

Written Representation 58

Name: Association of Women for Action and Research (AWARE)

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No new restrictions needed: AWARE submission to Select Committee on "Deliberate Online Falsehoods"

Introduction

This is a submission by Corinna Lim, Executive Director of the Association of Women for Action and Research (AWARE), on behalf of AWARE. The author details requested by the Select Committee are found in Annex A.

As Singapore's leading gender equality advocacy group, AWARE is strongly interested in ensuring space for, and promoting the quality of, public discussion. To achieve our mission, we address mindsets and practices that affect women's rights, often through democratic engagement in the public square, via online media. The concerns of this Select Committee and the directions proposed by the Green Paper¹ are therefore highly relevant to our work. We are willing to appear before the Select Committee to give evidence, if requested.

Overview

The Green Paper rightly highlights that "open" and "vigorous exchange" is vital to "the heart of democracy". Experiences and views vary, even among people acting in good faith, how to characterise events and facts is contested. In a democracy, people understand matters by critically engaging a range of accounts, not relying on infallible authorities. Freedom of expression is constitutionally protected and restrictions should be strictly proportional to address clear and identifiable harms, judicially determined wherever possible.

The internet is young, but the dilemmas of free speech have been discussed in courts and legislatures for centuries. Nor is rapid mass communication new: a 1938 radio broadcast about an alien invasion paused to reassure worried listeners it was fictional. The Cold War era was marked by hostile foreign state propaganda: e.g. a Soviet campaign alleged that HIV was a US-engineered weapon. In Singapore, media licensing, advertising regulation, and laws on sedition, harassment, defamation and contempt of court, among others, have long grappled with balancing expression and harm.

While there is reasonable concern about how social media may shape media consumption, we argue for **upstream education instead of downstream censorship** wherever possible.

The Green Paper does not define the issue of "deliberate online falsehoods" in terms of limited and clearly defined judicial findings of a specific harm. Given its wide approach, there is a risk that any legal powers intended to deal with "Deliberate Online Falsehoods" will be broad and discretionary. Far from promoting "people's faith in the country, democracy, and

¹ Ministry of Communication and Information and the Ministry of Law, "Deliberate Online Falsehoods: Challenges and Implications", 5 January 2018.

its institutions”,² such powers encourage distrust and conspiracism, as people fear asking questions and raising concerns openly. In such a climate, public agencies may become - and certainly strongly risk being perceived as - less accountable to the public.

Broad powers of censorship also do not promote “racial and religious harmony”, a concern discussed in para 75 of the Green Paper. Insofar as restrictions seem to be proposed on the basis of nationality alone, and to be supported by very wide and general characterisations of all foreigners’ voices as inherently illegitimate, this would be unfair discrimination which will harm their integration into society, promoting social division and tension rather than harmony.

The Government’s best tools for enhancing public confidence and defusing conspiracism are the promotion of media literacy and an increase in transparency—e.g. the systematic release of data about public agencies, and the introduction of independent inspectorates such as Ombudsmen. These approaches will enhance general understanding of public agencies and thus the standing of these agencies. The Government can also work with technology firms to explore voluntary ways for social media algorithms to deprioritise sensationalism. Hostile foreign states, where present, call for traditional diplomatic means and technical defences.

“Deliberate Online Falsehoods” do not require new censorship measures. Below we discuss in detail: (A) Foreign actors; (B) Non-state speech; and (C) Procedural questions.

- A. Foreign actors: The Green Paper classifies several quite different phenomena together in discussing “Deliberate Online Falsehoods”. The Green Paper’s concerns about “foreign interference” can be divided into two categories.
- 1) Hostile disinformation by a foreign state power: All the Green Paper’s contemporary examples refer to alleged campaigns by Russia, targeting NATO member states, former Soviet territories, or Northern European societies.³ This is significant because:
- Only one state power is identified.
 - That state power appears to be motivated by specific geopolitical and military interests in a region where Singapore’s strategic role is relatively small.
 - The state’s disinformation campaigns are extremely high-budget, large-scale affairs involving cyber-warfare expertise (hacking) and labour-intensive operations (planted journalists, social media accounts etc.).

This suggests that alleged Russian disinformation is exceptional. It should be taken seriously, but it does not straightforwardly justify measures of broad application in restricting speech. Few actors - state or non-state - have means and motives for such unusual operations, for quite unclear gains. It is also questionable how domestic legislation targeted broadly at non-state actors would counteract such a campaign.

² Paragraphs 81 of the Green Paper.

³ Based on textual description and footnotes in the Green Paper, this applies to the examples from Germany, the US, Ukraine, the Czech Republic, Slovakia, the UK, France, Sweden and Italy.

Recommendation: Concerns about hostile disinformation by foreign state powers should be studied on a case-by-case basis and addressed through traditional diplomatic means, as well as through security measures to prevent hacking. They cannot form the basis of any legislation which could curtail ordinary political speech.

- 2) Speech by foreign non-state actors: The Green Paper asserts that “foreign actors who wish to destabilise Singapore” threaten “national security”. It cites current restrictions imposed on foreign persons engaging in or supporting political speech, including restrictions on political donations, association and assembly. It asserts that the principles behind these measures should extend to online speech. The argument in paras 77, 78 and 82 seems to seek restrictions on online speech solely based on the nationality of the speaker, regardless of any specific proof of harm or dishonest intent associated with the speech.

AWARE strongly urges the Select Committee to reject such an approach. As we have repeatedly argued,⁴ current rules restricting speech simply based on nationality⁵ are excessive. The approach in the Green Paper adds further grounds for concern.

- International exchange is not harmful. To heavily circumscribe speech by foreigners simply because of their nationality (the approach heavily implied by para 77 of the Green Paper) is a discriminatory infringement on their fundamental human right to expression. Singaporeans often speak on controversies in other nations, which affect us and/or are of human interest.⁶ If Singaporean commentary does not amount to destabilising interference by us elsewhere, let us not be paranoid about the effects of foreign speech here.
- Blanket censorship of foreigners promotes division, not integration. Singapore is home to foreign employers and workers; teachers and students; service providers and consumers in all sectors. One in 3 citizen marriages is to a foreigner;⁷ 1 in 5 citizen births is to such a couple.⁸ Over a million work permit holders raise our children, care for older persons and build our homes. Overwhelmingly, foreigners are ordinary people, not saboteurs who “wish to destabilise” a place that provides their livelihood or houses their families. Broad-brush measures that exclude rather than integrate them will fan, rather than reduce, social tension and division.

⁴ <http://www.aware.org.sg/2016/06/clarity-needed-on-interference-by-foreign-entities/>,
<http://www.aware.org.sg/2016/11/controversial-issues-need-more-voices-not-fewer/>,
<http://www.aware.org.sg/2017/11/awares-statement-on-charges-against-civil-society-activist/>

⁵ Restrictions on speech based on other substantive potential harms (e.g. harassment, defamation), regardless of the nationality of the speaker, are discussed in a separate section below.

⁶ See for instance various comments on ‘Brexit’:

<https://www.channelnewsasia.com/news/singapore/brexit-vote-a-turning-point-pm-lee-7959216>

⁷ <https://www.strategygroup.gov.sg/docs/default-source/Population/population-in-brief-2015.pdf>

⁸ <http://www.straitstimes.com/singapore/more-foreign-wives-seek-help-after-singaporean-husbands-abuse-them-le-ave-land-in-jail-or>

It also denies society of concerns worth hearing. Foreign parents (e.g. of citizen children) have strong stakes in education, health and housing. Foreign professionals such as teachers, social workers and healthcare workers bring expertise, experience and potentially unique insights in the Singapore context. In some areas (e.g. human trafficking, domestic worker labour law), foreigners are acutely affected; no fair or complete approach should ignore their voices. Singapore loses the benefit of these perspectives when restrictions on speech are made on the basis of nationality.

Moreover, “political” content is ill defined, with arbitrary outcomes. Foreigners occupy positions of influence (e.g. employers, teachers, appointees to bodies like the National Wages Council); Singapore joins treaties committing us to standards developed internationally. The Select Committee itself specifically invited views from foreign experts on “Deliberate Online Falsehoods”.⁹ With no clear distinction between taboo and non-taboo issues for comment, many foreigners are already intimidated into silence. When censorship appears non-transparent, this fuels rather than deflates conspiracism and erodes public confidence.

- The internet is unavoidably international. It is unworkable to police every internet publication. Will it become illegal for international publications such as Al Jazeera or BBC to run commentaries which discuss matters in Singapore? If foreigners are censored for being foreigners in some publications but not others, this creates the appearance of arbitrariness in intervention, which tends to erode public trust and confidence.

Recommendations: “Deliberate Online Falsehoods” do not justify nationality-based restrictions on online speech by individuals or organisations. Moreover, we urge the Government to avoid language and measures which cast the whole category of foreigners as malicious provocateurs, as this tends to inflame xenophobic sentiment.

Clarification: For the avoidance of misunderstanding, AWARE is not arguing that online speech by foreign entities should face no regulation whatsoever. For instance, a prohibition on online harassment should apply regardless of nationality of the perpetrator. Likewise, a foreign corporation should face the same duties as local corporations when it comes to truthfulness in advertising.

- B. Non-state speech: How, then, to handle “Deliberate Online Falsehoods” by non-state actors of any nationality? We discuss: 1) Free expression vs. harm; 2) Existing measures; and 3) Improving social discourse.

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<https://www.channelnewsasia.com/news/singapore/select-committee-on-deliberate-online-falsehoods-wants-more-9946270>

- 1) Free expression vs. harm: No one possesses complete truth and objectivity. Each person or organisation has different strengths, limitations and biases. Consequently, truth-seeking is not merely consuming one narrative from an infallible authority. People build pictures from multiple accounts, testing each source against others and against their pre-existing knowledge and beliefs. Even a court, striving for impartial truth, does so by listening to and working through (often) highly adversarial and partisan testimonies.

Being wrong or failing to cite evidence unfavourable to one's view, even from questionable motives, is not alone enough to justify censorship.

Restrictions on speech must be justified by - and limited to the extent necessary to - address a further clear and identifiable harm. If it were made illegal simply to give what is deemed a biased, incomplete, inaccurate or even wrong account, such a measure could catch all manner of ordinary speech that clearly does not merit criminalisation, e.g.:

- Cultural practices of dubious factual basis e.g. making astrological predictions or recommending fengshui services.
- Ordinary commercial puffery and bias, including exaggerating the alleged need for a product or service or its attractive qualities.
- Ordinary persuasive speech which omits inconvenient facts or context. For example, anti-abortion advocates often present the health risks of abortion without giving specific (small) probabilities, and without comparing them to the risks of pregnancy and childbirth. While AWARE may disagree with this argumentative tactic, it is by no means clear that it should be made illegal.
- Satirical speech which knowingly exaggerates or distorts for the sake of commentary or amusement.

Usually, the circulation even of misunderstandings simply reflects different concerns and information gaps, allowing for clarification from others. With recent "kidnapping scares",¹⁰ for example, concerns raised over one interpretation of events led to investigation and clarification as other accounts emerged. Ultimately all were better informed.

- 2) Existing measures: AWARE's view is that the developments discussed in the Green Paper do not disclose a specific and new kind of harm which requires additional legislative measures.¹¹ The Green Paper itself does not specifically identify the relevant harm which would define the scope of such measures. At various points it refers to: (a) interference with electoral outcomes (para 51); (b) "racial and religious harmony" (para 75); and (c) "people's faith in the country, democracy and its institutions" (para 81), but it does not indicate how

¹⁰

<http://www.todayonline.com/singapore/kidnapping-scares-near-international-schools-took-place-due-misunderstandings>

¹¹ It should be noted that even where particular harms are at issue, legal restriction on speech is rarely the only or best measure to address those harms. Other, preferable, means are discussed in a further section below.

protecting these interests requires additional powers or scope beyond existing legislation, which is extremely broad and comprehensive. In particular:

- Interference with electoral outcomes: Falsehoods which damage the reputation of candidates are covered by defamation law, which applies to online statements.¹² Falsehoods attacking a candidate may also constitute harassment under the Protection from Harassment Act (POHA), which applies to online statements. The Parliamentary Elections Act makes it illegal for non-citizens to engage in any kind of “election activity” intended to promote or procure the election of a candidate. It restricts “election advertising” to prevent last-minute interventions designed to provoke spur-of-the-moment decisions; this applies to online statements.¹³ The Presidential Elections Act likewise governs presidential elections.
- Racial and religious harmony: Speech threatening this is criminalised by both Section 298 of the Penal Code (wounding religious and racial feelings with deliberate intent) and the Sedition Act (which criminalises speech which will “promote feelings of ill-will and hostility between different races or classes”). Both offences apply to online speech¹⁴ and indeed would be wider than any measures targeting falsehoods specifically, since truth is no defence. Racist or religiously motivated harassment of a person is covered by POHA.
- Faith in the country, democracy and institutions: The desirability of protecting these through censorship is discussed in more depth below. In any case, the Sedition Act restricts speech which “brings into hatred or contempt” or “excites disaffection against” the Government or administration of justice. The Administration of Justice (Protection) Act further criminalises speech that “imputes improper motives to or impugns the integrity, propriety or impartiality of any court” and “poses a risk that public confidence in the administration of justice would be undermined”, a prohibition that applies to online speech.¹⁵

Aside from the scope of material covered by existing law, there is also no indication that the existing measures are unable to cope with online media specifically. They have been found to apply to online statements. In addition:

- Rapidity of response: There is no evidence that it is necessary to censor even inflammatory falsehoods with extreme rapidity. The only example of a Singapore-specific online falsehood cited in the Green Paper is an article published by website The Real Singapore, making

¹² See the case of Roy Ngerng.

¹³ See the cases of Roy Ngerng, Teo Soh Lung and The Independent - Singapore.

¹⁴ See the cases of Amos Yee and the editors of The Real Singapore.

¹⁵ See the case of Li Shengwu.

allegations about the 2015 Thaipusam procession, later found to contravene the Sedition Act. There is no indication that the false account of the procession is now believed by any sizeable segment of the population at all. In other words, after-the-fact prosecution was sufficient to curb spread of a false belief.

Nevertheless, a rapid take-down power is **already available** to IMDA in respect of regulated online news sites (i.e. sites with an interest in Singapore news and a large amount of traffic). IMDA can require such regulated sites to remove material that contravenes the Internet Code of Practice, which covers all material otherwise contrary to Singapore law as well as material which “glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance”.¹⁶

Finally, even if all the above measures are considered inadequate and it is argued that deliberate falsehood alone should suffice as a basis for restricting online speech, **such a measure already exists and no new one is needed**. Section 45 of the Telecommunications Act sets out the offence of “Sending false message”, which makes it a crime if a person “transmits or causes to be transmitted a message which he knows to be false or fabricated”. It carries substantial penalties (up to three years in prison and/or a fine of \$10,000), especially if the message pertains to an explosive device (up to seven years in prison and/or a fine of \$10,000).

- 3) Improving social discourse: We have discussed censorship measures at some length. However, this is only one piece of the puzzle when it comes to improving discourse on matters of public interest. In general, censorship does not improve understanding - only public engagement can do so. If we stifle conversations that are based on or initiated out of incomplete knowledge, important questions will not be asked and we will not be able to collectively improve our understanding as a society.

The Green Paper seeks to protect “faith in...institutions” (para 81), but such faith is not an end in itself. It is accorded by society, organically, based on the democratic responsiveness of the institutions themselves. This properly results from hard scrutiny, uncomfortable as it can be. Moreover, some matters are inherently matters of interpretation - e.g. the motivations or ways of thinking of public agencies and institutions - and it is not appropriate for an authority to prescribe one specific interpretation as fact.

Conspiracist thinking and toxic cynicism about democracy are best addressed by proactive means to improve the discursive environment, not reactive

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<https://www.imda.gov.sg/-/media/imda/files/regulation-licensing-and-consultations/codes-of-practice-and-guidelines/acts-codes/19-policiesandcontentguidelinesinternetinternecodeofpractice.pdf>

means aimed at slapping down each instance of worrying expression. We propose the following measures:

- Increase transparency about public policies and institutions: The more that detailed, disaggregated information is available about various policy areas and the workings of public agencies, the more that ordinary people are empowered to build a more accurate picture of society, reject falsehoods when they see them, and refute others who propagate them. Livestreaming parliament, for example, would enable everyone to independently verify claims made about proceedings.
- Institute independent inspectorate mechanisms: Mechanisms such as independent review panels and Ombudsmen help to promote public faith in public agencies and authorities. When it is known that claims about the workings of institutions will be investigated and verified by an independent body, this helps to strengthen the persuasiveness and authoritativeness of accurate information put out in the public sphere.
- Collaboration with social networks: Much concern has been expressed about the way that social media technology (e.g. newsfeed algorithms) may tend to amplify the effect of sensationalist or distorted accounts, or promote an “echo chamber” in which people only encounter material which confirms their existing biases. Yet social media companies are investigating methods of addressing these concerns, for instance by removing tools that enable misinformation¹⁷ or adding fact checking tools to their software.¹⁸ The Government could explore voluntary collaboration with these companies to enhance and promote similar measures.
- Media literacy and political/constitutional education: The Government can do more to investigate common misconceptions about how news is collected, made and distributed, as well as about the workings of political institutions and public agencies. Targeted public education can improve the general knowledge of the population about how journalism works, how different public agencies work, and how different parts of the constitutional order fit together, which in turns reduces the persuasiveness of falsehoods.

C. Procedural questions: AWARE welcomes the fact that a Select Committee has been set up to solicit input. Yet the Green Paper and the Select Committee’s terms of reference do not propose any specific measures - which means that submissions at this stage cannot give detailed feedback on any specific proposals.

¹⁷ <https://mashable.com/2017/06/28/facebook-modify-link-details-fake-news/#s8mUFWTaoOqI>

¹⁸ <https://mashable.com/2017/03/22/facebook-fake-news-tool-irish-slaves-us/#67KZ5bJNTsqD>

Recommendation: We urge Parliament and the Government to ensure that drafts of any proposed legislation aimed at “Deliberate Online Falsehoods” are published in full and undergo a further round of public consultation before being enacted. This consultation should last for at least three months to enable full public consideration.

In the absence of specific proposals, we offer the following more detailed comments. In our view, no new legislation restricting speech is necessary; but if the Government does consider any such legislation, it should have the following features:

- Require independent judicial finding of harm: As discussed above, any restrictions intended to target “Deliberate Online Falsehoods” should be strictly proportional to a specific harm, and limited to the extent necessary to address that harm. To prevent the measure from being overbroad, it is important that such restrictions must always be dependent on a judicial finding of that harm materialising (or a credible and immediate threat of that harm materialising). The involvement of the independent judiciary is a vital check and balance for this purpose. As discussed, in particular, restrictions should not operate based on nationality of the speaker alone.
- Do not include rapid take-down mechanisms based on executive discretion: This gives excessive discretion to the executive to restrict speech. If non-compliance with such an order is punishable, the measure exposes individuals and organisations to criminal liability without the benefit of a criminal trial. Even if it is possible to apply to a court to have an order lifted, this involves a reversal of the ordinary criminal burden of proof, as well as making freedom of speech contingent on having sufficient resources, time and confidence to engage with the legal system, a prospect which intimidates most ordinary citizens. Moreover, the German experience with a controversial “take-down” law¹⁹ strongly suggests that social networks may be excessively cautious in response to such laws, and block even material which is mocking or opposing hate speech. As discussed above, the application of the Sedition Act to the case of falsehoods circulated by The Real Singapore make it clear that extreme rapidity is not necessary to counter falsehoods. Yet it can have a strong inhibitory effect on ordinary citizens engaging in political discussion.
- Any criminal liability should require proof of specific intent: In addition to any other elements that constitute any crimes, the prosecution should have to prove, beyond reasonable doubt, that the defendant had the dishonest intention to publish a statement that the defendant knew to be false (actual and not constructive/imputed knowledge). The prosecutor should also be required to prove specific intent as to the specific harm targeted by the law (as discussed above). Absent a requirement of specific intent, any measures restricting speech may be too broad and discretionary, criminalising many forms of speech that should not be subject to punishment.

¹⁹ <https://www.politico.eu/article/germany-hate-speech-netzdg-facebook-youtube-google-twitter-free-speech/>