

Written Representation 155

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ALLEN & GLEDHILL

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**WRITTEN REPRESENTATIONS ON PUBLICATION CONSULTATION
ON DELIBERATE ONLINE FALSEHOODS – CAUSES,
CONSEQUENCES AND COUNTERMEASURES**

**JOINT SUBMISSION BY SINGAPORE CORPORATE COUNSEL
ASSOCIATION AND SINGAPORE PRESS CLUB**

TABLE OF CONTENTS

Contents	Page
1. Introduction.....	1
2. The phenomenon of using digital technology to deliberately spread falsehoods online and consequences that the spread of online falsehoods can have on Singapore society	3
3. Combatting the spread of deliberate online falsehoods.....	10
4. Principles that should guide Singapore's response	14
5. Specific measures that should be taken.....	16
6. Conclusion.....	17
7. Further Information.....	17

Written Representations on Public Consultation on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures

1. Introduction

1.1 We act for the Singapore Corporate Counsel Association (SCCA)¹ and the Singapore Press Club.²

1.1 SCCA aims to promote professional standards and provide developmental opportunities to help in-house lawyers in Singapore be better counsel. SCCA's belief is that better counsel make better corporations and better corporations make better communities. SCCA's members include corporate and in-house legal counsel, including legal counsel working in government or public institutions or engaged in intellectual property rights activities, academic staff, lecturers and tutors in law of the Faculty of Law, National University of Singapore and School of Law, Singapore Management University.

1.2 The Singapore Press Club has established itself as a networking organisation for those working in the media, public relations and media-related areas in Singapore. The Singapore Press Club's membership includes members from local print and broadcast media as well as media-related professionals in Singapore. It is a founder-member of the International Association of Press Clubs, which brings together over 10,000 working journalists worldwide with the aim of promoting friendly contact among journalists.

1.2 We refer to the Press Release of the Parliament of Singapore dated 16 January 2018 inviting written representations on any matter falling within the Terms of Reference of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures which are to examine and report on:

1.2.1 the phenomenon of using digital technology to deliberately spread falsehoods online;

1.2.2 the motivations and reasons for the spreading of such falsehoods, and the types of individuals and entities, both local and foreign, which engage in such activity;

1.2.3 the consequences that the spread of online falsehoods can have on Singapore society, including to our institutions and democratic processes; and

1.2.4 how Singapore can prevent and combat online falsehoods, including:

(i) the principles that should guide Singapore's response; and

(ii) any specific measures, including legislation, that should be taken.

1.3 We are pleased to submit written representations on the following matters on behalf of members of SCCA and the Singapore Press Club:

¹ www.scca.org.sg

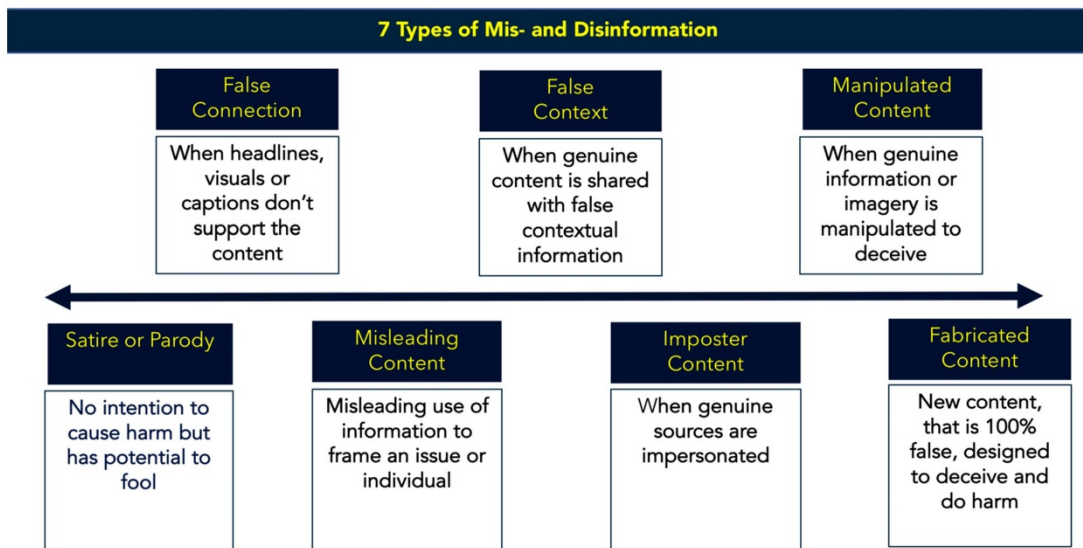
² www.pressclub.org.sg

- 1.3.1 The phenomenon of using digital technology to deliberately spread falsehoods online;
 - 1.3.2 The consequences that the spread of online falsehoods can have on Singapore society, including to our institutions and democratic processes; and
 - 1.3.3 How Singapore can prevent and combat online falsehoods, including:
 - (i) The principles that should guide Singapore's response; and
 - (ii) Any specific measures, including legislation, that should be taken.
- 1.4 We also highlight concerns of the members of SCCA and the Singapore Press Club over any measures that may be implemented to prevent and combat online falsehoods.
- 1.5 A joint event held by SCCA and the Singapore Press Club on 7 February 2018 at Singapore Press Holdings ("**SCCA Singapore Press Club Joint Event**") was attended by approximately 48 members of SCCA and the Singapore Press Club to canvass views on the topic "Deliberate Online Falsehoods – Causes, Consequences and Countermeasures" in response to the Select Committee's invitation for written representations from the public. This joint submission reflects the ideas and reflections expressed during that session by SCCA and the Singapore Press Club members interested in this issue, and are buttressed by other informal feedback received from SCCA membership and the Singapore Press Club membership.
- 1.6 Please note that this response does not represent the position of the entire membership of SCCA or companies for which SCCA members act as in-house counsel. It is recognised that SCCA member companies may have provided written representations to the Select Committee on this issue directly or through other organizations/representatives. For the purposes of this submission, "members of SCCA" refer to only those members of SCCA who attended the SCCA Singapore Press Club Joint Event on 7 February 2018 and who provided informal feedback to SCCA.
- 1.1 This response also does not represent the position of the entire membership of the Singapore Press Club or newspapers, magazines, radio, television and news agencies, digital media organisations, new photo services and feature services or other organisations for which the Singapore Press Club members work for or work with. These agencies and organisations may have provided written representations to the Select Committee on this issue directly or through other organizations/representatives. For the purposes of this submission, "members of the Singapore Press Club" refer to only those members of the Singapore Press Club who attended the SCCA Singapore Press Club Joint Event on 7 February 2018 and who provided informal feedback to the Singapore Press Club.
- 1.2 Please also note that for those matters falling within the Terms of Reference of the Select Committee where responses have not been given, SCCA and the Singapore Press Club are not in a position to express any comment or response because feedback has not been obtained or forthcoming on those matters. In the event there are further invitations to submit written representations on this issue or there is a consultation on a proposed regulatory framework and/or draft legislation on deliberate online falsehoods, SCCA and the Singapore Press Club would appreciate the opportunity to provide responses to the same where necessary.

2. The phenomenon of using digital technology to deliberately spread falsehoods online and consequences that the spread of online falsehoods can have on Singapore society

2.1 The members of the SCCA and the Singapore Press Club recognise that there are complexities in the issue of the spread of deliberate online falsehoods. These complexities need to be considered in the discussion on preventing and combatting the spread of deliberate online falsehoods.

2.2 First, the question arises as to what constitutes “deliberate online falsehoods”. Whilst it is tempting to conflate “deliberate online falsehood” with “fake news”, consideration needs to be taken of the complexity in identifying the type(s) of falsehood(s) that are spread through digital technology and the different motivations behind the spreading of falsehoods. One writer argues that there are seven distinct types of “problematic content” within the “information ecosystem” on a scale measuring the intent to deceive:³



Extracted from “Fake news. It’s complicated.” by Dr Claire Wardle at <https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79>

2.3 As can be seen from the above illustration, there is a spectrum of the falsity in the different types of “misinformation” and “disinformation”, which Dr Claire Wardle (director of First Draft⁴) defines respectively as “the inadvertent sharing of false information” and “the deliberate creation and sharing of information known to be false”. It is readily apparent that the sharing of Fabricated Content, as defined in the above diagram, needs to be prevented and curbed. However, for some types of “problematic content”, the answer as to whether such content should be treated as or are truly “deliberate online falsehoods” is less straightforward. For example, “False Context”, as defined in the above illustration is when genuine information is shared but with false contextual information. Given that there is genuine information in the content mixed with false contextual information, would

³ <https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79>.

⁴ First Draft is a non-profit project of the Harvard Kennedy School’s Shorenstein Center that fights mis-information and dis-information through fieldwork, research and education. See <https://firstdraftnews.org/>

the right approach be to classify such content as “deliberate online falsehood” or would doing so be problematic and open to criticism / objections? In their true nature, satires and parodies are not intended to cause harm but to critique or provide a form of commentary and the question is to what extent should these be exempted from constituting “deliberate online falsehoods” if these satires and parodies have the potential, albeit unintended, to mislead or fool readers (undiscerning or otherwise). A further question is whether truth suppressed, or factual information withheld, would constitute a “falsehood”.

2.4 Secondly, the intent or the motivation behind the spreading of the online falsehood is another key factor that needs to be taken into consideration in the discussion on preventing and combatting the spread of deliberate online falsehoods. Singapore has a high mobile phone penetration rate.⁵ According to a report on The Business Times published on 24 January 2017,⁶ 70% of Singaporeans are active social media users on mobile devices, which is more than double the global average of 34%. The report showed that more than 3 in 4 Singaporeans use social media. Such high penetration rates facilitate the ease of the spread of online falsehoods through social media and mobile phone usage in Singapore. However, given that there is a spectrum of falsity and motivations behind the online spread of falsehoods, innocuous dissemination of falsehoods without knowledge or verification of whether the news or information is true or false (or the sharing of “mis-information” as defined by Dr Claire Wardle) can happen easily in Singapore just as the malicious spread of deliberate online falsehoods with the intent to destabilise or harm society. The sentiments are that the treatment of innocuous dissemination of falsehood should be distinct from the treatment of the spread of online falsehoods with specific intent to harm or destabilise society. The varying motivations behind the different types of falsehoods and the identification of what these motivations are add to the complexity of devising appropriate measures to combat the spread of deliberate online falsehoods.

2.5 A third consideration is whether the preventing and combatting of deliberate online falsehoods is best addressed through targeting the source of the deliberate online falsehoods, or the gateways (such as internet service providers and digital platform owners/operators) through which the falsehoods are spread or both? This is of particular concern and interest to SCCA, especially from the perspective of corporations which are Internet Service Providers (ISPs) or digital platform owners/operators (collectively referred to as “**Intermediaries**”).

2.5.1 It would be ideal to target the source of the creation and publication of deliberate online falsehoods. However, from a practical perspective, this is not always possible. The creation and publication of deliberate online falsehoods often originate from actors located outside of Singapore. Indeed, as the Green Paper by the Ministry of Communications and Information and the Ministry of Law “Deliberate Online Falsehoods: Challenges and Implications” has highlighted, online falsehoods are spread by foreign State and non-State actors. Tracking and identifying the source of such falsehoods can be challenging, costly and/or time-consuming. Even

⁵ According to data on the Mobile Penetration Rate on https://data.gov.sg/dataset/mobile-penetration-rate?view_id=3fed45d7-7f86-4422-872a-e6d0a0154b06&resource_id=26e9766b-a42d-468c-9c25-88d89b850823, the mobile penetration rate for Singapore as of October 2017 was 148.8%.

⁶ <http://www.businesstimes.com.sg/consumer/7-in-10-singaporeans-use-social-media-on-mobile-double-global-average-survey>

if the sources are tracked and identified, there are limits on the jurisdictional reach of Singapore's laws on these foreign actors.

2.5.2 A more effective means of curbing the spread of deliberate online falsehoods in Singapore would be to target the gateways and channels through which deliberate online falsehoods are spread. This appears to be the approach adopted by Germany in passing legislation to combat online falsehoods. Germany's Network Enforcement Act ("**NetzDG**") that entered into force on 1 October 2017 applies to telemedia service providers (operators of online social networks) and imposes obligations to:

- (i) report on handling complaints on unlawful content if they receive more than 100 complaints per calendar year;⁷
- (ii) remove or block access to content which is "manifestly unlawful" within 24 hours;⁸ and
- (iii) remove or block access to content which is "unlawful" within 7 days (subject to an extension if the decision regarding the unlawfulness of the content is dependent on the falsity of a factual allegation or is clearly dependent on other factual circumstances).⁹

The NetzDG makes a distinction between content that is "manifestly unlawful" and content that is "unlawful". The time period within which telemedia service providers are required to remove or block access varies according to whether the content is deemed to be "manifestly unlawful" as opposed to "unlawful". Telemedia service providers have to remove or block access to the former within 24 hours whereas they have up to 7 days to remove or block access to the latter.

2.5.3 While it is recognised and anticipated that Intermediaries will likely be required to be responsible for removing or blocking access to deliberate online falsehoods as an effective means of preventing and combatting the spread of deliberate online falsehoods, there are the following concerns:

- (i) Intermediary liability, in particular, the degree of culpability for neutral platforms in carrying third-party reporting on mainstream news or advertising or sponsored content. Intermediaries will argue that they ought not to be responsible for and be made to defend news that they merely host and did not create. The question is whether Intermediaries can rely on Section 26 of the Electronic Transactions Act (Cap. 88) or similar provisions as a safe-harbour.¹⁰

⁷ Section 2 of the NetzDG.

⁸ Section 3 of the NetzDG.

⁹ Section 3 of the NetzDG.

¹⁰ Section 26 provides that "(1)...a network service provider shall not be subject to any civil or criminal liability under any rule of law in respect of third-party material in the form of electronic records to which he merely provides access if such liability is

- (ii) The obligations imposed on telemedia providers under the NetzDG that require them to make a value judgment on what content to remove access to or block in complying with the obligation to remove or block access to unlawful content. If a similar approach is taken in Singapore, Intermediaries will have to become arbiters of what constitutes falsehood in the course of complying with their legal obligations.
- (iii) The cost of compliance if Intermediaries are required to unilaterally remove access to or block content that are deemed to constitute falsehood. First, personnel dedicated to this task will have to be hired. The additional costs incurred will depend on the speed at which Intermediaries are required to act. Secondly, they will need the requisite training and skills to be able to exercise value judgment on content.

Concerns of members of the SCCA

2.6 The use of digital technology to deliberately spread falsehoods online is a matter of great concern to corporations for several reasons.

2.6.1 First, in addition to interests relating to national security, public order, public safety and public health, corporate interests are also vulnerable to compromise by the digital spread of falsehoods. Corporations have been the target of online falsehoods and are not spared from the negative consequences and ramifications of the use of digital technology to spread deliberate online falsehoods. Deliberate online falsehoods about corporations and/or their products are not always the domain of private concerns. As the following examples demonstrate, the spread of online falsehood not only affects the corporation's reputation and image in the minds of consumers but can also impact upon public health and public safety concerns:

- (i) The spread of an online falsehood on or around early 2017 that the house brand jasmine fragrant rice of leading supermarket chain FairPrice is made of plastic¹¹ caused alarm amongst some consumers and surfaced a public health and food safety concern on the sale of plastic rice in Singapore even though the online falsehood was targeted at FairPrice's house brand jasmine fragrant rice.
- (ii) A video circulated on WeChat claimed Ayibo Food's seaweed was made of plastic¹². China's food safety officials had to counter the allegations contained in the videos.
- (iii) Social media circulated a report regarding Malaysia's Health Ministry issuing a notice to Nestle Malaysia ordering them to withdraw all of its instant

founded on the making, publication, dissemination or distribution of such materials or any statement made in such material; or the infringement of any rights subsisting in or in relation to such material."

¹¹ <http://www.straitstimes.com/singapore/fairprice-files-police-report-over-fake-rice-rumour>.

¹² <https://qz.com/934038/in-china-fake-news-about-food-goes-viral-because-people-find-it-hard-to-trust-anyone/>

noodle products from supermarket shelves as it contained harmful lead.¹³ This news was even aired on Malaysia's local television channel. Malaysia's Health Ministry had to issue a statement saying that Maggi noodles are safe and that the news which was circulating was not true.

- (iv) In April 2016, the web site *News4KTLA* published an article reporting that Coca-Cola had issued a recall on Dasani water products after a clear parasite was found in bottles across the United States. Coca-Cola did not issue a recall on Dasani products and said in a statement: "The source of this false and inflammatory information about our brand is a hoax news website. There is no recall of Dasani being conducted in the U.S." The United States Food and Drug Administration similarly said they were not aware of any current recalls or disease outbreaks associated with Dasani water.¹⁴

As such, deliberate online falsehoods that target corporations are not merely a matter of corporate interests alone but also have a wider social impact and should be taken into consideration in the discussion on preventing and combatting the spread of deliberate online falsehoods.

- 2.6.2** Secondly, corporations have an interest in curbing the use of digital technology to spread deliberate online falsehoods because consumers are becoming increasingly concerned about the spread and impact of deliberate online falsehoods, "fake news" and other illegal and undesirable content. As the use of digital technology to spread deliberate online falsehood grows, corporations are becoming increasingly concerned that digital platforms take appropriate measures to filter out false information and abusive content.¹⁵ Content of this kind negates their investments in paid advertising and promotion campaigns. There are also concerns of advertisers over "brand safety" as legitimate advertising that appears next to online falsehoods or offensive content can destroy brands and their image. Such corporate interests have incentivised and continue to incentivise the large technology companies to implement measures to filter out falsehoods and abusive content from their digital platforms and offerings. In particular:

- (i) Twitter has taken steps to detect "spammy behaviours" at source, such as the mass automated distribution of tweets or attempts to manipulate trending topics and suspend accounts where they detect duplicative or suspicious activity. Twitter is also known to have taken action against applications that abuse their public API to automate activity on Twitter to potentially stop manipulative "bots" at the source.¹⁶
- (ii) Facebook has said it would ask its users to tell Facebook which news sources they trust to help Facebook decide which ones should be featured

¹³ <https://www.nst.com.my/news/2017/04/227412/health-ministry-denies-issuing-order-recall-maggi-noodles>

¹⁴ <https://www.snopes.com/dasani-recalled-clear-parasite/>

¹⁵ See e.g. <http://www.straitstimes.com/world/europe/unilever-threatens-to-cut-back-online-ads-over-toxic-content>

¹⁶ https://blog.twitter.com/official/en_us/topics/company/2017/Our-Approach-Bots-Misinformation.html

more prominently. It is moot whether this will prove effective. Mark Zuckerberg, Founder and CEO of Facebook stated in a Facebook post: *“The hard question we’ve struggled with is how to decide what news sources are broadly trusted in a world with so much division. We could try to make that decision ourselves, but that’s not something we’re comfortable with. We considered asking outside experts, which would take the decision out of our hands but would likely not solve the objectivity problem. Or we could ask you -- the community -- and have your feedback determine the ranking. We decided that having the community determine which sources are broadly trusted would be most objective.”*¹⁷

- (iii) Google has attempted to combat the circulation of “fake news” by allowing users to flag “misleading information, unexpected offensive results, hoaxes and unsupported conspiracy theories” as well as modifying its search engine by adjusting their signals to “surface more authoritative pages and demote low-quality content”.¹⁸
- (iv) In May 2016, the European Commission agreed with Facebook, Twitter, YouTube and Microsoft on a Code of Conduct on Countering Illegal Hate Speech Online (the “**Code of Conduct**”) to help users notify illegal hate speech in social platforms, improve the support to civil society as well as coordinate with national authorities. The four IT platforms agreed to assess the majority of users’ notifications within 24 hours and committed to remove those messages which it assessed to be illegal. The Code of Conduct also highlighted that civil society organisations have a crucial role to play in the field of preventing the rise of hatred online, by developing counter-narratives promoting non-discrimination, tolerance and respect.¹⁹ Recently, on 19 January 2018, Google+ announced that they are also joining the Code of Conduct and Facebook confirmed that Instagram would also be joining.²⁰

2.6.3 Corporate interests are thus one of the key drivers, in addition to laws, in mobilising digital platform owners/operators to take steps in preventing and curbing the spread of deliberate online falsehoods whether through contributed editorial content or through paid advertising or sponsored content.

2.6.4 Thirdly, it is anticipated that corporations, in particular Intermediaries, will likely be required to participate in the efforts of preventing and combatting online falsehoods. It is foreseen that any measures that are implemented will require Intermediaries to, amongst other things, report, take down and/or disable access to online falsehoods. The concerns of Intermediaries regarding obligations that may be imposed on them to combat deliberate online falsehoods have been discussed in paragraph 2.5.3 above. Further, as mentioned in paragraph 2.6.2 above, consumers and advertisers

¹⁷ <https://www.facebook.com/zuck/posts/10104445245963251>

¹⁸ <https://blog.google/products/search/our-latest-quality-improvements-search/>

¹⁹ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300

²⁰ http://europa.eu/rapid/press-release_IP-18-261_en.htm

are demanding that digital platforms and media providers put in place measures to adequately filter falsehoods and abusive content. Digital platforms also have to be vigilant in not accepting paid advertisements that are of dubious origin or accuracy. Corporations have to respond to these demands. For these reasons, the use of digital technology to deliberately spread falsehoods online and the discussion on the measures and steps that Singapore will take to prevent and combat the spread of deliberate online falsehoods is a matter of concern to corporations, particularly those who own and/or operate digital platforms, are ISPs or media providers.

2.7 It is the submission of the members of the SCCA that it is relevant to take into account corporate interests in the discussion on preventing and combatting the spread of deliberate online falsehoods in Singapore, both in terms of:

- 2.7.1** corporations being the subject / target of deliberate online falsehoods and having the ability to avail themselves of remedies under any proposed framework in preventing and curbing the spread of deliberate online falsehoods; and
- 2.7.2** the implications on compliance with obligations that may be imposed on corporations, particularly Intermediaries, in preventing and curbing the spread of deliberate online falsehoods.

Concerns of the members of the Singapore Press Club

2.8 Key concerns of members of the Singapore Press Club are:

- 2.8.1** The need to prevent and curb the spread of deliberate online falsehoods may be perceived, rightly or wrongly, as a means to assert more control over the press and journalism in Singapore. Measures that are eventually adopted to prevent and curb the spread of deliberate online falsehoods should not have the effect of curtailing serious-minded journalism and news reporting in Singapore.
- 2.8.2** Measures that are eventually adopted to prevent and curb the spread of deliberate online falsehoods should also not have the effect of curtailing the fair and lawful exchange of opinions and ideas in Singapore. In particular, a clear distinction should be made between fact and opinion.
- 2.8.3** In addition, such measures should not provide a basis for any assertions that the deployment of such measures is politically motivated.
- 2.8.4** While journalists and members of the Singapore Press Club recognise and value the importance of verification as one of the measures to prevent and combat deliberate online falsehoods, there is a real and legitimate concern about the practical difficulties in fully verifying information that is expressly attributed to sources, whether named or unnamed, including verification with and/or against Government data.

- 2.8.5** The need to prevent and curb the spread of deliberate online falsehoods should not discourage a free “marketplace of ideas” where freedom to express opinions is valued and encouraged. It is possible that in a developed knowledge economy as Singapore’s, the marketplace should be allowed to call out false information and provide fact checks and counter-balancing views. Indeed, it is noted that with the rise of the spread of online falsehoods, consumers, corporates and institutions alike have responded with increasing demands for filtering falsehoods and abusive content (see paragraph 2.6.2 above). Projects and websites focussed on the verification of “fake news” have also emerged.²¹ These are indicators that quite apart from Governmental or legislative intervention, the marketplace has also galvanised counteractive measures to combat the spread of deliberate online falsehoods.
- 2.9** Members of the SCCA and the Singapore Press Club submit that the approach to preventing and combatting the spread of deliberate online falsehoods in Singapore must be nuanced and measured. The approach and types of measures that are eventually adopted by Singapore should take into account the following:
- 2.9.1** the spectrum of falsehoods and in particular motivations behind such falsehoods and resulting complexities in identifying the type of falsehoods and accompanying motivations;
 - 2.9.2** the practicalities in curbing the spread or further spread, as the case may be, of deliberate online falsehoods including the implications on compliance with obligations that may be imposed on corporations in preventing and curbing the spread of deliberate online falsehoods; and
 - 2.9.3** the interest in maintaining a free marketplace of ideas and opinions within the parameters of laws and not unduly restricting professional journalism, news reporting, commentary and criticism (including leaving room for satires and parodies).
- 2.10** The principles that members of the SCCA and the Singapore Press Club consider should guide Singapore’s response in adopting and implementing measures to prevent and curb the spread of deliberate online falsehoods are discussed in Section 4 below.
- 3. Combatting the spread of deliberate online falsehoods**
- 3.1** The members of the SCCA and the Singapore Press Club note that existing laws in Singapore already provide some measure of protection against deliberate online falsehoods. These include:
- 3.1.1** Section 45 Telecommunications Act (Cap. 323) which provides that it is an offence to transmit a message knowing that it is false. Although Section 45 does not take

²¹ See e.g. Factcheck.org, International Fact-Checking Network (run by the Poynter Institute), factcheckeu.org (EU) and pagellapolitica.it (Italy).

into account the 'viral effect', it criminalises the transmission of a message that the sender knows is false.

- 3.1.2** Truth or falsity is not the focus of the Undesirable Publications Act (Cap. 338) and the Sedition Act (Cap. 290) but these laws can be invoked against the spread of deliberate online falsehoods.
- 3.1.3** Individuals and businesses have recourse under the torts of defamation and malicious falsehood in relation to the publication of false or misleading statements that meet the legal criteria for establishing these common law torts.
- 3.1.4** Where false statements are made about a person, Section 15 of the Protection from Harassment Act (Cap. 256A) allows an individual to apply for an order that "*no person shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and true facts.*"
- 3.1.5** Where the deliberate online falsehoods impute improper motives or maligns the integrity, propriety or impartiality of any court and poses a risk that public confidence in the administration of justice would be undermined, or the deliberate online falsehoods prejudice or interfere with, or poses a real risk of prejudicing or interfering with the administration of justice or court proceedings, the intentional publication of such deliberate online falsehoods would constitute an offence under the Administration of Justice (Protection) Act 2016 (Act 19 of 2016).
- 3.1.6** The Maintenance of Religious Harmony Act (Cap. 167A) can also be invoked against persons who publish deliberate online falsehoods that:
- (i) incite, encourage or instigate hostility between different religious groups;
 - (ii) promote a political cause under the guise of religious belief;
 - (iii) carry out subversive activities under the guise of religious belief; and
 - (iv) exciting disaffection against the President or the Government under the guise of religious belief.
- 3.1.7** The Info-Communications Media Development Authority (IMDA) can demand the take down or removal of websites that host content on a wide range of issues under the Broadcasting Act (Cap. 28) and its subsidiary legislation. Under the Broadcasting Act and the Broadcasting (Class Licence) Notification, Internet Content Providers are automatically class licensed and are required to comply with the Class Licence Conditions and the Internet Code of Practice. Pursuant to the Schedule to the Broadcasting (Class Licence) Notification – Conditions of Class Licence, Internet Content Providers have obligations to, *inter alia*,

- (i) assist IMDA with investigations into any alleged violation of any law committed by licensee or another person, including the production of information and documents to the IMDA;
- (ii) ensure that its service is not used for any purpose that is against public interest, public order or national harmony;
- (iii) comply with directions from the IMDA requiring them to remove or prohibit the broadcast of, the whole or any part of a programme included in its service which IMDA informs to be contrary to the Internet Code of Practice or against the public interest, public order or national harmony or offends against good taste or decency.

3.1.8 The Internet Code of Practice defines “Prohibited material” as 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.²²

3.1.9 Licensed service providers under the Broadcasting Act have existing legal obligations under Content Codes issued by IMDA to ensure accurate news reporting and that any opinions expressed on programmes offered are not based on false or inaccurate facts in the course of their provision of free-to-air television services, linear channels of nationwide subscription cable and Internet Protocol Television and free-to-air radio services. The failure to comply with the relevant Content Codes attracts sanctions from IMDA including the imposition of financial penalties.

- (i) Under the Content Code for Nationwide Managed Transmission Linear Television Services (“**TV Content Code**”), licence holders are required to:
 - (a) ensure that programmes are not slanted by the exclusion of facts or by misleading emphasis;²³
 - (b) make every reasonable effort to ensure that the factual content of programmes is accurate;²⁴
 - (c) correct significant errors in factual programmes such as news, current affairs and infoeducational programmes should be corrected and make available the corrections at the earliest opportunity;²⁵
 - (d) grant the Government or its agencies a right of reply or an opportunity to respond to correct mistakes, wrongful reporting or

²² Paragraph 4.1 of the Schedule to the Internet Code of Practice.

²³ Paragraph 5.2 of the TV Content Code.

²⁴ *Ibid.*

²⁵ Paragraph 8.18 of the TV Content Code.

misrepresentations and consider granting private individuals or groups a right of reply based on the merits of each case.²⁶

It is also noted that under the TV Content Code, IMDA may direct a service provider to give an aggrieved party the opportunity to respond over an appropriate medium.²⁷

- (ii) Under the Free-to-Air Radio Programme Code ("**Radio Programme Code**"), licence holders are required to:
- (a) ensure that factual programmes such as news, current affairs or documentary programmes should present information in an objective, accurate or balanced manner;²⁸
 - (b) ensure that programmes are not slanted by exclusion of facts or by misleading emphasis;²⁹
 - (c) make every reasonable effort to ensure that the factual contents of programmes are accurate;³⁰
 - (d) consider a right of reply or an opportunity to reply on the merits of each case;³¹
 - (e) correct significant errors in factual programmes such as news, current affairs and documentary programmes and broadcast the corrections at the earliest opportunity;³²
 - (f) in respect of 'personal view' programmes, ensure that the opinions expressed in 'personal view' programmes, however partial, do not rest upon false or inaccurate facts³³ and provide a suitable opportunity to correct mistakes, factual errors or other biased analyses.³⁴

3.2 Although there are limitations in existing laws in enjoining the spread of deliberate online falsehoods, it is noted that the Government, corporations and even individuals currently have certain recourse under existing laws in Singapore to take action against the spread of deliberate online falsehoods. Consequently, any new measures that are adopted and implemented to prevent and curb the spread of deliberate online falsehoods should build upon existing laws and obligations.

²⁶ Paragraph 8.20 of the TV Content Code.

²⁷ *Ibid.*

²⁸ Paragraph 8 under the General Principles of the Radio Programme Code.

²⁹ Paragraph 6.1 under Part 6: News and other factual programmes of the Radio Programme Code.

³⁰ *Ibid.*

³¹ Paragraph 6.2 under Part 6: News and other factual programmes of the Radio Programme Code.

³² Paragraph 6.3 under Part 6: News and other factual programmes of the Radio Programme Code.

³³ Paragraph 6.6(b) under Part 6: News and other factual programmes of the Radio Programme Code.

³⁴ Paragraph 6.6(c) under Part 6: News and other factual programmes of the Radio Programme Code.

4. Principles that should guide Singapore's response

- 4.1** In view of the matters raised in Section 2 above, the members of the SCCA and the Singapore Press Club consider that the following principles should guide Singapore's response in adopting and implementing measures to prevent and curb the spread of deliberate online falsehoods.
- 4.2** The approach in determining the appropriate measures should keep in mind the complexities highlighted in the preceding Section 2, existing laws that provide some measure of protection against deliberate online falsehoods as well as existing legal obligations on the media and/or content providers to report news accurately, to present accurate facts in programmes and provide a right of reply or a response in response to errors and/or opinions expressed in programmes.
- 4.3** In formulating a definition for what constitutes "deliberate online falsehoods" that would be the subject of prohibitive and punitive measures, the intent behind the publication and dissemination of the falsehood should be treated as paramount. The *mens rea* / level of culpability in disseminating a deliberate falsehood - knowing that it is false - should be high. Specifically, malice and/or the intent to cause harm should be a requisite in order to establish liability. Such an approach would address any concerns of innocuous dissemination of "mis-information" without any real intent of causing instability or harm being subject to prohibitive and punitive measures.
- 4.4** Measures to prevent and combat "deliberate online falsehoods" must distinguish between fact and opinion.
- 4.5** There should be a mechanism for any disagreements between the Government and other actors on whether a piece of news or information is indeed a "deliberate online falsehood" and whether the requisite intent or malice is present to be resolved by an independent arbiter or Ombudsman.
- 4.6** A risk-based approach may be effective in balancing the need to maintain public safety, order and security and uphold institutional processes and integrity in Singapore on the one hand, and ensure the continued open discourse of ideas and opinions, on the other. Such an approach should also consider avenues for remediation or apologies and take into account whether such remediation or apologies were rendered upon discovery of a factual inaccuracy or falsity before any penalties (civil or criminal) are imposed. The opportunity afforded to the person that is the subject of the deliberate online falsehood to respond to the falsehood should also be considered and taken into account when deliberating measures to prevent and curb deliberate online falsehoods and the imposition of liability.
- 4.7** Any obligations that are imposed on corporations, particularly Intermediaries, should be measured and take into account all other existing obligations that Intermediaries are subject to under other laws.³⁵

³⁵ For example, under copyright laws.

- 4.7.1** There should be a certain level of flexibility given to Intermediaries in terms of compliance timelines and actions. The German NetzDG exempts telemedia providers with fewer than 2 million registered users from Germany from compliance with certain obligations. A similar exemption may be considered in terms of measures adopted for Singapore.
- 4.7.2** Intermediaries should be permitted to take advantage of “safe harbour” provisions similar to Section 26 of the Electronic Transactions Act and those in the Copyright Act (Cap. 63), especially where the Intermediaries can genuinely claim to be merely serving as a host or conduit for news.
- 4.7.3** Where an Intermediary is able to identify the source of the “deliberate online falsehood”, there should also be provision for the Intermediary to provide that information to the relevant authorities to allow them to take appropriate action without any further involvement or action by the Intermediary.
- 4.8** There should be due consideration given to satires, parodies, alternative opinions, commentaries and critiques in any measures adopted to prevent and curb the spread of deliberate online falsehoods. It is important that freedom of expression is still valued and seen to be valued and encouraged.
- 4.9** In relation to professional journalists and news reporting/commentary, the real and legitimate concern over challenges in verifying information and data due to time constraints and availability of data should be taken into account. To minimise exposure of journalists to any allegations of publishing “deliberate online falsehoods” by reason of limitations or inability to fully verify information, it should be explored whether disclaimers (e.g. that verification was not possible due to certain constraints) and a right of reply afforded to those who are the subject of fake news to respond would provide a form of “defence” for journalists.
- 4.10** A further factor is that facilitating access to information would assist journalists in accurate news reporting/commentary and minimise the incidence of inadvertent or unintentional inaccuracies in reports. Such access would also be beneficial in assisting the public to verify information. Falsehoods are likely to be exposed more easily and at a quicker pace if there is better access to information. Freedom of information laws and/or the creation of an independent fact-check agency are examples of how better access to information can be facilitated.
- 4.11** Consideration should also be given to incentivising and rewarding responsible information creators and providers. Beyond punitive measures, measures that incentivise and reward responsible information creation and publication should also form part of the response to preventing and curbing the spread of deliberate online falsehoods.
- 4.12** Existing laws in Singapore provide some measure of protection against deliberate online falsehoods although there are limitations. In particular, it is noted that licence holders under the Broadcasting Act have existing legal obligations under the relevant Content Codes issued by IMDA to ensure accurate facts are presented in programmes offered by the relevant licence holders. Further, licence holders, including Internet Content Providers,

have existing legal obligations to comply with directions from the IMDA requiring them to remove or prohibit the broadcast of, the whole or any part of a programme included in its service which IMDA informs to be contrary to the Internet Code of Practice or against the public interest, public order or national harmony or offends against good taste or decency. Measures adopted to prevent and curb the spread of deliberate online falsehoods should build upon these existing laws, and there may not be a need to introduce a new piece of legislation.

5. Specific measures that should be taken

- 5.1** As discussed in Section 3 and in paragraph 4.8, it is noted that there are existing pieces of legislation in Singapore under which the Government and other actors can enjoin the spread of “deliberate online falsehoods”. Consequently, any proposed framework to prevent and curb the spread of deliberate online falsehoods should build on these existing laws and any legal obligations and penalties can be introduced under existing legislation. In particular, it is noted that the IMDA already has existing powers under the Broadcasting Act to direct Internet Content Providers and Broadcasting Class Licensees to remove objectionable content and material. Any additional measures that are considered to be necessary to prevent and curb the spread of deliberate online falsehoods can be introduced under the existing regime under Broadcasting Act and the various Codes of Practice, in particular the Internet Code of Practice.
- 5.2** As explained in paragraph 2.6.1, deliberate online falsehoods that target corporations and their products can also have wider social / public health and safety implications. Where corporations are the subject / target of deliberate online falsehoods and such falsehoods have an impact on social / public health and safety concerns or there is a greater public interest at large that is adversely impacted, it is suggested that it would also be appropriate for corporations to have remedies under any proposed framework to prevent and curb the spread of deliberate online falsehoods. These remedies can exist alongside existing causes of action and be invoked where there is a greater public interest at large that is adversely impacted by the spread of deliberate online falsehoods.
- 5.3** There should also be provision for the establishment of an independent arbiter, advisory committee or Ombudsmen to decide on whether a piece of news or information alleged to be a falsehood is indeed a “deliberate online falsehood” and whether the requisite intent or malice is present to attract culpability.
- 5.4** Facilitating access to information (such as through Freedom of Information laws and/or the creation of an independent fact check agency) and incentivising and rewarding responsible information creation and publication should form part of the measures for preventing and curbing the spread of deliberate online falsehoods.
- 5.5** Apart from legislation and laws, there is also an important role for public education in preventing and curbing the spread of deliberate online falsehoods. Raising awareness and educating the public on taking responsibility for independently checking what is circulated online, being responsible in sharing the information (as opposed to mindless resharing on social media or digital platforms) and the existence of fact-check websites like Factually

<https://www.gov.sg/factually> would be an important step in counteracting the spread of deliberate online falsehoods and its consequences.

6. Conclusion

- 6.1** There are certain complexities which need to be carefully considered in formulating a framework to prevent and curb the spread of deliberate online falsehoods. This submission on behalf of the SCCA and the Singapore Press Club has sought to highlight some of the challenges and difficulties in identifying falsehoods and the motivations behind such falsehoods. In addition, it has highlighted certain specific concerns of members of the SCCA and the Singapore Press Club in thinking about measures to prevent and curb deliberate online falsehoods.
- 6.2** We respectfully urge the Select Committee to take into consideration the representations set out in this paper in the Select Committee's examination and report.