

Written Representation 87

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Received: 28 Feb 2018

**WRITTEN REPRESENTATIONS
TO THE SELECT COMMITTEE ON DELIBERATE ONLINE FALSEHOODS —
CAUSES,
CONSEQUENCES AND COUNTERMEASURES**

**RAJAH & TANN SINGAPORE LLP
28 FEBRUARY 2018**

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1. Statement of Interest

- 1.1** Rajah & Tann Singapore LLP is a leading law firm in Singapore and in the ASEAN region, with Rajah & Tann Asia. The Technology, Media, and Telecommunications Practice advises extensively on various issues relating to technology law including data protection issues and cybersecurity issues. The team and its practitioners have won numerous accolades as a leading practice from, amongst others, *Chambers and Partners* and *Legal 500*.
- 1.2** This submission is in response to the invitation by the Select Committee on Deliberate Online Falsehoods — Causes, Consequences and Countermeasures (the “**Select Committee**”) to provide feedback on the issue of the regulation of online falsehoods.
- 1.3** None of this memorandum is confidential.

2. Executive Summary

- 2.1.1** There are already numerous laws in place which are aimed at regulating the publication and dissemination of undesirable online content, with each law encompassing an aspect or facet of the broad concept of fake news. Given that the inadequacies in the aforementioned existing laws stem largely from the procedural difficulty in the enforcement of such laws in the fastmoving digital realm, and not from any substantive deficiency in the coverage of these laws, we submit that Parliament should examine how it may enhance existing laws to improve their enforceability. Further, we are of the view that any attempt to create a new law targeting fake news would necessarily face significant difficulty in defining the broad, amorphous concept of fake news with a sufficiently meaningful degree of clarity, nuance and accuracy.
- 2.1.2** We would therefore recommend that Parliament look to amend and enhance the various existing laws that are intended to regulate undesirable online content. In conjunction with this, we would also recommend that the Government adopt softer regulatory measures that would arm the public with the necessary education and online resources that would enable them to effectively identify fake news and self-police the proliferation of fake news in their online and social circles.

2.2 Existing laws are sufficient to regulate the issue of fake news

- 2.2.1** We submit that there are already a number of laws in place which would apply to, and are sufficient to regulate, the issue of fake news if these laws are enhanced appropriately. We note that fake news is a multi-faceted concept, involving not only false statements but also statements which are injurious to the public interest, public order, national harmony or even to a particular individual. As such, laws that would govern these different aspects of fake news can be already found in multiple pieces of existing legislation and these cumulatively cover a wide scope which ensures that fake news is more than sufficiently dealt with from multiple angles.
- 2.2.2** Fake news which is injurious to the public interest, public order and national harmony is already prohibited by legislation such as the Penal Code (Cap. 224) which prohibits material that would incite violence; the Sedition Act (Cap. 290) which prohibits material which is seditious; the Internal Security Act (Cap.143) which prohibits material which is prejudicial to Singapore's public security; the Maintenance of Religious Harmony Act (Cap. 167A) which prohibits material which may create hostility between Singapore's different religious groups; and the Administration of Justice Protection Act 2016 ("**AJPA**") which prohibits material of a contemptuous nature which is likely to undermine public confidence in the Court.
- 2.2.3** Further, fake news that relates to a person individually is currently governed by the Protection from Harassment Act (Cap. 256A) ("**POHA**") and the laws of defamation. A person who is the subject of fake news may apply for a Court order in respect of the fake news under section 15 of POHA and may take up

a civil action in respect of the fake news if it is defamatory and causes harm to his reputation.

2.2.4 Fake news is also regulated by medium of transmission, as fake news that is transferred via telecommunications networks is prohibited by section 45 of the Telecommunications Act (Cap. 323), which makes it an offence of any person who knows that a message is false or fabricated, to transmit that message or cause that message to be transmitted.

2.2.5 Additionally, the regulation of fake news published on online platforms is already covered by the Broadcasting Act. The regulatory framework under the Broadcasting Act involves Internet Content Providers being automatically class-licensed under the Info-Communications Media Development Authority (“**IMDA**”) Class License Scheme, pursuant to the Broadcasting Act and the Broadcasting (Class License) Notification. These online platforms are required to observe the IMDA Class Licence Conditions and the Internet Code of Practice, which require online platforms to employ their best efforts in ensuring that “prohibited material” is not broadcast through the Internet to Singaporean users, with such “prohibited material” including material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.

2.2.6 As such, it is evident that the current regulatory framework is sufficiently wide enough to ensure that all the different facets of fake news are covered such that fake news is effectively dealt with from all angles. That said, we note that the current laws may require refinement in respect of enforcement procedures such that the current laws can be more easily and efficiently used to tackle fake news.

2.3 Existing laws that apply to fake news may be enhanced to better regulate the issue of fake news

2.3.1 If Parliament is of the view that the existing laws are unsuited for regulating fake news, we submit that the existing laws we have discussed at paragraphs 2.2.2 to 2.2.6 above may be enhanced via amendments targeted at improving the efficiency and efficacy of how such laws can serve to combat the ills of fake news.

2.3.2 One key concern that Parliament may potentially have relating to the existing laws that apply to fake news are that the enforcements procedures under these laws may not be agile enough to address the speed at which fake news can be spread. We are of the view that this may be remedied by enhancing the enforcement procedures provided for under these existing laws.

2.3.3 As mentioned above, the IMDA Class License Scheme based on the Broadcasting Act and the Broadcasting (Class License) Notification is useful in regulating fake news on online platforms. Under section 16 of the Class License Conditions, there is a takedown regime for objectionable content, where a class licensee is required, upon receipt of a takedown notification

issued by IMDA, to remove from its platform, to remove any online content that contravenes the Internet Code of Practice or is “against the public interest, public order or national harmony”, or “offends against good taste or decency”, which would include any fake news being circulated on its online platform. The takedown regime has the benefit of being a flexible and agile tool that would enable the Government to effectively respond to and stop the proliferation of fake news.

2.3.4 However, we note that the takedown regime under the class licensing framework, unlike the takedown regime applicable to individual licensees, presently lacks a clear statutory timeline within which the offending content must be removed upon receipt of a takedown notice from IMDA, and also lacks clear statutory penalties should a class licensee fail to comply with the IMDA’s takedown directions. The relevant statutes dealing with the IMDA Class License Scheme could therefore be amended to provide for clear statutory timelines and penalties, thereby giving the takedown regime more teeth and improving its effectiveness as an enforcement tool.

2.3.5 In a similar vein, we note that the AJPA provides for a means by which the publication of contemptuous statements can be halted pending the completion of the full criminal process of charging and convicting the individual of an offence under the AJPA. Under the AJPA, the Attorney General may make an *ex parte* application to court without notice, for leave to issue a Non-Publication Direction (“**NPD**”) to the platform on which the contemptuous statement had been published, to require said platform to cease the publication of the allegedly contemptuous content. We are of the view that the NPD regime can be extended and applied to the existing laws discussed at paragraphs 2.2.2 to 2.2.6 above, in order to enable the Attorney General to halt the publication of the offending content prior to the completion of the full criminal process, thereby increasing the agility and effectiveness of the existing laws in tackling the proliferation of fake news.

2.3.6 We note that there was a recent incident where a Chinese newspaper article posted on Facebook had been doctored to suggest that a People’s Action Party Member of Parliament had enabled the accused in the City Harvest Church matter to obtain a lighter sentence by virtue of his status as a PAP Member of Parliament. This was clearly a contemptuous statement within the ambit of the AJPA, and was widely considered to be a notable example of what constitutes fake news. The Attorney General wrote to the individual responsible for posting the doctored image and was swiftly able to get the said individual to remove his offending post and issue a full public apology. This incident therefore demonstrates how the Attorney General was able to make effective use of an existing law (i.e. the AJPA) to quickly address a piece of fake news that was being spread before real damage could be done, thereby showing that the existing laws dealing with objectionable content are in fact sufficient.

2.4 Difficulties with creating a new law specifically targeted at fake news

2.4.1 The major difficulty we foresee in the creation of a new law specifically targeted at fake news is the issue of producing a clear and nuanced definition of what would constitute fake news, considering that fake news is not a concept which lends itself to being defined clearly. We note that fake news is a highly broad and amorphous concept, and thus it would appear difficult to encapsulate a definition of it within a few lines of legislation. Any definition of fake news that seeks to be sufficiently comprehensive is likely to be so broad in scope that it would lack meaningful utility. Given the difficulty we envision in articulating the definition of fake news in a nuanced, clear and certain manner, we submit that any new law targeted at fake news would only serve to create confusion and uncertainty.

2.4.2 Further, it is unclear how fake news can be defined in a sufficiently nuanced manner that would prohibit malicious online falsehoods while allowing satirical content to exist. Any new law targeting fake news would also be likely to have the undesirable, albeit unintentional, effect of chilling healthy public discourse, as the ambiguity in any possible definition of fake news may cause people to be wary about engaging in such discourse for fear of unintentionally perpetrating fake news and being prosecuted as a result.

2.4.3 Moreover, considering there are already many laws currently in place that could apply to fake news, any new law relating to fake news would inevitably overlap with such existing laws, thereby creating a multiplicity of laws and causing a degree of confusion amongst both online content providers and members of the general public seeking to comply with all relevant laws.

2.5 Our recommendations

2.5.1 As mentioned above, we are of the view that existing laws are sufficient to cover the various aspects of fake news and these laws can be enhanced to enable them to be more easily and efficiently enforced. We are also of the view that the adoption of softer policy measures, in conjunction with the coupled with the improvements to existing legislation, is likely to be a highly effective measure in combating fake news.

2.5.2 We strongly believe that implementing measures that would educate the public on how to effectively identify and distinguish fake news would be one of the most effective means by which the ills of fake news can be combated. Similar to how vaccines function, educating the public on how to identify fake news would have the added benefit of building up a community resilience to fake news. Members of the public would be able to differentiate the fake news from genuine content and choose not to spread such fake news, thereby preventing the fake news from spreading virally and limiting its negative impact. Members of the public would also be able to effectively self-regulate their online communities, alerting each other to any fake news being spread across such online communities.

2.5.3 In conjunction with the foregoing, the Government can also provide and/or promote to the public the necessary online tools and resources which they can use to check the truth and veracity of any news or content that they might

encounter online. This may include factchecking websites or myth-busting websites which are free online resources that are readily accessible to the public.

2.5.4 While there are a number of such fact-checking or myth-busting resources available online (for example, www.snopes.com), these would not typically contain information on news or content that is locally relevant to Singapore. Hence, the Government should seek to create and actively maintain a local fact-checking/myth-busting database that members of the Singapore public can refer to as a trusted first port-of-call should they wish to verify the truth or veracity of any Singapore-related news circulating online. It would be useful for a Government fact-checking team to be responsible for regularly maintaining and updating this database to reflect the latest news that is starting to spread online. The Government may also consider partnering with major online content platforms in the private sector to assist with and contribute to the maintenance of such fact-checking databases, given their extensive experience in dealing with the spectre of fake news all over the world.

2.6 Conclusion

2.6.1 We hope that the Select Committee on Deliberate Online Falsehoods — Causes, Consequences and Countermeasures will favourably consider our submissions and recommendations provided above and will be persuaded in favour of our proposals to enhance the existing laws which address the publication and circulation of objectionable online content and the adoption of softer regulatory measures such as education.