

**XNET CONTRIBUTION TO INFORM THE SPECIAL RAPPORTEUR'S ANNUAL THEMATIC REPORT ON DISINFORMATION TO BE PRESENTED TO THE HUMAN RIGHTS COUNCIL AT ITS 47<sup>TH</sup> SESSION IN JUNE 2021.**

- 1. What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?**

**Briefly who we are**

Xnet is an activist project working and proposes advanced solutions in fields related to digital rights and democracy: freedom of expression; net neutrality; digital privacy; the free circulation of culture, knowledge and information; mechanisms for transparency, participation and citizen control of power and institutions; the defence of citizen journalism for the right to know, inform and be informed; the technical, communications and legal fight against corruption; and the technopolitics understood as the practice of networking and taking action for citizen empowerment, justice and social transformation.

**Our expertise on disinformation**

In the recent years, we have been a relevant actor in the disinformation debate, contributing with an advanced perspective to attack efficiently the problem. We consider Xnet has designed one of the few realistic solutions at the moment.

Our work is based on the **research conducted by several working groups directed by Simona Levi in collaboration with Cristina Ribas in the Postgraduate on Technopolitics and Rights in the Digital Era** at the University Pompeu Fabra and at the University of Barcelona ([https://www.ub.edu/web/ub/es/estudis/oferta\\_formativa/masters\\_propis/fitxa/T/201911482/index.html](https://www.ub.edu/web/ub/es/estudis/oferta_formativa/masters_propis/fitxa/T/201911482/index.html)) and (<https://www.bsm.upf.edu/es/noticias/fakeyou-sale-a-la-luz-el-informe-sobre-fakes-news-tecnopolitica> y <https://xnet-x.net/ca/presentacion-barcelona-fakeyou/>), which led to the **publishing of the book “#FakeYou, Fake News y Desinformación - Gobiernos, partidos políticos, mass media, corporaciones, grandes fortunas: monopolios de la manipulación informativa y recortes de la libertad de expresión” [#FakeYou, Fake News and Disinformation – Governments, political parties, mass media, corporations, big fortunes: the monopoly of information manipulation and threats to freedom of expression]** (<https://xnet-x.net/informe-fake-news-desinformacion/> and <http://www.rayoverde.es/catalogo/fakeyou/>).

**Our thesis for a solution on disinformation**

On the grounds of our previous work, we have developed a legislative hypothesis (<https://xnet-x.net/ley-fakeyou/> and <https://www.opendemocracy.net/en/democraciaabierta/fight-against-disinformation-proposal-regulation/>).

Our proposal for regulation aims to provide an off-the-shelf model for legislators. And is in line with the guidelines set forth by the Council of Europe and the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda by the UN Special Rapporteur on

Freedom of Opinion and Expression; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE); the OAS Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information (ACHPR).

As we showed in the aforementioned book, the public and legislative policies used or proposed up until now in the fight against disinformation, often actually serve to distract from the real solution since they use solely the following approach:

1) Internet as the only place and cause:

They attack the Internet as if the Internet were the only source of toxic disinformation: The phenomenon of disinformation is only considered on the Internet, segregating it from offline disinformation, thus leaving off the scope a large part of the issue.

2) The users/consumers as the main problem

They attempt to limit users' freedom of expression, letting the real promoters of collective disinformation off the hook in the process.

It is important that we respect the fundamental rights of freedom of expression and information not only because they are rights, the backbone of any state that would claim to be democratic, but also because they are not the source of the problem of disinformation and fake news. If anything, they are the solution.

It would be fair to say that people's use of their freedom of expression is far from perfect, of course, yet it is a fundamental right, and one that will improve in the way we use it insofar as we are able to exercise it without asymmetries.

**What isn't a fundamental right is what businesses and institutions are doing with the content of communications.** Like any business or institutional practices, there must be limits when it harms the general interest. What is good about that, as we prove in the book, is that they are in fact the main responsible for the creation and dissemination of disinformation. So, eureka :), let's focus on that.

The measures and the narrative that lay the groundwork for liberticidal legislation focus on Internet users and embrace a logic of control and censorship by either public or private players. These policies neglect the subjects who actually generate, and benefit from, disinformation the most. In #FakeYou, we clearly demonstrate that all paths to the source of systemic disinformation lead to the same place: political parties and their structures of interest and influence, englobing other powerful, privileged players, from institutions to media and companies. **Basically governments, institutions, political parties, mass media, corporations, and celebrities business are the actors we have to focus on.**

While there is general consensus that systematic disinformation is harmful to democracy, we should also consider that there should not be an industry founded on this harmful fact. At the same time, we also emphasise the idea of institutional responsibility and dereliction of duty as something that is both quantifiable and punishable.

**We propose a radical shift in the approach taken to address the issue, focussing on the idea of the profit generated by disinformation. This allows us to be objective and efficient, and to**

**move away from normative designs led mainly by the temptation to control the internet, meddle with fundamental rights or to establish an official Truth.**

So the main focus of our proposal, largely exposed in the book, is: **whoever finances the dissemination of fake news, or orders it from an institution and/or business, is responsible for the disinformation.** Punishment for disinformation must fall on the mass producers and participants in the disinformation business; we must also remember that, despite the many subjects who profit from the dissemination of fake news, this practice is especially harmful to society in the case of political institutions and parties, since they should be responsible for creating the regulatory framework to attack the problem, but fail to do so as it harms them in terms of their power and influence.

We propose a proactive approach that corrects asymmetries of power and empowers the public.

- 1) Holding the mass producers of disinformation fully to account so that the creation of viral disinformation does not end up being a viable business model for them;
- 2) Expanding the monitoring and verification capacities of the public as a whole, through protocols for open, transparent access to information and the way it is produced.

How?

**We propose a labelling system, compulsory when in the chain of communication money is involved, or when the communication is institutional.**

**This labelling is not related to the indication whether the information is "true" or "false" like the ones produced by fact-checkers. It is related to the obligation verification previous to publication when money is involved.**

*[Note: notable difference between Truth and Verification: The exercise of the right to freedom of information requires that the information disseminated to be truthful. This does not exclude the possibility of disseminating erroneous information; it does not require that the information may not ultimately prove to be wrong during a trial. It simply requires a duty of care on the part of the informant; it is an obligation of means and not of results. The informant must transmit information on facts that have been the subject of a prior contrast with objective data and that do not encourage rumours or libellous insinuations.]*

Basically, we transform in compulsory for governments, institutions, political parties, mass media, corporations, and celebrity's business the duty of journalists to verify the information before publishing. We have created a labelling system, that can be partly automated, similar to food and nutritional labelling for that.

- a) We need to make proactive checks as to the veracity of information **compulsory** for the major generators, that is, the largest investors in disinformation, whether they be public or private (it bears repeating: governments, institutions, political parties, mass media, corporations, and celebrities business). This will mean **exposing the way in which information is created, in turn making verification open to everyone.**

Currently, the public is required to verify information without giving them the proper tools to do so. How can we verify and avoid falling for fake news if the person producing the information and the news doesn't give us any **clues as to the source or data behind them? The public must have at their disposal the detailed elements that enable them to verify facts in a way that is quick, accessible, distributed and open, the same way verify nutrition information and ingredients can be verified and known through food labels, in order to allow** the public to whom the content is addressed: the type of content presented (sponsored, information), the **sources and number of sources, whether the content may be influenced by those who finance the issuer of the information, etc.**

**It is important to improve the transparency of the content, its funding and possible biases in its production.**

b) It needs to be stressed, though, that such actions **must not only affect online intermediaries (content platforms and social networks), but the whole of the investment chain.** Focusing all regulation on online platforms, as currently happens, has very clearly resulted in those platforms safeguarding their commercial interests and reducing their legal risks by applying the curtailment of users' freedom of expression, resulting in moves towards a single acceptable pensée unique and automated censorship.

There is nothing new about this dynamic: since the dawn of time, governments have used intermediary structures to implement surveillance and censorship policies. Control over what people say and do is often delegated to "private parties". They ensure that their users do not "commit" acts that upset the powers-that-be, and in return they receive a wider margin of movement and freedom for their business. This is exactly what is happening now.

In summary, the core of our legislative proposal is:

- Update the verification and fact-checking protocols included in the deontological codes of journalism and transform them into law: this is not about setting a single, approved Truth, but about applying objective parameters to verify truthfulness (something which is already included in current legislation).
- Extend and enforce verification obligations that apply to journalists and newspapers to other sectors where the flow of information involves profit or institutional benefit, including political parties, authorities, governments, corporations and other influential opinion-makers.
- Display this mandatory application through labelling. This allows anyone to verify the information, something which is currently required of the population in spite of the fact that they are not offered the tools to do so. When we talk about allowing verification by the recipient, we are talking about making the verification process a traceable one.
- Update other tangential regulations, eliminate technophobic bias in policies and incorporate effective sanctioning regimes.

### **More about labelling**

When information is offered as part of a business model (because it is offered in exchange for payment) or is offered by institutions, it is no longer a form of freedom of expression, and there

must be an obligation of transparency to enable verification, as happens, for example, with food. This is a form of labelling.

A table with basic information for verification should be included with the published information. The responsibility for the accuracy of the labelling should be borne by both those who pay for that information to become viral and those who receive payment. Its application must be accompanied by a strong sanctioning regime as happens with food.

This has two main objectives:

- To check whether the verification has actually been carried out.
- To allow anyone who reads the information to check the verification for themselves and access the original information and sources.

People are constantly accused of not checking the information they share for its truthfulness. They are blamed for failing to do something they are not given the tools to do. Labelling would provide such a tool.

This dynamic can also generate a positive chilling effect so that all information providers who claim to be professional and reliable will apply these protocols to ensure maximum quality.

In practice, the aim of such a table is to answer simple verification questions informed by existing “types of misinformation” and “parameters of deontological codes”, for example: Does the information have a source or none at all, meaning it’s made up? Is the article about a particular company paid for by that same company or political party? Has the source been contrasted, or does it simply act as a platform for a source, publishing what it wants to publish unaltered; If one source says it’s raining and another says it isn’t, has anyone looked out the window to see which of the two statements is correct, or have they both been published in the name of (non-existent) information neutrality? Etc.

[See the proposed label and full draft regulation here <https://xnet-x.net/ley-fakeyou/>].

### **Other relevant conclusions of the book**

**1. There are biases in the definition of fake news and misinformation:** Looking at how the notions of fake news and disinformation are being defined, we discover the great effort from governments, parties and mass media to keep themselves safe. We see how instead of fighting the monopolistic business of the corporations in this sector, the Internet and “technologies” are criminalised and people are persecuted for exercising their rights and liberties, in an attempt to perpetuate the asymmetry of the pre-digital era between citizenship and big media. The high-level Committee created by the EC is in fact a lobby of the media corporations, the predigital monopole of (dis)information.

**2. Disinformation is not a “new phenomenon”** and trying to make it look so it is again an effort to protect the pre-existing monopoles of disinformation: governments, parties, media....

**3. The business of disinformation:** We use known cases of study (Cambridge Analytica, election campaign in Mexico, Brazil and Bolsonaro and Spain) to show that the problem cannot be segregated differentiating between the physical world and the Internet and that the **core points to attack in order to reduce disinformation are political interests.**

We are talking about “producers” because this is an industrial-scale set-up issue. We also show how national *bot* factories work and how we needn't fantasise about far-off Russia to understand how it is used every day by the political class both here and abroad.

**4. Fact-checking: information verification and verifiers.** We explain how verification works and how the verifiers often are part of the manipulation too; that verification is nice but useless if it is not done previously to the viralization; how journalism verification methods have to be applied to other sectors; how it has to be updated with the science verification methods and the online native verification. Given how traditional mainstream media are increasingly abandoning their responsibilities in this field, we prefer to trust a mix between professional models and distributed structures of moderation and verification, but until now, the European Commission has been heavily influenced by media lobbies and media corporations (47% of the experts on the committee defend these interests). We must be fully aware that at this stage of democracy, verification of information is not a majority practice among the population. So, it is difficult to understand why this is the solution that all modern politician uses a side with attacking internet freedoms. Thousands of years of information dependence can only be countered by a protracted implementation period.

#### **5. Public policies and legislation: towards a liberticidal drift**

We compare legislation and this is the conclusion we have reached.

#### **2.**

##### **a. What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?**

No measures have been undertaken in Spain, and the ones taken only follow the EU rationale exposed in the first question or in the attached book from page 178 to page 192.

##### **b. What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?**

As exposed before:

- On disinformation almost none.
- On freedoms: it has put them under threat.

##### **c. What measures have been taken to address any negative impact on human rights?**

As exposed in question one, since the approach is wrong, since the approach is to judge freedom of expression and sharing information, human rights will be at risk. The approach must change and talk about business and institutions.

**3.**

**a. What policies, procedures or other measure have digital tech companies introduced to address the problem of disinformation?**

Please see question one.

As we have mentioned, with all due respect, online and offline must not be segregated when designing measures against disinformation.

Intermediaries and platforms are the only ones that have introduced measures to counter disinformation, but they follow the rationale to establish a Truth that cannot be discussed and meddle with fundamental rights (see question 1). The question is not to signal if something is true or false, because not every content is verifiable in a strict manner and Arbitrators of the Truth shall not exist.

To focus online on the online perspective, leads to force these private companies to introduce automatic censorship.

Automated filtering without human intervention, especially concerning user opinions, often results in censorship of freedom of expression, removing legitimate content due to a lack of understanding of the context of the systems used by the platforms. See: <https://citizensandtech.org/2020/09/chilling-effect-automated-law-enforcemen/>

Therefore, such automated content filtering and removal should not be established or incentivized by law or by institutions.

**b. To what extent do you find these measures to be fair, transparent and effective in protecting human rights, particularly freedom of opinion and expression?**

See previous question.

**c. What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?**

'Notice-and-Action' mechanisms designed to eliminate illegal or infringing content from the Internet, comprising 'Notice-and-Take down' (NTD) schemes allow for hosting service providers to benefit from a liability exemption provided they 'act expeditiously' to remove or disable access to content upon learning of its illegal nature. This has led to erroneous removals and censorship of legitimate content which have not always been rectified in due time when users complain about it. Our approach "follow the money" would greatly reduce the problem.

**4. Please share information on measures that you believe have been especially effective to protect the right to freedom of opinion and expression while addressing disinformation on social media platforms.**

Our proposal is to draw a clear distinction between the free expression of opinion on the one hand and the business of information and institutional information on the other.

To a large extent, it aims to broaden the scope of application of existing or planned regulations at the international and European levels, eliminating the biases that segregate the Internet and curtail freedom of expression and information:

- Apply a “follow-the-money” approach (aimed at business or institutions that have neglected their duties) as opposed to passing judgement on content (do not interfere with freedom of opinion, nor create a Ministry of Truth).
- Update the verification and fact-checking protocols included in the deontological codes of journalism and transform them into law: this is not about setting a single, approved Truth, but about applying objective parameters to verify truthfulness (something which is already included in current legislation).
- Extend and enforce verification obligations that apply to journalists and newspapers to other sectors where the flow of information involves profit or institutional benefit, including political parties, authorities, governments, corporations and other influential opinion-makers.
- Display this mandatory application through labelling. This allows anyone to verify the information, something which is currently required of the population despite of the fact that they are not offered the tools to do so.
- Update other tangential regulations, eliminate technophobic bias in policies and incorporate effective sanctioning regimes.

In the definition of the subjects to which this Law should apply, we indicate institutions, political parties, systemic private entities with a massive impact on the population, on the one hand, and businesses, including the media, communication companies, celebrities and opinion-makers, and any other person who invests or receives money for information to be more visible than it would have been if it were simply issued by someone.

Two obligations we indicate for these subjects: the duty to verify the truthfulness of content and to allow verification by the recipient.

Truthfulness is not to be taken as a synonym for THE Truth. It requires that the information disseminated be truthful. This implies the possibility of disseminating erroneous information but requires a duty of care on the part of the person informing. The person informing must transmit information on facts that have been contrasted beforehand with objective data that does not encourage rumours or insinuations. Furthermore, the duty of care in reasonably verifying the truthfulness of the information is not satisfied by pure and generic reference to undetermined sources.

A communication that claims to be “information” must therefore use verification protocols in its preparation. In theory, the jurisprudence already defines the responsibility of professional information providers to check the information before publishing it. There are deontological and ethical codes that apply to the journalism sector that have detailed protocols of action for such



verification. It is now a matter of expanding the subjects that these apply to, with special emphasis on political parties, institutions and online and offline businesses working in communication.

On the other hand, when we talk about allowing verification by the recipient, we are talking about making the verification process a traceable one.

When information is offered as part of a business model (because it is offered in exchange for payment) or is offered by institutions, it is no longer a form of freedom of expression, and there must be an obligation of transparency to enable verification, as happens, for example, with food. This is a form of labelling.

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This dynamic can also generate a positive chilling effect so that all information providers who claim to be professional and reliable will apply these protocols to ensure maximum quality.

In practice, the aim of such a table is to answer simple verification questions informed by existing “types of misinformation” and “parameters of deontological codes”, for example: Does the information have a source or none at all, meaning it’s made up? Is the article about a particular company paid for by that same company or political party? Has the source been contrasted, or does it simply act as a platform for a source, publishing what it wants to publish unaltered; If one source says it’s raining and another says it isn’t, has anyone looked out the window to see which of the two statements is correct, or have they both been published in the name of (non-existent) information neutrality? Etc.

**5. Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, in particular the right to freedom of opinion and expression.**

Please, see question 1.

6. **Please share any suggestions or recommendation you may have for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.**

More information about what has been proposed in this response to the consultation can be found here:

- Our book, "*#FakeYou, Fake News y Desinformación - Gobiernos, partidos políticos, mass media, corporaciones, grandes fortunas: monopolios de la manipulación informativa y recortes de la libertad de expresión*" [*#FakeYou, Fake News and Disinformation – Governments, political parties, mass media, corporations, big fortunes: the monopoly of information manipulation and threats to freedom of expression*] [in Spanish] (in attachment).
- Our article on OpenDemocracy: <https://www.opendemocracy.net/en/democraciaabierta/fight-against-disinformation-proposal-regulation/>
- Our contribution to the European Democracy Action Plan (EDAP) by the European Commission ([https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en)) [in Spanish] (in attachment).