



Submission to the Special Rapporteur for Freedom of Opinion and Expression, Irene Kahn, July 2022

CELE

The Center for Studies on Freedom on Freedom of Expression and Access to Information (CELE) is an academic research center affiliated with Universidad de Palermo in Argentina. The Center provides technical, legal analysis on issues affecting this fundamental right, and since 2012 has been studying freedom of expression on the Internet as a specific research area. The Center is a leading voice on the promotion and protection of freedom of expression nationally, regionally and internationally.

This submission was prepared in response to the public call for input published by the Special Rapporteur. Per the call, “The right to freedom of opinion and expression is essential for human dignity and the enjoyment of many other rights, as well as the advancement of peace and development. However, it has come under increasing pressure and restrictions in the digital age, especially in the context of conflict and violence.”

CELE has studied and published on the issue of disinformation from various points of view. The Center leads a repository of laws and bills of law encompassing 9 countries in Latin America that tracks, among others, legislative efforts to deal with the phenomenon; and in 2020 we launched Letrachica.digital, a project that tracks changes to terms of service and community guidelines in real time. Both projects seek to understand how public and private regulations and restrictions of content work and impact the exercise of freedom of expression, particularly in Latin America.

CELE celebrates that “The Special Rapporteur is launching a multi-year project to examine the challenges to the right to freedom of opinion and expression in the context of conflict and violence, with a view to eventually developing

concrete guidelines for States, digital platforms and other stakeholders”. Conflict and violence raise important issues for human rights, particularly for freedom of expression and opinion, where the context within which this right is exercised is in many ways determinative of the need and proportionality of the applicable restrictions.

The limits to freedom of expression and opinion vary from one society to the other and they vary in times of conflict and emergency. Freedom of Expression is among those derogable rights that admit stringent restrictions at certain times. These limits have been tested recently during the COVID 19 pandemic and more recently in the context of the international conflict between Ukraine and Russia. Contributing to the development of clearer standards and criteria that may help the international community as a whole agree on common elements to test their policies, legislation and practices against is an important exercise and the Office of the Special Rapporteur is especially well placed to develop guidance.

This call seems especially timely, considering the restrictions on state-owned media advanced by the European Union in the form of "sanctions" in the aftermath of Russia's illegal invasion of Ukraine. Both the scope and the rationale of the sanctions were met with different viewpoints, which highlighted both the problematic nature of propaganda that promotes warfare and the need to respect human rights standards and related proportionality analyses, even with regard to that kind of content.

It is also timely because the problems the call assess are made worse by extended lack of clarity in terms of what they mean. Disinformation, misinformation, and propaganda are concepts that deserve careful scrutiny, and in public debate are often used lightly and interchangeably. This leads to a kind of conceptual confusion that is specially problematic when considered from the point of view of the development of international human rights standards, for one of their purposes is to guide the conduct of public officials around the world.

With this submission CELE intends to share a few past research papers and reflections that we have developed through our work, particularly as it relates to information manipulation and disinformation, as the Mandate leads us in reflecting on these issues for her upcoming report. The materials referenced are listed by theme, and a short summary is provided.

1. Current responses to disinformation threaten freedom of expression as a fundamental right within democratic societies. Indeed, this conclusion was reached in the context of our own research on the matter. From our perspective, disinformation as a threat to democracy is a problem that is—to an extent—overblown, based on faulty and inconclusive evidence, and that tends to distract policy makers from the true causes of democratic erosion around the world. Generally, we find that the regulatory responses offered by countries such as Germany and France are disproportionate, considering the risks involved, the mechanisms designed to deal with the issue, and what we know so far about it. While human rights law has created approaches to deal with false information, we acknowledge that these were developed for a different world, one that did not need for solutions to be scalable. But the challenges posed to freedom of expression standards by the Internet, of which disinformation is just one among many, should be addressed based on clear evidence and solid data. Furthermore, those bodies in charge of developing these standards should be particularly wary of any kind of scare or regulatory drive that is not based on such clear foundation.
 - a. <https://observatoriolegislativocele.com/panel-de-alto-nivel-del-consejo-de-derechos-humanos-de-la-onu/>
 - b. [https://www.palermo.edu/Archivos_content/2021/cele/papers/Disinformation-in-democracy%20\(2\).pdf](https://www.palermo.edu/Archivos_content/2021/cele/papers/Disinformation-in-democracy%20(2).pdf)
 - c. <https://carnegieendowment.org/2021/10/19/disinformation-is-not-simply-content-moderation-issue-pub-85514>
2. Public officials and public figures (including political candidates) as generators and disseminators of disinformation. This is an often

overlooked part of the problem. When public officials or public figures proactively take part in disinformation campaigns, narrowly defined, they are violating the duties they hold to create an environment that is friendly to the free exercise of the right to freedom of expression, for the latter includes the right to *seek* and to *receive* information from others. The deliberate proliferation of false information is a problem that should receive a clear answer, especially when the original transmitter falls within one of these clear categories.

- a. <https://observatoriolegislativocele.com/en/no-todos-los-usuarios-son-iguales-ni-deberian-serlo/>.
 - b. <https://observatoriolegislativocele.com/los-funcionarios-publicos-y-la-desinformacion/>
 - c. https://www.palermo.edu/Archivos_content/2021/cele/papers/Di-sinformation-and-public-officials.pdf.
3. Internet companies' efforts to address disinformation are varied. Their implementation is uneven, the rules are unclear and the impact is unknown. In our research, we found that Internet companies reacted to disinformation differently, more or less reluctantly when dealing with political disinformation in the context of electoral campaigns but much more willingly to exercise strong moderation prerogatives when dealing with issues of public health. In any event, the source of their actions is one and the same: the pressure that has been mounting against them from different quarters, including public officials themselves, academia, civil society, and so on. From a descriptive point of view, their reaction is inconsistent, lacks clarity, and is generally unprincipled. This should be a cause of concern. International human rights law should frown upon such strong exercise of moderation prerogatives in the hands of such powerful intermediary actors, rather than encourage it.
- a. https://www.palermo.edu/Archivos_content/2021/cele/papers/Di-sinformation-and-Content-Control.pdf



- b. https://www.palermo.edu/Archivos_content/2021/cele/papers/Fake-news-on-the-Internet-2021.pdf
- c. https://www.palermo.edu/Archivos_content/2019/cele/Mayo/Fake-news-strategy-to-battle-misinformation.pdf.

As the Rapporteur acknowledged in the call, challenges to freedom of expression are multiple and require diverse approaches and stakeholders to properly address them. Unpacking terms like “disinformation” will be particularly important to allow for depth and a more nuanced approach to issues that are extremely pressing that require serene analysis and policy-making.

We celebrate the initiative of the Rapporteur to address challenges to freedom of expression in times of conflict and violence and consider this a unique opportunity to provide more depth and clarity over some of the concepts that have been associated and tagged as disinformation, including for example, propaganda of war or incitement to violence. We look forward to further opportunities to collaborate with the Mandate on this topic and as the report develops.

Thank you,

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