

Written Representation 112

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MARUAH representation to the Select Committee on Deliberate Online Falsehoods

MARUAH is a civil society organization dedicated to promoting and raising awareness of human rights and related issues. We were registered in 2010 and are the focal point for the Working Group for an ASEAN human rights mechanism.

Genesis of government concerns on deliberate online falsehoods

The government first revealed its intention to take action against “deliberate online falsehoods” after it lost its Protection from Harassment Act (POHA) suit against a critic of the Ministry of Defence in January 2017.¹ According to a Ministry of Law (MLAW) spokesman, “fake news’ has become a major problem for many societies. As recent events elsewhere show, the spreading of false and misleading information can be highly destructive of the institutions of democracy ...The Government will study the judgment and consider what further steps it should take to correct the deliberate spreading of falsehoods.”²

What are deliberate online falsehoods ?

Apart from the MLAW spokesman quoted above, government ministers³, members of parliament⁴ and journalists⁵ in Singapore have used the term “fake news”. However, in our view, use of the term “fake news” should be discouraged because it has multiple, contradictory meanings⁶ including:

¹ Kelly Ng, “Apex court rejects AG’s appeal on anti-harassment law in split decision”, Today, 17 Jan 2017.

² Selina Lum, “Is Government a person? Court rules on anti- harassment law provision”, Straits Times, 17 Jan 2017.

³ For example, Minister for Law, Mr K Shanmugam in reply to a question in Parliament on 3 April 2017 (<https://www.mlaw.gov.sg/content/minlaw/en/news/parliamentary-speeches-and-responses/oral-answer-by-minister-for-law--mr-k-shanmugam--to-parliamentar.html>) and in the opening address at the “Keep it Real: Truth and Trust in The Media” Forum on 19 June 2017 (<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-mr-k-shanmugam--minister-for-home-affairs-and1.html>).

⁴ MP Lee Bee Wah used the term “fake news” to describe the fear caused by racial violence during the May 13, 1969 riots in Malaysia. However, her use of the term “fake news” appears to be non-standard as there was no suggestion that her fears were due to the deliberate propagation of false rumors. Lee Bee Wah, “Fake News Hurts Real People”, 10 Jan 2018 (<http://papneesoan.sg/2018/01/11/fake-news-hurts-real-people/>)

⁵ Rachel Au-Yong, “All lies: Why we should be worried”, Straits Times, 4 Dec 2016, (<http://www.straitstimes.com/singapore/all-lies-why-we-should-be-worried>).

⁶ This classification is modified from the classification used in James Titcomb and James Carson, “Fake news: What exactly is it – and how can you spot it?”, The Telegraph, 22 February 2018 (<http://www.telegraph.co.uk/technology/0/fake-news-exactly-has-really-had-influence/>)

- **Commercially-driven sensational content** such as the Macedonian websites active during the 2016 US election and The Real Singapore website. These are primarily driven by the desire for advertising revenue rather than being politically-motivated
- **State-sponsored disinformation** such as alleged efforts by Russia to sow discord if not to influence the outcome of the 2016 election in the US.⁷
- **Any critical or negative media coverage** regardless of truth or falsehood. This usage of “fake news” is prevalent in tweets by US President Donald Trump.
- **Highly partisan news sites** that do not distinguish facts from opinions and are unswervingly supportive of one political viewpoint or party
- **Internet hoaxes and conspiracy theories** such as recurring stories about plastic rice, stolen kidneys and so on. Unlike the commercially-driven sites mentioned above, these sites may not necessarily be profit-driven. Anti-vaccination sites such as those cited in the Green Paper would presumably fall into this category.

The Ministry of Communication and Information and Ministry of Law have wisely decided not to use the term “fake news” in the Green Paper although we recognise that the term “deliberate online falsehoods” (DOF) is not very catchy. Unfortunately **the term “deliberate online falsehoods” is also not clearly defined in the Green Paper.** While some non-political examples are included, the great majority of examples cited in the Green Paper are of foreign attempts to manipulate the political process in targeted countries.

Local or Foreign ?

A great deal of media attention has been directed at accusations of Russian interference in US and Europe, and the Singapore government has regularly raised the spectre of foreign interference as a rationale for taking action against DOF. However, the government has not yet clarified whether the scope of any new law on DOF will encompass both Singaporeans as well as foreigners. **Given the historical tendency of the government to narrowly define the boundaries for free speech in Singapore, we have to assume that it also targeting Singaporeans who use what the government deems to be “falsehoods” to influence public opinion and political outcomes in Singapore.**

What is truth ?

Unfortunately, this immediately raises the question of how truth or falsehood can be determined. To take one example, the government has persistently maintained that 22 people detained under the Internal Security Act in 1987 were “Marxist conspirators” aiming to topple the government⁸. However, the detainees have refuted those charges⁹ and Australian academic Michael Barr has stated “there never was a

⁷ Scott Shane and Mark Mazzetti, “Inside a 3-year Russian Campaign to Influence U.S. voters”, 16 Feb 2018 (<https://www.nytimes.com/2018/02/16/us/politics/russia-mueller-election.html>)

⁸ <https://www.mha.gov.sg/NewsRoom/press-releases/Pages/Ministry-of-Home-Affairs-Press-Statement-on-ISA-23-September-2011.aspx>

⁹ Chng Suan Tze et al. (eds), “1987 Singapore’s Marxist Conspiracy 30 years on”, Function 8 Ltd, 2017.

conspiracy, Marxist or otherwise”¹⁰. In the event that laws against DOF are enacted, would the government then be able to declare that the detainees’ statements are “online falsehoods” and shut down Function 8’s website¹¹ or block Singaporeans from accessing the academic journal where Prof Barr’s offending statements are published?

Going down the rabbit-hole of internet hoaxes

To take another less overtly-political example, public health experts may deem that is in the public interest to take down anti-vaccination sites such as those cited in the green paper but it is far-fetched to blame resistance to compulsory vaccination on “online falsehoods” when the Anti-Vaccination League was formed in London in 1853¹² and there have been vocal anti-vaccination movements long before the advent of the internet.¹³

Trying to use legislation to suppress internet hoaxes will inevitably be a bottomless pit. US President Donald Trump, for example, has declared climate change to be a hoax.¹⁴ Would any law against DOF empower climate-change skeptics to demand the removal of sites presenting evidence of climate change on the grounds that they are hoaxes, or conversely would climate scientists get the right to demand that climate-change disbelieving sites be removed instead? President Trump has also regularly called critical media coverage “fake news” even if the reports are objectively true. What will prevent the Singapore government from deciding that all critical views are “deliberate falsehoods” and subject to sanction under laws against DOF?

Is there any evidence of harm?

The Green Paper does not present any evidence that DOF have actually changed public opinion or affected the outcome of any election. While foreign interference in an election is itself illegal, it is easier for supporters of Mrs Clinton to blame her loss on “foreign interference” than to admit that they were out of step with the mood of the electorate. A far more reasonable view would be that the outcome of the 2016 US election was determined by a highly polarized electorate, weaknesses of both political parties, and an uninspiring Democratic candidate rather than by any foreign interference via “deliberate online falsehoods” or old-fashioned agents on the

¹⁰ Michael D. Barr, “Marxists in Singapore ? Lee Kuan Yew’s Campaign against Catholic Social Justice Activists in the 1980s”, *Critical Asian Studies*, 42:3, pp335-262, 2010 (<http://criticalasianstudies.org/issues/vol42/no3/marxists-in-singapore.html>)

¹¹ <https://fn8org.wordpress.com>

¹² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1123944/>

¹³ <https://www.historyofvaccines.org/content/articles/history-anti-vaccination-movements>

¹⁴ <https://www.snopes.com/donald-trump-global-warming-hoax/>

ground¹⁵. In the case of the ‘Macron Leaks’ in France, most observers have concluded that they had no or little impact on the election.^{16,17}

Are existing laws inadequate?

One of the reasons that that Macron Leaks did not have much impact in France was that existing laws prohibited the publication of political commentary so close to the date of the election. Similar laws are in place in Singapore as well.¹⁸ Apart from the Parliamentary Elections Act, the Telecommunications Act, the Penal Code and the Sedition Act also already contain provisions against the transmission of false messages¹⁹ or indeed any message which may incite crimes against the State or any community in Singapore.²⁰ Those laws were written in the pre-internet age but they are still applicable to “deliberate online falsehoods” today. Indeed, the operators of The Real Singapore site were successfully prosecuted under the Sedition Act.

Surprisingly, the government has not yet cited the risk of Singaporeans being self-radicalized or induced to commit violence by extremist web-sites²¹ in its justification for new laws against DOF. Websites espousing distorted interpretations of Islam or other religions could certainly be deemed to be spreading “deliberate online falsehoods”. By failing to raise those examples, the government is suggesting that existing laws such as the ISA are sufficient to defend against this kind of threat.

Overall, the government has not presented convincing evidence that DOF is a significantly new or different threat from those that are already addressed by existing legislation. In Singapore, the prosecution of the editors of The Real Singapore showed that pre-internet era laws can be successfully used against online offences and even against people based outside Singapore. In the US, 13 Russian individuals and 3 Russian entities were charged with various crimes related to their alleged interference in the 2016 election. Again, all these charges were made under existing laws without any need to create new laws.

No-brainer that one-sided laws have bad consequences

¹⁵ Jonathan Martin and Maggie Haberman, “Indictment Leaves No Doubt: Russia Backed Trump. But Was It the Difference?”, New York Times, 18 Feb 2018.

¹⁶ Emily Schulteis, “The Macron Leaks Probably Came Too Late to Change The French Election”, The Atlantic, 6 May 2017 (<https://www.theatlantic.com/international/archive/2017/05/france-macron-leak-hack/525738/>)

¹⁷ Sonia Delesalle-Stolper, “MacronLeaks is final twist in surreal French election campaign”, The Guardian, 6 May 2017 (<https://www.theguardian.com/commentisfree/2017/may/06/macronleaks-french-election-campaign-hackers>)

¹⁸ Section 78B, Parliamentary Elections Act. See also the Parliamentary Elections (Election Advertising) Regulations.

¹⁹ “Any person who transmits or causes to be transmitted a message which he knows to be false or fabricated shall be guilty of an offence ...”, Section 45, Telecommunications Act.

²⁰ “Whoever makes, publishes or circulates any statement, rumour or report in written, electronic or other media ... whereby any person may be induced to commit an offence against the State or against the public tranquillity or with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community of persons”, Section 505, Penal Code.

²¹ <https://www.channelnewsasia.com/news/singapore/self-radicalised-singaporeans-a-stark-reminder-of-risks-in-socie-7934484>

Despite this, Minister for Law K Shanmugam has said that it is a “no-brainer” that legislative action against fake news is necessary²² and that the government would study what Germany was doing. Under the German Network Enforcement Act (NetzDG), social media companies must remove illegal content within 7 days, or within 24 hours in the case of content which is “manifestly illegal”. While Germany has historically had very strict laws against hate speech, this new law has been criticised for being overly broad and biased towards forcing companies to remove content without judicial oversight or right of appeal.²³

We’ve made this mistake before...

The lack of judicial oversight and right of appeal are reminiscent of *take-down* provisions that were introduced in Singapore’s Copyright Act in 1999. The government at that time argued that the take-down provisions were modelled after the United States’ Digital Millennium Copyright Act (DMCA).²⁴ Under the DMCA, Internet Service Providers (ISPs) were given a safe harbour if they removed (*took down*) content that was the subject of a copyright complaint. However, the content could be restored (*put back*) if the targets of the complaint filed a counter-notice.²⁵ In contrast, when take-down provisions were added to Singapore’s Copyright Act in 1999, there were no corresponding *put-back* safeguards.²⁶ It was only in 2004 that *put-back* provisions were introduced in Singapore.²⁷ Between 1999 and 2004, the *take-down* provisions in Singapore’s Copyright Act were heavily biased in favour of copyright owners and website owners in Singapore had little defence against their content being taken-down due to invalid complaints of copyright infringement. **The German NetzDG today suffers from the same defects as Singapore’s 1999 copyright law, i.e. content can be taken down without a court order and there are no safeguards against invalid accusations of illegal content.** It would be extremely regrettable if the government were to repeat the mistakes of the 1999 Copyright amendments in its rush to enact legislation against DOF.

The NetzDG does have its merits, however, in that there are sensible limits on its reach²⁸—

1. Services enabling individual communication, particularly email or messaging services, e.g. Whatsapp are not subject to the law.
2. The law does not apply to platforms with journalistic/editorial content even if the content is published on a social network such as Facebook.

²² K Shanmugam, “Opening Address by Mr K Shanmugam, Minister for Home Affairs and Minister for Law, at the “Keep It Real: Truth And Trust In The Media” Forum”, 19 Jun 2017 (<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-mr-k-shanmugam--minister-for-home-affairs-and1.html>)

²³ <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>

²⁴ Pang Khang Chau, “Changes to Copyright Act protect service providers”, Straits Times, 28 August 1999.

²⁵ David Kravets, “10 years later, DMCA is the misunderstood law that saved the web”, 27 Oct 2008, <https://www.wired.com/2008/10/ten-years-later/>

²⁶ Prof Toh See Kiat, Parliamentary debate during second reading of Copyright (Amendment) Bill, 17 August 1999.

²⁷ Section 193DA(2)(b) of the Copyright Act and Section 6 of the Copyright (Network Service Provider) Regulations.

²⁸ <https://www.bmjv.de/SharedDocs/FAQ/EN/NetzDG/NetzDG.html>

3. Only social networks with more than two million registered users in Germany are covered. [As Singapore has a population about 7% that of Germany, the proportionate figure here would be 130,000 registered users.]
4. There is no general power to remove “falsehoods”, only to remove content which is illegal under existing law.

We would like to emphasize again that the NetzDG does not create any new power to remove “falsehoods” but only requires social media networks to take action against content that is already illegal, whether on- or off-line, under existing law,

Freedom of speech and expression

The right to freedom of expression is a human right enshrined in the Universal Declaration of Human Rights²⁹ and is also guaranteed in Singapore’s Constitution³⁰. While the law may place constraints on this right, these constraints on freedom of expression must only be the minimum necessary for ensuring the rights of others, national security or public order.

Conclusion

MARUAH’s view is that the government has not articulated a clear case for new legislation against Deliberate Online Falsehoods (DOF). Existing laws can already be used and have been used against DOF in Singapore and overseas.

There is a very high risk that any legislative action will stifle free speech and may be used against the legitimate expression of dissenting views.

In the event that the government still feels compelled to enact any laws against DOF, such laws must be balanced and not result in the removal of legitimate content including political debate. All parties affected must be given the chance to present their case and take-down orders issued only by a court of law.

²⁹ “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”, Article 19 of the Universal Declaration of Human Rights.

³⁰ The relevant portions of the Constitution of the Republic of Singapore are,

14.—(1) Subject to clauses (2) and (3) —

(a) every citizen of Singapore has the right to freedom of speech and expression;

...

(2) Parliament may by law impose —

(a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;