

Written Representation 133

Name: Lim Sheng Kang Shaun
4th Year Student at the Faculty of Law, NUS

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Declaration

I am currently a fourth-year student at the Faculty of Law, National University of Singapore, with research interests in technology, regulation, and behavioural economics. I was formerly an active volunteer with the State Courts, Community Justice and Tribunals Division, dealing with among others the enforcement of the Protection from Harassment Act. Currently, I am an active volunteer at Meet-the-People Sessions in the constituency of Buona Vista, and am also a member of the Young PAP. However, I make this submission to the Select Committee purely in my private capacity as a citizen, and any interest I may have in any issue falling within the Committee's Terms of Reference is a purely civic and non-pecuniary one.

As for the dates listed in the Committee's Press Release of 5 March 2018, namely 14-16, 22-23 and 27-29 March, I remain in Singapore for all of them, and am therefore available to appear before the Committee if so required.

Summary

Due to the open and borderless nature of cyberspace, national laws bound by physical constraints of geography and territorial jurisdiction tend to be less effective in the virtual world. Short of effectively creating a national intranet - like China and North Korea have done, but which we cannot afford to do for predominantly economic reasons - we must accept that the Internet represents a free flow of information into our borders over which we have little control. For this reason, our reaction to the phenomenon of online falsehoods can only be purely defensive. Our primary and best defence lies in reinforcing and enhancing the Psychological Defence component of our Total Defence structure, and recognising that it extends to more than just embracing the multiracial and multireligious nature of our society.

To that end, two factors are critical. The first is trust between society and our Government and its institutions. Not only must the Government deal honestly and fairly with its citizens, as it has always done, it must be perceived to be so by an overriding majority of society. However, it takes two hands to clap, and the counterpart must be an increased focus on civic and critical education of our society. The greatest danger to us in the fight against fake news is our general political and intellectual apathy. Political apathy weakens the incentive to be involved until it is too late, whereas intellectual apathy removes our ability to deal with vines of doubt planted by others.

On the subject of laws, slight enhancements to present laws rather than an entirely new law might be called for. Singapore, compared to many of the liberal Western democracies mentioned in MICA and MinLaw's joint Green Paper, already has relatively comprehensive laws against fomenting enmity between different segments of society. Laws alone cannot help defend against the more insidious effects of fake news and misinformation, and their presence should not be taken as a guarantee of

safety. All they can do is convey societal disapproval of the actions of perpetrators, if ever caught locally.

Background

1. For better or for worse, the Internet is now a fact of life. A virtual world that transcends national geographical borders and territorial jurisdictions, it obeys the rules of its code more than it pays heed to law, and is shaped from within by evolving norms and from without by market forces. Law, code, norms, and market forces – these are the four fundamental factors that must be considered in the regulation of any application of technology,¹ and the Internet is but one such application.

2. As with virtually every other aspect of our existence, Singapore is unfortunately a price-taker when it comes to influencing the development of the Internet. While it is in our strategic interest to cultivate local expertise and develop thought leadership so as to subvert this price-taking tendency at the highest level, we must recognise that there are a great number of things for which our wishes are entirely irrelevant. Decisions on code and algorithms are beyond our ability to affect with any kind of law and regulation, and our economic clout is insufficient to constitute a market the same way that China does.

3. The experiences of the United States with copyright regulation should sound a cautionary tale with attempting to react to technology via law. While Section 512 of their Digital Millennium Copyright Act provides a statutory mechanism for copyright owners to request content providers to take down infringing material, copyright owners note that it is almost impossible to take down material hosted on overseas servers over which no US entity has control.² This highlights the open nature of the Internet vis-à-vis the limited reach of any national law. Short of creating a national intranet like

¹ See generally Lawrence Lessig, *Code version 2.0*, available at <http://codev2.cc/download+remix/Lessig-Codev2.pdf>. Professor Lessig is a professor of law at Harvard Law School with research interests in technology and regulation.

² See Urban et al, *Notice and Takedown in Everyday Practice* at page 45, available at <http://ssrn.com/abstract=2755628>.

China and rigorously policing digital traffic – an exercise which we cannot afford to undertake, in view of our status as an open economic hub – it is impossible to police or censor the flows of information into Singapore.

4. In fact, it is precisely because of the open flow of such information that the Internet is being used as a weapon of foreign propaganda, the examples of which are well-enumerated in the Green Paper. I pause here to mention that while the main perpetrator of such tactics, generally suspected to be Russia, has little strategic interest in us, it is possible and likely that China may soon resort to such tactics as well. This is all the more so given that Oceania in general is wising up to the personal influence of Chinese agents, as the recent scandal of Chinese sponsorship in Australia and our own experiences with Professor Huang Jing, lately of the LKY SPP, show.

5. Without being privy to the surveillance capabilities of the Government over internet traffic in Singapore,³ I cannot comment on the technical ability to monitor the Internet or the expense thereof, and will restrict myself to commenting on the enactment of legislation criminalising the dissemination of fake news, rather than any kind of enabling legislation.

6. Criminal laws will be of little use in defending against assaults generated from overseas, or from within. The effect of such propaganda is subtle; vines of fear and doubt germinate in the minds of individuals which the criminalisation of sedition or inflammatory content cannot excise. Even where the perpetrators are local, their prosecution is akin to closing the stable door after the horse has bolted, as the damage

³ The ability of the Government to detect and preventively detain self-radicalised individuals under the ISA suggests that there is indeed some degree of surveillance of online traffic.

has already been wrought. Undoubtedly they should be prosecuted, but our true concern should not lie with the punishment but with the prevention.

7. If we cannot stop the spread of fake news, if we accept that it is an aspect of the Internet and of modern communication beyond our control, then we have to find ways to prevent or defend against its effects. We can take heart in having successfully done something of the sort before in regard to racial and religious harmony, in remaining relatively immune to the politics of race, division, and envy even while politics around us are riven with tensions and discord. We did so with a strong stance on racial and religious harmony, as part of our Psychological Defence component of Total Defence, and repeatedly emphasised in all our citizens from a young age the importance of maintaining such harmony. From this, we can surmise that education is to be a crucial component of our strategy against fake news.

8. However, these lessons cannot be blindly applied without deconstructing the phenomenon of fake news. We need to know what it is we face before we can decide how to counter it.

Fake News

9. The phenomenon of fake news, as we see in the world around us today, can be roughly split in the following ways:

- a. By the territorial provenance, i.e. whether local or foreign;
- b. By the primary motivation, whether financial, political, or “well-meaning”.

10. This split means that there can be up to five species of fake news:

- a. Foreign financial fake news, e.g. the example of the Macedonian youths profiting off the advertising during the 2016 US Presidential Election;
- b. Foreign political fake news, e.g. the attempts by foreign powers to influence the internal affairs and democratic processes of a state;
- c. Local financial fake news, e.g. The Real Singapore;
- d. Local political fake news, e.g. TR Emeritus, States Times Review, and assorted Facebook groups;
- e. Local well-meaning fake news, e.g. “alerts” on plastic rice sold by NTUC, the collapse of part of a condominium at Punggol, etc.

11. One might observe that superficially, there seems to be no real distinction between the substantive content of the fake news in items a to d above. However, the distinction is subtle but important, as our defences and responses will vary accordingly. For instance, local fake news can at least be made subject to our laws and regulations, and the “clickbait” nature of financial fake news can sometimes help to distinguish it from the more insidious effects of political fake news.

12. Naturally, the primary distinction between the provenance of fake news is in our ability to bring our jurisdiction to bear on perpetrators. While it may be desirable to include an extraterritoriality clause in any legislation we may choose to enact on this matter, the practical reality is that many foreign perpetrators are unlikely to have reasons to visit Singapore, even if we did obtain the co-operation of other foreign security agencies in ascertaining their identity.

13. As for the primary motivation, financial fake news relies on the use of Google Ads or other similar advertising services, in conjunction with high site traffic, to derive revenue. This is distinguished from political fake news because financial fake news is indifferent to the substantive content posted – all that site owners who peddle financial fake news are concerned about is the site traffic they get. Articles of a politically controversial nature are of course one way to obtain high site traffic, but the point of financial fake news is that it is not essential that the material be politically controversial, and more than just the content can be targeted.

14. In contrast, political fake news has a clear political agenda. In a sense, it is the converse of financial fake news in that political fake news sites can be indifferent to the funding or financials of running such a site. While already partially subject to local regulations on foreign funding, the fact that these sites are financially indifferent means that IMDA regulations are only partially effective.⁴

15. The mechanism of action of financial and political fake news is insidious. In peddling articles which cast aspersions on the policies of governments, it sows doubt

⁴ See e.g. <http://ricemedia.co/terry-xu-i-am-ready-to-go-to-jail-forever/>, where, despite the withdrawal of funding from The Online Citizen, its Chief Editor continues to run the site out of his own sense of civic obligation. The interview is also interesting for disclosing that he sees his role as providing an outlet for the politically discontent, which suggests that there is a possibility for the Government to co-opt this role in permitting political discontent to vent in a controlled manner.

and distrust between citizens and the institutions of state. This decrease in trust reduces the confidence that citizens have in their present political establishment to solve their daily needs and issues. Combined with a less-than-thorough understanding of the proper operation of state institutions according to the constitutional order, this in turn manifests itself as an increased stridency against the actions and policies of state institutions. Inevitably, this also drives a wedge between the elite seen to run the machinery of state, and the everyday man. We see the effects of such a vicious cycle in the assaults on the judges in the wake of the Brexit case,⁵ where the bench was roundly pilloried in some rather rabid, pro-Brexit segments of the British press. Similar factors have also been theorised to be behind the meteoric rise of now-US President Donald Trump on a populist campaign, considering that prior to the 2016 election he was a relative political outsider. The danger is in creating a political mob running only on knee-jerk reactions, drowning out all rational discourse in favour of emotive responses – that is no way to run a country properly.

16. The last type of fake news, well-meaning fake news, is easiest to recognise but hardest to police and stop. It has several characteristics that set it apart from financial and political fake news. First, it tends to be phrased as a warning against something or an exhortation to do something before an impending event. Second, in contrast to the other types of fake news which tend to be on publicly available portals, well-meaning fake news is most commonly peddled on private messaging groups on services such as Facebook Messenger, WhatsApp, and Telegram. Third, the spreaders of such fake news are not necessarily also its creators, and their intentions

⁵ *R(Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5. For a sample of the reactions in the British press, see <https://www.theguardian.com/politics/2016/nov/04/enemies-of-the-people-british-newspapers-react-judges-brexit-ruling>

are often different – while the creators may be malicious, they may also simply be misinformed, and the spreaders even more so.

17. These factors combine to make well-meaning fake news more capable as a physical threat to Singapore than financial or political fake news (though not necessarily a greater danger). In containing a warning or an exhortation to action, they attempt to influence the readers into concrete action; in being conveyed through relatively more trusted channels and coming from closer sources, people might actually be inclined to act on the exhortations. It does not take a doomsday prophet to foresee the perils of a fake message claiming a major bank in Singapore is about to go under, or for a terrorist attack hoax to be circulated – on top of the economic damage to the institutions or locales, there is a real danger that any flux or mass of people that may result could also cause physical injuries in stampedes or the like.

18. A closely-related phenomenon, though not fake news *per se*, is the rise of online phishing or email scams that rely on deceiving members of the public via duplicated websites. I mention it here for two reasons. First, the lessons in educating citizens on how to recognise fake news apply equally to recognising fake websites. Second, where such scams involve duplicating government websites or communications, there is inevitably planted the seed of suspicion regarding any future, ostensibly-official communication or information from the Government. This is cause for concern because it degrades, however subtly, trust between society and the Government, another essential component of our defence against fake news. Even if online scammers are not allied with the purveyors of fake news, they are at least fellow travellers.

19. On a parting note, it is equally important to define now what fake news is not. Quite self-evidently, fake news must be fake, i.e. it has to be false in some particular *or* peddled without any regard to its truth. Part of the difficulty in legislating on fake news is that it is difficult to draw a line between the truth or falsity of a matter, and the intention with which it is spread, or even to divine the intentions with which it is spread. There is a difference between a socio-political site with a political axe to grind attributing sinister motives to the Government, and one that has good intentions but pushes for unsound policies, whether because of their own ideological inclinations or simply a lack of good information. We should be slow to assume the mantle of arbiter over ideological correctness or permissibility.

Education and Trust

21. It follows that to immunise ourselves against fake news, we must first be able to recognise it for what it is. Second, to mitigate its effects in attempting to sow discord, we must have a high degree of confidence that the Government will do right by us in all respects. Both these measures are long-term defences, and it is all the more imperative that we put them in place as soon as possible to shield ourselves from the coming storm.

22. Recognition of what fake news is must be a lesson on recognising more than just the trappings of fake news. To that end, while it is important to debunk untruths in fake news, it is also important that Singaporeans in general be able to recognise what makes fake news fake news. Therefore, it is vital that greater media literacy and critical thinking be a component of Singaporean education.

23. Factually, the microsite devoted to debunking untruths relating to national policies and infrastructure, is an excellent building block. However, it suffers from at least three systemic flaws. First, being an organ of the Government, it can do no more than explain matters of general national importance. Therefore, it must be a bystander when issues of politics are involved – but as we have seen, issues of politics are fodder for fake news sites. It would be unseemly for an instrument of the Government to defend a political party from any allegation or likewise. Second, as part of the bureaucracy, there is by definition a response time in debunking untruths by which time damage might have been done, especially from the well-meaning fake news sort. Third, it does not currently have a means, like an app or a public notification system, to reach the general public proactively. It has no accessible Facebook page, for instance, and therefore cannot compete with the various means by which fake news can be delivered direct to Twitter or Facebook feeds. Due to its flaws, Factually

therefore cannot be relied on as the sole means, or even the first line of defence. If fake news were an epidemic or mass injury event, Factually would be the hospital or the clinic – vital for major treatment and care, but too far from the site to offer timely help.

24. Public education, including media literacy, must be relied on as the first line of defence to blunt and avert any impact that fake news may have before an official response can be put out. If fake news cannot get a good hold on the population, its effects are more easily ameliorated and contained. This is all the more important in combatting fake news of foreign extraction, which cannot even be touched by our criminal and licensing laws. Extending the casualty metaphor, media literacy is training the public in first aid and basic triage, drastically increasing the chances of survival while more aid can arrive.

25. Media literacy involves questioning the meta-attributes of a piece of information, beyond simply its content. In other words, it questions not just the substance but the delivery of that substance. An example is the National Library Board's SURE campaign,⁶ but the impact of its campaign is at best limited to those still in the education system. Working adults, for instance, are unlikely to interface with the SURE campaign, and anecdotally, it is working adults who through "slacktivism" on social media are most likely to violate its tenets.

26. What we are fighting here really is a conflict of the intuitive versus the rational. It is not easy to overwrite base instincts – or Type I decision making, as the parlance in behavioural economics goes – with consciously-learned methods of thought, or Type II. The SURE campaign needs to go further and be worked into a fundamental

⁶ See <http://www.nlb.gov.sg/sure/sure-campaign/>

part of our education system, to stand a chance of being part of the innate response of persons when faced with the need to evaluate information. As it is, most Singaporean adults are sadly beyond our ability to reach meaningfully in this regard – not that we cannot, or should not, try to educate them on the perils and proper usages of social media.

27. As regards the education system, it also follows that an emphasis on blind and rote learning cannot be compatible with the aims of the SURE campaign. Information literacy is premised around deeper questioning and curiosity about the information in question. Perhaps the SURE campaign can be integrated into the tertiary education system, as part of mandatory classes or modules in JCs, polytechnics and universities, striking a good balance between reaching malleable minds and ensuring that they have the intellectual maturity to grasp and wrestle with the concepts.

28. As a segue into the matter of political trust, I feel obliged to mention that part of the susceptibility of Singaporeans to fake news lies in our propensity for passive acceptance, whether as part of our education or in political matters. The issue here is not with the correctness of the content but the way in which we convince ourselves, as individuals, that the content is correct. Various writers have commented on our over-deference to authority; to particularise the problem further, it is the perspective that authority is correct simply because it is authority that causes this malaise. From parents enforcing their will by saying “Because I say so”, to the making of decisions like the clearing of Bukit Brown, the perceived lack of control by those in submission is part of what causes this apathy. Therefore, intellectually, we are not trained to grapple critically with information that appears legitimate or authoritative, because the mental processes have already been done for us.

29. Applied to the political sphere, this means that the ruling party in government must do more to convince and engage the population, rather than present every major decision as a *fait accompli*. I make the distinction between the party and the government in this case because it is technically the party's political loss if its governmental policies are not properly understood. I have no doubt as to the correctness of the process by which decisions are made by the party in government. But it is key to the public's education in information literacy that they be shown how the correctness of the decisions made derive from the validity of the process and the concerns and inputs considered, and not simply be presented with the decision to uncritically accept.

30. In other words, it is in the interest of Singapore, as a polity, that its people are politically sophisticated and able to engage rationally in civic debate. But to be so capable, they must first be intellectually trained – to hold both sides of the argument in their head, to reason through the flaws and merits, and to come to a decision of their own, to recognise the reasons why they choose this outcome, and to recognise that there could be equally valid reasons for choosing other reasons.

31. Sadly, this is not necessarily the case today. The quality of civic discourse in our society is disturbing, overly polarised, and seemingly incapable of civility and a spirit of "agreeing to disagree". *Ad hominem* attacks seem to dominate over reasoned discussions of the issues. Part of the blame must be laid at the feet of social media culture, but short of the 140-character limit in Twitter, there is no reason why social media as a communication medium cannot be a means for quality discourse. We may not be able to change the code of social media, but we may at least be able to shape a new norm in our citizens' use of social media as a platform for informed and enlightened debate.

32. Questions of political sophistication relate to the issue of trust in government like so – the more politically sophisticated a populace is, the more immune it is to political fake news, and the less governmental trust suffers, and vice versa. As an added side effect, a politically sophisticated populace holds an institutionally-transparent government to account far more ably than an opposition which cannot even block a special majority amendment to the Constitution, and which has little room to manoeuvre on policy issues given Singapore’s “precision watch” status.

Laws

33. We now turn to the issue of whether we need laws against fake news. As earlier mentioned, I will touch only on the issue of criminal liability and licensing.

34. As regards foreign fake news, while we should implement extraterritoriality provisions similar to those found in the Computer Misuse Act⁷ and the Protection from Harassment Act,⁸ we should be under no illusions that they will combat the effect of fake news on the minds of our citizens. If at all, these provisions only help catch Singaporeans overseas who peddle fake news to Singaporeans, such as in the case of Ai Takagi and Yang Kaiheng, the operators of the now-defunct The Real Singapore website.

35. As regards local fake news, there are some measures we can take, but all of them should be exercised complementarily and not in isolation.

36. First, IMDA can exercise finer control by varying the conditions of the broadcasting class license. For instance, it could be made a condition that sites earning a substantial income via web advertising services could be made to declare this via clickwrap popups. This eases the task of applying information literacy questions because the user is put on notice that there may be a financial agenda to the site. Naturally, mistruths as to the scope or purpose of the income should be prosecutable. If such a condition were in place for The Real Singapore, it is hard to see that their articles would have been taken seriously once their true intentions were known.

37. While this method tackles the main source of fake news – the Internet, it is not medium-neutral as it is pegged to the conditions of the Broadcasting Act. Furthermore,

⁷ Cap 50A, 2007 Rev Ed Sing, s11. This is the edition pending updates from the passage of the Cybersecurity Bill.

⁸ Cap 256A, 2015 Rev Ed Sing, s17.

it does not deal with fake news spread via private groups, which are by definition out of IMDA's regulable purview.

38. Secondly, adjustments to our present criminal provisions, such as the Sedition Act and the Penal Code, can be contemplated. At present, the only offense involving false information is in the Telecommunications Act,⁹ but this is limited almost exclusively to telephonic communications.

39. That being said, any adjustments to our laws to establish criminal liability for fake news must be dealt with very carefully. Regarding political fake news, it is difficult to draw the line between a genuine difference in political opinion founded on access to incomplete information, and a straight-out wilful attempt to mislead. The difference lies primarily in the intent, the *mens rea* in criminal legal parlance. Some potential tests could be as to whether the peddler was wilfully blind, or reckless, or indifferent to the truth of what was said, or alternatively whether there was good faith in the promulgation of the statement, or good reason to believe in the truth of the statement. The test has to be a mixed test of subjective belief premised on objective fact, to avoid people claiming pure subjective belief in the truth of what they wrote, but even so there are difficulties in determining what is objective fact. In matters of political controversy where there is information asymmetry between the Government and the public, such as in the recent Budget debate over the right level of reserves to have, it is not in the Government's interest to have to disclose the full underlying facts, nor would it be fair to an accused to have him judged on the basis of information he could never have legally obtained nor knew was there. But where else should the line be drawn – on the information objectively available to the accused? That would conflate the objective and

⁹ Cap 323, 2000 Rev Ed Sing, s45.

subjective components of the test. A test of “information available to the reasonable man” fares no better save in obvious cases, as Googling turns up such a plethora of information that it is reasonably questionable whether a reasonable man ought be deemed to have read it all.

40. The question is even more wretched in cases of well-meaning fake news. Not only is there likely to be an absence of *mens rea*, as the intentions were benevolent, there will be difficulty in linking the fake news to the physical harm caused, if any, under traditional legal doctrines of causation. While causation could be overcome with deeming provisions, the lack of a suitably culpable *mens rea* is damning. It is hard to argue for the establishment of a strict liability offence where the detrimental outcomes are almost entirely due to the Law of Unintended Consequences. Similarly, effectively establishing a duty to ensure the correctness of anything published is overly chilling, ineffectively assigning to legislation one of the functions of the marketplace of ideas. And all this is without considering the practicalities of investigating a chain message, which could go through tens if not hundreds of persons – a measure hardly justified except for the most disastrous of consequences.

41. For these reasons, I would humbly advise the Select Committee to be extremely careful about recommending legal approaches to the problem of fake news. It is likely that there will have to be at least two different sets of provisions in some way or another – one dealing with financial and political fake news, and one with well-meaning fake news. Also, while our political processes for the moment appear well-insulated against traditional means of foreign influence, we should be under no blinkers that they are a sufficient safeguard against new means of foreign influence. For instance, despite the statutory imposition of a Cooling-Off Day, it is hardly likely that a foreign agent seeking

to influence our election would abide by such niceties and refrain from throwing an explosive rumour into our electoral mix.

Conclusion

42. For the reasons demonstrated, laws are a necessary but wholly insufficient safeguard against fake news. They help to delineate what is acceptable, and provide a means to hold malfeasants to account, but cannot shield our minds and guard our thoughts from subtle and insidious whispers.

43. The best defence must still be at the root. Singaporeans have to be able to renew their trust that the Government is doing right by them in an increasingly multipolar and complex world, and the only way to do that is to show them a glimpse of the way decisions should be rightly made, and to educate them on how such decisions should be made and arrived at, and what factors to take into account and why. Simply forbidding them the fruit of knowledge on the bare assurance that all else is right with the world, the way it has been planned, can only lead to rebellion and heartbreak, as the good book goes.