXT

This section provides context to the research findings. It briefly explores some of the overall perceptions and expectations of participating in an online environment. It also details some of the strategies social media users employ when engaging with social media platforms.

OVERALL PERCEPTIONS OF THE ONLINE ENVIRONMENT

There is a general sense that the access/availability to technology means much of our privacy has been stripped away, and that people are facilitating this.

"Big brother isn't watching, we are telling big brother everything."

Older, Less Active, Hawke's Bay

This technology and the social media platforms also create expectations around the immediacy of information and instant gratification. This relates to how long a platform takes to use, how long it takes someone to comment/reply to a post (especially when the sender can see when it is opened), how long it takes someone to hit 'like'. This, in turn, modifies their behaviour on social media. They may be selective about opening messages if an immediate response is required and they may post at specific times (eg, weekday evenings) when they know more people will likely be online, to maximise positive response.

"When someone doesn't reply within seconds, you're like – 'why are you not replying?' And you can see if they're active and if they've seen the message or if it's delivered it tells you. It tells you if they've seen it. And if you don't reply, you're in trouble. Then you keep bombing them with – 'why are you not replying, why are you not replying?' That has made us real impatient."

Younger, Active, Hawke's Bay

EXPECTATIONS OF PRIVACY

The general sense across most social media users is that if you post content online, you need to be prepared for it to be public – irrelevant of privacy settings or steps put in place. They believe the act of posting it in a public domain means you effectively hand over ownership and privacy rights. This could be overtly done, through a social media platform's terms and conditions, or more covertly with someone taking a 'screen shot' of content without the user's knowledge or consent.

"Once it's out there, it's out there and it belongs to the world. It doesn't belong to you anymore. Once you put it out there, it no longer belongs to you."

Older, Less Active, Hawke's Bay

"Privacy and social media are juxtapositions."

Older, Active, Wellington

A commonly used descriptor of content posted online is that it becomes 'fair game'. This is perceived to relate to both access to content as well as *ownership* of content. Many users hold the opinion that once content is 'out there', it is out there forever. So whilst users may have more difficulty locating deleted files, there is a sense that it never truly goes away.

"If you've posted something – so I came home drunk 5 o'clock Sunday morning, did the old drunk tweet. Luckily it was nothing ...but if you do something, expect it to be spread far and wide... That's completely in the public domain. That's freehold now if somebody wants to do something with it."

Older, Active, Wellington

In this context, any expectations around (retaining) privacy are centred on the idea of 'personal responsibility'. There is a strong belief that it is up to the individual to self-censor.

"You know you are not putting yourself in those positions where you go 'OMG, like far out, I have put that up there, how do I get it back?' You know you haven't got that stress because you are already making a conscious decision before you post something..."

Younger, Less Active, Christchurch

Social media users believe personal responsibility includes self-generated content as well as sharing content, and extends to behaviour around identifying and tagging friends.

STRATEGIES

Social media users utilise a number of strategies when interacting with social media to limit access to their content and personal information.

Some of the strategies include:

› Using a fake name or creating a fake profile

› Retaining a Facebook profile in a previous name (for example, maiden name)

› Setting yourself up as 'unsearchable' on Facebook, whereby your profile cannot be found without knowing your email address

› Removing or 'unfriending' friends you are no longer in contact with.

> *"It is very hard to find me on Facebook because I don't have a display picture and the only people who are on my friends list are my family and a couple of friends, so if anyone is trying to look for me it would be pretty hard to find me."*
>
> **Younger, Less Active, Christchurch**

Social media users who are more sceptical about the privacy provided by social media platforms may implement their own strategies, centred on minimising their presence or retaining anonymity. For example:

› Often constrained usage and active consideration of posting/sharing

› Un-tagging themselves from images

› Some will 'private message' rather than post comments/updates, to provide greater control over who sees the content

› Explicitly communicating their desire for permission to be obtained before content/images featuring them is posted. This varies by type of relationship.

> *"If me and my work colleagues went to Wellington for a concert or whatever, we would all have to agree that it goes up on a page because it's about all of us. But if it was just me and my friend... well obviously we share all the photos of everything that we do together because we are best friends or whatever. Then she shares my stuff and I share photos..."*
>
> **Younger, Active, Hawke's Bay**

Some extend this courtesy to others and let them decide whether they are identified (tagged) in images online.

> *"If I put a photo up on Facebook, I never tag anyone... because first of all, it will take a billion years and I am way too lazy for that. And then, if they want to be recognised for the photo, so then the ball is in their court, then they can tag themselves and be a part of it. But if they don't want to, they don't have to be. So they kind of have a say."*
>
> **Younger, Active, Hawke's Bay**

Some are proactive and set up notifications/permission to tag themselves.

> *"With the way my privacy settings are, if someone does try to tag me in something I have been notified and I have to approve it before that tag gets put on. And it gives me a chance to say that no one gets to see the photo until I approve that. So it gives me the chance to go to them and say, 'okay I don't like this photo – you are not sharing it in a million years'... or I can say 'yeah that's totally fine – go for it'."*
>
> **Younger, Less Active, Wellington**

Whilst many claim to actively review their privacy settings, this is more likely to be instigated by an external influence. For example, it is often prompted by Facebook referencing a change in their terms and conditions. It may also be prompted by the presence of children, or desire to have tighter settings in place to protect the privacy of children.

> *"I think mostly it is if you hear that Facebook has put out a new privacy setting or something or an extra privacy setting, you can go in and change it, but otherwise just out of sight out of mind I guess."*
>
> **Younger, Less Active, Christchurch**

> *"I guess when you get random people commenting on your stuff or message you and you're like 'whoa, who was that?' And you think 'How did they get to see my picture?' So, that's when I realised that my thing is public so anyone can comment on it and see it, so that's when I changed my privacy settings."*
>
> **Younger, Active, Auckland**

LEARNED BEHAVIOUR

For many social media users, the consideration they give to posting/sharing content is often a response to learning from mistakes – either their own or others.

"I have had an experience with a partner of mine being catfished [lured into a relationship by someone adopting a fictional online persona] whilst he was my partner and I think it is just something to do with that, my just keeping the ambiguity and people not being able to find you that you don't want to find, so you have to tell them who you are for them to find you..."

Younger, Less Active, Christchurch

Similarly, consideration is given to potential consequences of posting/sharing content, particularly in the context of employment, both currently and in the future.

"I've got a friend who constantly posts meme type things about marijuana and I think they're hilarious, but I will never comment or repost them because my boss might see that and think what's this guy on? So, whilst I think there's no harm in them in reality, it's just someone posting stuff online, I wouldn't partake... You don't know if they're watching and what they may think of you."

Younger, Active, Auckland

"I won't actually friend anyone who I work with currently. No one from my work site is ever my friend until I leave. Because it can be as simple as they've misinterpreted."

Older, Active, Wellington

GENERATIONAL DIFFERENCES

There appears to be generational differences with regard to the capture of content.

There is a perception that younger people see life through a lens, and that this may provide a sense of disconnection for some.

"We live through our eyes for the moment and they live through their camera."

Older, Less Active, Hawke's Bay

Younger people acknowledge this too; they are amused by their own behaviour and the corresponding irony, as illustrated in the extract from a group discussion below.

R6: *"Cameras have become more important than memories."*
R3: *"Yeah."*
R2: *"Wow, that's deep."*
R5: *"You should Snapchat that."*

Younger, Active, Hawke's Bay

However, it is interesting to note that many of the different age groups feel that they themselves are in the best position to 'manage' social media.

Some of the younger users feel they are in the best position as they have effectively grown up with social media – they have matured as social media has advanced.

"As the technology has advanced... we were slowly put into it, rather than having it all at once."

Younger, Less Active, Christchurch

Older people feel they have the maturity to consider the potential long-term consequences of content posted on social media. While younger people express greater levels of comfort and knowledge of the workings of social media, older people still feel younger people are naïve about the potential impact of some posts.

"They [younger people] don't consider consequences, understand the implications... will one day regret, photograph/video everything, are desensitised to violence, won't get employment..."

Older, Less Active, Auckland

"Our kids have grown up with social media and they kind of understand the rules on a different level, whereas I mistrust everything. That's why I'm saying, if I post something on Facebook or whatever, I just totally mistrust that it says it's private. So I think, no it isn't. So I am very, very careful and I don't post anything, any profile pic or any pic at all. I know that it could pop up anywhere. I just accept that."
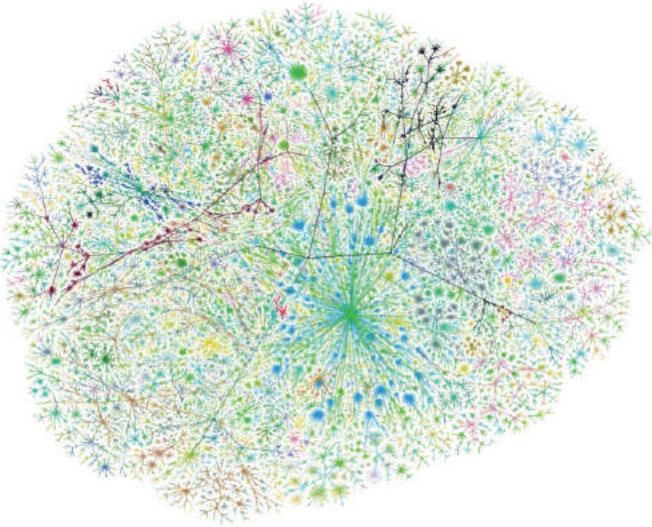
Older, Active, Wellington

UNDERSTANDING SOCIAL MEDIA USERS

This section seeks to understand similarities and differences amongst social media users, based on the focus group responses. It highlights commonalties, presents a framework to understand differences in attitudes and behaviours, and finally explores how the various platforms are positioned in the minds of social media users.

Social media users have a number of commonalities in their attitudes and behaviour towards social media. At its core, social media is a communication/networking/connectivity channel. It allows people to engage with others. This is depicted in the image below, which was created by a research participant.[2]

WHAT SOCIAL MEDIA* MEANS TO ME....

*By *Social Media,* we mean any platform that enables you to create and share content or to participate in social networking.

WRITTEN DESCRIPTION OF WHAT THESE PICTURES REPRESENT...

Social media is part of an online engagement with a networked society. It's something easily depicted through a rhizome structure. It's a way to stay connected to other people.

<div align="right">

Younger, Less Active, Christchurch

</div>

Given social media is effectively 'social' by its very nature, the concepts of validation and approval (which are often represented by 'likes') span across all social media users. This occurs in varying degrees.

---

2   Participants completed a pre-task prior to attending the focus group discussion.

Social media users generally believe it is not acceptable to post/share content that is:

› Untrue, unfounded (gossip)

› Demeaning, harmful to others (humiliates, bullies)

› Cruel to others (including animals)

› Offensive, obscene

› Puts things like work or relationships in jeopardy

› Overly personal.

To further understand social media users, we developed a framework that illustrates how they are different in their usage of, attitudes towards, and behaviour on, social media.

Firstly, social media users differ by their *level of engagement* with social media, which is illustrated on a vertical continuum.
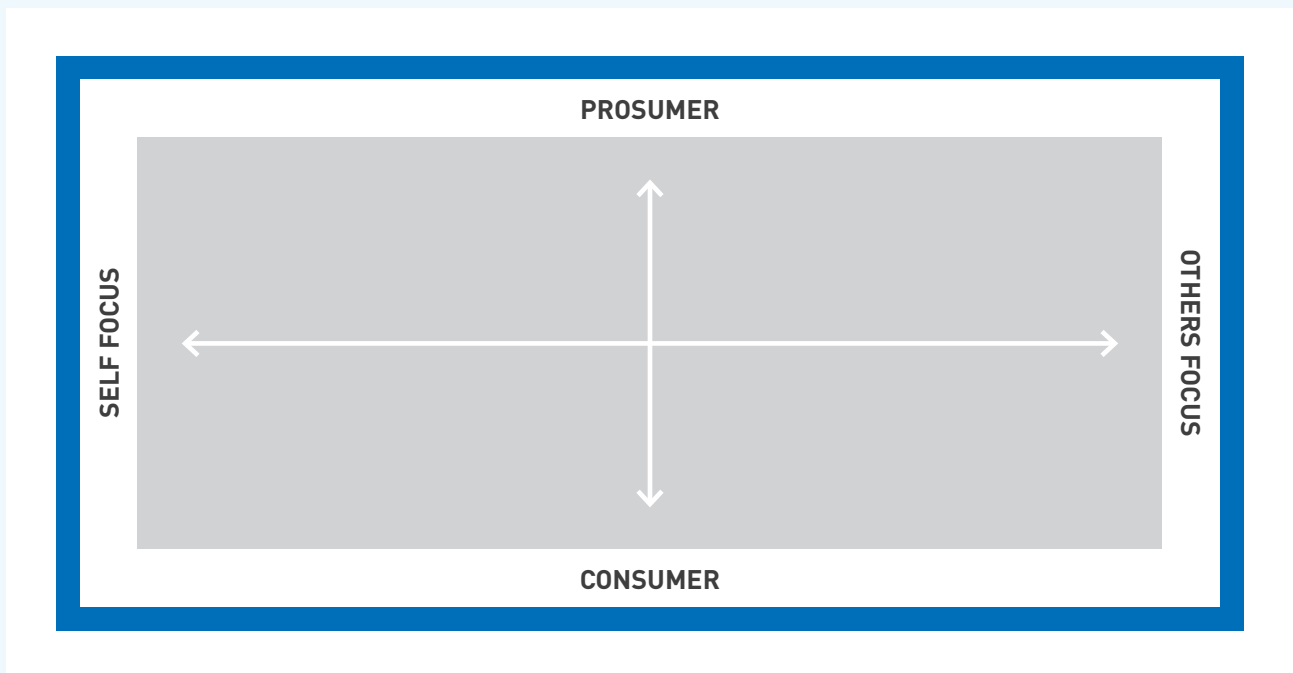

At one end, lies 'Prosumers' – those who produce and consume media. They are characterised by a higher level of confidence. They are comfortable sharing and have a desire to share.

At the other end of the continuum are 'Consumers' – who are more likely to only consume media. They engage with social media with a degree of cautiousness. Whilst they are happy to 'consume' (that is, read others' posts) they often restrict what they are willing to share themselves. They express a strong desire for privacy.

Social media users also differ with regard to their primary point of reference, as illustrated on the horizontal continuum. At one end there are those who have strong 'self focus' – what they themselves get out of social media and how they express themselves.

At the other end of the continuum, there are those who have a strong 'others focus' – a desire to bond with others and create a sense of togetherness.

Appendix

The interaction of these core dynamics creates the model framework and identifies a number of key territories of social media behaviour. These are depicted in the diagram below.
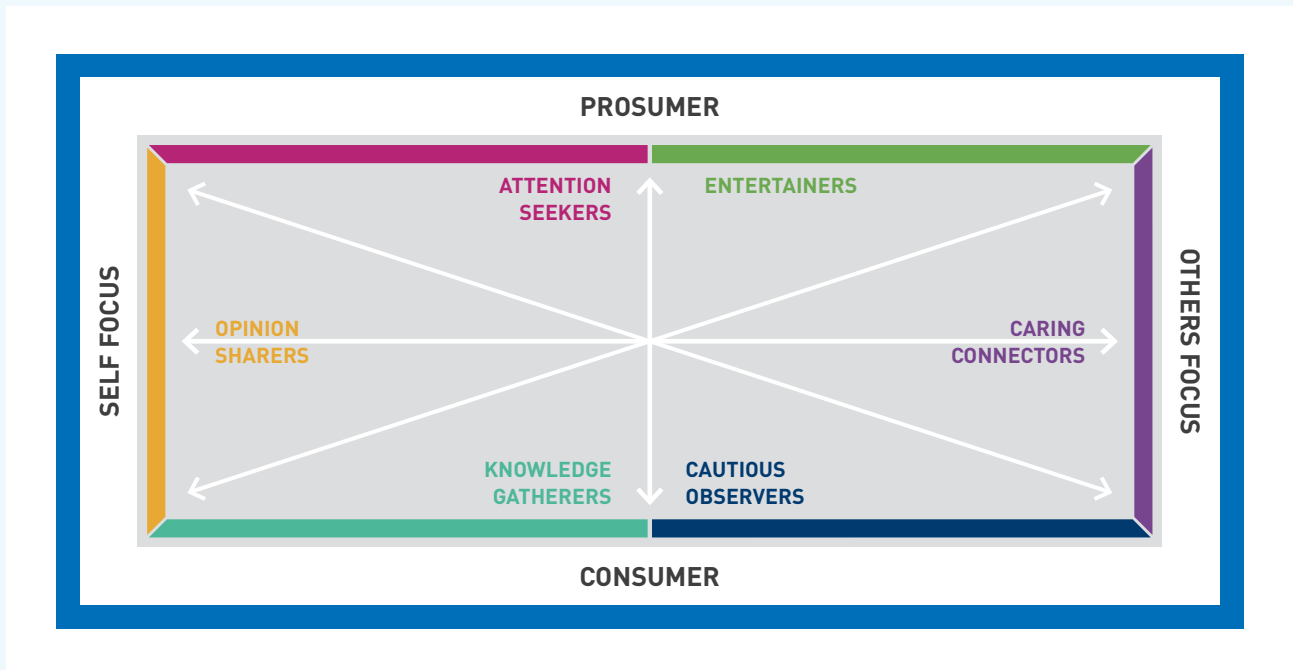
It is important to note that social media needs are modal. Users may have different needs as situations change. This means the same user can have different needs (and be in a different part of the model) depending on the content they are posting/sharing and their audience. However, in saying that, we suggest social media users typically operate in a primary territory.

The following section profiles each of these territories of social media behaviour.

Entertainers

Entertainers are characterised by being highly engaged with social media (both producing and consuming content), with their focus being toward others.

The primary driver is to entertain and to be entertained, to have a bit of fun and a laugh, and potentially to 'pass the time away'. They do this through content which consists of jokes, stories, funny images, the weird and wild and anything they feel is relatable – both to themselves and their audience.

Entertainers' decision making and behaviour

Entertainers are motivated to capture content if they themselves find something humorous. Similarly, they may share content they find amusing. Their behaviour is often impulsive, with a short-term focus. Their intent is typically to give someone a little emotional 'lift' and create a sense of enjoyment.

If they feel something is universally funny, they will share indiscriminately. On other occasions, they will consider the recipient and assess the appropriateness of the content, whether it is likely to be interpreted as intended, and also potential to offend. Content can be sourced from anywhere and Entertainers may publish on a number of different social media platforms and may use multiple devices at any one time.

In this context, Entertainers have few concerns about privacy – content is out there for the world to see (as long as it's not hurting anyone). However, they may not consider the long-term, flow on consequences (for themselves or others) of capturing or sharing content.

For Entertainers, social media is simply an entertainment channel.

"I shared a picture of a Christmas tree made out of cats or whatever and people think 'whoa'... It was pretty funny, and anyway, I shared it with my friend and she was just like, 'oh my gosh – that is me. I've just got so many cats'."

Younger, Active, Hawke's Bay

"Because people who are reading it are going to feel uplifted hopefully, and it's something they can share and enjoy and feel happy about."

Older, Less Active, Auckland

Caring Connectors

Caring Connectors are characterised by being relatively engaged with social media (both producing and consuming content), with their strong focus being toward others.

Their primary driver is to connect with others. This means keeping up with others and what's going on in their lives and facilitating others keeping up with them. Caring Connectors perceive a key benefit of social media is the ability to be part of someone's life, even if you aren't physically there. In saying that, actual physical distance appears less relevant. Some Caring Connectors speak of connecting with friends and family on the other side of the world, others speak of connecting with friends and family on the other side of the room!

Caring Connectors do this through content which primarily consists of personal stories, personal photos and 'updates'.

Caring Connectors' decision making and behaviour

Caring Connectors are motivated to capture content that celebrates key milestones (birthdays, anniversaries), acknowledges achievements of others, captures a moment in time (often holiday snaps) and recalls memories. The sharing of content may also be utilised to demonstrate support for someone, to help others in need, or simply to let others know that they are thinking about them.

Facebook is a key platform for Caring Connectors to share their lives with others. Sharing is discriminate as personal relationships have typically already been established. As such, privacy is a key consideration for Caring Connectors and they actively seek to limit access to their profiles and take steps to maximise their level of perceived privacy.

For Caring Connectors, social media is a conduit to connect. (Facebook provides the entry point for many into social media.)

"I think it's just a good way of keeping in touch, knowing about other people's thoughts and feelings and what interests them and seeing family and friends' photos and keep track of their activities and feel like you know the ones that aren't in Christchurch, I'm still part of their life etc."

Older, Active, Christchurch

"I don't feel bad if I haven't called a friend for a year and then we catch up because we sort of know what's been going on."

Older, Active, Wellington

Cautious Observers

Cautious Observers are characterised by lower levels of engagement with social media (primarily limited to consuming content), with their focus being toward others.

The primary driver is centred on social acceptance – the desire to fit in (with a particular social group) and the fear of missing out.

Cautious Observers' decision making and behaviour

Cautious Observers rarely capture and share content themselves. Although, they may be quite active in watching what others are doing or posting about. While Cautious Observers are interested in the lives of other people, they do not necessarily want others to know about their lives. Their scepticism (which for some, extends to anxiety) around privacy in the context of social media means their behaviour is very considered and cautious.

"But if I put it on Facebook and then there are all these other people that would hear the same kind of thing, so you multiply... That's why it's a loud hailer basically in the modern sense, of a simple comment becomes broadcast to lots of people and then it goes viral... and that's why I think you have to be much more careful before it goes out there..."

Older, Less Active, Hawke's Bay

Facebook is likely the predominant platform and Cautious Observers are slow to adopt other social media platforms. Cautious Observers implement measures to maximise their privacy, for example, using an abstract photo for a profile shot or communicating with someone via a private message.

Appendix

For Cautious Observers, social media provides a (one-way) window into the lives of others.

"I'm on social media quite a bit, but people that I know don't possibly know that I'm on social media. More lurking as it were, rather than posting stuff out there."

Younger, Less Active, Wellington

Knowledge Gatherers

Knowledge Gatherers are characterised by lower levels of engagement with social media (primarily limited to consuming content), with their focus being on themselves and what they get out of it.

The primary driver is to access and acquire knowledge – often with a desire to problem solve, learn new skills, be inspired, or simply be up to date with the latest current events.

Knowledge Gatherers' decision making and behaviour

Knowledge Gatherers capture and share little content themselves. However, they may be active in utilising social media as a 'tool' to obtain information. This could relate to any number of topics, such as personal interests, events, 'how to' guides, topical events, sports results or recipes, to name a few. Their accessing of information tends to be quite purposeful – they typically have a specific task or issue in mind and like to feel that their time spent on social media has been productive.

Knowledge Gatherers do this by sourcing content from any number of platforms/sites (eg, Facebook, Twitter, Pinterest, YouTube). They recognise that everything online needs to be 'taken with a grain of salt'. In saying that, they are confident in their ability to provide the necessary 'filter' to determine the accuracy and value of information sourced from social media. They feel they have a good understanding of the risks and pitfalls of accessing information from social media.

"I think any employer these days is looking at social media for their prospective employees. I would be very surprised if they didn't. Absolutely. It would probably be their first point of call before they call your referees."

Older, Active, Wellington

Knowledge Gatherers are more considered about what they post themselves, but without a clear purpose, they often don't see the point. They are likely to capture content if they feel it serves some purpose, for example, evidence at a crime scene. However, they would likely forward the content to the relevant authorities, rather than post it online for all to see.

"If it was me, I would potentially film it. I would keep a copy. I wouldn't post it. I would go to the authorities and say, this is what's happened and look at this."

Older, Active, Wellington

For Knowledge Gatherers, social media is a tool, a means to an end.

"I had by nature been an information junkie since the year dot and the thing about social media is that it feeds that information junkie society, with all sorts of information offered."

Older, Active, Wellington

Opinion Sharers

Opinion Sharers are characterised by higher levels of engagement with social media, with their focus being on themselves.

The primary driver is to express themselves, and to have views and opinions (and in some respects, stand out from the crowd).

Opinion Sharers' decision making and behaviour

Opinion Sharers readily generate their own content, often expressing their feelings about an issue. They may use social media to 'rant' or 'vent' about a particular topic and are likely to believe that the points they make are intellectually sound (even if others disagree). Opinion Sharers are not afraid to push the boundaries, however, they may use an alias if the subject matter is controversial.

Opinion Sharers also seek to raise awareness about particular issues or causes, particularly if it is something they believe in or feel passionately about.

They use a range of social media platforms, including blogging sites, and will often seek out some of the more unusual platforms. Opinion Sharers are willing to share their perspective with anyone who will 'listen', as such their audience is wide, from close friends and family, to anonymous strangers.

For Opinion Sharers, social media is a modern day soapbox.

"During the elections, you know when you share something it's a bit passionately political or something… if they don't agree with you politically, they might get a bit angry."

Younger, Active, Napier

Attention Seekers

Attention Seekers are characterised by high levels of engagement with social media (both producing and consuming), with a strong focus on themselves.

The primary driver is to make a statement about themselves, to depict the best version of themselves and how fabulous their life is. Their desire is to get a reaction (often with the intent of making others envious).

Attention Seekers' decision making and behaviour

Attention Seekers readily capture and generate their own content. They tend to be very knowledgeable about social media and use it to their advantage. They understand camera angles and presenting themselves in the best possible light.

Attention Seekers willingly publish and share aspects of their lives, to the minutia of detail. There is a tendency to focus on the positive elements, limiting bad-news stories. This may include sharing their own successes and achievements, along with newsworthy events they may have witnessed or been a part of (eg, the Christchurch earthquake).

They use a range of platforms (eg, Facebook, Instagram, Snapchat) and are likely to be on multiple platforms at any one time. Attention Seekers have few concerns about privacy and often want to generate as large an audience as possible.

For Attention Seekers, social media is a virtual stage.

"She likes people to know that she knows the new restaurants to try and that she's social and she wants the world to know it. If she was being honest, what does it really hope to achieve? Look at me, look at my friends, we're great, I'm popular and I'm having fun. Showing off really is what it boils down to."

Older, Active, Wellington

"… to portray that I've achieved something and then I want to share that with the world. A little bit of 'look at me'."

Older, Active, Wellington

As identified in each of the above profiles, social media users utilise social media to fulfil a number of roles. These are summarised in the diagram below.
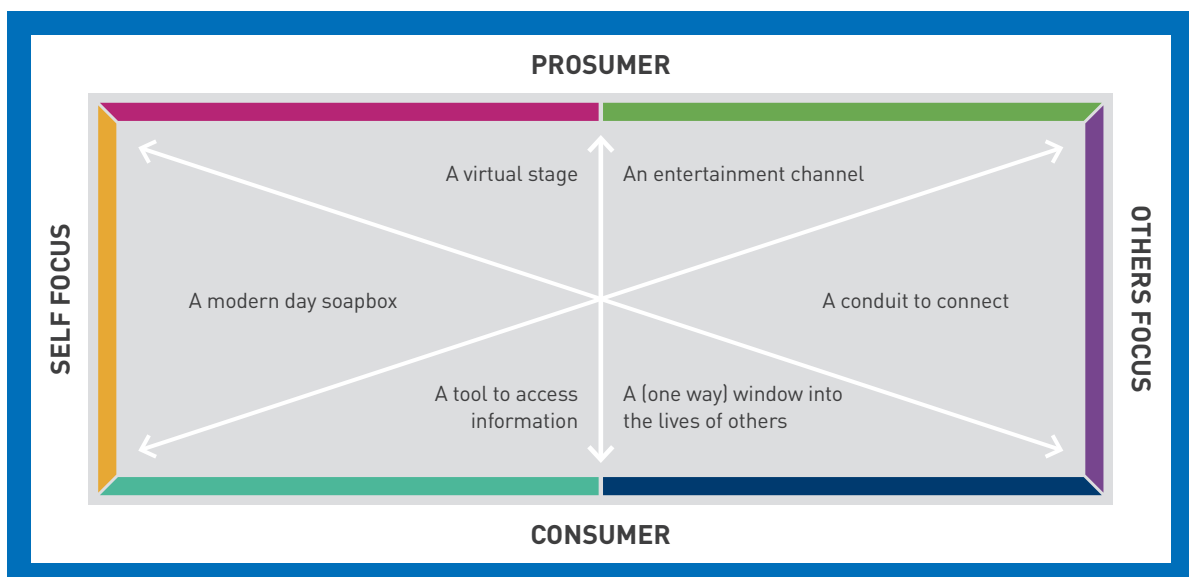
DIFFERENCES BY PLATFORM

Whilst there is the general perception that everything online needs to be taken with a 'grain of salt', there are some differences with regard to the various platforms and how social media users engage with them.

Facebook

Facebook is perceived to be relatively universal, with the perceived 'norm' being the presence of a Facebook account.

"Because everybody has Facebook, I don't think I know anyone who doesn't, other than maybe my brother because he's old… but everybody has Facebook so that's the best way of keeping in contact with everybody."

Younger, Active, Hawke's Bay

Social media users consider Facebook has a degree of permanence (you can go back and review a person's timeline or previous posts). In conjunction, content is typically attributed to an individual, so there is potential for greater accountability for content posted. For some, this translates into greater consideration about what is posted, which in turn translates to higher levels of credibility for some.

"I don't know about you guys, but in my opinion, if something was said on Facebook and the same thing was said on Tumblr, I would probably believe it more on Facebook… Probably because of the widespread use of Facebook, there are so many people that use it… there's more accountability to users on Facebook whereas Tumblr you are kind of hidden behind an anonymous [profile]."

Younger, Active, Hawke's Bay

Social media users have mixed opinions about the degree of control Facebook provides. Those who feel that Facebook provides a degree of control are comforted by the presence of privacy settings, the ability to un-tag yourself, and the option to report 'abuse' to Facebook, which may then remove a post.

Others feel Facebook offers little control or privacy as you can never really be sure who has access to your content (via friends of friends, or screen shots) or where it ends up.

"If you're a friend of a friend and you've liked something, then that comes up forever. I'm forever going 'how did that get on my page?' And then I realise because some friend of a friend liked it and then it's on my page and it's quite obscene and offensive and I don't like it. Because you don't know what other people's private settings are. You know what your privacy settings are, but you don't know what theirs are. So if they liked a picture of you, you're not necessarily convinced that it's not going to go everywhere."

Older, Active, Wellington

Instagram

Social media users perceive Instagram to be similar to Facebook in that it provides a channel for sharing content with friends and family – with a stronger emphasis on imagery.

"I use Facebook as a similar sense to Instagram, like I can post things on Facebook that are me and my friends in a picture and I can post it to Instagram, as well."

Younger, Less Active, Wellington

However, the audience is not limited and there is opportunity to go out to a mass audience. For some, Instagram provides a greater level of comfort about sharing content because others don't see what you 'love'. Whereas on Facebook, if someone likes your post, all their friends can see it. In saying that, there is a perception that Instagram is evolving more like Facebook.

"[Instagram] started off as just pictures, like you could share a picture. Like you Instagram a picture of a sunset or whatever, and you add different filters to make it look really good, and then people would scroll past your photo and they would give it a like. But now over the past few months Instagram has become almost better than Facebook because of all the new features and stuff that they are adding. Like you can direct message someone on Instagram can't you, and you can reply to people's comments and everything but it's all based on the picture that you took."

Younger, Active, Hawke's Bay

Snapchat

The essence of Snapchat is fun.

> *"Like some people treat their Facebook quite seriously, but no one really has a serious Snapchat I guess."*
>
> **Younger, Active, Hawke's Bay**

Lack of permanence of Snapchat 'snaps' implies higher permission for content that may be perceived as less socially acceptable (and people would not want to be associated with in the long term).

> *"[Snapchat is for]… kind of the naughty pictures that you know will disappear after 10 seconds… like this guy has got a really big bum. Not that I've done that, but you know… But you feel a little bit better knowing that the picture is going to disappear."*
>
> **Younger, Active, Hawke's Bay**

The short-lived nature of Snapchat 'snaps' provides a degree of comfort for some users in that there are unlikely to be long-term consequences. Similarly, there is a perception posts can only be viewed by friends and content is not accessible by the public.

> *"Well, people can't judge you on Snapchat. That's the beauty of it. If you go for a job, they'll look up your Facebook profile or whatever because that's there… So if you put heaps of stuff on Facebook of … cats… people will judge you based on that. But on Snapchat the photo just deletes itself and the photo is gone."*
>
> **Younger, Active, Hawke's Bay**

Twitter

Whilst many were aware of Twitter, actual usage (generating content) appears quite low. Some social media users follow people they deem to be interesting. It is defined by its real-time, here and now aspect – with little longevity.

> *"That's like me with Twitter. I haven't posted a single thing on Twitter, except for maybe some pictures I have taken. But it is mostly about following people that I like."*
>
> **Younger, Less Active, Wellington**

> *"Twitter is… just an in the moment thing, that it has no value going back and looking at it because it is what is happening right there and right then… It's sort of meaningless unless it's happening right now and people are responding to it right now."*
>
> **Older, Less Active, Hawke's Bay**

Many feel that Twitter has not really 'taken off' in New Zealand, with others referring to it as a 'fad'. There is a perception that, in New Zealand, businesses have taken to Twitter and it has become more of a marketing and advertising channel.

> *"I would say that Twitter is even more of an advertising thing… You always see…Foot Locker or … one of the winemakers at work will post the wine that he matches with something and then he Twitters it out, but I still don't quite get it."*
>
> **Younger, Active, Hawke's Bay**

Tumblr

There is relatively low awareness and usage of Tumblr across those involved in the research. Whilst some are aware of it as a blogging platform, those who use Tumblr tend to use it as a personal collection of images.

> *"Nobody follows my blog, so it is great… nobody will see it. So basically it is just kind of a collection of stuff that I like to look at, that I can just save for later."*
>
> **Younger, Less Active, Christchurch**

LinkedIn

Most social media users understand LinkedIn to be a business networking site, with a very clear purpose. In this context, the type of content is perceived to be appropriate as it is less about personal information and focuses on professional experience. Those who are aware of LinkedIn generally perceive the site to be orderly and structured.

> *"I think in a way it helps, because if some company is looking for a person, with this kind of experience. If they said, I worked in an audit department in India for 10 years… you can contact me. You've got some experience, do you like to work for me for part time for this work, because you have been working in such and such a thing for 10 years. Like that's what I see, I feel it's not that dangerous or anything."*
>
> **Older, Less Active, Auckland**

Summary

This section identified perceptions of the various platforms and how social media users engage with the platforms. In the minds of social media users, the platforms often have a core usage or function and this corresponds with the behavioural territories identified in an earlier section. The platforms can be overlaid to demonstrate their core usage, relative to social media users' behaviour.
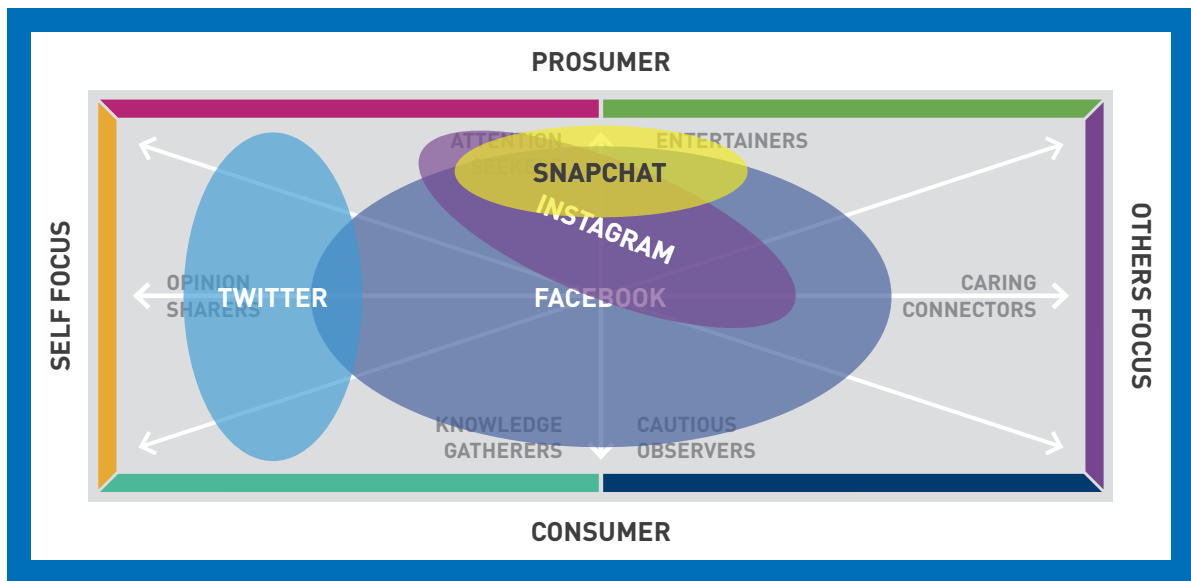
PERCEPTIONS OF MAINSTREAM MEDIA

Overall, participants' perceptions of mainstream media in New Zealand were somewhat mixed. On the one hand, compared to international counterparts (like the now defunct News of the World), media outlets in New Zealand are perceived to operate with a high degree of integrity.

In this context, mainstream media are expected to act ethically and responsibly. Many social media users feel the onus is on mainstream media to report authentically and accurately, particularly given the potential 'reach' of what they broadcast, and many social media users feel that this is indeed the case.

> *"I would hold them to a higher level because they can touch more people than we can with what they say..."*
>
> **Older, Less Active, Hawke's Bay**

> *"Mainstream media should follow some type of code of conduct and they are professionals that should be held to a higher standard than the average Joe Bloggs with his smartphone... Yeah, their reach is way higher, way further so they should be more responsible with it..."*
>
> **Younger, Active, Auckland**

However, on the other hand, social media users acknowledge the changing media landscape, with social media platforms effectively increasing the level of 'competition' in the news arena. In this context, some social media users perceive the ethics that have traditionally governed the mainstream media have been overtaken (or shadowed) by commercial imperatives. Some social media users suspect the commercial realities of remaining profitable means the focus shifts to maximising audience reach (or generating hits) and the corresponding lift in advertising revenue.

With this focus, many social media users perceive mainstream media continually race to get a story first, and, as a result, may not undertake the necessary due diligence that perhaps they once would have done. This, in turn, can lead to inaccuracies in reporting or the practice of 'grabbing' information from anywhere, which has the potential to impact the credibility of mainstream media in the longer term.

> *"I feel like the rush to be the first one to pick something or have the most updated you know, with the photo and stuff, means that they will just take whatever they can and just pump it out..."*
>
> **Younger, Less Active, Christchurch**

In the minds of some, this extends to the perception that the mainstream media have become lazy.

> *"... if they (media) are posting it straight away they often don't really have accurate information, but then the newspaper is getting really bad too and just re-posting Stuff articles, because sometimes it comes up with 'click here' to follow this and like it is a (printed) newspaper, I can't click it... they have got really bad grammar and spelling and just the facts are kind of dodgy sometimes."*
>
> **Younger, Less Active, Christchurch**

Some social media users are critical of mainstream media sourcing content from social media and broadcasting stories that users feel don't qualify as 'news'. This varies across social media users, however it is generally content felt to be quite trivial. For some, trivial topics may include celebrity news; for others it may be a cute animal story.

> *"I ended up seeing on 1, 2 or 3 [TV channel], but they had taken it from Facebook. I thought what a load of shit, what a waste of time. Is this actually news? Do I really care what Kim Kardashian had for dinner? It was something stupid like that, and I thought how is that news, how does that make it onto the news? When there is something else happening over in somewhere else in the world and people are getting injured or something – that to me is news but not what some socialite has done."*
>
> **Older, Less Active, Hawke's Bay**

Alternatively, some suggest mainstream media is complicit in creating a story due to the 'angle' they take.

> *"What about the girl at the Melbourne races who was taking the piss with her friends... She was sober, but she was taking the piss out of other women who went and got drunk and fell over in their high heels. But the magazines picked up the pictures of her lying in the bush and portrayed her as a drunk woman. She was having a laugh with her friends...it was taken completely out of context. I think [the photo] was from her [Facebook] page. [The media] were like, we don't have a story. Hell, this chick is on here, let's just take her footage..."*
>
> **Younger, Active, Hawke's Bay**

Appendix

In saying that, social media users acknowledge the role they (or others) play in this, in that mainstream media may well simply be giving their audiences what they want – effectively content that sells. It is perceived that content that sells generates more 'hits', which can demand higher advertising premiums.

However, others understand mainstream media need to be timely in their reporting to keep up with online competitors, and suggest the practice of sourcing content from social media is simply a 'sign of the times'.

"People say they are lazy if they pick it up from social media, but I just think it's the modern way. The speed that we expect media these days. Like as soon as the earthquake struck, I'm on twitter #eqnz – you want it there and then. You don't want to wait until the 6 o'clock news the next night. I just think that they are having to adapt. I don't think badly of them because of that."

Older, Active, Wellington

Others (particularly active younger users) feel their expectations of mainstream media are mitigated by the fact that, often by the time the mainstream media pick up a story or broadcast it, it is essentially 'old news'.

"By the time it gets to news outlets, most of the time it's kind of already been killed. Like it's been… everyone's seen it already…"

Younger, Active, Auckland

"But even the news at night time, even if I do watch it, I'm like, I know all of that already because I've been on Facebook. Do you know what I mean?"

Younger, Active, Hawke's Bay

Conclusion: Criteria required for mainstream media to broadcast content from social media

Overall, social media users generally perceive it is permissible for mainstream media to broadcast content from social media if it meets the following criteria:

› It is factual information and has been authenticated/fact-checked.

- This relates to the basics of journalistic inquiry in that reporters would go out and research/ verify stories themselves.

"You're not a journalist if you're just picking it up off Facebook and it's not gospel. Somebody should undertake a little bit of research and investigation. The facts."

Older, Less Active, Auckland

› It is already in the public arena/has been published on a public forum.

- If something is posted on a public platform, it is deemed to be fair game. A Facebook profile picture is a classic example, along with company websites.

"If [your photo] is on an organisation's website, then you assume that it is a public website right? So it is public information. Maybe the website would have to request your permission to put that up on the site but you would probably do so knowing that then anybody could access that."

Younger, Less Active, Wellington

› It does not contain overly sensitive or personal information.

- Social media users are very aware of privacy laws in New Zealand and the need to comply with these.

› It relates to public safety or public interest.

- There is a sense by some, that the greater good outweighs individual privacy.

"Someone I knew went missing and the photo of the missing person in the paper and on TV, was their profile picture from Facebook. And I didn't object to that… Because I felt that that was in public interest and me as a member of the public who might be able to assist in finding someone who was missing or similar."

Older, Active, Christchurch

› Permission has been obtained, to use the content.

"Gaining permission or consent to use content is a key factor in considering whether it is appropriate for the mainstream media to republish. If you have privacy settings, but then TV3 suddenly get your photo of it, would you be like… Not okay. You would need to ask for permission, I think it's stealing."

Older, Active, Wellington

COLMAR BRUNTON
A Kantar Millward Brown Company

FACTORS INFLUENCING EXPECTATIONS OF PRIVACY: SCENARIO TESTING

This section explores expectations of privacy in the context of social media and use of content by mainstream broadcasters, and highlights a number of factors that influence perceptions.

Social media users trust that there are privacy laws in place to protect individuals and/or their content. However, knowledge of these laws, or what the rules are, is very low.

In the minds of many social media users, the internet or social media platforms are simply another 'channel' to access or distribute information. As such, most assume that existing rules governing the behaviour of the mainstream media in 'traditional' channels, such as television, radio, and print, would extend to other 'channels' like social media. If not, most feel existing privacy laws should be updated and extended to social media. There is a strong expectation for mainstream media to adhere to some kind of code for use of social media content in broadcasting.

The reference point for knowledge that there is some governance over broadcasts is typically seeing or hearing an advertisement advising viewers/listeners of their right to complain if they think broadcasting standards have been breached by a broadcaster. As a result of seeing these ads, social media users are aware they can complain to the Broadcasting Standards Authority. However, knowledge of the complaints process, what the Broadcasting Standards Authority does, or how it is administered, is relatively low.

SCENARIO TESTING

Social media users in this research were presented with a number of scenarios to help tease out some of the factors that influence expectations of privacy. Each scenario described a real or hypothetical instance where content was captured and posted online and then taken/used/repurposed by mainstream media. The objective behind this approach was to test whether participants thought this was acceptable or contrary to privacy interests, and at what point it became unacceptable (if it did). The order in which the scenarios were presented was rotated across the focus groups to minimise any order effect bias.

1. Grief or Trauma

Filming of tragedy, such as accident scenes. Bystanders take photos/video and post to social media or send to media outlets. The media then use the content.

For example, after a fatal accident in Lower Hutt, police were forced to ask bystanders to stop taking pictures and video of a dying man involved in a crash.

When an individual is not in a position to protect their own rights to privacy, there is an expectation that others or the law will assist with this. This includes vulnerable members of society such as accident victims. Most social media users acknowledge that there are moral issues to be considered, even if distributing or broadcasting content featuring vulnerable people may be permissible/may not raise any legal issues.

"[It's] completely inappropriate... if that was my family, I'd be in a rage with anger. How dare they... it's morally unacceptable."

Younger, Active, Hawke's Bay

"Exposing someone in their weakest most vulnerable time ... they should not be allowed to do this..."

Older, Less Active, Hawke's Bay

"The thing is, when you are dying on the side of the road, you should be able to have some sort of rights."

Younger, Less Active, Christchurch

Moral issues centre on respect, decency, sensitivity and empathy – how someone would feel if that was them or a member of their family being exposed. Related to this is the idea that consideration needs to be given to friends and family, especially if there is a risk of finding out about something with significant, highly personal consequences via the media.

"I think people need to be respected in whatever circumstances or whatever extreme they are in. If you are recording someone's last moments or someone else's trauma, you've got to say to yourself, how would I feel? How would I feel if it was my loved one or if it was me being recorded? So that empathy is very important in all of these situations. If you use that as your yardstick, I don't think you can go wrong most of the time."

Older, Less Active, Hawke's Bay

Appendix

Subsequently, seeing images in the mainstream media has the potential to inflict more pain, even if they have already been made available on social media.

"Family don't need to see this, the general public need to see it even less."

Some social media users suggest one solution would be for police to have the power to stop people from filming or forcing deletion of digital files. However, most concede there are civil liberties at play.

The concept of protecting the vulnerable also extends to protecting the 'innocent'. For example, protecting children to ensure their image is not misappropriated.

Most agree that capturing and publishing content purely for voyeuristic purposes is not acceptable, particularly in situations where vulnerable people may be exposed.

"People to a certain extent, remove themselves from these situations... they become voyeurs... it's ugly."

"For forensic, crime scene [purposes], it's okay. For shock factor, no."

The concept of public interest was raised in this scenario, whereby images of the accident could raise awareness of the need to drive carefully or that road closures were in place as examples of when images in this context would be appropriate.

2. Sexual content/humiliation/reputation

A couple is photographed and video-recorded having sex in a brightly-lit office building after hours by patrons at an adjacent pub. The content is uploaded online and goes viral over social media, TV and radio. Both individuals are recognised in the footage and subsequently fired from their jobs.

The context in which content is captured is a key variable influencing perceptions of privacy. Given the proliferation of cameras and technology in society, many social media users feel that it is unreasonable to expect any level of privacy outside of your own home.

"I think you're quite naive if you think you can go anywhere today on the street and not expect for your image to be captured in some way or

other. I mean the cameras on every street, at the traffic lights, in every shop... I think you can only expect privacy in your own home really, or behind closed doors really."

While anything occurring in a 'public place' is deemed to be 'fair game' by most, the definition of a public place varies. Some users feel a 'public place' is any area accessible by the public, including areas that are government-owned.

However, the concept of a workplace being a public place is polarising. While some social media users feel a workplace is easily accessible by members of the public, others suggest the workplace is privately owned.

Others suggest 'public place' extends to the viewing vantage point.

"When you can be seen from a public space, I would assume so. But then again, in your house with the curtains open, is that a public space?"

Others feel the actions being captured should take priority. For example, sexual activity is deemed to be a private moment (irrelevant of location).

"I still think it's not okay because it's a private moment between two people, two consenting adults who happened to be in the wrong place, at the wrong time."

There is general agreement that you can't expect others/the law to safeguard your privacy if you are not taking steps to safeguard it yourself. As such, the extent of perceived privacy rights is influenced by your role in the situation.

"How can people's privacy be protected when they are so careless with it?"

Many social media users reference this scenario as an example of failure to take responsibility and consequently reducing reasonable expectations of privacy.

As such, the couple is, in some respects, perceived to have contributed to the situation and their own fate. They were familiar with the environment (their

workplace and surroundings) and should have taken appropriate measures to ensure their privacy, such as not sharing an intimate moment in full view and turning off the lights.

"Privacy... I don't know if it even exists if you do something dumb like that."

Older, Less Active, Hawke's Bay

3. Public figure behaving badly

Photos of a famous sports person drunk and acting disruptively outside a local pub.

The photos are posted to social media and then re-published in newspapers and on TV. The player is suspended from the team.

There is a general agreement that public figures (whether they be politicians, sports people or celebrities) should expect to be held to a higher standard of conduct. Consequently, expectations about a public figure's right to privacy are lower (compared with members of the public).

"Public figures should expect a higher level of scrutiny. It doesn't make it okay or right, but when you put yourself out into those positions, you should expect that it comes with the territory."

Younger, Less Active, Wellington

"They don't have any rights to privacy once they become a public figure. You don't have any unfortunately and that's just the way I see it."

Older, Less Active, Hawke's Bay

Some question the newsworthiness of some of the reporting, particularly if the public figure is not harming or offending anyone. However, social media users are philosophical that the life of a public figure is only reported because they are a public figure. A few acknowledge that double standards are at play.

"I don't worry if somebody is out and they've had too much to drink and they're just making a tit of themselves. I don't need to know that. But if they've gone out and they've crossed that boundary and are found assaulting somebody..."

Older, Active, Wellington

There is also a sense that they are remunerated accordingly and that any loss of privacy is compensated by a financial gain.

Most social media users perceive a public figure is always 'on duty', and therefore, should always behave in an appropriate manner. A few question this and believe media reporting on a public figure should be limited to the area they are known for. For example, reporting concerning a rugby player should be limited to their on-field behaviour.

"Well I think when you're professional or you're a sports person or a movie star or whatever, you're on the clock all the time in that sense."

Older, Active, Christchurch

"Unless he did it on the field, I don't really care and in that case, I don't really want to know either. Unless he is doing it in the middle of a game, it is not newsworthy."

Younger, Less Active, Christchurch

There is also a perception that living a life in the public domain is a choice, and people make an active decision to be a public figure (along with the ramifications that come with that).

"If a person doesn't like it, they're free to leave any time they want... Say I'm out of here, I want my life back."

Older, Active, Christchurch

However, perceptions are mixed as to whether expectations of privacy should extend to the public figure's friends or family. Some social media users feel strongly about protecting the privacy rights of children, and feel there are, or should be, structures (whether formal or informal) in place, to ensure they can be protected. Others suggest that the lack of privacy of friends and family 'comes with the territory' of being a public figure.

"You know as a society, we have kind of agreed that children shouldn't be exploited so... if the news media went and posted a picture of the kid standing there, I think the public would be like, well actually you shouldn't be doing that."

Younger, Less Active, Christchurch

In some situations, social media users suggest the concept of public interest may take priority over an individual's right to privacy. However, this is complicated by differing interpretations of what 'public interest' means.

Some social media users interpret public interest as being content that the public would find interesting.

"… to say public interest, I think really what we're talking about is public salaciousness or similar… you know it's like, 'hey guess what happened, guess why John Key resigned', or similar."

Older, Active, Christchurch

Others interpret public interest to be content that is in the public's interests to know, whereby the public receives some benefit as a result of being exposed to the information.

"…public interest to me is when I'm told something, that as a member of the public, I'd benefit from or enhances my life or similar."

Older, Active, Christchurch

"I think public interest can be what benefits the public, what the public should know about, need to know about."

Older, Active, Christchurch

Holding public figures to account also raises questions around public interest, in this context whether others in the community benefit from the knowledge.

This may extend to scrutinising politicians, publicly elected officials or the government and holding them accountable.

"And therefore it's public interest because we can actually say 'well no, you've discredited your view and that's what we elected you on to represent us', so then it actually becomes public interest."

Older, Active, Christchurch

"I would say maybe government scandals or something. Like if it was John Key set up nuclear plans with Vladimir Putin or something… I think public interest, government secrets, that is definitely number one type thing."

Younger, Less Active, Wellington

Some acknowledge achieving a balance between public interest and privacy is difficult.

"It would be hard to write a rule or a law against that public interest and privacy … it would have to depend on the situation. It's a tough one."

Younger, Less Active, Wellington

4. Photographs from social media sites

Re-publishing photographs.

A person becomes the subject of a news story, and the media want photographs to go with the story. They find some selfies of the person on that person's social media pages.

Social media users perceive information on Facebook as being in the public domain and see it as 'fair game' for repurposing by third parties. This extends to a profile picture, which is shown publicly, even with privacy settings.

"… getting it off Facebook would be the same as getting your photo taken and put in the paper if you are at an event. If you are out in public and someone takes your photograph and you see it in the paper… But I don't mind seeing my photo in the paper every now and then. I don't think it's an invasion on my rights or anything."

Older, Less Active, Hawke's Bay

However, there appears to be confusion amongst social media users with regard to ownership of content posted online. This has implications for the issue of consent for content to be re-purposed or re-published.

Social media users are generally unsure about the intricacies of ownership, but almost all agree that content is 'fair game' if it is online in a public domain. Some of the factors contributing to the confusion include:

› The perception that ownership rights are relinquished to Facebook when content is published, as outlined in Facebook's terms and conditions (although many readily admit never actually reading the terms and conditions)

"I think there is something about like once you have posted something to Facebook, then it is actually owned by Facebook and that content is on their site so that's why the credit goes to Facebook as opposed to the original person. I'm not entirely sure, but I guess if you post something public then it's fair game."

Younger, Less Active, Wellington

"I'm pretty sure there's a clause in there somewhere that says that anything you upload to Facebook is pretty much a free-for-all fest and Facebook will not be held accountable for breach of privacy or something or other."

Older, Less Active, Hawke's Bay

› The presence of other symbols to identify ownership or copyright (for example, watermarks on images)

› Entitlement (if any) of the subject of the content to control use of that content.

Outside of Facebook's role, there is confusion about ownership, particularly in instances where the social media account holder, the producer of the content and the subject of the content, may be different people.

Generally, social media users' view is that sourcing photos from Facebook becomes unacceptable when the user has taken steps to implement privacy measures to limit access to private content. Users are, in effect, seeking to increase their expectation of privacy.

If the mainstream media attempt to source content in a way that conflicts with, or seeks to bypass, privacy settings, this is perceived as unacceptable.

> *"I think if say my son had died, something had happened to him and then suddenly on TV3, a private photo… oh TVNZ, a photo popped up that I knew was only on my private Facebook page. You would be horrified, hang on, that was a private photo. Even though I know it's out in the World Wide Web, but why is news media using a photo that wasn't… I just think that I would feel like, 'how did you get that?'"*
>
> **Older, Active, Wellington**

If it is perceived that there is a deliberate attempt by the mainstream media to portray someone in a negative light, this is seen to be even less acceptable.

> *"But if they (mainstream media) went and found, purposefully went and found some dodgy photos or something just to portray them in a particular way, then that's also not acceptable to do that sort of thing."*
>
> **Younger, Active, Auckland**

However, while there is a perception that it may be permissible or not contrary to any law for mainstream media to pick up what is already in the public domain, it nevertheless may not be appropriate or moral. There is a strong expectation that the mainstream media needs to be sensible, responsible and practise some kind of self-censorship, self-selection or filtering.

Conclusion: Factors influencing expectations of privacy

To summarise, this exercise identified a number of factors that influence individuals' expectations of privacy, which include:

› The context in which content is captured is important – eg, public vs private setting

› Who the individual is – public figures should expect to be held to a higher standard of conduct, and therefore have correspondingly lower expectations of privacy

› Complicit behaviour – the extent of perceived privacy rights is influenced by the person's role in the situation

› Protecting the vulnerable – when an individual is not in a position to protect their own rights to privacy, there is an expectation that others or the law will assist with this

› Public interest – the concept of public interest may take priority over an individual's right to privacy. However, interpretations of public interest vary – eg, the public may find something interesting to know vs the public receives some benefit from knowing

› Purpose for which the content is used – eg, if it is used to portray an individual negatively, it is less acceptable

› Ownership of content – there is confusion amongst social media users with regard to ownership of content posted online

› Sourcing of content – content in the public domain or open to public viewing can be easily accessed and repurposed

› Voyeurism – capturing and publishing content purely for voyeuristic purposes is not acceptable

› Efforts to protect privacy – curtailing someone's efforts to keep content private is also not acceptable.

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GUIDELINES FOR MAINSTREAM MEDIA

This section expands on the expectations of social media users with regard to how the mainstream media should operate when sourcing content from social media, and the corresponding social and/or legal considerations.

ACT RESPONSIBLY / SELF-REGULATE

In the context of freely accessible content on social media, there is a strong expectation that mainstream media will act responsibly.

> *"You can find anything and everything on social media. So I think the mainstream media, they have more of a responsibility to be more sensible with what they broadcast."*
>
> **Younger, Active, Auckland**

There is a clear expectation that mainstream media will comply with/adhere to privacy laws, even if social media users are unsure of the laws themselves. Social media users also reference other laws like intellectual property and distribution of pornography as potentially playing a role, but are unsure of how these might apply.

In addition, social media users would like the mainstream media to self-regulate – over and above the existing privacy laws – to instil a strong moral component. This is about extending empathy, respect, dignity and consideration to the subjects of a story, effectively regulating themselves in the mid-ground between legal and moral issues.

> *"See I don't believe that you can legislate against morality... maybe harp back to male homosexuality being illegal. I don't believe that you can legislate against morality, so in my opinion, I think that if it appears in social media for instance, on Facebook it can be taken down if it's inappropriate or unacceptable. I can't see it becoming illegal... I think the broadcaster's role is even more important in this one... he or she are given footage of it and they [need to] say, not appropriate."*
>
> **Older, Active, Christchurch**

UPDATE PRIVACY LAWS

To assist with self-regulation, social media users believe privacy laws need to be continually updated to keep abreast of the evolving technological environment.

> *"I think they maybe need to start looking at some of the privacy laws because I imagine by now they are quite outdated. So they will be more about things that aren't to do with the internet in any way whatsoever and as the internet grows and changes on almost a daily basis it feels like, I think they need to have something quite robust in place to protect everyone. Not just now, but also as the internet continues to grow."*
>
> **Younger, Less Active, Wellington**

However, there is some confusion over the interface between New Zealand law that governs users and the country law of where the social media platform is based.

> *"There is a law in America that says you have the legal right to say what you want to say, whereas in New Zealand we don't have one big law that says that. But if Facebook is hosted in America, do we have to abide by their rules? But it is used in New Zealand by New Zealanders, so it comes under New Zealand law once you cross the international waterline and step into New Zealand and use appropriate, that's the thing. Does it?"*
>
> **Younger, Less Active, Christchurch**

IMPLEMENT PROACTIVE RULES

In the context of privacy, there is a perception that many of the available legal remedies are 'after the fact'; the damage has already been done and is irreversible. As such, there is a desire to ensure rules are in place to restrict the publishing of content in the first place (notwithstanding the view that generally publicly available content is 'fair game'). The focus here is more about limiting potential harm.

> *"Is it all kind of ambulance at the bottom of the cliff stuff, though, like the shaming has happened, it is on the TV, it is not going away even if they remove it... the damage has been done."*
>
> **Younger, Less Active, Christchurch**

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OBTAIN CONSENT / PERMISSION

Almost all social media users agree, that in an ideal world, consent would be sought before the mainstream media broadcast content sourced from social media (even in the context of the content being publicly available).

"Even if they were shared publicly, I think the media outlet should have made their best attempts to try and get the person's consent first, even though they didn't necessarily have to with the current rules as they stand."

Younger, Less Active, Wellington

However, it soon becomes apparent that there is difficulty in determining who consent should be obtained from, with a broad range of opinions. At the extreme, some believe consent needs to be obtained from the platform, the account holder, the producer of the content and the subject of the content, and (if the subject is unable) family members of the subject of the content. Others believe a variation of these would be appropriate: at a minimum, the producer and the subject of content should be asked for consent.

"If there is no visible person in it, I personally would say it is the person that took the photo. If it's a photo of me and if it is a photo you have taken of me, you want my permission before it goes out... then, in that case, it would be my choice whether I take compensation to allow it to be out there, or say no I am not allowing it to be out in the open."

Younger, Less Active, Christchurch

Social media users suggest that if consent cannot be obtained, then all elements in the content need to be edited in such a way that the subject cannot be identified. There is an assumption that this occurs in other content broadcast by mainstream media.

"That is why Police Ten 7, like somebody said they have blurred out the images because people have to sign a lot of forms and that is for a television show... when they take it off social media, there obviously needs to be some sort of... personally, I would want a form to sign."

Younger, Less Active, Christchurch

An alternative suggestion is the requirement for mainstream media to label any content or images where consent has NOT been obtained. Social media users perceive this may help build awareness amongst members of the public that broadcasters are using unauthorised content. It also provides the potential to hold the media accountable (should the need arise) in the longer term.

"What about some kind of stamp. So, if you take a photo from someone's page and you didn't ask for permission or anything, it has a stamp on it like we have a copyright written on things... So, if you take a comment maybe it says NP like 'Not Permissioned', and then you can take a quote, take a picture but it has to have that stamp on it that says that you didn't actually have permission to take that... It would help public knowledge of these kind of things that this is actually happening, whereas at the moment I think they are all kind of like well you know maybe it happened, maybe it didn't [obtaining consent]."

Younger, Less Active, Christchurch

Similarly, there is a suggestion to change the 'default' status on social media platforms. That is, rather than have everything freely available on social media, have nothing available with the requirement for individuals to actively 'unblock' content.

"Or alternatively, like the default. This is not 'you can take my picture and use it'. It is 'everything is blocked off, you must now undo them in order for people to be able to see them'. So something in that area to protect and help people to protect themselves."

Older, Less Active, Hawke's Bay

Some also suggest implementing a 'stand down' period – a legally defined period whereby social media or the mainstream media are not permitted to broadcast or publish information (much like they do when police go through the process of notifying next of kin in a fatality).

Appendix

"Maybe if someone died or there is a circumstance where it is interference with, there should be a period of time before social media can make comments or include people's names or whatever. There should be a time allowance, like a grief period for the people in the situation or if there is a shooting the media should not be able to comment or make posts about [it]..."

Younger, Less Active, Christchurch

Whilst most social media users would like to see stricter regulations for the mainstream media, others would like to see consequences for individuals who upload the original content.

"The original uploader should be banned off where they are because recording sex [office couple] and putting it on is pornography. And they can be banned permanently for that, so they should be banned for that."

Younger, Less Active, Wellington

Others believe that targeting individuals would be ineffectual and stricter regulations need to be in place to govern broadcasters.

"There should be stricter regulations in what media should be able to publish, because while individually you can't really regulate what people share and publish, with big media organisations, you can probably hit them, either with stopping them from publishing for a while or monetary [fine], like you should be able to hit them harder with these regulations and you possibly can look to regulate the industry a bit more that way."

Younger, Less Active, Christchurch

There is also the suggestion that the punitive damage broadcasters face would need to be significant enough to influence their behaviour. Social media users cite examples of gardening stores ignoring rules because the financial gain is too great.

"And would the fine or the impact, the consequence of it be enough to prevent them doing it. Look, like [one store] which open like Anzac Day or Easter, they are like, 'yeah whatever, we know that the laws tell us, but at the minute the fine is like $2,000 and we can make a lot more money so'..."

Younger, Less Active, Christchurch

INDIVIDUAL RESPONSIBILITY

While the focus group discussions asked social media users for their views on mainstream media broadcasting content sourced from social media, many of the participants feel that individuals also have a role to play and steps can be implemented to assist with maintaining privacy.

There is a call for consumer education around personal responsibility and social media etiquette.

> *"I think education, like a lot of these things... if we want them to be more responsible, then you've actually got to show them how to be more responsible. A lot of people just don't know."*
>
> **Older, Less Active, Hawke's Bay**

> *"What I'm saying, there's no etiquette. When you think of how people behave and how you expect them to behave, that's been developed over a long period of time and continues... but social media develops so fast on the different platforms and different ways of using it, that's gone."*
>
> **Older, Less Active, Hawke's Bay**

Similarly, some feel there is a greater need for education (and reminders) of the availability of privacy settings.

> *"Your first question was 'what do you know about the settings?' Like a lamb to the slaughter, I know nothing, I just signed up and I'm away."*
>
> **Older, Less Active, Hawke's Bay**

This includes prompts from the social media platforms themselves.

> *"So you need warnings. Or the other thing is and it came up on my page, just a dialogue box – 'you haven't chosen who should see this for a long time, what would you like?' So you've got that choice. But I think you need to be warned of what is happening or can happen to your material – not just, 'I agree' at the bottom of a sign."*
>
> **Older, Less Active, Hawke's Bay**

Some feel there is an opportunity to use the power of social media to help individuals regulate their own viewing. Users suggest there is potential to influence content through establishing public pressure regarding what users want to see and hear broadcast - in effect, creating a public outcry, with the intent that (unacceptable) content will be removed or ultimately, not shown in the first place.

> *"I think that's where social media comes into play again, is that if there was enough of an outrage about something, or about content then that's when social media does its thing as well, the people speak I think and then that can be very powerful in itself, we can regulate our own viewing."*
>
> **Older, Less Active, Auckland**

There is also a sense that, given individuals are often the source of the content, and given the sheer volume of content, monitoring what's posted becomes insurmountable.

> *"Privacy laws need to be enforced more, but how do you enforce something that you have no control over?"*
>
> **Older, Less Active, Hawke's Bay**

Similarly, some assume that the governing bodies may not be motivated to enforce the rules, with the effort it will require.

> *"The problem is that it is so easy to share a picture or a video, compared to the effort required to enforce it."*
>
> **Younger, Less Active, Christchurch**

BSA: PRIVACY AND SOCIAL MEDIA TOPIC GUIDE

FINAL topic guide

[Note: This document is designed as a guide for discussion, it allows for considerable freedom within the topics. The order in which items are covered will vary according to the natural flow of conversation and questions are indicative only of subject matter to be covered and are not word for word descriptions of researchers' questions].

1. Introduction

Purpose: To introduce the research process. [10 minutes]

- **Explain process**
    - Topic – talk about privacy in the context of social media
    - No right or wrong answers
    - Confidentiality/Use of audio equipment
    - Up to 2.5 hour duration
    - Researcher neutrality/honesty of responses

- **Let's break into pairs, introduce yourself to your partner**
    - Tell them a little about yourself and your family, what you do
    - Very briefly, what social media means to you

Then introduce partner back to the group.

RESEARCHERS TO MODIFY LANGUAGE/TERMS TO MATCH PARTICIPANTS

2. Warm up and Contextualisation

Purpose: To warm up participants and set the context for discussion. [30 minutes]

To give us an idea of where you're coming from, let's have a chat about how we use social media. (By social media, we mean any platform or blogging site where we create or share content or participate in social networking, for example Facebook, Instagram, Twitter, YouTube, Snapchat, Tumblr, Reddit, Wordpress, blogger, Google+, Linked In, Flickr … etc).

Now's the time to pull out your diary.

- **We've talked about what social media means to us, let's share some examples from our diaries.**
    - What is it that social media allows us to do?
    - What was it about these that made us want to post/share them?
    - How do we go about posting/sharing? Talk me through the process.
- **What are some examples of when we decided NOT to share/post?**
    - What did we take into account?

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- **What are some examples of things we've posted/shared that we've later regretted?**
  - What was the outcome? What led to the regret?
- **What's an example of a controversial post you or someone you know has re-shared?**
  - How did your friends/followers respond?
- **What's the difference between posting/sharing content that captures us and content that captures others?**
  - How do we manage this?
- **What's the difference between re-publishing others' content and having others re-publish your content?**
- **What's the difference between what we deem as private content and what we deem as public content?**

RESEARCHER NOTE: If participant brings up examples (like the scenarios) themselves, probe:

- **What did you do?**

- **Did you post or share news stories about this? How come?**

RESEARCHER NOTE: Participants may default to talking about a platform (likely the one they're most familiar with eg, Facebook), if so, explore platform use, then compare/contrast with other platforms.

- **How do we use [platform]?**
  - What does it allow us to do?
  - FULLY EXPLORE
- **We mentioned that [platform] allows us to … [connect, spread the word, organise etc etc], what other platforms do we use for this?**
  - How is one platform different from another?
- **Let's put these platforms on a continuum in terms of… security, control over content, credibility.**
  - What's driving this?
  - How are they the same/different?

Great! Can I just get a sense for who has accounts with some of these sites/platforms?

Cast your mind back to when you first set up an account or registered for [x] social media platform.

What made you to decide to set up an account with that particular site/platform?

What settings, if any, did you put in place when you set it up (eg, privacy settings)?

How often do you refresh or review your settings, eg, privacy settings?

3. Societal context

Purpose: To explore perceptions around re-publishing content by third parties. [25 minutes]

Now, let's think about mainstream media – by this, we mean TV stations, radio stations, newspapers, magazines, and their online platforms/content, etc.

- **Firstly, what are we watching / reading / listening to?**

    - Favourite stations / publications / shows?

- **How do we feel about the mainstream media broadcasting something they pick up from social media?**

    - When is it okay/not okay?

    - What *should* the media be doing in this context?

RESEARCHER NOTE: Focus is on privacy issues, rather than inappropriate/ offensive content.

- **What role does the source of the content play? How important is this?**

    - What's the difference between something created by broadcasters themselves vs something they pick up from social media?

So far, we've talked a lot about when it's okay and not okay to post/share stuff on social media.

- **What about the legal side of things?**

- **(If you had to guess) what kinds of things/circumstances/topics would be illegal to post/share on social media?**

    - How/where did you find out if it was illegal or not? **(CHECK: Information source)**

    - So on the other side, what kinds of things would be legal, or should be legal?

RESEARCHER NOTE: If participants unsure of laws, probe:

- **What do you think the rules should be?**

- **What should the mainstream media do, if they are considering using content from a participant's social media platform?**

- **Someone mentioned the idea of privacy. How would we define 'privacy' in this context?**

    - What does it mean for people like us? **(PERCEIVED VALUE OF PRIVACY LAWS)**

- **What privacy regulations are currently in place?**

- **Thinking specifically about privacy laws – what should the rules be in this context?**

- **What does this mean for mainstream media and what they do?**

- **Someone (at a previous group) mentioned that privacy is all good and well, but it needs to be balanced with public interest.**

    - When we think of 'public interest' what comes to mind?

- **How do we feel about the relationship between privacy and public interest?**

    - Thinking of privacy and public interest, what regulations should be in place?

4. Scenario testing

Purpose: To explore findings from earlier sections and how they relate to different concepts/examples. [75 minutes]

Let's have a look at some examples.

PARTICIPANTS TO RECEIVE A PRINT OUT OF EACH SCENARIO

RESEARCHERS TO ROTATE ORDER SCENARIOS ARE PRESENTED ACROSS THE GROUPS

Probe for each scenario:

- **How do we feel about this scenario?**

- **What are the privacy issues here?**

- **What role does... play?**

  - ... public interest?

  - ... the location of *where* the content is captured?

  - ... the nature of the programme?
    eg, news bulletin vs documentary vs comedy/7 Days etc?

  - ... who is featured in the content?
    eg, public figure, private citizen, child, vulnerable person (eg,injured, intoxicated, grieving), or you?

- **What's <u>not</u> okay?**

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1. Grief or Trauma

Filming of tragedy, such as accident scenes. Bystanders take photos/video and post to social media or send to media outlets. The media then use the content.

For example, after a fatal accident in Lower Hutt, police were forced to ask bystanders to stop taking pictures and video of a dying man involved in a crash.

- **How does the concept of public interest fit here?**
    - eg, in content showing earthquakes, accidents
- **What if questions were raised about the conduct of emergency services in dealing with the incident – would that make it more valid to capture/post?**

---

2. Sexual content/humiliation/reputation

A couple is photographed and video-recorded having sex in a brightly-lit office building after hours by patrons at an adjacent pub. The content is uploaded online and goes viral over social media, TV and radio. Both individuals are recognised in the footage and subsequently fired from their jobs.

- **Did the couple have a reasonable expectation of privacy?**
- **Is it acceptable for people to capture photos/video of the couple?**

---

3. Public figure behaving badly

Photos of a famous sports person drunk and acting disruptively outside a local pub.

The photos are posted to social media and then re-published in newspapers and on TV. The player is suspended from the team.

- **How does the concept of public interest fit here?**
    - eg, behaviour of a public figure
- **How do perceptions differ depending on who is involved?**
    - Is it more acceptable to publish information about a public figure, than a private citizen?
- **What if the photos moved beyond the sports person and then included eg, their child, spouse, friend etc, who may not be a 'public figure'?**

---

4. Photographs from social media sites

Re-publishing photographs.

A person becomes the subject of a news story, and the media want photographs to go with the story. They find some selfies of the person on that person's social media pages.

- **When is this acceptable?**
- **Does it matter whether the person is a criminal, or someone who is blameless (eg, a victim)?**
- **Does it make a difference whether the person had used privacy settings to restrict access to content?**
- **Does it matter which platform they used to publish photos of themselves?**

5. Personal factors – motivations (Photosort/Projection)

Purpose: To explore motivations that drive participants to record or document a private moment. To start to explore the concept of public vs private content and the social expectations around publishing content online.

Let's have a bit of fun and use our imaginations a little.

INTRODUCE PEOPLE PHOTOSORT

We've got some pictures here of a range of different people. These are images we have taken off the internet. As we look at them, we can get a sense of what kind of people they'd be like – especially if we look at their eyes and their mouth.

Take a moment to get familiar with them. As we look through them, we'll see that they all have slightly different personalities, and would have different attitudes and priorities.

Let's pick the person who feels the same way about social media as we do.

They may be different from us in every other way, but what makes them similar to us is their attitude and behaviour when it comes to using social media and what it means to them.

Give them a name.

What's going on in their lives – work, family, hobbies?

What are they like? How would their friends describe them? Personality words?

- **What is a typical event/time when [photo name] would choose to capture a moment?**

    - What's going on – who, what, where, when?

    - How come it's important for them to capture this particular event?

    - What goes through their mind?

    - REPEAT FOR ANOTHER EVENT IF TIME PERMITS

- **Thinking about the event(s) you just described, if [photo name] was being really honest, what do they hope to achieve by sharing?**

    - What is it that [photo name] is trying to portray?

    - What would [photo name] hope others would think/say about them?

- **How would [photo name] feel if they no longer had access to social media platforms?**

    - What would they miss out on?

- **What kinds of things would [photo name] NOT want posted/shared online about themselves?**

- **How come?**

    - What would they imagine the impact would be?

6. Summary

Purpose: To summarise key outtakes. [10 minutes]

Great! Let's do a quick summary. Thinking about everything we've spoken about today, what's the one thing that stands out to you when thinking about...

- privacy in the context of social media?

- re-publication of social media content by broadcasters?

- **Is there anything you wish could be different?**

- **Probe expectations/attitudes overall**

  - Do you think it is reasonable for information on the internet to be used by media?

  - Do you see the internet as a 'public highway'?

  - Do you think social media content can only be used with the consent of the producer of the content, with the consent of the subject of the content, or both?

Any final comments?

Thank you and close.

6. ABOUT THE RESEARCHERS

Katrine Evans

After ten years as a law lecturer specialising in privacy, media and tort law, Katrine became Assistant Privacy Commissioner in August 2004. She was the Commissioner's legal counsel until June 2015, giving advice about complaint investigations and representing the Commissioner in litigation. She also managed the policy and technology team giving a wide range of advice to government and business, and was lead adviser on the privacy law reform proposals.

Since July 2015 she has been in private practice with Hayman Lawyers, with a specialist privacy law focus. On top of her practice commitments, she is a member of the New Zealand Law Society's Human Rights and Privacy Committee, edits a column for the IEEE's Security and Privacy Journal, is a member of the Asian Privacy Scholars Network, and co-teaches the LLM course in privacy law at Victoria University.

Dr Kathleen Kuehn

Dr Kathleen M. Kuehn is a lecturer in Media Studies at Victoria University of Wellington. She researches and teaches in the areas of digital/social media, surveillance and consumer culture. She is the author of the recently published book, *The Post-Snowden Era: Mass Surveillance and Privacy in New Zealand* (BWB Texts, 2017). Her work on contemporary digital media practices also appears in a wide range of academic journals including *Journal of Consumer Culture*, *Social Media + Society*, *Journalism*, *International Journal of Communication*, amongst others. Her contributions to this research project were inspired by a case study she published on privacy and social media in the edited collection, *Scandal in a Digital Age* (Palgrave MacMillan, 2016). Prior to becoming an academic, Kathleen worked across a range of media industries including radio, film and publishing in the United States.