

Written Representation 129

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Written Representations to the Select Committee on Deliberate Online Falsehoods **Effectiveness of Current Legislative Tools**

I. Introduction

1. I am presently Dean of the School of Law, Singapore Management University, and make these written representation to the Select Committee on Deliberate Online Falsehoods (“Select Committee”).
2. I will not revisit the challenges posed by deliberate online falsehoods, which have been laid out in the Green Paper issued jointly by the Ministry of Communication and Information and the Ministry of Law. I will instead confine my written representations to (d)(ii) of the Select Committee’s terms of reference, that is, how Singapore can prevent and combat online falsehoods, including any specific measures, including legislation, that should be taken. Specifically, I focus my representations on the current legislative tools that can be used to respond to the spread of deliberate online falsehoods, and analyse the effectiveness of such tools with reference to some real world examples. It is necessary to understand the current framework before deciding on further steps that should be taken in relation to deliberate online falsehoods.

II. Current legislative framework vis-à-vis online falsehoods

A. Overview

3. The current legislative framework deals with deliberate online falsehoods in at least three ways.
4. First, the spread of online falsehoods may constitute a *criminal offence* through various provisions. The focus of these provisions is on the *individual* who is responsible for deliberately spreading the online falsehood, rather than dealing with the falsehood itself (although sometimes the falsehood will also be dealt with). Some of these provisions are:
 - Section 45, Telecommunications Act;
 - Sections 298 and 298A, Penal Code;
 - Sections 4, Sedition Act; and
 - Section 26, Internal Security Act.
5. Second, there are *judicial remedies* available. These differ from the above-mentioned criminal offences in that the law targets the deliberate online falsehood *itself*, rather than the individual. These remedies are in the form court

orders made on the application of the specified persons. For example, an affected individual could seek assistance under section 15 of the Protection from Harassment Act to remove the falsehood concerned. Similarly, the Public Prosecutor could apply to court for selected orders under section 10 of the Sedition Act, such as prohibiting the publication concerned.

6. Third, there are *executive actions* which the IMDA can take under the Broadcasting Act. Unlike judicial remedies, these actions are taken by the IMDA without the need to apply to court. It bears noting that there are executive actions which can be taken under the Undesirable Publications Act (section 5) and the Internal Security Act (section 20 and 21) in relation to false publications. However, these do not apply to online communications. Therefore, they will not be further examined within the context of this paper which address online falsehoods.
7. Apart from examining the offence itself, I will also examine: (a) whether the offence deals with all kinds of falsehoods, (b) whether the offence deals with the falsehood itself and (c) the processes involved.

B. Criminal Offences

(1) Section 45, Telecommunications Act

8. Section 45 of the Telecommunications Act provides:

45. 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 and shall be liable on conviction —

- (a) in the case where the false or fabricated message contains any reference to the presence in any place or location of a bomb or other thing liable to explode or ignite, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 7 years or to both; and
- (b) in any other case, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both.

9. In summary, section 45 of the Telecommunications Act applies to any person who knowingly transmits any false or fabricated message, or causes any false or fabricated message to be transmitted.
10. In terms of scope, section 2 of the Telecommunications Act makes it clear that it applies to any form of online communication.¹ However, section 45 of the Telecommunications Act does not apply where the person does not know that the message is false or fabricated.²

¹ Section 2 provides as follows: “message” means any sign, signal, writing, image, sound, intelligence or information of any nature transmitted by telecommunications; and “telecommunications” means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.

² This position is supported in case law – see *eg, PP v Boon Yu Kai John* [2004] 3 SLR 226 at 231.

11. The offender will also have to be first charged in court, and the penalty is either a fine or imprisonment or both. Because section 45 is targeted at the *offender* rather than the falsehood itself, the falsehood might still remain online in the meantime.

(2) Sections 298 and 298A, Penal Code

12. Section 298 of the Penal Code provides:

298. Whoever, with deliberate intention of wounding the religious or racial feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, or causes any matter however represented to be seen or heard by that person, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

13. In summary, section 298 of the Penal Code applies to any person who causes any matter, however represented, to be seen or heard by another person with the *deliberate intention* to wound the racial or religious feelings of that person.
14. Section 298A of the Penal Code provides for a more specific offence. It provides:

298A. Whoever —

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or
- (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquillity,

shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

15. In summary, section 298A applies to any person who by other means (than words or signs and visible representation) *knowingly* promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different racial or religious groups, or commits any act knowing that it is prejudicial to the maintenance of harmony between different religious or racial groups, and which disturbs or is likely to disturb the public tranquillity.
16. In terms of scope, both provisions apply to any form of online communication. However, they only cover falsehoods which touch upon the issues of race or religion. Both provisions also require that the falsehood be spread knowingly by the suspected offender. They do not apply where the falsehood is spread inadvertently.

17. The offender will also have to be first charged in Court, and the penalty is either a fine or imprisonment or both. The falsehood might still remain online in the meantime.

(3) Section 4 Sedition Act

18. Section 4 of the Sedition Act provides:

4.—(1) Any person who —

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication,

shall be guilty of an offence and shall be liable on conviction for a first offence to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding 5 years; and any seditious publication found in the possession of that person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

19. In summary, section 4 of the Sedition Act applies to any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication.
20. In terms of scope, section 2 of the Sedition Act defines “publication” to include all “written or printed matter and everything whether of a nature similar to written or printed matter or not containing any visible representation or by its form, shape or in any other manner capable of suggesting words or ideas”, which is broad enough to cover any form of online communication.³
21. Section 4 of the Sedition Act covers only falsehoods within the definition of “seditious tendency” under section 3 of the Sedition Act. This includes raising discontent or disaffection amongst the citizens or residents of Singapore, and promoting feelings of ill-will and hostility between different races or classes of the population in Singapore.
22. The offender will also have to be first charged in Court, and the penalty is either a fine or imprisonment or both. The falsehood might still remain online in the meantime, although the court has powers to prohibit circulation of seditious publications on the application of the Public Prosecutor.

(4) Section 26, Internal Security Act

³ Charges under the Sedition Act were successfully brought in 2016 in a case involving online communications. This was the prosecution of the couple who were behind *The Real Singapore* website, Ms Ai Takagi and Mr Yang Kaiheng.

23. Section 26 of the Internal Security Act provides:
- 26.** Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular or other printed publication or by any other means spreads false reports or makes false statements likely to cause public alarm, shall be guilty of an offence under this Part.
24. In summary, section 26 of the Internal Security Act applies to any person who spreads false reports or makes false statements likely to cause public alarm.
25. It can apply to any form of online communication, but it covers only falsehoods likely to cause public alarm.
26. The offender will also have to be first charged in Court, and the penalty is either a fine or imprisonment. The falsehood might still remain online in the meantime.

(5) Summary

27. I set out below a summary of the discussion above.

Offence	Covers online falsehood?	Additional requirements?	Deals with falsehood itself?
S 45, Telecommunications Act	Yes	Knowledge of falsity or fabrication	No
Sections 299, 298A, Penal Code	Yes	Knowingly spread falsehoods that concern race or religion	No
Section 4, Sedition Act	Yes	Covers only falsehoods within definition of “seditious tendency”	Yes
Section 26, Internal Security Act	Yes	Covers only falsehoods likely to cause public alarm	No

C. Judicial remedies

(1) Section 15, Protection from Harassment Act

28. Any individual against whom a false statement of fact has been published by any means can apply to Court under section 15 of the Protection from Harassment Act (“POHA”) for relief. This section provides:

15.—(1) Where any statement of fact about any person (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.

(2) Subject to section 21(1), the District Court may, upon the application of the subject under subsection (1), 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 the true facts.

29. As such, the Court can grant an order that the statement complained of shall not be published, or continue to be published, unless the person publishing it also

publishes such notification as the court thinks necessary to bring attention to the falsehood and true facts. In deciding whether to grant the order, the Court will be guided by the principles set out in s 15(3) of POHA.

30. In terms of scope, section 15 applies to any form of online communication which comes under the definition of “publish” under section 2 of POHA, but it only covers falsehoods which are made in respect of the applicant individual (*ie*, private interests).

(2) Section 10, Seditio Act

31. Section 10 of the Seditio Act provides:

10.—(1) Whenever on the application of the Public Prosecutor it is shown to the satisfaction of the Court that the issue or circulation of a seditious publication is or if commenced or continued would be likely to lead to unlawful violence or appears to have the object of promoting feelings of hostility between different classes or races of the community, the Court shall make an order (referred to in this section as a prohibition order) prohibiting the issuing and circulation of that publication (referred to in this section as a prohibited publication) and requiring every person having any copy of the prohibited publication in his possession, power or control forthwith to deliver every such copy into the custody of the police.

32. In summary, section 10 of the Seditio Act empowers the Public Prosecutor to apply to the High Court, to seek a prohibition of the circulation of seditious publications. Where the publication/falsehood in question is one which would “likely to lead to unlawful violence, or appear to have the object of promoting feelings of hostility between different classes or races of the community”, the Public Prosecutor can make such an application. The Court’s order can require every person who has a copy of the seditious publication in his possession, power, or control to deliver such copy into the custody of the police.

(3) Summary

33. I set out below a summary of the discussion above.

Provision	Covers online falsehood?	Additional requirements?	Deals with falsehood itself?
S 15, POHA	Yes	Covers private interests	Yes
S 10, Seditio Act	Yes	Covers falsehoods likely to lead to unlawful violence, or appear to have the object of promoting feelings of hostility between different classes or races of the community	Yes

D. Executive Action: Broadcasting Act

34. The Broadcasting Act regulates licensable broadcasting services in or from Singapore (section 8). As a regulatory regime, the Broadcasting Act does *not* apply to every person. It applies only to:
- a. Class licensees, *ie*, Internet Content Providers, defined under Notification 2 of the Broadcasting (Class Licence) Notification (“Notification”) as:
 - I. Any individual in Singapore who provides any programme, for business, political or religious purposes, on the World Wide Web through the Internet; or
 - II. Any corporation or group of individuals ... who provides any programme on the World Wide Web through the Internet, and includes any web publisher and server and any web server administrator.
 - or
 - b. Individual licensees, *ie*, Internet Content Providers which are (under Notification 3A):
 - I. assessed from at least 50,000 different IP addresses in Singapore per month on average, over any period of 2 consecutive months; and
 - II. contains at least one Singapore news programme per week on average, over the same period of 2 consecutive months
35. The Broadcasting Act provisions do *not* apply to *non-licensees*, such as:
- a. A website run by an individual which does not provide programmes for “business, political or religious purposes” (*eg*, personal blogs);
 - b. Persons communicating via closed platform groups (like WhatsApp, Telegram), to the extent such communication constitutes “private communication” under the definition of “programme” in section 2 of the Broadcasting Act;
 - c. Foreign broadcasting services (*ie*, broadcasting services outside Singapore but broadcasting into Singapore). There are, however, specific provisions (sections 29-31 of the Broadcasting Act) which govern the support of, and the declaration of, foreign broadcasting services in Singapore.
36. Under Condition 16 of the Schedule in the Notification, the Broadcasting Act can be used against online falsehoods which are:
- a. contrary to the Internet Code of Practice (*ie*, anything against public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws); or
 - b. against the public interest, public order or national harmony; or offend against good taste or decency.
37. If the conditions (under [24] and [26] above) are met, IMDA has the power under the Broadcasting Act to:

- a. require the licensee to take such action with regard to the contents of programmes ... as IMDA considers necessary, or prohibit the licensee from broadcasting the whole or any part of a programme (under section 16 of the Broadcasting Act); or
- b. cancel the broadcasting license of the licensee (under section 12 of the Broadcasting Act).

III. Testing Current Legislative Provisions Against Real Cases of Online Falsehoods

38. To test the parameters of the current legislative provisions, I now apply them to incidents of online falsehoods that occurred in other jurisdictions, to see how our laws would have tackled the problem.

A. Example (1): Falsehoods regarding Hurricane Irma

(1) Background

39. During Hurricane Irma, a number of false stories were generated. I focus on the story of a Ms “Rebecca Riviera”, who claimed to be a resident of Saint-Martin, a French territory affected by Hurricane Irma.⁴
40. In the aftermath of Hurricane Irma, “Rebecca Riviera” claimed via Facebook that Air France had increased the price of its tickets by €2,500 before the disaster, that Hurricane Irma had left thousands dead and dozens of bodies floating in the street, and that the media and the authorities were hiding the truth. One of her videos containing such claims was seen 5 million times. These claims were false.
41. “Rebecca Riviera” also began an online donation campaign to support victims of Hurricane Irma in Saint-Martin. Almost €1,000 were donated to this campaign.

(2) Applicability of Current Legislation

(a) Criminal laws

42. There are some criminal laws that could apply to this case:
 - a. Section 45 of the Telecommunications Act can apply to this case, if it can be proven that “Rebecca Riviera” knew that the information she was putting out was false.
 - b. Section 26 of the Internal Security Act can also apply to this case, considering that the falsehoods spread by “Rebecca Riviera” about the impact of Hurricane Irma are likely to cause public alarm.
 - c. Section 4 of the Sedition Act may apply to this case, as the falsehoods propagated by “Rebecca Riviera” arguably either (a) bring into hatred or contempt or excite disaffection against the Government, or (b) raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore.

⁴ Anne-Sophie Faivre Le Cadre, *Intox sur Irma: quel est le but de ces vidéos diffusées sur Facebook?* (Misinformation about Irma : what is the purpose of these videos circulated on Facebook?), LE MONDE (Sep 18, 2017, 5:39PM), http://www.lemonde.fr/les-decodeurs/article/2017/09/18/intox-sur-irma-quel-est-le-but-de-ces-vidéos-diffusees-sur-facebook_5187419_4355770.html

This is especially considering the claim that the authorities are hiding the truth of the situation from the general public.

43. However, before initiating a criminal prosecution, investigations will need to be conducted to ascertain the actual identity of “Rebecca Riviera”. Such investigations could take time, depending on how well “Rebecca Riviera’s” online tracks have been covered. It is possible that the real identity of “Rebecca Riviera” may never be established. It is also unclear what can be done if it is revealed that “Rebecca Riviera” was operated by a social bot (*ie*, an automated account). Even when investigations have concluded, additional time is needed for prosecution.
44. Further, criminal prosecutions do not ensure that online falsehoods are removed, or that people are given access to the facts. This means that even if “Rebecca Riviera” is arrested for spreading falsehoods, the falsehoods she propagated will remain in cyberspace, with no means of ensuring that readers of the falsehoods are made aware of the true facts. As mentioned above, the criminal offences largely target the individual, rather than the falsehood itself.
45. Sections 298 and 298A of the Penal Code do not apply in this case, as the falsehoods in question do not impact on racial or religious harmony.

(b) Judicial remedies

46. The judicial remedies under section 15 of POHA and section 10 of the Seditious Act do not apply in this case for the following reasons:
 - a. The remedy under POHA only covers individuals in respect of whom a false statement of fact has been made. The falsehoods propagated by “Rebecca Riviera” do not target any specific individual. The Government will not be able to utilise POHA to counter false claims that it is hiding the truth, as the remedy under section 15 of POHA does not apply to Governments.⁵
 - b. The remedy under section 10 of the Seditious Act only applies where the falsehoods are likely to lead to unlawful violence, or appear to have the object of promoting feelings of hostility between different classes or races of the community. The falsehoods propagated by “Rebecca Riviera” do not fall within these categories.

(c) Executive action

47. It is unlikely that executive action can be taken directly against “Rebecca Riviera”, an individual, under the Broadcasting Act for propagating falsehoods, unless her Facebook page is used for “*business, political or religious purposes*”.
48. The question then is whether action can be taken against Facebook, for allowing “Rebecca Riviera” to propagate falsehoods using its platform. It is open to debate whether a platform like Facebook falls within the scope of the definition of “Internet Content Provider” under the Notification, since Facebook characterise

⁵ See *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373.

themselves as non-content generators (but rather the providers of a framework on which content can be shared by users). Therefore, it is questionable whether a straightforward application of the Broadcasting Act's powers to Facebook is possible.

B. Example (2): Emmanuel Macron's Alleged Offshore Account

(1) Background⁶

49. In the lead up to the French Presidential election in 2017, falsehoods were shared amongst the French population. In one instance, two hours before the then-candidates, Emmanuel Macron and Marine Le Pen, faced off in a televised debate, an online forum began circulating documents supposedly proving that Macron had a secret offshore account. During the debate, Le Pen alluded to this, saying that she hoped they would not find out Macron had an offshore account in the Bahamas.
50. The documents were designed to suggest that Macron had created a company to transfer money to the Cayman Islands for the purposes of tax evasion. The online forum that circulated the documents was 4chan, a well-known conspiracy network, and the documents were widely shared on websites that spread falsehoods during the 2016 US Presidential Election, as well as websites that were pro-Trump and pro-Russia.

(2) Applicability of Current Legislation

(a) Criminal laws

51. It is likely that section 45 of the Telecommunications Act can apply to this case, so long as it can be proven that the user who uploaded the documents to the online forum knew that the information he was putting out was false.
52. However, the downsides to using criminal prosecutions to combat online falsehoods, as described above, apply equally to this case.
53. As for the other criminal laws:
 - a. The falsehoods in question are not likely to cause public alarm and so, section 26 of the Internal Security Act is unlikely to apply.
 - b. The falsehoods in question do not have a seditious tendency (as defined under section 3 of the Sedition Act) and so, section 4 of the Sedition Act does not apply.
 - c. The falsehoods in question do not impact on racial or religious harmony and so, sections 298 and 298A of the Penal Code do not apply.

(b) Judicial remedies

54. The judicial remedies under section 15 of POHA can apply in this case, as the false statement targets Macron, an individual. The remedy under POHA will allow

⁶ <http://observers.france24.com/en/20170505-france-elections-macron-lepen-offshore-bahamas-debunked>

access to facts, as the statement cannot be published without a notification bringing attention to its falsity and the true facts. However, going through this court process will take time – the application for a court order must be made via originating summons supported by an affidavit, the applicant must comply with directions for service, the person against whom the order is sought can file an affidavit in reply, and the court may set the matter down for hearing before coming to a decision.⁷ If this arose in the Singapore context, it remains to be seen whether a remedy would have been effectively obtained in a time sensitive manner (*ie*, before the debates were over and before voters had exercised their vote in a particular fashion).

55. The remedy under section 10 of the Sedition Act only applies where the falsehoods are likely to lead to unlawful violence, or appear to have the object of promoting feelings of hostility between different classes or races of the community. The falsehoods in this case do not fall within these categories and so, section 10 of the Sedition Act does not apply to this case.

(c) Executive action

56. It is uncertain whether the online forum falls within the definition of an “Internet Content Provider” under the Notification, similar to the position with Facebook (see [39], above).

C. Example (3): Japanese Blogger and the Zuma Dismemberment Case

(1) Background⁸

57. A Japanese blogger was reported to have deliberately spread fabricated stories of the “Zama dismemberment” case (where remains of nine people were found in an apartment) on his blog. These fabricated stories suggested that specific relatives affected by the case may have been accomplices, and that the motive was organ trafficking.
58. The purpose of creating these stories was to have more people access his blog, in order to gain more revenue. The blogger indicated that he could earn just under 200,000 yen per month from such stories on his blog.

(2) Applicability of Current Legislation

(a) Criminal laws

59. There are some criminal laws that may apply to this case.
- a. Section 45 of the Telecommunications Act can apply to this case, if it can be proven that blogger knew that the information he was putting out was false.
 - b. Section 26 of the Internal Security Act can also apply to this case, considering that the falsehoods spread by the blogger about organ trafficking are likely to cause public alarm.

⁷ See O 109, r 4 of the Rules of Court.

⁸ <https://mainichi.jp/english/articles/20171120/p2a/00m/0na/015000c>

60. However, the downsides to using criminal prosecutions to combat online falsehoods, as described above, apply equally to this case.
61. Sections 298 and 298A of the Penal Code do not apply in this case, as the falsehoods in question do not impact on racial or religious harmony. Likewise, section 4 of the Sedition Act does not apply in this case, as the falsehoods in question do not have a seditious tendency (as defined under section 3 of the Sedition Act).

(b) Judicial remedies

62. The judicial remedies under section 15 of POHA can apply in respect of falsehoods that target individual relatives, but not in respect of the other falsehoods (such as the motive for the murders being organ trafficking).
63. The remedy under section 10 of the Sedition Act only applies where the falsehoods are likely to lead to unlawful violence, or appear to have the object of promoting feelings of hostility between different classes or races of the community. The falsehoods in this case do not fall within these categories and so, section 10 of the Sedition Act does not apply to this case.

(c) Executive action

64. Personal blogs which do not provide programmes for “*business, political or religious purposes*” are not licensed under the Broadcasting Act. It is arguable whether a personal blog that generates ad revenue can be considered as providing programmes for business purposes. However, in today’s age of digital advertising, that would mean that every blog that carries advertisements, regardless of the content of the blog, would need to be licensed under the Broadcasting Act. This is unlikely to have been the intent behind the regulations. It is more likely that “business purposes” is intended to cover blogs that sell products, for example. As such, it is unlikely that the IMDA will be able to take down the falsehoods on the blog using the Broadcasting Act.

Conclusion

65. There has been much discussion on whether there are sufficient legislative tools in place today which can address the challenges posed by the spread of falsehoods online. I have sought to review some of these tools to map out the coverage and scope of such levers.
66. Broadly, the review illustrates that there are selected criminal, judicial and executive levers which can be used to counter online falsehoods today. However, when applied to real world situations, these tools run up against limitations – of scope, speed and adaptability.