

Stranger Than Fiction: The Truth Behind “Fake News”

Over the past three years, ‘fake news’ has become something of a buzz word. Analysis by Google Trends shows that the term gained relevance in American Google searches and entered the mainstream discourse during the 2016 presidential elections.¹ The ‘fake news’ phenomenon has recently attracted much international attention with committees set up around the world to investigate the issue.

‘Fake news’ is not new. Rapid dissemination of false information arrived alongside the invention of the printing press in the 15th century.² The ACCC Inquiry into Digital Platforms (**ACCC Inquiry**) acknowledged that issues of ‘authenticity and quality news’ are not new but warned that ‘these problems are potentially magnified online’³. Similar conclusions have been made by governments around the world and this article takes a look at some of the international efforts to tackle this ‘fake news’ phenomenon.

Defining “Fake News”

The term ‘fake news’ is tossed around with a myriad of meanings: to describe fabricated news stories; to identify misrepresentations; even to dismiss information one disagrees with, and short-circuit debate.⁴ There is a hint of irony in the fact that this term wielded to identify misinformation and falsehood, does itself lack a settled definition.

A United Kingdom Government inquiry took a broad view of the term, finding that it could include: fabricated and manipulated content, imposter content, misleading content, accurate content shared in a misleading context and in some instances, satire and parody.⁵ The UK inquiry concluded that the term ‘fake news’ is bandied around with so many meanings that it should in fact be rejected and replaced with settled definitions of ‘misinformation’ and ‘disinformation’.

The European Union has also rejected the term ‘fake news’, arguing it simplifies the complex problem of disinformation: ‘false information deliberately created and spread to influence public opinion or obscure the truth.’⁶ A similar theme emerges from government inquiries in Singapore, which focus on ‘deliberate online falsehoods’ motivated by ideologies, politics and prejudices.⁷

The following definition succinctly captures the concept:

‘[Fake news] is the *dissemination of false information via media channels (print, broadcast, online). This can be deliberate (disinformation), but can also be the result of an honest mistake or negligence (misinformation)*’⁸

Reasons for concern

News and journalism are widely recognised as providing significant public benefit. The ACCC Inquiry

noted that news ‘enables and influences consumers’ decision making and participation in social, economic and democratic processes’.⁹ This purpose is reflected in the implied freedom of political communication recognised by the High Court as essential to the system of representative government enshrined in the constitution.¹⁰

The risks that ‘disinformation’ and ‘misinformation’ pose to quality news and journalism, as well as broader concerns such as national security, are recognised in the various inquiries into ‘fake news’ globally. The common causes identified for driving the increase in ‘disinformation’ and ‘misinformation’ include:

- (a) **‘Clickbait’**: the online news and media environment is a largely advertising driven model based on ‘clicks’. This environment encourages sensationalised or viral content and headline grabbers known as ‘clickbait’¹¹;
- (b) **‘Filter bubbles’**: digital platforms often use algorithms to select the content its users see based on their previous behaviour and preferences. This can create a ‘filter bubble’, in which personalised content is shared among like-minded users heightening polarisation and strengthening disinformation;¹²

1 J Roozenbeek and S van der Linden, ‘The Fake News Game: Actively Inoculating Against the Risk of Misinformation’ (2018) https://www.cam.ac.uk/sites/www.cam.ac.uk/files/fakenews_latest_jrr_aaas.pdf.
2 Ibid 13
3 ACCC, Federal Government of Australia, *ACCC Digital Platform Inquiry Preliminary Report* (2018) 8.
4 Jente Althuis and Leonie Haiden, (eds), *Fake News: A Roadmap* (Riga: The NATO StratCom Centre of Excellence, 2018) 19
5 Digital Media and Sport Committee, *Disinformation and ‘fake news’: Interim Report*, HC 363 17/19 (2018) 7.
6 European Commission *FactSheet: tackling the Spread of disinformation online*, (2018): <https://ec.europa.eu/digital-single-market/en/news/factsheet-tackling-online-disinformation>
7 *Select Committee, Report of the Select Committee on Deliberate Online Falsehoods Executive Summary* (2018) 2
8 Fake News: A Roadmap, NATO Strategic Centre for Strategic Communications, Riga and King’s Centre for Strategic Communications (KCSE), January 2018, 19.
9 above n 3, 243
10 *Lange v Australia Broadcasting Corporation* [1997] 145 ALR 96.
11 See for example the ACCC Inquiry into Digital Platforms Interim report p 240 and the EU Tackling Online Disinformation: a European Approach p 5.
12 European Commission, *Tackling Online Disinformation: a European Approach* (2018) 5.

- (c) **‘Bots’ and ‘Trolls’**: automated online services and fake or unauthentic accounts can fuel the spread of disinformation, colloquially called ‘bots’ and ‘trolls’;¹³ and
- (d) **‘Foreign interference’**: efforts to intentionally fuel disinformation have been found to be a new and ‘unconventional warfare’. A UK Committee was presented with evidence of a sustained campaign by the Russian Government to influence UK elections¹⁴ and it is well known that inquiries into similar issues are being made in the United States.

Global responses to these problems range from legislative and regulatory style solutions, to policy and education-focused interventions. This reflects the clear complexities in addressing the issue. On the one hand, a lack of regulation may negatively impact public debate and democratic processes by allowing widespread disinformation. On the other hand, excessive regulation of news and media could in itself stifle debate and freedom of expression.

The following sections provide a snapshot of the contrasting steps being taken in the EU, Singapore and the UK.

European Union

The EU has taken steps to tackle disinformation with the 2019 European parliamentary elections in sight. These initiatives are intended to complement the General Data Protection Regulation (GDPR), which strengthened the protection of consumer data online.¹⁵ EU recommendations ranged from consumer-focused programs, such as increasing media literacy skills, to regulatory efforts that target digital platforms. In this regard, the *EU Code of Practice to counter disinformation (Code)* was published on 26 September 2018.

The Code is voluntary and implements self-regulated standards. On 16 October 2018 the Code was signed by Google, Facebook, Twitter and Mozilla. Other signatories include European communication and advertising associations. The key elements to the Code are:

- (a) it defines ‘disinformation’ as ‘*verifiably false or misleading information which*:
 - (i) *is created, presented and disseminated for economic gain or to intentionally deceive the public; and*
 - (ii) *may cause public harm (threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens health, the environment or security)’*
- (b) the code includes a number of commitments, such as:
 - (i) creating policies to disrupt the monetisation incentives for misrepresenting information about oneself (commitment 1);
 - (ii) further efforts to clearly distinguish advertisements from news content (commitment 2);
 - (iii) putting in place clear policies regarding identity and the misuse of automated bots (commitment 5);
 - (iv) investing in technological means to prioritise relevant authentic and authoritative information in searches and feeds (commitment 8);
 - (v) supporting good faith independent efforts to track disinformation such as independent fact-checking bodies (commitment 12).

- (c) Measures taken under the Code must fit within the existing Charter of Fundamental Rights of the European Union, particularly, freedom of expression in article 11.
- (d) Signatories have published and agreed to follow a range of best practice policies, annexed to the code. These include: *Facebook ‘Fake News’ Policy, Google Policy on misrepresentation and Twitter Political Campaigning Policy.*

On 29 January this year, the Signatories published their first self-assessment reports setting out the measures they had taken to meet their commitments under the Code. The EU noted that these reports showed some progress, particularly in removing fake accounts, but additional action is still required.¹⁶

The effectiveness of this self-regulatory code remains to be seen but it does represent engagement with the issue of ‘fake news’ at a platform level. The EU will conduct a comprehensive assessment of the code at the end of this year, noting that if results are unsatisfactory, further regulatory measures will be considered.¹⁷

Singapore

In Singapore, a parliamentary Select Committee took written submissions and conducted public hearings, concluding with a report that made 22 recommendations on disinformation. The report made similar recommendations to those made by the EU, regarding public education, upskilling journalists and establishing a media industry based fact-checking body.

However, in contrast to the EU efforts, the Select Committee report in Singapore has made clear that legislative action is required.¹⁸ The legislative recommendations include:

¹³ Ibid 5.

¹⁴ Digital Media and Sport Committee, *Disinformation and ‘fake news’: Interim Report*, HC 363 17/19 (2018) 43.

¹⁵ European Commission, *Tackling Online Disinformation: a European Approach* (2018) 1.

¹⁶ European Commission, Brussels (2018): https://ec.europa.eu/commission/news/code-practice-against-disinformation-2019-jan-29_en

¹⁷ Ibid.

¹⁸ Select Committee of the Thirteen Parliament of Singapore *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences And Countermeasures* (2018) 164.

- (a) legislating a “de-monetisation regime” that would cut off digital advertising revenue against purveyors of online falsehoods (recommendation 15);
- (b) where a requisite of criminal culpability is met, impose criminal sanctions on perpetrators of deliberate online falsehoods, including use of inauthentic accounts or bots (recommendation 16); and
- (c) increase government powers to swiftly disrupt the spread of disinformation, such as take-down powers and access blocking, with judicial oversight (recommendation 12).

These measures are noticeably more forceful than those made in the UK and the EU, and the Select Committee did consider that these measures could harm free speech. However, the Committee concluded that the measures were necessary given ‘that online falsehoods undermine democracy and harm the democratic contestation of ideas, which freedom of speech serves to protect’.¹⁹

The exact form of the proposed legislation is not yet clear but reports suggest it will be tabled this year.

United Kingdom

After an 18 month inquiry by a Committee of the House of Commons, on 14 February this year the ‘Disinformation and ‘fake news’: Final Report’ (UK Report) was published.

Like the inquiries in the EU and Singapore, this inquiry considered issues such as foreign interference, online advertising and the impact of algorithms used by digital platforms. Recommendations included making digital literacy a ‘fourth pillar of education’ and amending electoral and political advertising laws. However, the most unique of the recommendations are those aimed at what the UK Report calls ‘big tech companies’ such as Facebook.

A substantial part of the UK Report is dedicated to Facebook and the Cambridge Analytica scandal, in which Facebook ‘allowed applications and application developers to harvest the personal information of its customers who had not given their informed consent’.²⁰ Mark Zuckerberg was asked to appear before the Committee and the UK Report is critical of that fact he choose not to do so. While the report does make some comments about other platforms such as Google, the primary focus is Facebook.

The recommendations aimed at ‘big tech companies’ like Facebook seek to expand the potential scope of these companies legal liability and include:

- (a) developing a new category to cover tech companies that are neither ‘publishers’ nor passive ‘platforms’. The aim of this would be to catch social media platforms like Facebook and ensure they can assume

legal liability for content posted by users that is identified as harmful;

- (b) establishing an independent regulator to implement a compulsory code of ethics for tech companies that defines harmful content. This code would establish clear, legal liability for tech companies to act against agreed harmful and illegal content on their platform; and
- (c) imposing a levy on tech companies operating in the UK to help fund the work of the Information Commission Office, which could act as an effective “sheriff in the Wild West of the Internet”²¹.

The Final Report is a clear indication that efforts to tackle disinformation in the UK will target at digital platforms like Facebook. Like in the EU, it seems that efforts are intended to complement existing data protection regulations like the GDPR. The report was only recently release so it remains unclear which recommendations will be followed and the form any legislation would take. Questions that still need to be resolved include a definition of ‘harmful content’. The Final Report suggests ‘big tech companies’ should have legal responsibilities for ‘harmful content’ online but this term is not defined.

Way Forward

International efforts to tackle disinformation are still in their infancy. There are clear challenges still ahead and it remains to be seen how effective the measures proposed will be. As we continue to watch this space, there are sure to be many lessons learnt from the successes, of lack thereof, of international efforts to address this ‘fake news’ phenomenon.

Contributions & Comments

Contributions and Comments are sought from the members and non-members of CAMLA, including features, articles, and case notes. Suggestions and comments on the content and format of the Communications Law Bulletin are also welcomed.

Contributions in electronic format and comments should be forwarded to the editors of the Communications Law Bulletin at: clbeditors@gmail.com

¹⁹ Select Committee of the Thirteen Parliament of Singapore *Report of the Select Committee on Deliberate Online Falsehoods Executive Summary* (2018) 10 [56].

²⁰ Digital Media and Sport Committee, *Disinformation and ‘fake news’: Final Report*, HC 1791 (2019) 21

²¹ *Ibid* 18.