
THE INTERNET: THE BENEFITS, PROBLEMS AND LEGAL DIFFICULTIES FOR INDIGENOUS AUSTRALIANS

by Hugh Montgomery

INTRODUCTION

The internet can provide significant advantages and opportunities for Indigenous Australians, offering a seemingly infinite array of social media platforms, information services and opportunities for communication with other people from diverse backgrounds. Yet it also offers serious problems and legal difficulties. Examples of the internet providing social connection and belonging can be countered with instances of online racism, abuse and racial vilification directed towards Indigenous peoples and communities.

This article intends to negotiate these two composite elements of the internet, contrasting the benefits and problems posed by online media for Indigenous people. In particular, it describes how social media websites such as Facebook provide an online platform for racially discriminatory comments that can sometimes avoid legal accountability through anonymity or practical limitations in controlling overseas users of the internet. Perhaps alternative solutions need to be pursued to combat such online racism. Legislation and punitive legal punishments directed towards racial vilification need to be accompanied by programs of education, online empowerment and user-generated regulation of social media platforms.

WHAT ARE THE BENEFITS?

The internet offers numerous benefits to Indigenous and non-Indigenous Australians alike. It allows people to communicate with others, to express their identity, and even acts as a medium for expressing the complex cultural codes of Indigenous society. For example, the University of Sydney recently established a website called the Kinship Learning Module, which provides the public with access to information regarding the diverse social structures of Indigenous society.¹ Utilising the internet, this learning module encourages Indigenous and non-Indigenous Australians to better understand the cultural and social codes that define Indigenous languages, practices and kinship systems.²

The internet not only provides Australians with an opportunity to find out about Indigenous cultural heritage and social complexity,

it also acts as a practical facilitator of Indigenous identity, allowing Indigenous peoples to extend a sense of cultural belonging within and beyond their community. A recent study by the McNair Ingenuity Research Institute, analysing the internet usage of 400 Aboriginal and Torres Strait Islander Australians, found that Indigenous Australians used Facebook at a rate 20 per cent higher than the national average.³ Those in remote communities were even more likely to use Facebook, with social media being used by 62 per cent of the community's population.⁴

This suggests that Indigenous Australians are particularly willing to utilise the internet and Facebook as a means of communication and expression. As argued by Lumby, Facebook acts as a 'modern site for kinship connectivity and continuity',⁵ allowing individuals and communities to 'build, display, and perform Indigenous identities' online.⁶ From the ability to 'like' a Facebook page, therefore promoting awareness of Indigenous issues within Facebook networks, to having the Aboriginal flag as a Facebook cover photo, the opportunities for self-expression on social media sites like Facebook are numerous.

WHAT ARE THE PROBLEMS?

Websites and online social media platforms can also undermine some of the opportunities the internet offers to Indigenous Australians. In particular, digital comments have been frequently used to racially vilify Indigenous peoples via websites such as Facebook. Examples include the actions of Queensland Police Officer, Senior Constable Lean Rissman, who used an alias to post racist remarks on the Boomerang Justice Facebook page,⁷ and the derogatory 'Aboriginal Memes' Facebook page circulating online.⁸

Social media has also become a platform for abusive and hateful messages within Indigenous communities. In the community of Ernabella, Elders have expressed growing concern about the inappropriate use of Facebook, with many young people posting abusive or personal comments online with little regard for or knowledge of the public nature of such statements.⁹ In Tennant Creek, the social media platform Divas Chat facilitated both

cyberbullying and feuds between different family groups and individuals, exposing how many within the community had little understanding of the public and harmful nature of comments made online.¹⁰

The problems with social media in Ernabella and Tennant Creek signal how issues of education, especially amongst younger Indigenous individuals, are connected to problems with cyberbullying and discrimination. In Tennant Creek, the community found that community-based education programs, together with the appointment of six young men as 'Divas Cops'¹¹ to regulate the platform Divas Chat, helped to address issues of cyberbullying and abuse online.¹² With the National Indigenous Radio Service site littered with news posts such as 'Racist Facebook page taken down after community pressure', 'SA Police remove racist comments from Facebook site' and 'NT man set up a Facebook site blaming Aboriginals', it is clear that social media offers challenges to Indigenous Australians.¹³ When combined with a lack of awareness about the potential harm that can be caused, Indigenous communities, and indeed all Australians, are at risk of being negatively affected by online racial vilification and cyberbullying. These risks are made greater by the young age of many internet and social media users.¹⁴ Education and youth awareness are key to addressing the problems posed by the internet.

The problem of racial vilification is highlighted by the very real effect racism has on the health and wellbeing of Indigenous people.

WHAT ARE THE LEGAL DIFFICULTIES?

Whilst there are legal avenues that are being used to address some of these issues of cyber-racism and racial vilification online, there are some practical difficulties with the enforcement of Australia's anti-discrimination legislation for anonymous and overseas users, and overseas hosts of internet websites and social media platforms.

Section 18C of the *Racial Discrimination Act 1975* (Cth) ('RDA') makes it unlawful for a person to do an act, otherwise than in private, that is reasonably likely to offend, insult, humiliate or intimidate another person or a group of people, where that act is done because of the race, colour, national or ethnic origin of that person or those people.¹⁵ As stated by Justice Branson in *Jones v Toben*,¹⁶ posting material on a website which is not password protected constitutes

an act of communicating to the public,¹⁷ suggesting a wide ambit for the application of s 18C to regulate posts on the internet. The RDA is complemented by s 474.17 of the *Criminal Code Act 1995* (Cth), which creates the offence of using an electronic carriage service (such as a website) to do an act that reasonable persons would regard as being menacing, harassing or offensive.¹⁸ In addition, several states also have racial vilification legislation which offers varying criminal and civil sanctions.¹⁹

This range of anti-discrimination and racial vilification legislation is currently being utilised by the public, as evinced by the Australian Human Rights Commission ('AHRC'), reporting a 59 per cent increase in complaints about racial hatred between 2012 and 2013, with cyber-racism representing 41 per cent of all racial hatred complaints.²⁰ Whether this increase in the reporting of racism online is due to an increase in the public's willingness to report racist conduct, or a rise in actual instances of racial vilification online, is difficult to determine. What can be concluded, however, is that racial vilification legislation has an important role to play in addressing the issues and problems of abuse and racism online.

However, there are also limits to what this legislation can do. The internet, by its very nature, is an international system of information and communication. This means that often users of the internet are anonymous or overseas, making it difficult if not impossible for Australia's anti-discrimination legislation to practically regulate or enforce their conduct. While in *Dow Jones & Company Inc v Gutnick*²¹ it was found that defamatory information published overseas can be 'answerable before the courts of any nation where the damage to reputation has occurred',²² the application of the RDA or state anti-vilification legislation to overseas content published online has not been tested or confirmed.²³

The hosts and intermediaries that control websites and social media platforms generally have their own procedures for combatting inappropriate behaviour. Again, there are limits on the effectiveness of these procedures for preventing racial vilification. This is partly because social media companies often have narrow definitions for what constitutes racist or hateful conduct. Facebook, for example, merely prohibits the 'hate speech' and acts that are 'discriminatory' in its Statement of Rights and Responsibilities.²⁴ These prohibitions are vague, suggesting a reluctance to offer broad or substantial regulation of behaviour online.

With these vague definitions, which do not correspond to Australian racial discrimination terminology,²⁵ Facebook has been slow to regulate the racist conduct of its users. For example, it took five months of campaigning by the Online Hate Prevention Institute ('OHP'I) for Facebook to remove its 'Aboriginal Memes'

page in Australia, suggesting that many vilifying pages and comments go unremoved or unregulated online.²⁶

These problems with enforcing racial vilification law on the internet suggests that whilst legislation is playing an important role in regulating conduct online, there are some issues with hosts and users attempting to resist the systems of accountability set up by the *RDA* and its counterparts. There is a need for legislation to be accompanied by programs of education and social awareness, which are not hampered by issues of jurisdiction or anonymity.

THE EFFECTS OF RACIAL VILIFICATION ON INDIGENOUS HEALTH AND WELLBEING

The significance of the problem of racial vilification is highlighted by the very real effect racism has on the health and wellbeing of Aboriginal and Torres Strait Islander people. Recent studies have found that racism contributes to one-third of all cases of depression and poor health amongst Indigenous Australians, and that Indigenous people who experience racism are 1.5 to 2.5 times more likely to have an adverse health outcome.²⁷ Racism is a direct cause of ill health amongst Indigenous Australians.

A recent Beyond Blue campaign also emphasised how Indigenous Australians are three times more likely to experience psychological distress than non-Indigenous Australians.²⁸ The campaign's commitment to addressing racism and discrimination against Aboriginal and Torres Strait Islander people demonstrates the severe impact that racism has on Indigenous people, directly linked to mental illnesses such as depression, anxiety and even suicide.

Indigenous youth, who use social media 20 per cent more than other Australians of the same age,²⁹ may face a disproportionate risk of harm from racial discrimination online. Indigenous youths are also at greater risk of mental and physical health problems, with some Indigenous communities having the highest youth suicide rates in the world.³⁰ Whilst issues of self-harm and suicide in Indigenous communities are far more complicated and problematic than problems arising out of social media, the link between racism or cyberbullying online and Indigenous youth health needs to be considered.

WHAT ARE THE ALTERNATIVE SOLUTIONS?

If the internet acts as a platform for racial vilification with substantial effects on Indigenous health, what is to be done? Can punitive punishments and primary legislation act as the sole protection against racial vilification for Indigenous individuals?

As highlighted above, there are some problems of legal accountability when Australian anti-discrimination legislation is

applied to the global and anonymous realm of the internet. This suggests that Australian legislators and policy makers need to realise the need for further community-based, educative responses to the problems of cyberbullying and online racism.

YOUTH EDUCATION

One way to combat online racism is through education of individuals, promoting an understanding of online websites and social media platforms. In particular, as highlighted in this article, issues of youth education and awareness are key to understanding how to address online racism. One example of this process of youth education is the character 'Codey' created by the Barkly Regional Arts Centre to deal with cyber issues in Indigenous communities. Codey, appearing on videos and websites produced by the Barkly Regional Arts Centre, teaches young Indigenous individuals from primary school and upwards how to stay safe and smart when online by telling them where to click, where not to click, and the public nature of the online content they publish.³¹

Codey, and other educational responses such as the *Be Deadly Online* campaign established by the Australian Communications and Media Authority ('ACMA') in the Yarrabah community³², are examples of education programs aimed at preventing Indigenous youths from both producing and falling victim to online racism and cyberbullying.

Educational programs directed at Indigenous youth need also to be accompanied by attempts to educate non-Indigenous Australians about the problems associated with racial vilification online. There are several existing education programs about online racism that are directed at all young Australians in the education system. For example, in 2013 the Victorian Equal Opportunity & Human Rights Commission published a document called *Reporting Racism: What You Say Matters*, which aims to raise awareness about racism in the community and encourages schools and youth groups to report instances racism and vilification.³³ Another example is the *Racism. No Way* campaign initiated by the NSW Department of Education and Communities, which provides teaching resources for both primary and high school students aimed at providing young Australians with an awareness of racism online and elsewhere.³⁴ Perhaps a national framework of youth education with regards to racial vilification online could continue this work in targeting young people and their experience of racism on social media.

DIGITAL CITIZENSHIP

Another potential avenue for addressing racial vilification online is through campaigns that aim to develop a sense of responsibility, accountability and citizenship amongst individuals. This idea of

'digital citizenship,' a term coined by Citron and Norton³⁵, involves websites and social media platforms giving those who post, contribute or read online content the ability to easily regulate what is published, by marking and removing content that is inappropriate, discriminatory or hateful.³⁶ An example of this user-regulation is the website Wikipedia³⁷, which allows its contributors and readers to delete comments or information that is incorrect or inappropriate.³⁸

Whilst this realm of user-regulation is somewhat uncharted, it has the potential to empower users to remove racist or hateful material in a quick and efficient way. Perhaps a system could be established to automatically remove Facebook pages and comments once a substantial number of 'dislikes' or 'reports' are made against them. Once removed, the page or comment could be assessed to determine whether it displays hate speech or racial vilification. If not, it could be re-posted. User-generated marking or deleting of racist comments has the opportunity to reduce the potential costs and privacy issues of having organisations trawl through websites and social media platforms looking for racist or hateful speech. There is a need to balance freedom of speech and the protection of individuals from racist abuse, and user-generated regulation offers one potential solution to the problem of racism and abuse online.

EMPOWERMENT OF INDIGENOUS COMMUNITIES

A final alternative solution to the problems posed by online racism could be to specifically use the internet as a means of empowering Aboriginal and Torres Strait Islander peoples to combat racism. As highlighted by Dr Bronwyn Carlson, the internet can use 'consultative, collaborative and culturally based'³⁹ education programs, websites and even smart phone apps to help Indigenous youths to avoid racism online and seek help if feeling at risk or alone.⁴⁰

CONCLUSION

Given both the great opportunities and challenges posed by the internet for Indigenous individuals, there is clearly a need for greater research and investigation into the role of online racism. A continued trend that has developed in researching this article is the need for community-based, local education, particularly associated with young Aboriginal and Torres Strait Islanders.

This ideal of education and empowerment of Indigenous Australians, especially young Aboriginal and Torres Strait Islander peoples, offers a potential solution to the damaging potency of racism posted or distributed online. Greater study and consideration is ultimately needed to ensure that effective educative and empowering programs are developed in Australia.

Hugh Montgomery is a 3rd year Arts/Law student at UNSW. He is currently a student editor at the Australian Indigenous Law Review, acting as an intern in the ILC.

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Old Girls

Silas Hobson

Acrylic on canvas, 960mm x 840mm

