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Comments of the Center for Democracy & Technology
To the forthcoming report on disinformation by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

15 February 2021

The Center for Democracy & Technology welcomes the opportunity to provide comments to the Special Rapporteur's consultation on disinformation. Disinformation is a complex topic that implicates freedom of expression, journalism, politics, technology, and more. Below, we share analysis and resources addressing three specific topics relevant to disinformation: existing research and the gaps in our understanding of how disinformation affects vulnerable communities; election-related disinformation and its relationship to voter suppression; and the risks to freedom of expression that arise at the intersection of intermediary liability law and disinformation.

I.   Research gaps in how disinformation affects vulnerable communities

Disinformation as a topic has received significant attention in the public policy and advocacy realms over the past five years. Journalists, press freedom groups, and scholars have studied the most effective ways to combat disinformation,[1] and civil society organizations have engaged in campaigns and interventions aimed at limiting the harmful effects of disinformation in vulnerable populations and communities.[2]

There has also been a significant focus on the methods and motivations of online disinformation in academic research, which has built on existing research on offline disinformation and propaganda to describe some of the main features of disinformation campaigns today. As CDT summarizes in our recent report, "Facts and Their Discontents: A Research Agenda for Disinformation, Race, and Gender":[3]

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[1] *See generally* Committee to Protect Journalists. https://cpj.org/tags/disinformation/ Data & Society. https://datasociety.net/research/media-manipulation/ First Draft. https://firstdraftnews.org/ PEN America. https://pen.org/?s=disinformation

[2] *See, e.g.,* PEN America, ReFrame, Disinfo Defense League (2020). Disinfo Defense Toolkit for Advocates and Organizers. https://pen.org/wp-content/uploads/2020/12/disinfo-defense-toolkit-v2-compressed.pdf Ultraviolet (2020). Reporting in an Era of Disinformation: Fairness Guide for Covering Women and People of Color in Politics. http://weareultraviolet.org/fairness-guide-2020/

[3] Center for Democracy & Technology (2021). Facts and their Discontents: A Research Agenda for Online Disinformation, Race, and Gender. https://cdt.org/wp-content/uploads/2021/02/2021-02-10-CDT-Research-Report-on-Disinfo-Race-and-Gender-FINAL.pdf

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- Producers of misinformation are motivated by different incentives, including political ideology, money, and status/attention.[4]
- The methods and tools for spreading disinformation include social media, memes, and bots. Producers of disinformation also target journalists and influencers to amplify their false messages.[5]
- Disinformation is designed to meet the demand for compelling and evocative content. A key feature of disinformation is that it commands people's limited attention and potential engagement, including their capacity to share content with others. Novel content that presents false information in new and unique ways is more likely to be shared.[6]
- People who share false information are more likely to be part of online polarized communities, which act as echo chambers and limit members' exposure to alternative viewpoints that would counter disinformation.[7]

Some researchers have focused on the particular ways in which race and gender play into both the substance and the strategy of disinformation campaigns. Existing research has demonstrated that:[8]

- There were racially targeted disinformation campaigns aimed at suppressing votes from communities of color in the last three major elections in the U.S.[9]
- Tactics include the use of "digital blackface/brownface," where disinformation operatives representing themselves as African American activists attracted more online engagement than any other identity category.[10]
- Spanish-speaking communities lack trusted sources that speak directly to them, and Latinx-oriented news outlets do not typically provide much information about American

[4] Marwick, A., & Lewis, R. (2017). Media Manipulation and Disinformation Online (pp. 1–106). Data & Society. https://datasociety.net/library/media-manipulation-and-disinfo-online/

[5] Id.

[6] *See* Guess, A. M., & Lyons, B. A. (2020). Misinformation, Disinformation, and Online Propaganda. *In* Social Media and Democracy: The State of the Field, Prospects for Reform (pp. 10–33). Cambridge University Press.

[7] Benkler, Y., Faris, R., & Roberts, H. (2018). Network propaganda: Manipulation, disinformation, and radicalization in American politics. Oxford University Press.

[8] Summary from Facts and Their Discontents, *supra* n.3.

[9] *See*, analysis of the 2016 election from Howard, P. N. et al (2019). The IRA, social media and political polarization in the United States, 2012-2018. University of Oxford. *And see*, research on the 2018 election from Mie Kim, Y. (2018, November 20). Voter Suppression Has Gone Digital | Brennan Center for Justice. https://www.brennancenter.org/our-work/analysis-opinion/voter-suppression-has-gone-digital *See also*, news reports on the 2020election from Mazzei, P., & Medina, J. (2020, October 29). False Political News in Spanish Pits Latino Voters Against Black Lives Matter. The New York Times. https://www.nytimes.com/2020/10/21/us/politics/spanish- election-2020-disinformation.html

[10] Freelon, D. et al (2020). Black Trolls Matter: Racial and Ideological Asymmetries in Social Media Disinformation. Social Science Computer Review. https://doi.org/10.1177/0894439320914853

political candidates. This makes it easier for bad actors to spread disinformation unchallenged.[11]

- Content moderation practices are not nearly as advanced or robust for Spanish-language content, or content in any other language besides English.[12]
- Gendered disinformation campaigns promote the narrative that women are not good political leaders, and often aim to undermine women political leaders by spreading false information about their qualifications, experience, and intelligence, sometimes using sexualized imagery as part of their tactics.[13]
- Women of color may be more likely to be the subject of disinformation when compared to others.[14]

Still, there is a significant need for additional research on disinformation and how it affects vulnerable communities. In particular, a substantial amount of the existing research focuses on the United States, and on election-related disinformation.[15] There are many key issues that still require further research, which include understanding how mis- and disinformation vary with different national/cultural contexts, and particularly how they affect non-English-speaking communities; measuring the efficacy of labelling and other interventions; and examining how design features of online services, including user interfaces and content-sorting algorithms, affect the spread of disinformation in different communities.[16]

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[11] *See*, Rogers, K., & Longoria, J. (2020, October 20). Why A Gamer Started A Web Of Disinformation Sites Aimed At Latino Americans. FiveThirtyEight. https://fivethirtyeight.com/features/why-a-gamer-started-a-web-of-disinformation-sites-aimed-at-latino-americans/

[12] Id.

[13] Jankowicz, N. et al (2021, February). Malign Creativity: How Gender, Sex, and Lies are Weaponized Against Women Online. Wilson Center. https://www.wilsoncenter.org/publication/malign-creativity-how-gender-sex-and-lies-are-weaponized-against-women-online

[14] Liotsiou, D., Ganesh, B., & Howard, P. N. (2020, October). Predicting Engagement with the Internet Research Agency's Facebook and Instagram Campaigns around the 2016 U.S. Presidential Election. ArXiv:2010.14950 [Cs]. http://arxiv.org/abs/2010.14950

[15] However, in 2020 brought a significant focus on the emerging issue of COVID-19 disinformation from researchers, governmental institutions, and civil society organizations. *See, e.g.,* Cinelli, M. et al (2020, October 6). The COVID-19 social media infodemic. Scientific Reports (Nature). https://www.nature.com/articles/s41598-020-73510-5 European Commission (2020, November 6). Fighting COVID-19 Disinformation Monitoring Programme. https://ec.europa.eu/digital-single-market/en/news/third-set-reports-fighting-covid-19-disinformation-monitoring-programme Simpson, E. and Conner, A. (2020, August 18). Fighting Coronavirus Misinformation and Disinformation: Preventive Product Recommendations for Social Media Platforms. Center for American Progress. https://www.americanprogress.org/issues/technology-policy/reports/2020/08/18/488714/fighting-coronavirus-misinformation-disinformation/ Smith, R. Cubbon, S., Wardle, C. (2020, November 12). Under the surface: Covid-19 vaccine narratives, misinformation and data deficits on social media. First Draft. https://firstdraftnews.org/long-form-article/under-the-surface-covid-19-vaccine-narratives-misinformation-and-data-deficits-on-social-media/

[16] For a full discussion of the gaps in existing research, see Facts and Their Discontents, *supra* n.3, p. 31-41.

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A persistent roadblock to disinformation research is researchers' lack of access to the necessary data, which is typically held by private companies.[17] The sharing of data between private companies and researchers raises significant questions of individual user privacy and consent to participate in research; the specter of Cambridge Analytica looms large. Efforts such as Social Science One have aimed at developing data-sharing processes that preserve individual privacy while still making useful data available to independent researchers.[18] It is also crucial that data protection laws enable privacy-preserving access to data for independent research.[19]

II. Election-related disinformation and voter suppression

Disinformation relating to elections is a particularly salient threat to democracy. "Election disinformation" is sometimes used as an umbrella term that covers everything from inaccurate information about a candidate's positions or endorsements,[20] to efforts to sow division and discord between groups with opposing views.[21] In developing strategies and recommendations for mitigating the harmful effects of election-related disinformation, CDT has found it useful to focus on a narrower category that we call "voter suppression content," information that could discourage or prevent people from casting their ballot.[22] As we describe in our guide for elections officials,

> Voter suppression content can include everything from inaccurate information about the date of an election, to inaccurate reports of long lines, to efforts to persuade people that an election is "rigged" and their vote wouldn't matter. This latter kind of content, which questions the legitimacy of electoral processes or the security of voting systems, can also be disinformation intended to lay the groundwork for disputing election results.[23]

It is important to recognize that voter suppression content can be shared by a wide variety of

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[17] For a discussion on specific research data needs see, Amazeen, M. A. et al (2020). Tackling misinformation: What researchers could do with social media data. The Harvard Kennedy School Misinformation Review, 1(8).

[18] King, G. and Persily, N. (2020, February 13). Unprecedented Facebook URLs Dataset now Available for Academic Research through Social Science One. https://socialscience.one/blog/unprecedented-facebook-urls-dataset-now-available-research-through-social-science-one

[19] *See* Ausloos, J., Leersen, P., and ten Thije, P. (2020, June 25). Operationalizing Research Access in Platform Governance: What to Learn from Other Industries? Institute for Information Law (IViR) and AlgorithmWatch. https://www.ivir.nl/publicaties/download/GoverningPlatforms_IViR_study_June2020-AlgorithmWatch-2020-06-24.pdf King, G and Persily, N. (2019, December 11). Public Statement from the Co-Chairs and the European Advisory Committee of Social Science One. https://socialscience.one/blog/public-statement-european-advisory-committee- social-science-one

[20] Ritchie, H. (2016, December 30) Read all about it: The biggest fake news stories of 2016. CNBC. https://www.cnbc.com/2016/12/30/read-all-about-it-the-biggest-fake-news-stories-of-2016.html

[21] Franceschi-Bicchierai, L. (2017, November 1). Russian Facebook Trolls Got People to Protest Against each Other In Texas. Vice. https://www.vice.com/en/article/3kvvz3/russian-facebook-trolls-got-people-to-protest-against-each- other-in-texas

[22] *See* Center for Democracy & Technology (2020, October). Online Voter Suppression: How to Spot It and How to Counter It. https://cdt.org/insights/online-voter-suppression-a-guide-for-election-officials-on-how-to-spot-counter/

[23] *Id.*

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actors with a mix of motivations, ranging from nation-state actors intent on disrupting another country's election, to well-meaning individuals sharing information they believe to be accurate. But regardless of the intent behind a post, inaccurate information about where and how to vote, or whether one's vote will be counted, can materially interfere with people's exercise of their franchise rights.

Election officials are an important authoritative source of accurate information about election administration, including the policies and procedures for voting; dates, times, and deadlines for different stages of the registration and voting process; and questions of vote-counting, security, and integrity of the election process. In the US context, CDT has worked with the Center for Tech and Civic Life to create resources and trainings for election officials to help them understand the vital role they play in the online information ecosystem.[24] As with any kind of disinformation, a lack of available accurate, reliable information (sometimes called a "data void") can be exploited by bad actors to manipulate people who are seeking out information.[25] Elections administrators can ensure that accurate, up-to-date information about elections procedures is available not only on their own websites but also on social media. CDT also recommends that election officials have proactive communications plans in place just before and during an election, in order to better identify misinformation and answer questions about election administration in the period where voters are most likely to be discouraged from casting their ballot.

For the US 2020 general election, there was also significant coordination across a variety of civil society organizations, to share information about mis- and disinformation they were seeing in their research, and to exchange strategies and advice for how to counter this misinformation.[26] And the major social media companies partnered with US elections officials and election watchdog groups to create "voting information centers" and other resources with trustworthy information.[27]

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[24] Center for Tech and Civic Life (2020, July 30). Combatting Election Misinformation. https://www.techandciviclife.org/wp-content/uploads/2020/07/Combating-Election-Misinformation-participant-guide.pdf Center for Tech and Civic Life (July 2020). Course Four: Combatting Election Misinformation. https://www.techandciviclife.org/course/trusted-info/#4

[25] Golebiewski, M., & Boyd, D. (2018). Data Voids: Where Missing Data Can Easily Be Exploited (pp. 1–8). Data & Society. https://datasociety.net/wp-content/uploads/2018/05/Data_Society_Data_Voids_Final_3.pdf

[26] Birnbaum, E. (2020, November 3). Meet the researchers and activists fighting misinformation. Protocol. https://www.protocol.com/election-day-2020-misinfomation-disinformation

[27] *See, e.g.,* Gleit, N. (2020, August 13) Launching Our US 2020 Voting Information Center. Facebook. https://about.fb.com/news/2020/08/launching-voting-information-center/ Miller, L. (2020, September 24). Authoritative voting information on YouTube. YouTube. https://blog.youtube/news-and-events/authoritative-voting-information-on-YouTube Twitter. Civic Integrity - US Elections - On-going work since the 2018 midterms - Partnerships. https://about.twitter.com/en/our-priorities/civic-integrity

Finally, we note that, in order to effectively combat election misinformation, election officials require sufficient resources to perform their roles.[28] As we have seen in the recent US presidential election, delays in counting ballots can create opportunities ripe for misinformation and exploitation by bad actors. Such delays are created by a combination of law (including laws restricting when the counting of ballots may occur) and a lack of funding for election equipment and staff. Combatting election misinformation requires much more than a singular focus on the decision of online platforms; legislatures must also act to address the broader factors that contribute to environments where disinformation can flourish.

III. Intermediary liability and disinformation

Finally, CDT seeks to highlight the significant risk that states will use laws framed as regulating disinformation to silence lawful speech, including journalism, both directly and via legislation aimed at online intermediaries.[29] As the Freedom Online Coalition noted in its recent statement on disinformation, "some states use the guise of countering disinformation to assert excessive control over the Internet, while disregarding international human rights law and principles of a free, open, interoperable, reliable and secure Internet."[30]

The reverse can also be true: some legislative proposals to change intermediary liability frameworks would make it more difficult for intermediaries to combat disinformation and abuse on their services. Before the 2020 US general election, CDT and a coalition of civil rights and civil liberties organizations in the US warned Congress of this very risk, noting that a proposed "Online Content Policy Modernization Act" would make it legally riskier for intermediaries to remove disinformation or to label it as false.[31] This legislation was part of a prolonged push by one political party, in the months before the election, to discourage social media companies from taking action against misinformation, including posts by then-President Trump.[32]

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[28] Adler, W. (2020, November 13). To Stop Election-Related Misinformation, Give Election Officials the Resources They Need. Center for Democracy & Technology. https://cdt.org/insights/to-stop-election-related-misinformation-give-election-officials-the-resources-they-need/

[29] *See, e.g.*, The Economist (2021, February 13). Inconvenient truths: Censorious governments are abusing "fake news" laws. Citing an International Press Institute finding that 17 countries passed "online misinformation" and "fake news" laws between March and October 2020, alone. https://www.economist.com/international/2021/02/13/censorious-governments-are-abusing-fake-news-laws

[30] Freedom Online Coalition (202, November). Joint Statement on Spread of Disinformation Online. https://freedomonlinecoalition.com/wp-content/uploads/2020/11/FOC-Joint-Statement-on-Spread-of-Disinformation-Online.pdf CDT is a member of the Freedom Online Coalition Advisory Network.

[31] Civil rights and civil liberties organizations (2020, September 30). Letter to Senator Lindsey Graham and Senator Dianne Feinstein re: Online Content Policy Modernization Act. https://cdt.org/wp-content/uploads/2020/09/2020-09-30-Civil-Society-Coalition-Letter-of-Opposition-to-S4632-final.pdf

[32] Center for Democracy & Technology (2020, September 30), Civil Liberties & Civil Rights Organizations Warn Senate Judiciary Committee of Voter Suppression Risk from "Online Content Policy Modernization Act". https://cdt.org/press/civil-liberties-civil-rights-organizations-warn-senate-judiciary-committee-of-voter-suppression-risk-from-online-content-policy-modernization-act/

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Online information intermediaries clearly have an important role to play in addressing the spread of mis- and disinformation; bad actors use online services to spread disinformation and attempt to manipulate algorithmic processes to ensure their messages get wider reach.[33] Fact-checking initiatives, labeling of false or misleading information, and removing or down-ranking misinformation are all potentially useful tools to fighting disinformation. And online services must carefully scrutinize the role that their own systems play in monetizing and amplifying disinformation. Transparency around intermediaries' content moderation practices in general, and in targeted advertising in particular,[34] is crucial to developing a better understanding of how policymakers, civil society, and intermediaries can better combat disinformation.

But laws imposing liability on intermediaries based on the falsity and harmfulness of user posts will create strong incentives for intermediaries to block content broadly. And laws that increase legal risk for intermediaries that take action against disinformation will only discourage important, useful interventions. To develop effective law and policy responses to disinformation, policymakers must understand the core dynamics by which intermediary liability laws can suppress or enable freedom of expression online.[35]

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[33] François, C. (2019, September 20). Actors, Behavior, Content: A Disinformation ABC: Highlighting Three Vectors of Viral Deception to Guide Industry & Regulatory Responses. Graphika and Berkman Klein Center for Internet & Society; Transatlantic Working Group. https://www.ivir.nl/publicaties/download/ ABC_Framework_2019_Sept_2019.pdf

[34] See Center for Democracy & Technology (2020, September 10). CDT EU Response to the European Commission Consultation on the Digital Services Act. p. 37-42. https://cdt.org/wp-content/uploads/2020/09/2020-09-10-Center-for-Democracy-Technology-Supporting-Document-Response-to-the-European-Commission-Consultation-on-the-Digital-Services-Act-Package.pdf

[35] See Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2016, May 11). Freedom of expression, states and the private sector in the digital age. A/HRC/32/38 https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Privatesectorinthedigitalage.aspx Manila Principles on Intermediary Liability. https://www.manilaprinciples.org/principles