



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | GENEVA

PERMANENT REPRESENTATIVE

5 July 2019

Mr David Kaye
Special Rapporteur on the promotion and protection of the right
to freedom of opinion and expression

Dear Mr Kaye,

1. I refer to your letter dated 24 April 2019 on Singapore's Protection from Online Falsehoods and Manipulation Bill ("**the Bill**").

Correction of Errors

2. Your concerns about the Bill are based on several errors in understanding it. I enclose at Annex A the opening speech of Minister for Law, Mr K Shanmugam, at the Bill's Second Reading in Parliament, which provides an overview of key features of the Bill and its impetus. I address your specific concerns below.
3. *First*, a central misconception is that judicial oversight is limited, and the process of appealing to the courts is designed to deter meaningful recourse.
 - a. On the contrary, the Bill narrows the Government's powers, and widens the scope of judicial oversight (see Annex A).
 - b. It is incorrect to say that the Bill gives Ministers "virtually unfettered discretion to label and restrict expression they disagree with as 'false statements of fact.'" The Bill expressly provides for the courts to finally determine whether a statement is a false statement of fact, through statutory appeal.

- c. It is incorrect to say that there is no independent review of the Minister's assessments of "public interest" when issuing directions under the Bill. Judicial review remains available. The courts may review the direction as a whole, and quash a direction on the established grounds of illegality, irrationality and procedural impropriety.
- d. It is incorrect to say that there are no time limits on the resolution of an appeal against a Minister's direction. In Singapore's statutes, procedural matters such as time limits are a matter for subsidiary legislation (e.g. the Rules of Court for civil procedure in court proceedings). Subsidiary legislation is public, and thus open to scrutiny.

The Minister for Law stated in his speech at the Second Reading of the Bill, that the process of bringing a statutory appeal to court will be fast. He also set out the specific timelines, which will be prescribed in the Bill's subsidiary legislation. The case can be heard in court as early as 9 days after a challenge is initiated to the Minister.

- e. It is also not the case that the appeals process will come with high financial and administrative costs. The Minister for Law stated in his speech at the Second Reading of the Bill, that individuals who wish to challenge a Minister's direction will be able to use standard forms. This makes self-help, without lawyers, easier. Their court fees will be kept very low. These matters will also be set out in the Bill's subsidiary legislation.
- 4. There are important considerations behind why the Bill adopts a two-stage mechanism, involving swift action first through a Minister's direction, followed by a statutory court appeal (see Annex A).
 - 5. *Second*, your concerns about the definition of a "false statement of fact" in the Bill appear to be based on a misunderstanding of the Bill.
 - a. This definition is a legal term drawn from existing jurisprudence, laid down by the courts in areas such as criminal, tort and contract law. Existing law will determine how statements of fact and opinion are distinguished.
 - b. You have suggested that Clause 2(1) of the Bill permits a statement that is factually accurate as a whole to be restricted by taking a portion of it out of context and labelling it "false." For the Bill to permit this would be absurd. The definition of a false statement in Clause 2(1) of the Bill reflects existing jurisprudence that statements can also be false by

reason of having misled through omission. Ultimately, whether by omission or express statement, the Bill deals with material that is *false*.

- c. These clarifications were made by the Minister for Law at the Second Reading of the Bill. Pursuant to Section 9A(3)(c) of the Interpretation Act, these clarifications can be used by the court in its statutory interpretation of the Bill, after it becomes law.
6. *Third*, it is completely wrong to state that the Bill authorises Ministers to “adjudicate the criminality of statements” and that “statements are criminalised” by Minister’s directions. This is a surprising interpretation of the Bill. As with other administrative directions that already exist in law, the directions under the Bill involve no finding of criminal liability on any person. They simply require a correction to be put up, or, in some more serious cases, a falsehood to be taken down. They do not make statements illegal. Your assertion that directions “effectively reverse” the presumption of innocence is a non-starter.
7. *Fourth*, you expressed concern that the penalties that may be imposed on internet intermediaries will make them feel pressured to err on the side of caution, and unduly restrict lawful expression. This does not make sense. The Bill does not require internet intermediaries to make judgments on what content is false or what to act against. They only need to comply with a Minister’s direction to them to put up a correction or remove a falsehood; the direction will identify the false statement for them.
8. I note that you have levelled the same criticism against Germany’s Network Enforcement Act, which places the onus on intermediaries to assess (at first instance) whether a statement is illegal. The criticism seems to have been repeated against this Bill, despite its material differences with the German law.

Background to the Bill

9. The Bill is Singapore’s response to a real and serious problem. Around the world, online falsehoods have distorted political processes, eroded trust in public institutions, exacerbated societal tensions, and threatened the very foundations of democracy. Singapore is not immune.

10. The Bill was drafted after an extensive process of study and public debate.
 - a. In January 2018, the Government issued a Green Paper outlining the challenges and implications of deliberate online falsehoods.
 - b. Parliament then appointed a parliamentary committee, the Select Committee on Deliberate Online Falsehoods, to examine and report on the phenomenon.
 - c. The Select Committee considered 169 written representations, and held 8 days of public hearings in March 2018. Local and international experts gave evidence as witnesses at the hearings. The concerns of different stakeholders – ranging from activists, academics, journalists – were examined and dealt with openly during this process.
 - d. In September 2018, the Select Committee issued a detailed 279-page report, setting out its findings and conclusions on the nature of the problem, and responses that Singapore should take. A copy of the Select Committee Report is enclosed in **Annex B**.
11. The Select Committee recommended a multi-pronged approach, and set out 22 specific recommendations that formed a suite of non-legislative and legislative measures. The Government has been implementing the recommendations, including through concerted efforts to expand public education.
12. This Bill is one part of the Government’s multi-pronged approach to combat online falsehoods. It implements the Select Committee’s recommendations on what legislation should achieve, including the ability to break virality in a matter of hours, and to ensure calibration in government intervention.
13. Notably, the Bill provides for the novel ability to ensure that corrections can catch up with falsehoods in the online world. This is done through corrections directions that do not require the falsehood to be taken down. This approach is in line with the psychological research on remedying the influence of falsehoods, and the ample studies showing that corrections seldom outrace falsehoods online.
14. I hope that you will not overlook the seriousness of this effort to ensure Singapore has the tools we need to effectively counter a real and serious problem. Singapore’s approach may not conform to certain ideological

preferences, but our laws are for us to make, as it is the interests of our society at stake.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jwee', with a horizontal line underneath.

Foo Kok Jwee
Ambassador and Permanent Representative