

Submission: Report on Disinformation

This submission responds to the invitation by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the *Report on disinformation*.

About us

The Defence and Research Engagement portfolio at Edith Cowan University (ECU) is committed to achieving practical outcomes in matters of vital importance to Australia's national interest, such as Defence. Defence and Research Engagement seeks to deliver support to Defence through: a strong awareness of Defence needs; Ongoing engagement with Defence and other Government agencies; Provision of advice to help enhance Australia's defence capability; Partnering with industry to translate knowledge into actionable innovation.

Introduction

The world has never been more interconnected; our reliance on the internet for our prosperity and way of life has never been greater.¹ The COVID-19 pandemic has demonstrated beyond reasonable doubt, the need for a comprehensive information environment. However, before the onset of the COVID-19 pandemic, many had begun to question the dynamics of the information media landscape. On the one hand, information had become easily accessible, affording an unprecedented amount of the international community with the opportunity to an increased absorption of information. On the other, the information landscape became oversaturated with supply, and as a result, some, in an effort to gain an upper-hand in the competition for attention, have resorted to modes of disinformation to achieve this.

In respect to Australia, there have been growing concerns that disinformation poses to the public sphere and democracy more generally. In particular, there are growing concerns within the Australian Government surrounding the viral dissemination of disinformation online and its impact to democratic systems of governance, public trust towards state institutions and for social harmony. Additionally, according to the *Digital News Report: Australia 2020*, 64% of Australians are concerned about the possibility of false information online.²

Threats posed by disinformation

Information ecosystem is driven by financial motivations

The common understanding surrounding disinformation is that it is often ideologically motivated - those on the fringes of the political spectrum, conspiracy theorists, anti-establishment actors push

¹ Australian Government, Department of Home Affairs, "Australia's Cyber Security Strategy 2020", (Canberra: Commonwealth of Australia, 2020), p. 4.

² Park, S, et al., *Digital News Report: Australia 2020*, (Canberra: University of Canberra, 2020), p.10.

spread false information for the purpose of promoting their own beliefs. Although there is truth within this conception, the disinformation ecosystem is primarily driven for financial reasons.³

One of the apparent realities is that news platforms, whether traditional or digital are competing for attention. This factor, often driven by commercial incentives encourages media platforms to produce 'sensational click bait stories'. These are often optimised within the algorithms within search engines for the purpose of going 'viral'.

Creating, publishing or amplifying disinformation is, in itself, a profitable industry. Recently, the Dutch media platform "DROG" in collaboration with the University of Cambridge developed a free-to-play game *Bad News*, in which players take the persona of a fake-news tycoon.⁴ Although a vague representation of the promotion of disinformation, the game provides a useful insight into the commercial incentives provided by disinformation. By creating 'sensational stories', the more people are likely to visit a given website and as a result, the more advertising revenue the publisher will receive.

Many of the stories, to the common eye, seem extraordinary or ridiculous, however, this does not reduce the financial return that can be gained from disinformation. Essentially, disinformation is a modern way in the digital era of making money from purposefully spreading lies. Although there is no direct empirical research directly addressing the problem, it is evident that disinformation has been a prominent topic, regardless of its believability.⁵ It was reported that prior to the 2016 US Presidential election, some individuals publishing disinformation, including the Pizzagate story - connecting the Clinton campaign to a paedophile ring made a substantial amount of money.⁶

These raise fundamental questions about the information media infrastructure and industries, such as advertising firms and programmatic advertising agencies, which create a financially lucrative environment for disinformation to spread. Therefore, in order to fully grapple the financial underpinnings of the digital journalism industry, various governments have established agreements with big technology companies such as Google and Facebook to reshape the environment. The United Kingdom, for instance, reached an agreement with Facebook to pay mainstream UK news outlets millions of pounds a year to license their articles.⁷ In a similar vein, the French consumer watchdog, the FCA, suggested that under the pan-EU copyright reform

³ Size, Robert, *PUBLISHING FAKE NEWS FOR PROFIT SHOULD BE PROSECUTED AS WIRE FRAUD*, Santa Clara Law Review 60, no. 1 (February 2020): 29.

⁴ Basol, M., Roozenbeek, J., and van der Linden, S., "Good news about Bad News: Gamified inoculation boosts confidence and cognitive immunity against fake news," *Journal of Cognition* 3, no. 1 (January 2020): 1.

⁵ Yariv Tsfati, et al., "Causes and consequences of mainstream media dissemination of fake news: literature review and synthesis," *Annals of the International Communication Association* 44, no. 2 (May 2020): 159.

⁶ Kathleen Frankovic. "Belief in conspiracies largely depends on political identity." *YouGov*. 2016.

⁷ Jim Waterson, "Facebook to pay UK media millions to license news stories," *The Guardian*, December 01, 2020.

introduced in 2019, Google should pay French publishers for reuse of snippets of content. The French Government upheld the FCA's recommendation and as a result, Google and the Alliance de la presse d'information générale, which represents the interest of around three-hundred information press titles in France reached an agreement over how it will pay for information reuse.⁸

Australia, moreover has perhaps adopted the strongest approach. Much like their French and British counterparts, the Australian legislation is an attempt to address the loss of advertising revenue from the traditional news media companies to 'Big Tech'. The Australian Competition and Consumer Commission (ACCC) has noted, 'for a typical \$100 spent by advertisers in Australia in 2018, \$49 went to Google (including ad tech services), \$24 to Facebook and \$27 to all other websites.'⁹ This incentivises Big Tech to maintain the status quo, for financial purposes and this includes a lapsed approach regarding the spread of disinformation. In addition, big tech companies do not adhere to the same editorial standards as traditional news media, often governed within the frame of self-regulation, this only reinforces the cycle created between disinformation, profits and big tech.

Foreign Measures taken to combat disinformation

Cybersecurity

One of the primary actions adopted by multiple governments is to enhance governmental monitoring of their respective information ecosystem. Since the information ecosystem has shifted towards digital media, governmental monitoring has typically been administered by national security agencies.

For instance, in Denmark in 2018, the Danish Security Intelligence Service and the Danish Defense Intelligence Service established an interdepartmental task force with the sole purpose of countering disinformation (from foreign sources).¹⁰ The taskforce would focus their efforts on collaborating during election campaigns, threats posed by foreign actors and cyberattacks.

Transparency and Accountability

⁸ Natasha Lomas, "Google inks agreement in France on paying publishers for news reuse," *Tech Crunch*, January 21, 2021.

⁹ Amanda Meade, "Australia is making Google and Facebook pay for news: what difference will the code make?" *The Guardian*, December 09, 2020.

¹⁰ Danish Government, Ministry of Foreign Affairs of Denmark, "Strengthened safeguards against foreign influence on Danish elections and democracy" (Copenhagen: Kingdom of Denmark, 2018).

There is a growing trend that suggests that social media companies should be required to self-regulate, that is, to make their content moderation policies and enforcement actions transparent. This includes, publishing their content moderation guidelines and conducting regular reports that describe the harms they see inflicted on their platform.

Given the financial incentives behind disinformation, the European Commission recommended that EU member states should promote the active disclosure of information being shared during election campaigns, including who is the sponsor, who is the promoter of online advertisements and who is behind the communications during election campaigns.¹¹

The French are perhaps, the most comprehensive example of transparency laws in the EU. The French Government adopted a law that requires online platforms with at least five-million visitors (per month) to provide users with the identification of the persons or organisations that have purchased content.¹² A further caveat imposed under French law requires online platform operators that adopt algorithms to recommend, promote, and sort content are required to publish statistics for every item of content.

The German Government's initial approach to disinformation was manifested in ideas of self-regulation. The German Federal Government asked tech companies and news media platforms to remove disinformation from their platforms within 24 hours. When this self-regulation did not work, the German Government passed the National Enforcement Act 2018.¹³ Commonly known as NetzDG, the legislation forces tech companies to remove disinformation from their platforms within 24 hours or face the penalty of a €20 million fine. As a result, it has been suggested that one in six Facebook moderators now works in Germany, a practical example that similar legislation can work. However, the German Government went one step further. It introduced and passed reform in the Bundestag, not only forcing media platforms to remove disinformation but actively report it to the police.¹⁴

Criminal Conduct for disinformation

A more severe punishment is the adoption of criminal proceedings and penalties, which sometimes extend to imprisonment and fines are becoming more common. In accordance with EU recommendations, Denmark introduced an amendment that criminalises the dissemination of disinformation that assists a foreign state actor to influence public opinion in Denmark. However,

¹¹ European Union, European Commission, "Commission recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament," (Brussels: European Commission, 2018).

¹² "France: Tax-related reporting requirements for online platforms," *KPMG*, August 29, 2019.

¹³ German Government, Federal Ministry of Justice and Consumer Protection, "Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act, NetzDG) - Basic Information (2017)," (Berlin: Federal Republic of Germany, 2018).

¹⁴ Janosch Delcker, "Germany's balancing act: Fighting online hate while protecting free speech," *Politico*, October 01, 2020.

it is important to recognise that publication on social media does not qualify within the criminal code, as the ecosystem surrounding social media is discouraged by foreign actors.

What has Australia done?

Select Committee on Public Interest Journalism

In the age of high-speed information, the role of public interest journalism has never been more crucial. Journalism, in many ways, has long been regarded as essential support for democratic and open societies. It is for this reason that the Select Committee on the Future of Public Interest Journalism was established on May 10, 2017.¹⁵ The committee identified the significant threats posed to a diverse journalistic environment in Australia, and the rise of social media coupled with the spread of disinformation remained paramount in their findings.¹⁶ However, what remains pertinent and continues to be so was the finding that journalism, in comparison to social media tends to uphold the importance of editorial ethics as a platform for coverage.

The report handed down by the select committee on February 05, 2018 provided eight key recommendations. In reference to disinformation, recommendation three suggested:

“The Commonwealth work with the states and territories through the Council of Australian Governments to determine how areas of the Australian Curriculum may be improved regarding digital media awareness and media literacy.”¹⁷

Australian Competition and Consumer Commission (ACCC) digital platforms inquiry

In addition to the select committee, in December 2017, the ACCC began conducting an inquiry into the impacts of digital platforms on media competition and how this trend towards media concentration has influenced the rise of disinformation. The inquiry found that the changing environment has implications towards the quality of news and journalism.

The preliminary report identifies a range of factors that continue to pose a risk of increasing audience exposure to disinformation. One major factor remains the news feeds on digital platforms, such as individual news stories that do not have context regarding source credibility, which has the consequence of making it difficult for readers to discern the quality of information

¹⁵ Australian Government, Australian Parliament House, “Senate Select Committee on the Future of Public Interest Journalism” (Canberra: Commonwealth of Australia, 2017).

¹⁶ This is not to suggest that the committee was limited in scope. Conversely, it did not assume that journalism in itself is the solution to the disinformation problem, as indeed, journalism is not free from dominant ideologies or bias. In addition, journalism maintains systemic issues that are salient worldwide, including the influence of ownership, business models and audience interests.

¹⁷ Australian Government, Australian Parliament House, “Recommendations” (Canberra: Commonwealth of Australia, 2018).

provided.¹⁸ Additionally, the algorithms of news platforms allow for the selection and prioritisation of news on the basis of users past behaviours and preferences. For instance, if a user was inadvertently watching a video or reading an article about conspiracy theories, then the algorithm of news sites would prioritise other conspiracy theories in accordance with the users preference.¹⁹

Electoral Integrity Assurance Taskforce

In early 2018, the Australian Government established a multi-body agency, the *Electoral Integrity Assurance Taskforce*, to address risks posed to the integrity of Australia's electoral system, in particular, disinformation.²⁰ The taskforce is led by the Australian Department of Home Affairs, with involvement from the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP) and was originally manifested after expressions of concern from multiple states concerning the amplification of disinformation during national elections. The taskforce's primary aim is to provide the Australian Electoral Commission (AEC) with technical advice and expertise when it comes to the spread of disinformation within the electoral process.²¹

Media Coordination

The AEC also established protocols with various social media platforms, notably Facebook and Twitter, pertaining to the removal or blockage of posts that breach electoral advertising laws, or report details of their creators to the AEC.

- Facebook made a further commitment to ban foreign-funded political advertising as well as increasing crack down measures on fake accounts around the time of the Australian electoral period.²²
- Twitter announced it would require all political advertisers in Australia to apply for certification, as well as meet profile requirements and comply with Twitter's code of conduct.²³

Beyond Facebook and Twitter, the Australian Government expanded provisions which requires all paid electoral advertisements to be authorised and contain an authorisation statement. Additional disclosure requirements apply to people and entities who undertake communication

¹⁸ Australian Competition and Consumer Commission, *Digital Platforms Inquiry: Preliminary Report*, p. 5. December 2018.

¹⁹ Ibid.

²⁰ "New taskforce to defend against election meddling," *Australian Financial Review*, June 09, 2018.

²¹ The Australian Electoral Commission (AEC) is an independent Australian federal agency tasked with organising, conducting, and supervising Australian federal elections, by-elections, and referendums.

²² Max Mason, "Facebook bans foreign-funded political ads during Australian election campaign," *Australian Financial Review*, April 05, 2019.

²³ Dylan Bushell-Embling, "Twitter demands verification for Australian political ads," *Technology Decisions*, February 20, 2019.

activities in Australia on behalf of a foreign principal for the purpose of being communicated or distributed to the public.

After recognising the increasing role that disinformation can play in elections, the AEC launched an advertising campaign, *Stop and consider*, on a number of social media platforms shortly prior to the 2019 Australian federal election.²⁴ The campaign intended to encourage voters to ‘carefully check the source of electoral communication they come in contact with. The impetus for the campaign was to promote digital media literacy and encourage voters that Australia is not immune to the prospects of disinformation.

Additional measures for combating disinformation

Technological solutions

Despite algorithmic practices being used to amplify disinformation, a series of online tools have also been developed to help information researchers, journalists and consumers to detect, and mitigate disinformation efforts. The connection between online disinformation checking tools and news media platforms appears to be underdeveloped. In terms of mixed human-automated practices, news media companies maintain the ability to filter disinformation, mainly in the form of reviews by human auditors and apps that use artificial intelligence to detect bots.²⁵ There are a number of bot and spam detection tools, these include Bot Sentinel, Botcheck.me, Botometer, Hoaxy (Observatory on Social Media).

Media literacy vs information literacy

Jun Sakamoto, an academic at Hosei University has suggested that when considering countering disinformation, it is important to identify the difference between information literacy and media literacy. Information is a broad, multifaceted manifestation with countless viewpoints and perspectives, whereas media is a much more limited and defined organisation. As such, the ability to educate the population within these two spheres should be different.²⁶

For instance, given informations ambiguous nature, Sakamoto has suggested the CRAAP technique:

Currency: The timelessness of the information.

Relevance: The importance of the information for your needs

Authority: The source of the information

²⁴ Michael Jensen, ‘Fake news’ is already spreading online in the election campaign – it’s up to us to stop it,” *The Conversation*, April 23, 2019.

²⁵ “Tools That Fight Disinformation Online: Bot/Spam detection,” *RAND*, December 19, 2019.

²⁶ Jun Sakamoto, “Disinformation and MIL Movements in Japan,” *United Nations Educational, Scientific and Cultural Organisation (UNESCO)*.

Accuracy: The reliability, truthfulness and correctness of the context

Purpose: The Reason the information exists

For Media Literacy, given its more narrow scope in comparison to information, five key questions must be asked of the source:

1. **Who** created the message?
2. **What creative techniques** are used to attract attention?
3. **How might different people understand** the message differently?
4. **What lifestyles, values, and points of view** are expressed in - or omitted from - the message?
5. **Why** is the message being sent?

Protecting freedom of expression while tackling disinformation

The role of social media and free-online speech in the modern day has come under increasing scrutiny. The central question, therefore, has been the paradoxical nature over the need to limit the spread of disinformation and the tension that this exists with freedom of expression, regardless of its accuracy.

One of the fundamental arguments against the censoring, limitation or blockage of free speech remains the principles of free speech. Indeed, any effort to curb speech, no matter how inaccurate is often seen as a deterioration of fundamental human rights. This is most commonly seen within liberal democracies, with matters concerning freedom of speech and freedom of expression recognised as one of the central philosophies of society.²⁷ However, it is often very rare to view free speech in instrumental terms, it is often seen as a 'right'. Freedom of speech is a matter of individual agency - it maintains intrinsic value within the human condition.

However, concerns surrounding free speech have never been static. In the two thousand years of political and ideological thought that has existed around free speech, the matter of debate has continuously shifted. The changing nature of speech regulation simply reflects the complexity of the information age we live in.

Within the new technological age, there have been a string of new fields of speech restriction. Often is the case when governments decide that new technologies (such as radio and television back in the 20th century) deserved different levels of free speech protection than had been apparent for the printed word. A similar situation is arising with the stream of digital media

²⁷ Indeed, the First Amendment of the US Constitution guarantees rights protection to express ideas through speech and press. In addition, Article III, Section 4 of the US Constitution proclaims that "no law shall be passed abridging the freedom of speech, of expression, or of the press..." Thus, the right to freedom of expression remains unquestioned.

<https://www.lexology.com/library/detail.aspx?g=fef828b7-cdfa-4462-8ca9-4512bc28358b>

meritting new forms of regulation compared to radio and television. For example, during the seventeenth-century, governments believed that print media deserved different levels of speech protection based on its ability to amplify much quicker than the vocal world. Indeed, this represents the centrality of the issue, the changing nature of free speech. The pendulum of free speech has constantly shifted as new technologies disrupt the status quo. Therefore, perhaps the debate itself should be shifted.

One of the optimal debates when it comes to reconciling the protection of free speech with deterring disinformation remains the debate over toleration. The toleration debate typically sees conscience and expression as one. Here, John Stuart Mill reinforces this when he suggests that the formation of opinion is richer when one can hear all arguments freely (regardless of agreement). Mill suggests that the formation of opinion is richer, but does not indicate it is any less free should it be left unsaid.²⁸ ‘Everyone has an inalienable right over his thoughts’ wrote Baruch Spinoza.²⁹ Therefore, the freedom to hold an opinion and the freedom to express an opinion are one in the same. The only difference is that when discussing matters of free speech vs disinformation, the ability to not project falsified information is not a violation of human rights as believing disinformation and the spreading of disinformation are underlined within two different frames.

However, it is possible for both governments and digital media platforms to adopt tangible steps to help reduce the spread of disinformation. Transparency, in relation to disclosure is a simple way of discouraging disinformation at the same time as maintaining the freedom of speech. Now it is important to recognise that in authoritarian societies, anonymity is an important element in the protection of civil rights, however, in democratic societies, the role that anonymity plays in disinformation is continually on the rise. Anonymity should not give license for imposter content. Therefore, the ability to express freedom of opinion should be coupled with the freedom of identity. Other options posited by the Council of Foreign Relations in an effort to limit disinformation, fact-checking posts, labelling the accounts of state run media, and banning some particular ads (depending on the information provided).³⁰

Yours sincerely,

Conor McLaughlin
14th of February 2021

²⁸ Chris Berg, *In Defence of Freedom of Speech: From Ancient Greece to Andrew Bolt* (Melbourne: Institute of Public Affairs, 2012), 157.

²⁹ Ibid, 4.

³⁰ Anshu Siripurapu and William Merrow, “Social Media and Online Speech: How Should Countries Regulate Tech Giants,” *Council of Foreign Relations*, February 09, 2021.

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