

Written Representation 75

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Written Representation, Select Committee on Deliberate Online Falsehoods

Select Committee on Deliberate Online Falsehood – Cover Letter of Mr. Dan Shefet

By way of introduction I am an Individual Specialist to UNESCO and French lawyer specialized in European Law and IT Law in particular.

It would be a privilege and a pleasure to contribute to the important work of the Select Committee on Deliberate Online Falsehood, especially since I actually drafted the first bill on the subject in Europe (“Deliberate Online Falsehoods”). This bill was presented before the French Senate last year (March 22nd, 2017).

I am a frequent speaker at international conferences on IT law, Data Privacy and Content Regulation and the question of Deliberate Online Falsehoods has been part of my concerns and research for over two years.

I have given lectures on the subject of Deliberate Online Falsehoods and Echo-Chambers (which in my opinion are closely related) i.e.. at Harvard University, at the Ministry of Foreign Affairs of Israel, at the conference MisInfoCon in London, at the Council of Europe , at press conferences held at the French Senate pursuant to the aforementioned bill (“Proposition de loi visant à définir et sanctionner les fausses nouvelles ou « fake news »” of March 22nd 2017) and on several live TV programs , latest on the French channel ARTE in the program “28 Minutes: Hanif Kureishi / Fake News : Facebook, Google et Twitter sont-ils coupables?” (2 November 2017) and the public Channel of the French Parliament (“Public Sénat”) on January 9th:

<https://www.youtube.com/watch?v=O6c53iCc2P4>

You may also find this article interesting. It was published in the French newspaper “Le Point” on “Fake news : « Rien n’influence plus les êtres humains que la parole »” (15 May 2017) written by Laurence Neuer, Le Point .

http://www.lepoint.fr/chroniqueurs-du-point/laurence-neuer/fake-news-rien-n-influence-plus-les-etreshumains-que-la-parole-15-05-2017-2127518_56.php

I may add that it was a great honour to address the Lee Kuan Yew School of Public Policy on November 21st on the subject of Smart Cities and Privacy:

<https://www.youtube.com/watch?v=ga0vcitwjVY> and the National University of Singapore on November 22nd : <http://news.nus.edu.sg/highlights/democracy-andaccountability-internet>

Furthermore I enclose a copy of my latest article on the subject which was published in the Dhaka Courier on the 8th of February: <http://www.dhakacourier.com.bd/the-impact-of-the-internet-on-democracy-and-democratic-values-fake-newsmanipulation-and-destabilization/>

My contribution to the Select Committee on Deliberate Online Falsehood would include that of a definition of complicity of intermediaries (civil and penal), monitoring obligations, take-down procedures, involvement of advertisers and the drafting of a general legal framework including stakeholder and user accountability.

Furthermore I can contribute with expertise in the field of racial and or religious radicalization and its impact on security as I have done extensive research in this area as an Individual Specialist to UNESCO having written the report "*Policy options and regulatory mechanisms for managing radicalization on the Internet*" for the UNESCO conference held in Quebec (October 30th – November 1st 2016) titled "*Internet and the Radicalization of Youth: Preventing, Acting and Living Together*": http://en.unesco.org/sites/default/files/rapport_dan_shefet.pdf

I have also been commissioned by the Kingdom of Saudi Arabia to draft a report on Hate Speech and its Impact on Regional Security and Stability for a Conference which will take place later this year in Riyadh.

The principle of accountability is indeed a personal "Leitmotif" which prompted me found the "Association for Accountability and Internet Democracy" (AAID) the main objective of which is to introduce a general principle of accountability on the internet in order to secure the protection of human integrity, societal values (i.e. democracy as endangered by Deliberate Online Falsehood) and world peace and stability.

Causes, Consequences and Countermeasures of Deliberate Online Falsehood

In the following I shall share some of my ideas on the Causes and Consequences of Deliberate Online Falsehood as well as my suggestions as to how to prevent and combat such falsehoods. Some of these proposals were made at my latest public intervention on the subject at a hearing at the Senate in Paris on February 15th which I co-chaired together with Facebook.

Countermeasures to Deliberate Online Falsehood

The problem with government regulation of Deliberate Online Falsehood is not - only - the risk it poses to free speech, but that the regulatory efforts in Europe so far (the German law which took effect in the 1st of October last year being the best/worst example since it provides for penalties against social media of up to 50 M € !) and potentially in the rest of the world will ultimately lead to the tech companies gaining even more control over our lives.

It will help them reach the level of thought control which is necessary for them if they want to maintain the growth expectancy that is already reflected in their market capitalization.

The numeric boundaries of their business model forces them to seek ultimate control of each and every aspect of our lives.

I am often quoted for saying that « Never has so much information been controlled by so few » and that really sums it up.

There is only one regime more dangerous to democracy than government censorship and that is corporate censorship.

Regulating « Fake News/ Deliberate Online Falsehood » may in the short term be "bad news" to the tech companies, but they will quickly turn it their advantage and the bad news will become « great news » for them and "devastating news" for the rest of us.

Obliging them to do what is in their interest i.e. consolidate their power and influence over each and every data slave in the world is just like AT&T obtaining government endorsed monopoly protection conferring absolute control over the telecom industry for decades (thanks to Tim Wu's outstanding research we now clearly understand those dynamics and should learn from earlier policy mistakes).

If the tech companies face penalties for not taking down « Fake News/ Deliberate Online Falsehood » we basically sign a blank brain washing check. We give them precisely the legal argument and ethical justification for thought control.

That is why I am so actively engaged in the Fake News/ Deliberate Online Falsehood debate in Europe and have developed some ideas to address the legitimate concerns over Deliberate Online Falsehood without growing corporate censorship.

So here come the proposals made at the session at the Senate last Thursday and which have now reached the European Commission and the Ministry of Justice: They are hopefully simple, but not simplistic.

1

Instead of « obliging » (which in reality amounts to « authorizing ») Facebook to perform some sort of fact checking (inhouse or by subcontracting) we (i.e. policy makers) should agree on a « critical mass » for challenge content say 10 000 users: In the event that this critical mass is reached by users independently of each other (i.e.no bots) contesting a given piece of content such content may be tagged as « contested content » (not « Fake » which is judgmental just like the word « controversial «) provided the following second condition is met:

The critical mass should be reached within a given period of time (say 48 hours). In that event the algorithm will automatically tag to the notice « Contested Content » (and nothing else).

In certain cases (depending on user input) a counter narrative may be attached.

The important difference between the existing and potential regulations and « voluntary codes of conduct » is that this is 100% user driven and that it will not amount to or justify government or corporate censorship: No qualification of the content as « fake or not fake » will be made by some opaque algorithm.

The user/reader will simply be informed that the critical mass agreed has challenged the content in question. It does also not constitute "censorship by the masses « or « popular censorship « since the content is not taken down. It is left up there for everyone to see, but with the caveat clearly expressed.

Finally, it will allow posts which are a mixture of challenged and unchallenged content to be unaffected by censorship. One of the many problems associated with regulating « Deliberate Online Falsehood » is that the URL or post in question may just contain a couple of lines which are deemed « fake », but that even from a contextual point of view the rest is not challenged. Deliberate Online Falsehood regulation will result in « censorship by association » i.e. the whole thing is taken down because of a few lines.

Once the proposed system is in place it may easily be calibrated to accommodate specific requirements of a temporal nature for instance the democratic processes of elections or particular threat situations.

The critical mass could be lowered for instance and the counter narrative feature be enhanced under such circumstances, but the important point is that censorship should not be Facebook's or any other tech companies' « problem ». They would quickly turn the problem into a privilege.

So let's start talking about « Contested or Disputed News » and drop the term « Fake News » and let it be 100 % user driven. The only obligation/right of Facebook being the algorithm handling the critical mass and time element.

The real threat to democracy in my mind (in addition to corporate thought control in general) is not « Deliberate Online Falsehood », but what I call « Selective News ». The overreaching problem is that the news I get is not the news you get and so on.

Once I realized that I made the proposal to the Senator and developed it at the session last Thursday: Selective News should be regulated prior to elections. This means of course that « bubbles » should be disabled during the period agreed (for instance 5 weeks or whatever prior to elections) so that each and every one of us gets the same news before casting our vote.

Some people may say that this would amount to imposing all newsstands to carry the same newspapers all over the country prior to elections, but I would personally embrace such an idea with enthusiasm. In no way do I see it as an argument justifying bubbles during this « protected period » - on the contrary. We all know why bubbles exist, they serve important and legitimate commercial interests, but unfortunately they also tend to galvanize political opinions, prejudice, bias and inequality. Curated as well as "raw «content are ok, but it should be the same for everybody at least during elections (in my opinion it should always be the same, but that's a different story).

3

So now we have dealt with « Contested /Disputed News » and « Selective News » and we have done so in a way that avoids corporate censorship and promotes free speech and not the opposite.

We should now turn to another variable of the manipulation equation, but let us first expound the value we wish to protect . I guess it would be something like « The Integrity of Democratic Elections ».

Irrespective of the precise definition we need to be intellectually consistent and draw all logical conclusions as to events that are incompatible with the value defined and this is where I referred to Stanford University and Cambridge Analytica during the session at the Senate.

The threat to "The Integrity of Democratic Elections" posed by the availability of up to 60 « Persuasion Points » used together with finely granulated « cluster matrixes » is much greater in my opinion than « Fake News » (whatever that may be).

We are all open to persuasion and the recent research is nothing short of scary. We can be easily manipulated by anyone who acquires this research and I dare not envisage what could happen if it fell into the wrong hands (again whatever that means).

So if we wish to proceed rationally and protect the above value we need to prohibit the use of such research and techniques at least during elections. Our logic fails us if we don't take that step.

4.

State sponsored « Deliberate Online Falsehood » is already covered by law under the heading of « propaganda » (both domestic and international public law for instance by the treat of 1936 under the League of Nations which imposes the notion of « country of origin liability » for such propaganda originating on its territory).

My latest article on the subject is enclosed. You may also find it on the following link: <http://www.dhakacourier.com.bd/the-impact-of-the-internet-on-democracy-and-democratic-values-fakenews-manipulation-and-destabilization/>

Finally, I confirm that I have no financial or other interest (and neither has the Association for Accountability and Internet Democracy which I preside) on the subject matter of the Select Committee's inquiries; and that I am willing to appear before the Committee to give evidence, if required.

Mr. Dan Shefet, Paris (27th of February 2018)

Causes and Consequences of Deliberate Online Falsehood

The concept of the “Marketplace of Ideas”

The concept often referred to under this theory is that of the “Marketplace of Ideas”: Just like the physical Marketplace will find its equilibrium under the weight of the “natural forces” of supply and demand, so will content on the Net regulate itself under the influence of similar “natural” forces.

As a metaphor The Marketplace of Ideas dates back to the writings of Milton, and as a legal theory it can be traced back to the late US Supreme Court Judge Oliver Wendell Holmes in the case *Abrams v. United States* (1919): “The ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market” (*Abrams vs. United States*, 1919).

The theory is generally that ideas will “fight each other” in open debate and that the “best idea” (whatever that means) will survive.

It draws inspiration from a sort of Darwinist or utilitarian model and it was actually also used by John Stuart Mill.

The Marketplace of Ideas is constantly quoted in debates on Free Speech without any detailed definition or explanation as to how it is deemed to work its wonders.

The theory leads to at least 2 analytical misapprehensions since it implies that not only will «the best idea survive», but also the best technology.

This is based on (1) an erroneous understanding of the current business model / an archaic application of Malthusian growth theory within the parameters of said model and (2) a failure to properly identify the importance of the cost side of the equation.

1

The tech companies are not at the mercy of the marketplace. They control the marketplace. Their dominance will not be curtailed by market forces and certainly not as a consequence of a restricted number of potential users arguably limiting growth.

True the market reflects potential growth and expected returns that may be unrealistic, but we are not witnessing a bubble.

This is not dot-com days.

IT advertising and consumer attention (addiction even) have solidly eclipsed alternative channels and real time bidding, echo chambers and referencing (just to name a few substantial revenue generators) have proven their efficacy and attraction both to investors and users.

Applying a Malthusian « Limit to Growth » analysis (remember Dennis Medow ?) is seriously flawed.

Metcalfe has helped us understand the exponential character of networks and the power of controlling them. Once created the network becomes self-fulfilling.

We are not witnessing static product penetration, but vertical diversification and when the network is controlled new products are almost sure to capture the market.

Actually, the network becomes the market.

What we are witnessing is a market controlling market forces and not the other way around.

Barriers to entry are almost insurmountable.

Limits to growth are not a function of the number of users, but of the products peddled and when the market is controlled the first variable is insignificant and even irrelevant.

Take an example: Facebook's Lab 8 is developing body language interfaces (which according to some analysts amounts to thought control, but that's an entirely different story). This will result in new products just like the internet of things, self-driving cars, household surveillance sensors, glasses (they'll be back), AI etc. and all of these new product boons are and will be controlled by the existing players. It is of no concern to their growth that these products will be peddled to an existing customer base – on the contrary.

In addition, Schumpeterian disruption is neutralized. Take blockchain as an example. This technology could actually challenge the tech companies, but we know what will happen: They develop their own blockchain technology or acquire it from startups – even at the seed stage.

No VC or PE fund manager would take a substantial position unless it was part of such a strategy.

True we will still have the occasional IPO, but only with guaranteed underwriting.

The dream of startups today is not to attain substantial market participation, but to be sold to the titans. Such deals whether a combination of earn-outs, warrants, swaps and / or cash are all extremely sweet and the war chest is almost unlimited (imagine if the tech titans start leveraging!).

The Wendell Holmesian «Market Place of Ideas» has become a mere fiction: The combined economic, cultural and psychological power vested in the titans creates an entirely new economic paradigm.

2

In addition, the cost side sustains such consolidation: Imagine if a bank would be relieved of its compliance obligations.

The average cost ration of compliance to revenue in the finance industry is substantial.

This is one of the real reasons why accountability is rejected – not the promotion of free speech and democratic values.

Regulation of the “Marketplace of Ideas”

Let’s take a further critical look at this concept of the Marketplace of Ideas.

The word “Marketplace” designates some sort of trade or commercial transactions and raises connotations of commodities or units of currency.

Are ideas to be compared to commodities or units of currency.

The author strongly objects to any such analogy.

Assuming the opposite, let’s analyze how the concept of the Marketplace may be applied to “ideas”.

The notion of the “survival of the fittest idea” is inherent in the theory and the belief that just like the “Marketplace” ensures the dynamics that lead to the survival of the “best product” or “best economic agent” so will the unregulated “battle of ideas” weed out the “weaker ideas” in favor of the stronger – so goes the theory.

The “real” Marketplace is however far from unregulated.

Even in the most liberal of societies do we find regulations of the “Marketplace”.

One of the best examples is that of anti-trust. If the Marketplace i.e. the interaction between free economic agents would regulate itself so that “the best commodity/idea will survive”, why introduce antitrust legislation?

Obviously, the marketplace is distorted if there is no free exchange of commodities. Consolidation and monopolies impact prices, output, product and service development, variety etc.

From a historic perspective, however, the debate was heated when the first instances of governmental intervention to liberate the economy from monopolization were introduced.

We have long since crossed that bridge and even the most market driven societies subscribe to some measure of antitrust-regulation.

Once it has been accepted that the marketplace may be distorted and produce perverse economic effects including barriers to entry of newcomers, predatory pricing and elimination of competition, it must be accepted that society and the Marketplace in particular require regulation against the nefarious consequences of concentrated market power.

Society and consumers end up paying the price. There is no need to justify antitrust regulation. It seems obvious to us today that a Marketplace cannot exist without such regulations. Failure to regulate leads to restriction of liberty – not to the opposite.

Even the staunchest supporters of the free market which seem to be the theoretical foundation of the Marketplace of Ideas would not argue against a certain level of

environmental protection, consumer protection, anti-trust, financial regulations, product liability etc.

Actually, the marketplace of ideas far from justifying absence of regulation demonstrates exactly the opposite: The need to protect values through regulation.

The metaphor of the marketplace of ideas is appropriate, but it demonstrates that regulation is necessary. Marketplace auto-regulation is a fiction.

If we analogize this state of affairs to the Marketplace of Ideas, we see that auto-regulation is no less a fiction.

The unique concentration of information on a few corporate giants today should cause us all not only to fear the consequences of information control (never in history has so much information been controlled by so few), but also seriously to consider whether some sort of adapted antitrust regulation should be put in place on the Net just like we have it in the real Marketplace.

Survival of the fittest

The second critique against the Marketplace theory is based on its “survival of the fittest” axiom.

What is the “best” or the “fittest” idea? “Best” for whom: consumers, manufacturers, society?

“Market participation” i.e. dominance is not a pertinent criterion of truth or intrinsic societal value. The “virality” of content has no bearing on its validity.

One may question whether the Marketplace of Ideas has not “gone bankrupt” already or at least demonstrated its inability to function as the great hand of equilibrium allowing the “best idea” (whatever that means) to prosper.

The Marketplace of Ideas does not work as a regulator because it has no cost, no perishable goods and no supply and demand structure.

The consolidated nature of “commodity output and price control” and the lack of common currency cause it not to function in accordance with the theory.

It has no consensual measure of value. In the Marketplace of Ideas, the “best idea” is not the most truthful, but the most commonly shared. “Value” is based on the heuristic conviction of the “purchaser” and often causes artificial appreciation of ideas with no other “value” than statistic spread.

In addition, the marketplace is not unique, single or even global.

On the Net ideas are exchanged in a number of distinct and almost closed marketplaces. “Bubbles” and “Eco chambers” with groups of likeminded “consumers” open to consumption of ideas by their favorite “manufacturers” replace the unique character of The Marketplace.

There is no other criterion of truth than their joined embracement and celebration of the ideas circulated within the group.

No other idea will penetrate the group and the struggle between competing ideas becomes a ludicrous metaphor.

The idea lives forever. It has no costs. In the real Marketplace at least, some sort of cost based selection will lead to removal of unwanted products from circulation. This does not apply to the Marketplace of Ideas.

Necessary regulation

We saw what happened to the capitalistic system as a result of subprime abuse.

Toxic zero asset values contaminated true economic and financial assets and caused a systemic collapse of the financial system worldwide.

The marketplace did not regulate itself. Just like the demise of true financial assets do we witness the value of Free Speech being diluted by the defense of toxic speech. Destruction of real values as a consequence of dilution by toxic values “sub-primed” the entire capitalistic system.

Do we want to see Freedom of Speech being “sub-primed”?

We must learn from the analogy to the “Real Marketplace”.

The question is not regulation, but the terms and implementation of regulation and first of foremost the structure put in place for the exercise of regulation. Who decides, who implements and who enforces?

These queries do not however make the case against regulation.

Digital Manipulation: Fake News is no news

The second subject that we will have to analyze, and which is directly related to the Marketplace of Ideas is the impact on democracy of unregulated “information” or “content”.

This leads us to debate on “Fake News” (or “Deliberate Online Falsehoods”) and on this particular point the difference between those that have, generate and control information and those that do not. The term “Pariah Bay” appropriately indicates that some cyber citizens possess information while others do not. These latter “Information Pariahs” are excluded from educated judgement. The Digital Divide is a major problem as such, but it relates to equal information access and net neutrality. It does not cover “Digital Manipulation” of those that do not have access to credible information.

Fake News has become a term designating potential manipulation of the electoral processes of democracies by dissemination of false information. The term implies a reference to “politically motivated false information” as opposed to “commercially motivated false information” (“Astro-turfing”).

The impact of information on society and ultimately world peace and stability is typically referred to under the heading of “Fake News

It is interesting that commercially motivated false information is regulated heavily in both the US, Europe and Asia.

To what extent such Fake News has had an impact on the electoral debate and results in certain countries may itself be open to debate and dispute, but it is beyond such debate and dispute that there is a correlation.

Fake News is actually no news, but it is not a fake problem. Fake news is a predictable but not foreseen problem.

Manipulation, deceit, lies, rumors and gossip have been around since the dawn of mankind.

Even the Bible addresses the problem: You shall not spread a false report (Exodus 23:1).

Greek mythology had a “goddess of rumors”. Her name was Fame and she was depicted as spreading false news destabilizing those that were seduced by her trumpet.

For the Roman historian the eponymous term “Tacitean Rumors” was coined.

The use of fake news for propaganda purposes is well known and a vivid example is the purported crucifixions of allied soldiers by the Axis powers during WW1 which caused widespread panic to both troops and the civilian population.

Rumors about Jews poisoning wells and devouring Christian children during the plague in the 14th century is another poignant example of the devastating consequences of Fake News.

The Harlem Riots in 1935 (caused by false rumors about the assassination of a Puerto Rican born child) is a classic. No assassinating had taken place. The boy was fine. He had suffered no harm, yet all hell broke loose on the back of pure fiction (New York Daily News, 2015).

During WW2 a specific “Rumor Project” was launched under the auspices of the Office of War Information pursuant to Executive order of June 13, 1942. The purpose was to provide an informed and intelligent understanding of “the status and progress of the war effort, war policies, activities, and aims of the United States government”. The list is unfortunately long (National Archives, 1995).

The borderline between Fake News and different content is very difficult to draw.

The impact of Fake News on democracy – Communication Meltdown

If we relate “Fake News” to content which has a societal impact or in other words content which may change ultimately the course of history rather than the destiny of one person (which is typically referred to as defamation, denigration, harassment, cyberbullying etc.) we find borderline situations like the late French Prime Minister Joseph Caillaux who (had he not been driven to suicide by a heinous campaign against him personally) might have prevented World War 1 (Monnin, 2013).

The impact of the Internet on the democratic processes is not restricted to Fake News, but also intervention in electoral laws in many countries.

Most countries have laws that ban publication of opinion polls before the ballot takes place. In some countries, such restrictions apply a couple of weeks before, in other countries the time frame is different, but the principle is the same: The legislator has long since accepted that the impact on voter behavior of opinion polls is significant.

Unfortunately, the Internet being beyond many sovereign state regulations does not respect these laws and often allow not only opinion polls but also unequal media time to influence the electoral process.

It is about time that the international community realizes that the effect of toxic content on the Internet is just as dangerous as toxic emissions are to the atmosphere.

The difference is that the problem of global warming may well be eclipsed by the consequences of a "Communication Meltdown".