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Initiatives to Counter Fake News in Selected Countries: Argentina, Brazil, Canada, China, Egypt, France, Germany, Israel, Japan, Kenya, Malaysia, Nicaragua, Russia, Sweden, United Kingdom


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Initiatives to Counter Fake News in Selected Countries

Argentina • Brazil • Canada • China • Egypt • France
Germany • Israel • Japan • Kenya • Malaysia
Nicaragua • Russia • Sweden
United Kingdom

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Comparative Summary

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This report examines the legal approaches of fifteen countries, representing all regions of the world, to the emerging problem of manipulation with “fake news” using mass and social media, especially the impact of fake news on ongoing political processes and elections, and the legislative measures undertaken to counteract the dissemination of false information. Fake news as a phenomenon is not new and has been known since ancient times, but the present-day proliferation of digital and social media platforms, which allow for much broader distribution of information to a global audience, makes the need to counter fake news much more acute. With the exception of Japan, which appears to be the only country in this study where fake news scandals are limited to newspapers and tweeted messages that have no outside influence, a fact explained by the difficulty of the Japanese language for foreigners, the widespread distribution of false information and its impact on decision making and democratic processes is becoming a challenge worldwide. In 2017, a parliamentary committee in Egypt identified the dissemination of 53,000 false rumors over a period of two months. In Germany, 59% of survey participants stated that they had encountered fake news, and in some segments of the population this number was up to almost 80%. In Kenya, a country where 90% of the population has access to high-speed internet, 90% of surveyed users said that they received false or inaccurate information regarding the recent elections through social media.

The countries included in this study are addressing the fake news problem through one or more of the following four approaches:

- In the absence of legislation that expressly addresses the objectivity of news posted on social media, some of the surveyed countries apply relevant provisions of existing civil, criminal, administrative, and other laws regulating the media, elections, and anti-defamation (Canada, Japan, Nicaragua, Sweden, and the United Kingdom), even though these laws, enacted in the pre-internet era, do not always reflect current technological and telecommunications developments.
- Others are choosing to enact new and more focused legislation that imposes sanctions on social media networks that spread false news, usually imposing fines and ordering the removal of information identified as false (China, Egypt, France, Germany, Israel, Malaysia, and Russia). In Malaysia and Egypt these provisions apply extraterritorially.
- Another option reflected in the country surveys is to engage election authorities and digital platforms to secure a well-informed electorate, either by identifying and blocking fake news, providing fact-checking resources for the general public, or through the mass publication of “real” news during election season and beyond (Argentina, the UK, China, and Malaysia). Argentina, for example, is considering legislation that would create a Commission for the Verification of Fake News within the National Election Chamber. During national election campaigns, the Commission would recognize, label, and prevent the distribution of news considered “of doubtful credibility.” Both the UK and China have programs in place to

systematically rebut fake news by publishing reliable information, while Malaysia provides a fact-checking portal.

- Some of the countries are also addressing the issue in a more general way by educating citizens about the dangers of fake news (Sweden and Kenya). Sweden starts at a young age, having enlisted a famous cartoon character to teach children about the dangers of fake news through a cartoon strip that illustrates what happens to the bear's super-strength when false rumors are circulated about him. The US Embassy in Kenya launched a media literacy campaign in 2018, initially aimed at the Kenya chapter of the Young African Leaders Initiative, with the specific goal of stopping the dissemination of fake news.

Among the countries surveyed, there is no common position regarding the definition of "fake news" and its scope. The UK government attempts to avoid use of the term altogether, instead using the words "disinformation" and "misinformation." Countries with established anti-fake news laws have more elaborate terminology. Malaysian legislation defines fake news as "any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas." Russia passed a law penalizing the publication of fake news in March 2019, defining the term as "socially-significant false information distributed under the guise of truthful messages if they create a threat of endangering people's lives, health, or property; create possibilities for mass violations of public order or public security; or may hinder the work of transportation and social infrastructure, credit institutions, lines of communications, industry, and energy enterprises." China has made it a crime to "fabricate false information on [a] dangerous situation, epidemic, disaster or alert and disseminate such information via [an] information network or any other media while clearly knowing that it is fabricated, thereby seriously disturbing public order." Relying on the 1881 Freedom of the Press Law, France has made it illegal to "disturb public peace through the publication, dissemination, or reproduction of fake news in bad faith." The bad-faith publication, dissemination, or reproduction of forged or altered items, or items falsely attributed to third parties, is also prohibited.

Broad definitions are usually found in the laws of those countries that are rated low in indices related to freedom of speech, and such laws are often viewed by human rights organizations as government attempts to further restrict free speech and stifle opposition. The new Malaysian government tried unsuccessfully to repeal a 2018 act under which the government is required to "take measures to remove" the publication of recognized false information and imprison the publisher for up to six years. In Canada and Kenya courts have found anti-fake news provisions unconstitutional as a violation of freedom of expression and have thus suspended the implementation of such provisions.

Following the events of the US 2016 election campaign, several countries introduced legal mechanisms aimed at protecting the integrity of the democratic process, although depending on country specifics these laws apply to varied actors. In Sweden, the focus was on self-regulation by professional organizations of journalists and other media providers and strengthening ethics rules. This solution followed the European Union's approach where an EU-wide voluntary Code of Practice on Disinformation has been introduced. However, in view of the inadequacy of voluntary measures taken by social media platforms, Germany enacted the Network Enforcement Act in 2017. While this Act does not create new obligations for social media, it

imposes heavy fines for noncompliance with existing legislation and creates rules for the investigation and removal of illegal content hosted by networks with a very large number of registered users. French law also provides for special preventive measures that need to be implemented by operators of large-scale online platforms. Russian law distinguishes between news published by online media, news aggregators, and individual social network users. There are specific rules for the removal of information and the liability of authors, publishers, and internet providers depending on the type of the online platform.

Some countries are also taking steps to prevent foreign influence in their national elections. Interesting examples include an Israeli bill targeting foreign propaganda that, if passed, would allow the head of the Central Election Commission, who serves as a Supreme Court justice, to issue injunctions preventing the receipt of prohibited donations, monetary or otherwise, under current law. Under French law, a judge may order any measures necessary to stop the online dissemination of misleading information during the three months preceding an election. During the same period, foreign television broadcasts may be suspended if they deliver false information.

The governments of several countries included in this report recognize that a substantive response to disinformation could be an effective way to tackle fake news. The British government's position is that it is more important to inform citizens of the facts than to simply rebut false information. For this purpose, a Rapid Response Unit within the executive branch monitors news and engages with the public online. In China, a government online platform called "Refuting Rumors" was launched to broadcast "real" news sourced from government agencies and state-owned media. A similar web portal allowing the public to check the authenticity of news found online has been established in Malaysia. In addition, Kenya and Sweden have general education campaigns aimed at young people in place to counter the fake news trend, as noted above.

The individual country surveys that follow analyze current and proposed initiatives to limit the spread of false information undertaken at the national level, each country's challenges associated with these efforts, and efforts undertaken by national governments to secure the validity and accuracy of legal information.

Argentina

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SUMMARY Argentina is advancing some initiatives against fake news in advance of next year's presidential elections. Proposed legislation would create a Comisión de Verificación de Noticias Falsas (CVNF) (Commission for the Verification of Fake News) within the Cámara Nacional Electoral (CNE). The CVNF would be in charge of the detection, recognition, labeling, and prevention of fake news exposed through digital media broadcasts during national election campaigns. The CNE has already created a National Registry of social media accounts and websites of candidates, political parties, and party leadership, which is intended to enable the detection of false accounts. The accuracy of legal information is secured through the official publication of the national laws and regulations in an official portal online as well as in print.

The widespread manipulation of fake news through social media has become a serious concern in Argentina, particularly in light of next year's presidential elections.¹ Of the two basic approaches governments have taken to address this problem – regulating and applying sanctions to social media networks spreading fake news, and engagement between election authorities and digital platforms to secure a well-informed electorate – Argentina has taken steps toward the second approach.²

Argentina is considering proposed legislation to create a Comisión de Verificación de Noticias Falsas (CVNF) (Commission for the Verification of Fake News) within the Cámara Nacional Electoral (CNE),³ which would be in charge of the detection, recognition, labeling, and prevention of fake news exposed through digital media broadcasts during national election campaigns.⁴ It would only operate during national election campaigns.⁵

According to proposed legislation, the CVNF's aim would be to preserve the value of truth in broadcasting by digital media, the protection of freedom of expression, respect for the values and beliefs of news consumers via the internet, and the truthfulness of facts reported through social

¹ Laura Serra, *Fake News. Una Alerta para el Sistema Democrático*, LA NACIÓN (Oct. 7, 2018), <https://www.lanacion.com.ar/2178565-fake-news-una-alerta-sistema-democratico>, archived at <https://perma.cc/42R7-BLC2>.

² *Id.*

³ Proyecto de Ley Creación de Comisión de Verificación de Noticias Falsas, Aug. 28, 2018, art. 1, Honorable Cámara de Diputados de la Nación, https://www.hcdn.gob.ar/proyectos/texto_Completo.jsp?exp=5228-D-2018&tipo=LEY, archived at <https://perma.cc/7YZX-AYMA>.

⁴ *Id.*

⁵ *Id.* art. 3.

networks.⁶ The proposal recognizes the right to internet access as a human right, based on full respect for human dignity, freedom, equality, and diversity in all its expressions.⁷

Under the measure, all individuals and entities would have the right to create, transmit, and publish digital content via the internet and/or to receive such content without being subject to restraint, interference, or discrimination, except when the content is false information published as real and intentionally causes harm to another.⁸

The CVNF would operate by reviewing publications to verify the reality of the facts on which they are based, excluding those that are only based on ideological positions or reasoning expressed discursively.⁹ The CVNF would identify potentially fake news through the following methods:

- Checking the actual existence of the facts reported in the news by contrasting them with users' comments
- Excessive viralization of the news
- By complaint made by persons, openly or anonymously, on the special website created by the CNE for this purpose
- Other evidence of false news in the opinion of the CNE¹⁰

The proposal provides for fake news verification procedures that would be triggered by a complaint filed with the CVNF. Verification would encompass the identification of the source of information, verification of the actual facts on which the story is based, and cross-checking data on the origin and development of the reported facts, among other measures.¹¹

Once news was identified as false, the CVNF would report it to the CNE, which could take the following measures:

- Order internet providers to tag and label the information subject to verification under the caption "Notice of doubtful credibility"
- Require internet service providers to reduce the distribution of the labeled news
- Register it on the public website created by the CNE as news of dubious credibility as determined by the Commission

⁶ *Id.* art. 4.

⁷ *Id.* art. 7.

⁸ *Id.* art. 8.

⁹ *Id.* art. 9.

¹⁰ *Id.* art. 10.

¹¹ *Id.* art. 11.

A secretariat of the CNE Chamber would be tasked with monitoring the entire process on the identification and labeling of false news. Internet service providers would be required to comply with a CNE order within twelve hours.¹²

Violations of the law would be subject to a range of sanctions, including warnings, fines, disqualification as a government contractor/provider for up to ten years, loss of benefits or special tax regimes, and suspension for two years of the portal or network that failed to remove false or malicious content after being ordered to do so.¹³

In addition, the CNE has issued a resolution creating a registry of social media accounts and websites of candidates, political parties, and its leadership.¹⁴ The registration requirement is intended to allow the detection of false accounts.¹⁵ Under the resolution, the CNE will periodically publish the results of the monitoring of election campaign advertising on social media and websites.¹⁶ Registered political parties will be required to submit the audiovisual material that they broadcast on the internet and social media.¹⁷

With regard to securing the accuracy of legal information, the government provides free access to comprehensive national and provincial legislation through its portal [infoleg.gov.ar](http://www.infoleg.gov.ar), within the Ministry of Justice and Human Rights.¹⁸

The *Boletín Oficial* (Official Gazette) is the official publication of legislation in the country.¹⁹ Its content is considered authentic both in its printed and electronic editions.²⁰ Currently, the National Directorate of the Official Registry depends functionally on the Legal and Technical Secretariat of the Presidency of the Nation, which is the entity in charge of publishing the Official Gazette.²¹

¹² *Id.* art. 12.

¹³ *Id.* art. 13.

¹⁴ Acordada Extraordinaria No. 66/2018, Aug. 16, 2018, art. 2, Cámara Nacional Electoral, https://www.electoral.gob.ar/nuevo/paginas/pdf/AE_066_18.pdf, archived at <https://perma.cc/C2L3-TBCS>.

¹⁵ Serra, *supra* note 1.

¹⁶ Acordada Extraordinaria No. 66/2018, art. 1.

¹⁷ *Id.* art. 3.

¹⁸ *Infoleg, Información Legislativa y Documental*, MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, PRESIDENCIA DE LA NACIÓN, <http://www.infoleg.gob.ar> (last visited Mar. 8, 2019), archived at <https://perma.cc/UVG8-3ZVC>.

¹⁹ BOLETÍN OFICIAL DE LA REPÚBLICA ARGENTINA, <https://www.boletinoficial.gob.ar/#lestatica/institucional> (last visited Mar. 8, 2019), archived at <https://perma.cc/6ALA-ZC37>.

²⁰ *Id.*

²¹ *Id.*

Brazil

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SUMMARY With no laws regulating fake news, Brazil is making use of existing federal laws to try to mediate the problem. Attempts were made by a Superior Court to curb the use of fake news during the 2018 general elections. In the meantime, Congress is analyzing several bills of law that have been introduced to criminalize the practice. Law portals maintained by different branches of the government provide legal information to the population.

I. Introduction

Brazil has yet to enact specific legislation aimed at protecting the objectivity of any type of news regardless of media and so far has no legal definition of “fake news.” Currently, the Penal Code, Electoral Code, and federal law are being used to fight the phenomenon. Furthermore, for the 2018 general elections, the Superior Electoral Tribunal enacted a resolution that targeted fake news viewed as hate speech in electoral advertising during the electoral campaign. In an attempt to address the problem, several bills of law dealing with this subject are under discussion in Congress.

II. Legal Framework

A. Penal Code

The Penal Code punishes with detention from six months to two years and a fine the slandering of someone (*calúnia*) by falsely imputing to a person a fact defined as a crime.¹ The same punishment applies to anyone who propagates or divulges the imputation, knowing it is false.² To defame somebody (*difamação*) by imputing to that person offensive facts to his or her reputation is punishable with detention from three months to one year and a fine.³ To injure someone (*injúria*) by offending his or her dignity is punishable with detention from one to six months or a fine.⁴ If the injury involves the use of elements referring to race, color, ethnicity, religion, origin, or the condition of an elderly person or person with disability, the punishment is imprisonment from one to three years and a fine.⁵

¹ CÓDIGO PENAL, Decreto-Lei No. 2.848, de 7 de Dezembro de 1940, art. 138, http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm, archived at <https://perma.cc/5U3D-NT7K>.

² *Id.* art. 138(§ 1).

³ *Id.* art. 139.

⁴ *Id.* art. 140.

⁵ *Id.* art. 130(§ 3).

B. Electoral Code

The Electoral Code determines that advertising meant to slander, defame, or injure any person or the organs or entities exercising public authority is not to be tolerated.⁶ The person, organ, or entity who has been slandered, defamed, or injured, without prejudice to and regardless of the competent criminal action, may demand compensation for moral damages in Civil Court.⁷ The offender and his or her political party may be jointly and severally liable for the offenses.⁸

Voting, when corrupted by falsehood, fraud, coercion, use of the means referred to in article 237 of the Electoral Code, or use of a process of advertising or obtaining votes prohibited by law is voidable.⁹ Article 237 determines that the interference of economic power and the abuse of the power of authority, contrary to freedom of the vote, will be curbed and punished.¹⁰

Article 323 determines that to publicize through advertising facts known to be untrue in relation to parties or candidates that are capable of exerting an influence on the electorate is punishable with detention of two months to one year, or payment of a fine.¹¹ The penalty is increased if the crime is committed through the press, radio, or television.¹²

C. Law No. 12,965 of April 23, 2014

Law No. 12, 965 of April 23, 2014, establishes principles, guarantees, rights, and duties for the use of the internet in Brazil and determines the guidelines for action by the Union, states, Federal District, and municipalities in relation to the matter.¹³ Article 7 of Law 12,965 determines that access to the internet is essential to the exercise of citizenship, and the user is guaranteed, among other things, the following rights:

I - inviolability of intimacy and private life, their protection and compensation for material or moral damage resulting from their violation;

II - inviolability and secrecy of the flow of their communications over the internet, except by judicial order, according to the law.¹⁴

⁶ CÓDIGO ELEITORAL, Lei No. 4.737, de 15 de Julho de 1965, art. 243(IX), http://www.planalto.gov.br/ccivil_03/leis/L4737.htm, archived at <https://perma.cc/QE2P-28GH>.

⁷ *Id.* art. 243(§ 1).

⁸ *Id.*

⁹ *Id.* art. 222.

¹⁰ *Id.* art. 237.

¹¹ *Id.* art. 323.

¹² *Id.* art. 323 (sole para.).

¹³ Lei No. 12.965, de 23 de Abril de 2014, art. 1, http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm, archived at <https://perma.cc/8DRS-ANU3>.

¹⁴ *Id.* art. 7.

In order to ensure freedom of expression and prevent censorship, providers of internet connections are normally not liable for damages arising from content generated by third parties.¹⁵ However, internet providers may be held liable for damages arising from content generated by third parties if they fail to comply with a specific court order to make infringing content unavailable, acting within the scope and technical limits of its service and within the deadline indicated, except where there are legal provisions to the contrary.¹⁶ The court order must contain, under penalty of nullity, a clear and specific identification of the content deemed to be infringing, allowing the unambiguous identification of the material.¹⁷

D. Resolution TSE No. 23,551 of December 18, 2017

On December 18, 2017, the Superior Electoral Tribunal (Tribunal Superior Eleitoral, TSE) issued Resolution No. 23,551, which provides for electoral advertising, illicit campaign practices, and free election time.¹⁸ In regard to fake news viewed as hate speech, article 17(I) determines that advertising that conveys prejudices based on origin, race, sex, color, age, and any other forms of discrimination will not be tolerated. The offender must respond for the use of prohibited advertising and, if applicable, for abuse of power.¹⁹

III. Law Portals

The Presidency of the Republic of Brazil maintains a national law portal,²⁰ which provides access to federal laws and state constitutions. The national press²¹ has a website that provides access to the federal official gazette (*Diário Oficial da União*).

The Federal Supreme Court (Supremo Tribunal Federal, STF) maintains a portal that makes available the electronic judicial gazette (*Diário da Justiça Eletrônico*), which is an instrument of official communication, publication, and dissemination of judicial acts of the STF.²²

Official gazettes for the states are maintained by the respective state governments and provide access to state laws and regulations.

¹⁵ *Id.* art. 18.

¹⁶ *Id.* art. 19.

¹⁷ *Id.* art. 19(§ 1).

¹⁸ Resolução TSE No. 23.551, de 18 de Dezembro de 2017, art. 1, <http://www.tse.jus.br/legislacao-tse/res/2017/RES235512017.html>, archived at <https://perma.cc/RLC8-L7PW>.

¹⁹ *Id.* art. 17(I).

²⁰ PORTAL DA LEGISLAÇÃO, <http://www4.planalto.gov.br/legislacao/>, archived at <https://perma.cc/5Y2V-XJDT>.

²¹ IMPRENSA NACIONAL, CASA CIVIL DA PRESIDÊNCIA DA REPÚBLICA, <http://www.in.gov.br/web/guest/inicio>, archived at <https://perma.cc/R8MQ-BVJ7>.

²² DIÁRIO DA JUSTIÇA ELETRÔNICO, SUPREMO TRIBUNAL FEDERAL, <http://www.stf.jus.br/portal/diariojusticaeletronico/pesquisardiarioeletronico.asp>, archived at <https://perma.cc/U3PH-A4BT>.

IV. Bills of Law

Both the Chamber of Deputies (Câmara dos Deputados) and the Federal Senate are currently analyzing proposals criminalizing the dissemination or sharing of false or incomplete information on the internet.

A. Chamber of Deputies

In the Chamber of Deputies, several proposals have been attached to Bill of Law 6,812,²³ which, in summary, would

- address the criminalization of the dissemination or sharing of false or incomplete information on the internet,
- hold social networks liable when untrue materials are posted on the internet and the content is not removed within twenty-four hours,
- force social network websites to provide filters and tools to prevent the dissemination of harmful information, and
- hold providers of content and providers of internet services liable for damages caused by the dissemination of fake news on the internet.²⁴

B. Federal Senate

In the Federal Senate, Bill of Law No. 473 of 2017 punishes with detention from six months to two years and a fine those who disclose false information that may distort, alter, or corrupt the truth about information related to health, public safety, the national economy, the electoral process, or relevant matters of public interest.²⁵

²³ CÂMARA DOS DEPUTADOS, PL 6812/2017, <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2122678&ord=1>, archived at <https://perma.cc/VTL5-QL7H>.

²⁴ *Comissão de Ciência e Tecnologia, Comunicação e Informática*, CÂMARA DOS DEPUTADOS, PL 6812/2017, https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1694884&filename=Tramitacao-PL+6812/2017, archived at <https://perma.cc/PCC4-T7DT>.

²⁵ Projeto de Lei do Senado No. 473, de 2017, <https://www25.senado.leg.br/web/atividade/materias/-/materia/131758#diario>, archived at <https://perma.cc/3XGD-CFQR>.

Canada

Tariq Ahmad
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SUMMARY Currently, there does not appear to be any law in Canada that prohibits the dissemination of incorrect information unless that information is defamatory, covered by libel laws, or within the ambit of Canada's broadcasting regulations. Section 181 of Canada's Criminal Code prohibits the spreading of false news, but that provision was declared unconstitutional in 1992 by the Supreme Court of Canada. No information was found specifically on fake legal news. The government provides a variety of official online sources of legal information that are publicly accessible, however.

I. Background

Canadian lawmakers have been grappling with the issue of fake news and considering policy options in the aftermath of the 2017 mosque shooting in Quebec City. According to one news report, "[f]alse information about the suspects in [that shooting] circulating on the internet has raised new questions about how to fight the explosion of 'fake news.'"¹

A national survey conducted by Nanos Research for the organization Canadian Journalists for Free Expression (CJFE) found that "[m]ore than eight in ten Canadians agree or somewhat agree that search engines like Google should be forced to remove search results related to a person's name when they are inaccurate, incomplete, or outdated and that fake news is making it more difficult to find accurate sources of information. More than seven in ten Canadians agree or somewhat agree that government regulation is needed to prevent the proliferation of fake news."²

Canadian MPs and the federal Privacy Commissioner have shown great concern over the role of Facebook and the dissemination of fake news, as reflected in this excerpt from an article in *The Guardian*:

"What we want to hear from Mark Zuckerberg directly, is his response to the data breaches in Canada . . . and also the response to how they're going to handle fake news in the future," Bob Zimmer, chair of parliament's access to information, privacy and ethics committee, told reporters. He said the government is "deeply concerned" about the effect Facebook has on democracy and the extensive control it has over data and advertising.

In September, the privacy commissioner said it would investigate Facebook over the harvesting of user data. "The digital world, and social media in particular, have become

¹ Kathleen Harris, *MPs Look For Ways to Fight 'Fake News' in Wake of Mosque Shooting*, CBC (Feb. 2, 2017), <https://www.cbc.ca/news/politics/canada-fake-news-google-facebook-twitter-1.3961992>, archived at <https://perma.cc/UR3G-D5JZ>.

² NANOS RESEARCH, NATIONAL SURVEY SUMMARY SUBMITTED BY NANOS TO CJFE 2 (May 2018), <http://www.nanos.co/wp-content/uploads/2018/06/2018-1191-CJFE-Populated-report-without-Journalists-turning-over.pdf>, archived at <https://perma.cc/3Z4X-JF4T>.

entrenched in our daily lives and people want their rights to be respected,” the commissioner, Daniel Therrien, said in a statement.³

On February 9, 2018, Prime Minister Trudeau warned Facebook that it needed to fix its “fake news” issues or face stricter federal regulations.⁴

II. National Approach to Countering Fake News

A. Policy Framework

In February 2018 *Global News* reported that

“[t]he federal government doesn’t believe it can do much on its own to stem the growing tide of fake news in Canada, according to briefing notes prepared for Canadian Heritage Minister Melanie Joly.

The documents, obtained by The Canadian Press through an access-to-information request, highlight that even though the government recognizes that fake news could threaten Canada’s democratic institutions at a time when traditional news outlets are facing cutbacks and financial challenges, there’s not much they can do to stop it.

The government’s inability to decide for Canadians what should and shouldn’t be considered fake news is one reason it can’t take direct action, according to the briefing notes, prepared in November by deputy Heritage minister Graham Flack.

Even if the government did attempt to publicly identify fake news stories, Flack said it could backfire, making readers more convinced the stories are true and increasing the likelihood they’d share the stories.

Overall, the briefing notes concluded that the role of combating misinformation should not rest on the government’s shoulders alone and that “there is not likely one single, easy solution”⁵

B. Legislative Framework

Currently there does not appear to be any law that prohibits “the dissemination of incorrect information unless it is defamatory and covered by libel laws.”⁶ Section 181 of Canada’s Criminal Code prohibits the spreading of false news:

³ *Facebook Fake News Inquiry: The Countries Demanding Answers*, GUARDIAN (Nov. 27, 2018), <https://www.theguardian.com/technology/2018/nov/27/facebook-fake-news-inquiry-the-countries-demanding-answers>, archived at <https://perma.cc/6GSF-EC5F>.

⁴ Alex Boutilier, *Prime Minister Trudeau Warned Facebook that It Needed to Fix Its “Fake News” Issues or Face Stricter Federal Regulations*, THE STAR (Feb. 8, 2018), <https://www.thestar.com/news/canada/2018/02/08/trudeau-to-facebook-fix-your-fake-news-problem-or-else.html>, archived at <https://perma.cc/7S26-8NKR>.

⁵ Levi Garber, *Canada Can’t Do Much to Stem Fake News, According to Government Documents*, GLOBAL NEWS (Feb. 21, 2018), <https://globalnews.ca/news/4039886/canada-stem-fake-news-government/>, archived at <https://perma.cc/4DWL-9UQG>.

⁶ Harris, *supra* note 1.

Spreading false news

181 Every one who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.⁷

However, in *R v. Zundel* (1992),⁸ Canada's Supreme Court held that the offense is unconstitutional as it violates section 2(b) (freedom of expression) of the Canadian Charter of Rights and Freedoms.⁹ The section therefore appears to have no legal effect or force and the government appears to be in the process of removing this "zombie" provision.¹⁰

Canada has other laws that may be relevant to fake news that have been outlined by Canada's Department of Justice as follows:

- The hate propaganda provisions in sections 318 and 319 of the *Criminal Code* can be used to deal with false news that promotes hatred.
- The defamatory libel provisions in section 300 of the *Criminal Code* prohibit people from knowingly publishing false information that has been designed to insult or that is likely to harm the reputation of someone.
- Federal regulations such as section 8(1) of the Broadcasting Distribution Regulations prohibit radio and television broadcasters from broadcasting false or misleading news and abusive comments that are likely to expose persons to hatred based on listed grounds.
- Some provincial laws, such as section 14 of Saskatchewan's Human Rights Code, prohibit publications that are likely to expose groups to hatred.
- Some provincial laws provide civil means to deal with libel of racial, religious or other groups (for example, section 19 of Manitoba's Defamation Act).
- Various codes of practice direct certain professionals not to propagate false news or hate propaganda (for example, the Canadian Association of Journalist's Ethics Guidelines).¹¹

⁷ CRIMINAL CODE, R.S.C., 1985, c. C-46, § 181 <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>, archived at <https://perma.cc/7EDV-P7WF>.

⁸ *R. v. Zundel* [1992] 2 SCR 731, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/904/index.do>, archived at <https://perma.cc/7LJS-GCDA>.

⁹ *R. v. Zundel: Case Analysis*, GLOBAL FREEDOM OF EXPRESSION, COLUMBIA UNIVERSITY, <https://globalfreedomofexpression.columbia.edu/cases/r-v-zundel/> (last visited Mar. 18, 2019), archived at <https://perma.cc/R99Q-SWCW>.

¹⁰ *Questions and Answers – An Act to Amend the Criminal Code (Removing Unconstitutional Portions or Provisions)*, DEPARTMENT OF JUSTICE, <https://www.justice.gc.ca/eng/csj-sjc/pl/cuol-mgnl/qa-qr.html> (last updated Mar. 9, 2017), archived at <https://perma.cc/7D69-Z62H>; Alysha Hasham, *Purging Criminal Code of Defunct 'Zombie Laws' No Simple Task*, THE STAR (Jan. 1, 2017), <https://www.thestar.com/news/gta/2017/01/01/purging-criminal-code-of-defunct-zombie-laws-no-simple-task.html>, archived at <https://perma.cc/3AVS-Z9AQ?type=image>.

¹¹ *Id.*

Federal broadcasting regulations issued under the Broadcasting Act¹² that deal with false or misleading news include the following:

- section 8(1)(d) of the *Broadcasting Distribution Regulations*;
- section 3(d) of the *Radio Regulations, 1986*; [and]
- section 5(1)(d) of the *Television Broadcasting Regulations, 1987*].¹³

Generally “these provisions prohibit licensees of radio and television programming undertakings and broadcasting distribution undertakings from broadcasting programs that contain false or misleading news.”¹⁴

In 2011 the Parliament’s Standing Joint Committee for the Scrutiny of Regulations (SJC), citing the SCC’s *Zundel* judgment, raised concerns over whether the “existing false or misleading news provisions might not be in keeping with the freedom of expression provision under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the Charter).”¹⁵ To address these concerns, the Commission proposed “to amend the relevant provisions such that the above-noted prohibition would be narrowed to ‘news that the licensee knows is false or misleading and that endangers or is likely to endanger the lives, health or safety of the public.’ ” According to one news report,

[t]he proposed change sparked concerns that the CRTC was about to allow into Canada the more toxic – often grossly distorted – political discourse that pervades the American airwaves. Those suspicions were fuelled by the timing of the proposal, only weeks before next month’s launch of a new, right-leaning all-news network, Sun TV.¹⁶

In March 2011, the Commission received a letter from the SJC “in which it informed the Commission that it no longer saw the *Zundel* judgment as an impediment to the continued application of the current regulations” and the Commission announced “that it will not amend the false or misleading news provisions set out in various Commission regulations.”¹⁷

In 2017, the Federal Heritage Committee published a report on the changing media landscape in Canada that noted the problems with fake news and observed the lack of guidelines for digital

¹² Broadcasting Act, S.C. 1991, c. 11, <https://laws-lois.justice.gc.ca/PDF/B-9.01.pdf>, archived at <https://perma.cc/G5XG-MV7N>.

¹³ Canadian Radio-television and Telecommunications Commission, Broadcasting Regulatory Policy CRTC 2011-308 (May 11, 2011), <https://crtc.gc.ca/eng/archive/2011/2011-308.htm>, archived at <https://perma.cc/QQ6Y-24M3>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *False News Proposal Killed by CRTC*, THE CANADIAN PRESS (Feb. 25, 2011), <https://www.cbc.ca/news/politics/false-news-proposal-killed-by-crtc-1.1117504>, archived at <https://perma.cc/PR8V-QE5Q>.

¹⁷ Broadcasting Regulatory Policy CRTC 2011-308, *supra* note 13.

media. The Committee recommended that “the vigilance of existing ethics guidelines and press councils must apply equally to digital media.”¹⁸

The Standing Committee on Access to Information, Privacy and Ethics published a report in which it stated that “changes to Canada’s legislative and regulatory landscape are needed in order to neutralize the threat that disinformation and misinformation campaigns pose to the country’s democratic process.”¹⁹

C. Elections

In December 2017 Canada passed an omnibus bill²⁰ that amended the Canada Elections Act²¹ and other Acts to modernize its election laws. Among the changes included was “a provision that makes it an offence to make false statements about a candidate for the purpose of influencing the outcome of an election.”²² However, according to a news report, “that provision applies quite narrowly to false statements about whether a candidate has broken the law or withdrawn from the election, as well as about a candidate’s citizenship, place of birth, education, professional qualifications or membership in a group.”²³ The provision states as follows:

Publishing false statement to affect election results

91 (1) No person or entity shall, with the intention of affecting the results of an election, make or publish, during the election period,

(a) a false statement that a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party has committed an offence under an Act of Parliament or a regulation made under such an Act – or under an Act of the legislature of a province or a regulation made under such an Act – or has been charged with or is under investigation for such an offence; or

(b) a false statement about the citizenship, place of birth, education, professional qualifications or membership in a group or association of a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party.

¹⁸ STANDING COMMITTEE ON CANADIAN HERITAGE, *DISRUPTION: CHANGE AND CHURNING IN CANADA’S MEDIA LANDSCAPE* 63 (June 2017), <http://www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP9045583/chpcrp06/chpcrp06-e.pdf>, archived at <https://perma.cc/G6F9-AC7D>.

¹⁹ STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS, *DEMOCRACY UNDER THREAT: RISKS AND SOLUTIONS IN THE ERA OF DISINFORMATION AND DATA MONOPOLY* 75 (Dec. 2018), <http://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP10242267/ethirp17/ethirp17-e.pdf>, archived at <https://perma.cc/BGS9-2BBY>.

²⁰ Bill C-76, First Session, Forty-second Parliament, 64-65-66-67 Elizabeth II, Statutes of Canada 2018, Ch. 31, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-76/royal-assent>, archived at <https://perma.cc/HKT8-K8VW>.

²¹ Canada Elections Act, S.C. 2000, c. 9, <https://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html>, archived at <https://perma.cc/BSA3-R97Z>.

²² *Not Much Elections Canada Can Do about Fake News Spread about Candidates*, NATIONAL POST (Feb. 7, 2019), <https://nationalpost.com/pmnn/news-pmnn/canada-news-pmnn/not-much-elections-canada-can-do-about-fake-news-spread-about-candidates>, archived at <https://perma.cc/YY44-Z7RT>.

²³ *Id.*

Clarification

(2) Subsection (1) applies regardless of the place where the election is held or the place where the false statement is made or published.

Publishing false statement of candidate's withdrawal

92 No person or entity shall publish a false statement that indicates that a candidate has withdrawn.²⁴

In January 2019, the federal government announced that it will implement a series of new measures aimed at “further shoring up Canada’s electoral system from foreign interference, and enhancing Canada’s readiness to defend the democratic process from cyber threats and disinformation.”²⁵ One of the measures was to establish a “Critical Election Incident Public Protocol” that will “monitor and notify other agencies and the public about disinformation attempts. That task force will be led by five non-political officials and is an addition to a ‘rapid response mechanism’ housed within the Department of Foreign Affairs.”²⁶

III. Accuracy of Legal Information

No information was located on Canada’s efforts to deal with specifically fake legal news. However, Canada does provide a range of official, online sources of legal information that are accessible to the public.

The Justice Laws Website provides an “official consolidation, or updated version, of the federal Acts and regulations,”²⁷ which is maintained by the Department of Justice as a “convenient way for the public to view the state of the law, without having to carry out research and put together the various amended provisions.”²⁸ As of June 1, 2009, “all consolidated Acts and regulations on the Justice Laws Website are ‘official’, meaning that they can be used for evidentiary purposes.”²⁹ According to a note from the Department of Justice Canada,

[a]mendments made to the *Statute Revision Act*, renamed the *Legislation Revision and Consolidation Act* by chapter 5 of the 2000 Statutes of Canada, in force on June 1, 2009, authorize the Minister of Justice to publish an electronic consolidation of statutes and regulations and provide that the consolidation is evidence of those statutes and

²⁴ Canada Elections Act §§ 91 & 92.

²⁵ Rachel Aiello, *Feds Unveil Plan to Tackle Fake News, Interference in 2019 Election*, THE STAR (Feb. 8, 2018), <https://www.thestar.com/news/canada/2018/02/08/trudeau-to-facebook-fix-your-fake-news-problem-or-else.html>, archived at <https://perma.cc/ZCF9-WN87>.

²⁶ Daniel Funke, *A Guide to Anti-misinformation Actions around the World*, POYNTER, <https://www.poynter.org/ifcn/anti-misinformation-actions/> (last visited Mar. 18, 2019), archived at <https://perma.cc/F3EW-XT4N>.

²⁷ *Consolidated Acts*, JUSTICE LAWS WEBSITE, <https://laws-lois.justice.gc.ca/eng/acts/> (last updated Feb. 22, 2019), archived at <https://perma.cc/M629-DD77>; *Consolidated Regulations*, JUSTICE LAWS WEBSITE, <https://laws-lois.justice.gc.ca/eng/regulations/> (last updated Feb. 22, 2019), archived at <https://perma.cc/NV3F-DHVQ>.

²⁸ *Frequently Asked Questions*, JUSTICE LAWS WEBSITE <https://laws-lois.justice.gc.ca/eng/FAQ/#g9>, (last updated Feb. 22, 2019), archived at <https://perma.cc/NM5A-CACV>.

²⁹ *Id.*

regulations. The Act also provides that, in the case of an inconsistency between the consolidated statute or regulation and the original or a subsequent amendment, the original or amendment prevails.³⁰

In 1994, the Supreme Court of Canada began collaborating with the Université de Montréal's research team Lexum, "to make judgments, news releases and bulletins available on the Internet free of charge. The Judgments of the Supreme Court of Canada by Lexum continues to be the main public source for judgments, news releases and bulletins."³¹ According to the Department of Justice website, "[w]ith the exception of the Canadian Charter of Rights Decisions, the Department does not publish court decisions. The Lexum Collection provides free access to all of the Supreme Court of Canada decisions since 1907, while the Office of the Commissioner for Federal Judicial Affairs provides access to Federal Court decisions."³² Lexum's website states that

[t]he official version of a Supreme Court of Canada decision is the one published in the S.C.R. Counsel may cite either the print or the PDF version of the S.C.R. in documents filed with the Supreme Court of Canada, and both versions should be cited in the same way.³³ The official versions of decisions and reasons for decisions of the Supreme Court of Canada are published in the Supreme Court Reports (S.C.R.). An electronic version can be found in the "Resources" section.³⁴

The *Canada Gazette* is the official newspaper of the Government of Canada. It contains "new statutes, new and proposed regulations, administrative board decisions and public notices."³⁵ The public can read or browse editions published since 1998³⁶ and access archives of gazette editions from 1841 (when the official publication began) to 1997.³⁷

³⁰ Note from *The Department of Justice Canada*, JUSTICE LAWS WEBSITE, <https://laws-lois.justice.gc.ca/eng/ImportantNote/> (last updated Feb. 22, 2019), archived at <https://perma.cc/4FPU-9CF4>; see also Legislation Revision and Consolidation Act, R.S.C., 1985, c. S-20, § 31 <https://laws-lois.justice.gc.ca/eng/acts/S-20/section-31.html>, archived at <https://perma.cc/8G7K-EZT4>.

³¹ *Frequently Asked Questions (FAQ)*, SUPREME COURT OF CANADA, <https://www.scc-csc.ca/contact/faq/qa-qr-eng.aspx#f27> (last updated Oct. 5, 2018), archived at <https://perma.cc/4FE5-SE4W>.

³² *Guide to Canadian Legal Information*, DEPARTMENT OF JUSTICE, <https://www.justice.gc.ca/eng/contact/Comm2.html> (last updated Feb. 20, 2019), archived at <https://perma.cc/UV2E-FY22>.

³³ *Id.*

³⁴ *Important Notices*, LEXUM'S JUDGMENTS OF THE SUPREME COURT OF CANADA, <https://scc-csc.lexum.com/scc-csc/en/page.do?location=important-notices.html> (last updated Oct. 5, 2018), <https://perma.cc/E7RQ-AVW9>.

³⁵ *Canada Gazette*, GOVERNMENT OF CANADA, <http://www.gazette.gc.ca/accueil-home-eng.html> (last updated Mar. 6, 2019), archived at <https://perma.cc/6BKX-9VY2>.

³⁶ *Canada Gazette Publications*, GOVERNMENT OF CANADA, <http://www.gazette.gc.ca/rp-pr/publications-eng.html> (last updated Jan. 25, 2019), archived at <https://perma.cc/5LUE-CGOK>.

³⁷ *Browse the Canada Gazette Archives*, GOVERNMENT OF CANADA, <http://www.gazette.gc.ca/rp-pr/archives-eng.html> (last updated Jan. 11, 2018), archived at <https://perma.cc/BCE7-M723>.

China

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SUMMARY Spreading fake news that seriously disturbs public order through an information network or other media is a crime under China’s Criminal Law and is punishable by up to seven years in prison. The 2016 Cybersecurity Law prohibits manufacturing or spreading fake news online that disturbs the economic and social order. The Law also requires service providers, when providing services of information publication or instant messaging, to ask the users to register their real names.

According to the rules on internet news information services issued by the Cyberspace Administration of China, entities providing such services must obtain a license. When reprinting news, internet news information service providers may only reprint what has been released by certain news organizations prescribed by the state. The service providers and users are prohibited from producing, reproducing, publishing, or spreading information content prohibited by laws and administrative regulations. Once service providers find any prohibited content, they must immediately stop transmitting the information, delete the information, keep the relevant records, and report the matter to competent government authorities.

I. Introduction

In China, despite strict regulation of the media and internet, fake news, or what Chinese laws and domestic media often refer to as “rumors,” appears to be permeating the internet and social media. Tencent, the operator of China’s biggest social media platform Wechat, released a report in January 2019 on its fight against rumors spread online. According to the report, Wechat intercepted over 84,000 rumors in 2018. The report said 3,994 anti-rumor articles were published through Wechat during the year by 774 entities, including the government internet information authority, the police, the food and drug administration, and state media, and the articles were read by 294 million users. Popular fake news topics include food safety, health care, and other social issues.¹

In an effort to fight fake news, in 2018, China launched a platform named “Piyao” – a Chinese word meaning “refuting rumors.”² The platform, which also has a mobile app and social media

¹ 2018 Report on Managing Online Rumors Published, 774 Institutions Refuted Rumors on Wechat, PEOPLE.CN (Jan. 18, 2019), <http://society.people.com.cn/n1/2019/0118/c1008-30574893.html> (in Chinese), archived at <https://perma.cc/8QCK-37ZQ>.

² Homepage, CHINA INTERNET JOINT RUMOR REFUTING PLATFORM, <http://www.piyao.org.cn/> (last visited Mar. 13, 2019) (in Chinese), archived at <https://perma.cc/JN4X-F8UA>.

accounts, broadcasts “real” news sourced from state-owned media, party-controlled local newspapers, and various government agencies.³

The spreading of fake news may not simply be due to the availability of technologies to circulate it. A *Foreign Policy* article points out that, in China, there are other factors propelling the phenomenon: a deep sense of societal insecurity, the increasing politicization and commercialization of information, and a craving for self-expression.⁴ The article argues that, “the party-led campaigns against rumors have been seen as attempts to take out potential critics and enemies. When the government labels something a rumor, that information comes to be seen not as fake but as something the government doesn’t want the public to know.”⁵

II. Legal Framework

A. Criminal Law on Fake News

On August 29, 2015, China’s National People’s Congress (NPC) Standing Committee adopted the Ninth Amendment to the Criminal Law of the People’s Republic of China (PRC).⁶ The Amendment added into the Law a crime of spreading fake news that seriously disturbs public order through an information network or other media. This offense is punishable by up to seven years in prison. Paragraph 2 of article 291a added by the Ninth Amendment states that

[w]hoever fabricates false information on [a] dangerous situation, epidemic situation, disaster situation or alert situation and disseminates such information via information network or any other media, or intentionally disseminates above information while clearly knowing that it is fabricated, thereby seriously disturbing public order, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.⁷

³ Stella Qiu & Ryan Woo, *China Launches Platform to Stamp Out ‘Online Rumors’*, REUTERS (Aug. 30, 2018), <https://www.reuters.com/article/us-china-internet/china-launches-platform-to-stamp-out-online-rumors-idUSKCN1LF0HL>, archived at <https://perma.cc/3976-TPRB>.

⁴ Maria Repnikova, *China’s Lessons for Fighting Fake News*, FOREIGN POLICY (Sept. 26, 2018), <https://foreignpolicy.com/2018/09/06/chinas-lessons-for-fighting-fake-news/#>, archived at <https://perma.cc/U2N4-KKQ6>.

⁵ *Id.*

⁶ Ninth Amendment to the PRC Criminal Law (adopted by the National People’s Congress (NPC) Standing Committee on Aug. 29, 2015, effective Nov. 1, 2015), http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm (in Chinese), archived at <https://perma.cc/JZL6-XV2K>. English translation available at Westlaw China (by subscription).

⁷ *Id.* art. 32.

B. Cybersecurity Law

1. Manufacturing or Spreading Fake News Online

On November 7, 2016, the PRC Cybersecurity Law was adopted by the NPC Standing Committee.⁸ Paragraph 2 of article 12 of the Law prohibits a series of activities from being conducted online, including manufacturing or spreading fake news online that disturbs the economic and social order.⁹ Article 70 of the Law further provides that the publication or transmission of the information specified under article 12 paragraph 2, or information that is prohibited from publication or transmission under other laws or administrative regulations, is subject to penalties prescribed by relevant laws and regulations.¹⁰

2. Real-Name Registration

Under the Cybersecurity Law, when providing services of information publication or instant messaging, service providers must ask users to register their real names. The service providers must not provide relevant services to any users who do not perform the identity authentication steps.¹¹

Where service providers fail to authenticate users' identities, the competent authorities may order them to rectify their wrongdoings, suspend their businesses, shut down their websites, revoke relevant licenses, or impose a fine of 50,000 to 500,000 yuan (about US\$7,500 to \$75,000) on the service providers and/or 10,000 to 100,000 yuan (about US\$1,500 to \$15,000) on the responsible persons.¹²

C. Administrative Measures on Internet Information Services

On September 25, 2000, the State Council issued a regulation, the Administrative Measures on Internet Information Services, governing activities associated with providing internet information services within the territory of the PRC.¹³

The Measures prohibit internet information services providers from producing, reproducing, publishing, or spreading prescribed information content, including rumors that disrupt social order or undermines social stability.¹⁴ Whenever a service provider finds that prohibited content

⁸ PRC Cybersecurity Law (adopted by the NPC Standing Committee on Nov. 7, 2016, effective June 1, 2017), http://www.npc.gov.cn/npc/xinwen/2016-11/07/content_2001605.htm (in Chinese), archived at <https://perma.cc/3HAP-D6MZ>.

⁹ *Id.* art. 12 para 2.

¹⁰ *Id.* art. 70.

¹¹ *Id.* art. 24.

¹² *Id.* art. 61.

¹³ State Council, Administrative Measures on Internet Information Services (Sept. 25, 2000, effective on the same day), http://www.gov.cn/gongbao/content/2000/content_60531.htm (in Chinese), archived at <https://perma.cc/M6J4-HV7V>.

¹⁴ *Id.* art. 15.

is being transmitted on their website, they must immediately stop the transmission, keep the relevant records, and report the matter to competent government authorities.¹⁵

D. Provisions on Internet News Information Services

On the basis of the PRC Cybersecurity Law and the Administrative Measures on Internet Information Services, on May 2, 2017, China's central internet information authority, the Cyberspace Administration of China, issued the Provisions on Administration of Internet News Information Services.¹⁶

1. License Control

Under the Provisions, any entities providing internet news information services to the public – no matter whether that is through websites, apps, online forums, blogs, microblogs, social media public accounts, instant messaging tools, or live broadcastings – must obtain a license for internet news information services and operate within the scope of activities of the license.¹⁷ The licenses are only issued to legal persons incorporated within the territory of the PRC, and the persons in charge and editors-in-chief must be Chinese citizens.¹⁸

Providing internet news information services without a proper license is punishable by a fine of 10,000 to 30,000 yuan (about US\$1,500 to \$4,500).¹⁹

2. Restrictions on Reprinting News

When reprinting news, internet news information service providers may only reprint what has been released by official state or provincial news organizations, or other news organizations prescribed by the state. The original sources, authors, titles, and editors must be indicated to ensure that the sources of the news are traceable.²⁰

State or local internet content authorities may issue a warning to violators of this provision, order them to rectify their wrongdoings, suspend their news services, or impose a fine of 5,000 to 30,000 yuan (about US\$750 to \$4,500). Violators may also be criminally prosecuted, according to the Provisions.²¹

¹⁵ *Id.* art. 16.

¹⁶ Cyber Administration of China, Provisions on Administration of Internet News Information Services (May 2, 2017, effective June 1, 2017) art. 1, http://www.cac.gov.cn/2017-05/02/c_1120902760.htm (in Chinese), archived at <https://perma.cc/Y5VB-XZJV>.

¹⁷ *Id.* art. 5.

¹⁸ *Id.* art. 6.

¹⁹ *Id.* art. 22.

²⁰ *Id.* art. 15(1).

²¹ *Id.* art. 24.

3. *Prohibited Content*

The Provisions also prohibit internet news information service providers and users from producing, reproducing, publishing, or spreading information content prohibited by laws and administrative regulations.²² State or local internet content authorities may issue a warning to violators of this provision, order them to rectify their wrongdoings, suspend their news services, or impose a fine of 20,000 to 30,000 yuan (about US\$3,000 to \$4,500). Violators may also be criminally prosecuted, the Provisions state.²³

4. *Obligations of Service Providers*

Once internet information service providers find any content prohibited by the Provision or other laws and administrative regulations, they must immediately stop transmitting the information, delete the information, keep the relevant records, and report the matter to competent government authorities.²⁴

The Provisions also repeat the requirement of real-name registration under the Cybersecurity Law, providing that internet news information services providers must ask users of the internet news information publication platform services to register their real names.²⁵

Violators of these provisions are punishable by the state or local internet information authority in accordance with the Cybersecurity Law.²⁶

²² *Id.* art. 16(1).

²³ *Id.* art. 25.

²⁴ *Id.* art. 16(2).

²⁵ *Id.* art. 13(1).

²⁶ *Id.* art. 26.

III. Access to Accurate Legal Information

A. Online Publication of Laws and Regulations

On March 15, 2015, the NPC revised the PRC Law on Legislation.²⁷ In this revision, two websites were added into the Law to officially publish Chinese laws and regulations: the NPC website²⁸ and the Chinese Government Legal Information Network.²⁹

The NPC website is designated by the Law to officially publish laws adopted by the NPC and its standing committee. The laws are also published in the official NPC gazette and nationally-circulated newspapers.³⁰ Local regulations made by local people's congresses must also be published on the NPC website, as well in the local people's congresses' gazettes and on their official websites, and in newspapers circulated within the regions.³¹

The Chinese Government Legal Information Network is designated by the Law to officially publish administrative regulations made by the State Council.³² The website also publishes administrative rules made by the ministries and commissions under the State Council and by local governments.³³

B. Online Publication of Court Judgments

Since 2013, courts in China at various levels have been requested by the Supreme People's Court (SPC) to publish their judgments on an SPC platform, China Judgments Online.³⁴ According to the SPC, judgments must be posted on the platform within seven business days of taking

²⁷ Law on Legislation (adopted by the NPC on Mar. 15, 2000, rev. Mar. 15, 2015) (Legislation Law), http://www.npc.gov.cn/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm, archived at <https://perma.cc/92MR-NRX6>. See Laney Zhang, *A Guide to Chinese Legal Research: Official Online Publication of Chinese Law*, IN CUSTODIA LEGIS (Sept. 5, 2018), <https://blogs.loc.gov/law/2018/09/a-guide-to-chinese-legal-research-official-online-publication-of-chinese-law/>, archived at <https://perma.cc/6B8W-FLE9>.

²⁸ *Homepage*, THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, <http://www.npc.gov.cn/> (in Chinese, last visited Mar. 14, 2019), archived at <https://perma.cc/B9EU-KBWJ>.

²⁹ *Homepage*, MINISTRY OF JUSTICE OF THE PEOPLE'S REPUBLIC OF CHINA, CHINESE GOVERNMENT LEGAL INFORMATION NETWORK, <http://www.chinalaw.gov.cn/> (in Chinese, last visited Mar. 14, 2019), archived at <https://perma.cc/9RDG-8MMB>.

³⁰ Legislation Law art. 58.

³¹ *Id.* art. 79

³² *Id.* art. 71.

³³ *Id.* art. 86.

³⁴ *Homepage*, CHINA JUDGEMENTS ONLINE, <http://wenshu.court.gov.cn/Index> (in Chinese, last visited Mar. 14, 2019), archived at <https://perma.cc/Y9NR-WYC5>. See Laney Zhang, *China: Rules of Online Publication of Court Judgments Revised*, GLOBAL LEGAL MONITOR (Feb. 9, 2017), <http://www.loc.gov/law/foreign-news/article/china-rules-of-online-publication-of-court-judgments-revised/>, archived at <https://perma.cc/KPJ3-T3K3>.

effect.³⁵ Courts must redact names of certain people when publishing the judgments, including the names of all minors and their representatives.³⁶

The SPC exempts certain types of cases from being published on the platform, such as those involving state secrets, crimes conducted by minors, divorce, or child custody, and the courts are also allowed to decide that other cases are not appropriate to be published.³⁷ If a court decides not to publish a judgment online, it must still publish the judgment's case number, the name of the trial court, the judgment date, and the reasons for non-publication, except where publishing the information may reveal state secrets.³⁸

³⁵ SPC, Provisions on the Publication of Judgment Documents by the People's Courts (Aug. 29, 2016) art. 7, <http://www.court.gov.cn/zixun-xiangqing-25321.html> (in Chinese), archived at <https://perma.cc/P8G8-P4ED>.

³⁶ *Id.* art. 8.

³⁷ *Id.* art. 4.

³⁸ *Id.* art. 6.

Egypt

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SUMMARY In 2017, the Egyptian Parliament's Communication and Information Technology Committee revealed that 53,000 false rumors had spread in Egypt in just sixty days. The Egyptian authorities have adopted a number of measures to combat the phenomenon of the dissemination of false information. The Egyptian government has passed three domestic laws to regulate the distribution of information and its accuracy in print and online media as well as online social networks. Those laws include Law No. 180 of 2018 on Regulating the Press and Media, Law No. 175 of 2018 on Anti-Cybercrime, and Law No. 58 of 1937 and its amendments on the Penal Code. To facilitate the access to accurate legal information, the Court of Cassation, the Supreme Constitutional Court, and the Administrative Court post on their websites laws and regulations published in the official gazette and recent decisions issued by those courts. There are no fees to access such legal information.

I. Government Measures

In 2017, the Communication and Information Technology Committee in the Egyptian Parliament revealed that 53,000 false rumors had spread in Egypt in just sixty days. The Committee announced that most of this false news had originated and circulated on social-media platforms.¹ In an effort to combat the dissemination of false news, the Cabinet issues statements refuting false information circulated in the media or via online social networks.² In September 2018 the Associated Press also reported that the Egyptian authorities had suspended or blocked five hundred websites that were suspected by the authorities of distributing false information.³

Furthermore, the Egyptian authorities have arrested a number of journalists and website administrators suspected by the government of publishing false news.⁴ For instance, in April 2018, State Security Prosecution summoned the editor-in-chief of the newspaper *Al-Masry Al-Youm* and seven correspondents, accusing them of distributing false information. In another example, Adel Sabri, Editor-in-Chief of the *Masr El-Arabiya* website was detained and charged

¹ Amina Khairy, *Trapped in a Sea of Rumours*, AL-AHRAM WEEKLY (Aug. 1, 2018), <http://weekly.ahram.org.eg/News/25012.aspx>, archived at <https://perma.cc/8R75-VVRN>.

² Samy Magdy, *Egypt Says It Fights Fake News, Critics See New Crackdown*, ASSOCIATED PRESS (Sept. 17, 2018), <https://www.apnews.com/5b17cf57b4384f559a3035a167f8e211>, archived at <https://perma.cc/REV4-GZKL>.

³ *Id.*

⁴ *The Quarterly Report on the State of Freedom of Expression in Egypt 3rd Quarter (July-September 2018)*, FREEDOM OF THOUGHT AND EXPRESSION (Oct. 16, 2018), https://afteegypt.org/en/afte_releases/2018/10/16/16036-afteegypt.html, archived at <https://perma.cc/AR53-CC8N>.

with the dissemination of false news. The website was also fined 50,000 Egyptian pounds (about US\$2,855) by the Supreme Council for Media Regulation for disseminating false information.⁵

In its efforts to combat the dissemination of false information on social media networks, the Egyptian authorities have detained some individuals, accusing them of the dissemination of false news on Facebook and Twitter. For example, Amal Fathi, Wael Abbas, and Haytham Mohammaden were all charged with using social media to spread false information.⁶

In an extra measure to prevent the dissemination of false news, the Egyptian Public Prosecutor has announced the creation of a new hotline for citizens to file complaints against false news posted by media outlets or by individuals on social media networks.⁷

II. Legal Framework

The Egyptian government has passed three domestic laws to regulate the distribution of information and its accuracy in print and online media including social networks. Those laws include Law No. 175 of 2018 on Anti-Cybercrime,⁸ Law No. 180 of 2018 on Regulating the Press and Media,⁹ and Law No. 58 of 1937 and its amendments on the Penal Code.¹⁰

A. Law 180 of 2018 Regulating the Press and Media

Article 4 of Law No. 180 of 2018 stipulates that press institutions, media outlets, and news websites must not broadcast or publish any information violating the principles cited under the Constitution. Article 4 grants the Supreme Media Council the authority to ban or suspend the distribution, broadcast, or operation of any publications, newspapers, media outlets, or advertising materials containing information deemed to threaten national security; disturb the public peace; or promote discrimination, violence, racism, hatred, or intolerance.¹¹

Article 19 of the Law authorizes the Supreme Media Council to suspend or block any personal website, blog, or social media account that has a high number of followers – exceeding 5,000 – if it publishes fake news advocating and inciting the violation of a specific law or promoting violence or hatred.¹²

⁵ *The Quarterly Report on the State of Freedom of Expression in Egypt 2nd Quarter (April-June 2018)*, FREEDOM OF THOUGHT AND EXPRESSION (July 10, 2018), https://afteegypt.org/en/afte_releases/2018/07/10/15525-afteegypt.html, archived at <https://perma.cc/LU79-VK8M>.

⁶ *Id.*

⁷ Jihad Al-Sayed, *How Can Egypt Combat Fake News?*, EGYPT TODAY (Mar. 15, 2018), <http://www.egypttoday.com/Article/2/45300/How-can-Egypt-combat-fake-news>, archived at <https://perma.cc/644Y-R5SJ>.

⁸ Law No. 175 of 2018, *Al Jariddah Al-Rasmyiah*, vol. 32 (bis) (c), 14 Aug. 2018.

⁹ Law No. 180 of 2018, *Al Jariddah Al-Rasmyiah*, vol. 34 (bis) (h), 27 Aug. 2018.

¹⁰ PENAL CODE, Law No. 58 of 1937, as amended by Law No. 95 of 2003, Vol. 25, *Al Jariddah Al-Rasmyiah*, 19 June 2003.

¹¹ Law 180 of 2018, art. 4.

¹² *Id.* art. 19.

Article 21 prohibits news outlets from posting information in print or online concerning a specific court case if such information will negatively affect the defendant in the case or the trial proceedings.¹³

Article 22 requires media outlets to rectify any false information that was posted on their websites without any financial compensation. This is meant to prevent media outlets from demanding payment as a condition for withdrawing/correcting false information they publish. Such rectification must take place within three days from the date of being notified that the information posted was false.¹⁴

Article 101 sanctions the director of a media outlet or website administrator violating articles 21 and 22 with a fine of between fifty thousand and one hundred thousand Egyptian pounds (about US\$2,855–\$5,711).¹⁵

B. Law No. 175 of 2018 on Anti-Cybercrime

Article 7 grants the investigating authority the power to block or suspend Egyptian-based or foreign websites featuring content that is deemed threatening to national security or the national economy.¹⁶

Article 14, paragraph 2 punishes any individual who hacks a website in order to alter the information posted on such website or redistributes such information after altering it with a term of imprisonment of not less than two years and/or a fine of between one hundred thousand and two hundred thousand Egyptian pounds (about US\$5,700–\$11,400).¹⁷

Article 20, paragraph 3 punishes individuals who hack a government website in order to erase or modify information posted on such website, or redistribute the information after modifying it, with a term of imprisonment and a fine of between one million and five millions Egyptian pounds (about US\$57,000–\$285,000).¹⁸

Article 9 authorizes the public prosecutor to impose a travel ban on individuals suspected of committing any act considered a crime under Law 175 of 2018.¹⁹

¹³ *Id.* art. 21.

¹⁴ *Id.* art. 22.

¹⁵ *Id.* art. 101.

¹⁶ Law 175 of 2018, art. 7.

¹⁷ *Id.* art. 14, para. 2.

¹⁸ *Id.* art. 20, para. 3.

¹⁹ *Id.* art. 9.

C. Penal Code, Law No. 58 of 1937, and Its Amendments

Article 80(d) of the Penal Code states that whoever deliberately spreads false information or rumors abroad about the internal conditions of the country that might weaken the country's financial credibility or harm the country's national interests is punishable by six months' to five years' imprisonment and a fine.²⁰

III. Access to Legal Information

To facilitate access to accurate legal information, the Court of Cassation (the highest court of the land) posts domestic legislation and ministerial resolutions published in the official gazette online. There are no financial charges to use and obtain such online legal information.²¹

Similarly, the Supreme Constitutional Court²² and the Administrative Court²³ publish on their official websites updated decisions issued by those courts. The purpose of publishing such legal information is to educate the public about recent cases and legal principles adjudicated by both courts.

²⁰ PENAL CODE art. 80(d).

²¹ OFFICIAL GAZETTE, COURT OF CASSATION, http://www.cc.gov.eg/Legislations/Egypt_Legislations.aspx (last visited Jan. 4, 2019), archived at <https://perma.cc/A2NT-Q6WN>.

²² SUPREME CONSTITUTIONAL COURT, <http://www.sccourt.gov.eg/SCC/> (last visited Jan. 4, 2019), archived at <https://perma.cc/38BR-ZBU4>.

²³ EGYPTIAN STATE COUNCIL (ADMINISTRATIVE COURT), <http://www.ecs.eg/> (last visited Jan. 4, 2019), archived at <https://perma.cc/8ZJK-S2M9>.

France

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SUMMARY France does not have a law prohibiting the dissemination of fake legal news specifically, but it has legislation against fake news in general, which would be applicable to legal information. The French government can rely on the 1881 Law on Freedom of the Press to stop the dissemination of fake news that could disturb public peace. Additionally, a provision of the Electoral Code prohibits the spread of fake news that could affect an election. In light of the large scale at which fake news can now be disseminated on the internet, France recently adopted a new law that requires large-scale online platform operators to adhere to certain standards of conduct during the three months preceding general elections. These standards of conduct include the requirement to be transparent about sponsored content and the use of personal data in content promotion, and the requirement to publish the amount of payments received for the promotion of informational content. The new law also provides that, during the three months preceding an election, a judge may order “any proportional and necessary measure” to stop the dissemination of fake or misleading information online.

With regard to specifically legal information, the French government promotes access to accurate information by maintaining a free legal database online.

I. Introduction

France appears to have a fairly robust legal arsenal against the dissemination of fake news.¹ Until recently, the French government was able to rely on an 1881 statute against the publication of fake news, as well as a provision of the Electoral Code that prohibits the dissemination of fake news in an electoral context. While these provisions are still in effect, they were increasingly seen as inefficient to fight against fake and manipulative news disseminated on a large scale through the internet.²

The provisions described below do not address legal information specifically, but would be applicable to fake legal information. To ensure public access to accurate legal information, the French government maintains a free legal database online, which is described in Part IV, below.

¹ *Les enjeux de la loi contre la manipulation de l'information* [The Stakes of the Law Against Information Manipulation], CULTURE.GOUV.FR [website of the French Ministry of Culture] (Nov. 21, 2018), <http://www.culture.gouv.fr/Actualites/Les-enjeux-de-la-loi-contre-la-manipulation-de-l-information>, archived at <https://perma.cc/4NOK-FWYF>.

² *Id.*

II. 1881 Law on Freedom of the Press and Article L.97 of the Electoral Code

A 1881 law contains a provision, which is still in force, that makes it illegal to disturb public peace through the publication, dissemination, or reproduction of fake news in bad faith.³ In addition to fake news, this provision bars the bad-faith publication, dissemination, or reproduction of forged or altered items, or items falsely attributed to third parties.⁴ Such acts are punishable by a fine of up to €45,000 (approximately US\$51,000), or €135,000 (US\$153,000) if the fake news, forged or altered item, or item falsely attributed to another was of a nature to harm the discipline or morale of troops, or to impair the nation's war effort.⁵ Additionally, the Electoral Code prohibits the dissemination of "fake news, defamatory rumors or other fraudulent schemes" that affect the result of an election.⁶ Such acts are punishable by up to one year in jail and a fine of up to €15,000 (US\$17,000).⁷

III. New Legislation Against the Dissemination of Fake News During Election Periods

In addition to previously existing legislation, the French government recently adopted a pair of new laws to deal more specifically with the large-scale dissemination of fake news through the internet before an election.⁸ This new legislation requires large-scale online platform operators to adhere to the following conduct during the three months preceding general elections:

- Provide users with "honest, clear and transparent information" about the identity and corporate address of anyone who paid to promote informational content related to a "debate of national interest";

³ Loi du 29 juillet 1881 sur la liberté de la presse [Law of 29 July 1881 on Freedom of the Press], art. 27, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=vig>, archived at <https://perma.cc/2P43-E2D8>.

⁴ *Id.*

⁵ *Id.*

⁶ CODE ELECTORAL [ELECTORAL CODE], art. L97, <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070239&idArticle=LEGIARTI000006353232>, archived at <https://perma.cc/9QAN-2KVC>.

⁷ *Id.*

⁸ *Les enjeux de la loi contre la manipulation de l'information*, CULTURE.GOUV.FR, *supra* note 1; Loi organique n° 2018-1201 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information [Organic Law No. 2018-1201 of 22 December 2018 Regarding the Fight Against Information Manipulation], https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=3EA914DFE69980E3FBB01324A666B5D1.tplgfr22s_1?cidTexte=JORFTEXT000037847556&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT00037847553, archived at <https://perma.cc/CS7C-FBAA>; Loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information [Law No. 2018-1202 of 22 December 2018 Regarding the Fight Against Information Manipulation], https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=3EA914DFE69980E3FBB01324A666B5D1.tplgfr22s_1?cidTexte=JORFTEXT000037847559&categorieLien=id, archived at <https://perma.cc/9LD2-WWTW>.

- Provide users with “honest, clear and transparent information” about the use of personal data in the context of promoting content related to a “debate of national interest”;
- Make public the amount of payments received for the promotion of informational content when these amounts are above a certain threshold.⁹

The new legislation also provides that, during the three months preceding an election, a judge may order “any proportional and necessary measure” to stop the “deliberate, artificial or automatic and massive” dissemination of fake or misleading information online.¹⁰ A public prosecutor, a candidate, a political group or party, or any person with standing can bring a fake news case before the judge, who must rule on the motion within forty-eight hours.¹¹

In addition to the above, the new legislation requires large-scale online platform operators to implement measures to prevent the dissemination of false information that could disturb public order or affect the validity of an election.¹² Online platform operators must also put into place a visible and easily-accessible means for users to flag fake information, and they are required to provide a yearly statement to the Conseil supérieur de l’audiovisuel (CSA, Superior Council on Audiovisual) detailing the measures they have taken to fight against the dissemination of fake information.¹³

Finally, the new legislation allows the CSA to suspend television broadcasting services that are controlled or influenced by a foreign government, if it finds that these services are deliberately broadcasting false information during the three months preceding a national election.¹⁴

IV. Free Online Legal Database

The French government has long promoted the free access to official legal information online. As early as 1994, it started publishing an online version of the “Laws and Decrees” section of the Journal officiel de la République française, the French official gazette.¹⁵ This database was later incorporated into a website called Legifrance, created in 2002, which represented a larger effort

⁹ Loi n° 2018-1202 du 22 décembre 2018, art. 1 (amending CODE ELECTORAL [ELECTORAL CODE], art. L163-1, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070239>, archived at <https://perma.cc/W36D-E5IZ>).

¹⁰ *Id.* art. 1 (amending C. ELECTORAL, art. L163-2).

¹¹ *Id.*

¹² *Id.* art. 11.

¹³ *Id.*

¹⁴ *Id.* art. 6.

¹⁵ Arrêté du 12 octobre 1994 portant dispositions relatives à la création et à la diffusion de la base de données informatisée du Journal officiel des lois et décrets [Order of 12 October 1994 Establishing Provisions Regarding the Creation and the Dissemination of a Computer Database of the Official Gazette of Laws and Decrees], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005616760&dateTexte=20190222>, archived at <https://perma.cc/MS9S-AKH9>.

to provide the public with free and accurate access to legal information.¹⁶ The Legifrance website, which is accessible at www.legifrance.gouv.fr, aims to provide the official version of all current legislative and regulatory texts, including the French Constitution, the legal codes, laws, and national regulations.¹⁷ It also includes international agreements to which France is a party, as well as directives and regulations of the European Union. Additionally, Legifrance provides all the recent decisions of the country's highest courts: the Conseil constitutionnel (the Constitutional Council, which judges whether laws are constitutional), the Conseil d'Etat (Council of State, the highest jurisdiction for administrative law), the Cour de cassation (the highest jurisdiction for civil and criminal matters), and the tribunal des conflits (Tribunal of Conflicts, which resolves jurisdictional disputes).¹⁸ Legifrance does not publish all decisions of lower courts, but instead publishes a selection of the more significant ones.¹⁹

¹⁶ Décret n° 2002-1064 du 7 août 2002 relatif au service public de la diffusion du droit par l'internet [Decree No. 2002-1064 of 7 August 2002 Regarding the Public Service of Publication of Law through the Internet], <https://www.legifrance.gouv.fr/eli/decret/2002/8/7/PRMX0205836D/jo>, archived at <https://perma.cc/5V5N-MU4B>; Arrêté du 9 octobre 2002 relatif au site internet de Légifrance [Order of 9 October 2002 Regarding the Legifrance Website], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000416293>, archived at <https://perma.cc/J5C9-H5KZ>.

¹⁷ Décret n° 2002-1064 du 7 août 2002, art. 1.

¹⁸ *Id.*

¹⁹ *Id.*

Germany

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SUMMARY Reports about the dissemination of fake news during the 2016 US election campaign fueled fears that the same could happen during the 2017 German federal elections. However, surveys conducted after the elections revealed that the fears were unfounded. Nonetheless, the public perceived that fake news had played a major role.

Germany has a number of civil and criminal law provisions that may be applicable to safeguard individuals or the public from fake news in social networks. In addition, in 2017, the Network Enforcement Act was passed with the specific aim of fighting fake news on social networks by improving the enforcement of the current laws. Social networks that do not remove clearly illegal content may be fined up to €50 million (about US\$57.8 million). Germany also tries to ensure that citizens have access to accurate legal information by providing free access to legislation and court decisions online.

I. Introduction

In December 2016, the Parliamentary Research Services of the German Bundestag (parliament) published a report on dealing with the dissemination of false information (“fake news”), including the current legal situation and reform proposals.¹ The reason for the report was, among other things, a criminal complaint that the politician Renate Künast from the Green Party had filed against the authors of fake news published on Facebook.² According to news reports, several Facebook pages had posted a picture of the politician with a quote in which she allegedly commented on the recent highly publicized murder of a student and the arrest of a suspect in Freiburg, stating that “[e]ven though the traumatized young refugee has killed, he should be helped nonetheless.”³ The picture named the newspaper *Süddeutsche Zeitung* as a source for the quote. The politician filed a criminal complaint against the operators of a right-wing Facebook page and against unknown persons.⁴ She criticized the fact that it took Facebook three days to delete the false information.⁵ Around the same time, reports about the dissemination of fake news

¹ WISSENSCHAFTLICHE DIENSTE [PARLIAMENTARY RESEARCH SERVICES], DER UMGANG MIT FAKE-NEWS. RECHTSLAGE UND REFORMANSÄTZE [DEALING WITH FAKE NEWS. CURRENT LEGAL SITUATION AND REFORM PROPOSALS], Report No. WD 10 - 3000 - 067/16 (Dec. 20, 2016), <https://www.bundestag.de/blob/494418/4321d229204080dce488ebd0356b5db2/wd-10-067-16-pdf-data.pdf>, archived at <http://perma.cc/ZD2V-SSHP>.

² *Id.* at 5; *Künast stellt Strafanzeige wegen Falschnachricht auf Facebook* [Künast Files Criminal Complaint for False News on Facebook], FRANKFURTER ALLGEMEINE ZEITUNG (Dec. 10, 2016), <https://www.faz.net/-gpg-8o93s>, archived at <http://perma.cc/M3KS-Z4B2>.

³ *Künast stellt Strafanzeige wegen Falschnachricht auf Facebook*, *supra* note 2.

⁴ *Id.*

⁵ *Id.*

regarding the 2016 US elections on Facebook and other social media platforms were published and fueled fears that the same could happen in the upcoming German federal elections in 2017.⁶

A survey conducted in 2017 on behalf of the Media Authority of North Rhine-Westphalia (Landesanstalt für Medien Nordrhein-Westfalen, LfM) found that 59% of survey participants have encountered fake news on the internet.⁷ Among fourteen- to twenty-four-year-olds, the number was 77%.⁸ It is unclear whether false information has had any influence on the democratic process in Germany, for example, on elections.⁹ Whereas some studies have found that it has had an influence, others see the phenomenon more limited in nature.¹⁰ A survey conducted after the last federal elections in Germany found that there were not nearly as many fake news reports as expected and that no major piece of fake news had any impact on the results, but that there was a difference between that reality and the perception of most voters.¹¹ In total, 61% of voters said that they were under the impression that a lot of fake news was distributed by the media.¹² Among survey participants that were critical of the media and among younger people, the numbers were 75% and 72% respectively.¹³ Thirty percent of participants overall thought that fake news also had a major influence on the results.¹⁴ One possible explanation for this distortion found in the survey was the omnipresence of the topic “fake news” in media coverage of the US and the ambiguous meaning of the term “fake news.”¹⁵ In addition, most fake news in Germany is used by right-wing populist parties and supporters to advance their agendas and believed by their supporters when it correlates with their world views.¹⁶

As a reaction to the spread of fake news, several initiatives have been started. In 2017, Germany passed the Network Enforcement Act (the so-called Facebook Act), which explicitly aims to

⁶ WISSENSCHAFTLICHE DIENSTE, *supra* note 1, at 4.

⁷ FORSA, FAKE NEWS 1 (May 2017), http://www.lfm-nrw.de/fileadmin/user_upload/Ergebnisbericht_Fake_News.pdf, archived at <http://perma.cc/4ZDL-6LMS>.

⁸ *Id.* at 2.

⁹ DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 19/2224, at 1, <http://diibt.bundestag.de/doc/btd/19/022/1902224.pdf>, archived at <http://perma.cc/Q4NX-BF2K>.

¹⁰ *Id.* at 1 (referencing the survey on behalf of the LfM, *see supra* note 7, and a study from 2017, *see* Simon Hegelich, *Social Bots, Trolle, Fake-News* [Social Bots, Trolls, Fake-News], in 62 DIE POLITISCHE MEINUNG 543 (2017), https://www.kas.de/c/document_library/get_file?uuid=fb6dc26f-b391-995a-263b-cae7ed108176&groupId=252038, archived at <http://perma.cc/7HTG-RFEG>).

¹¹ ALEXANDER SÄNGERLAUB, VERZERRTE REALITÄTEN. DIE WAHRNEHMUNG VON „FAKE NEWS“ IM SCHATTEN DER USA UND DER BUNDESTAGSWAHL [DISTORTED REALITIES. PERCEPTION OF “FAKE NEWS” OVERSHADOWED BY THE USA AND THE FEDERAL ELECTIONS] (Oct. 2017), https://www.stiftung-nv.de/sites/default/files/fake_news_im_schatten_der_usa_und_der_bundestagswahl_0.pdf, archived at <http://perma.cc/SRK7-DKPR>.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 10.

combat hate speech and fake news in social networks.¹⁷ However, it should be noted that the Network Enforcement Act did not enter into force until October 1, 2017, after the Federal Elections of September 24, 2017.¹⁸ Likewise, the European Union (EU) in 2018 published an EU-wide voluntary Code of Practice on Disinformation and is planning to create an independent European network of fact-checkers to combat the spread of disinformation (fake news) online.¹⁹ The EU Code of Practice on Disinformation is the latest among a series of initiatives that the EU has started with regard to countering the spread of disinformation.²⁰

II. Legal Framework

In Germany, there is no general law that prohibits the creation and dissemination of fake news. However, depending on the facts of the case, there are a number of civil and criminal law provisions that may be applicable to safeguard individuals or the public from fake news in social networks. The aforementioned Network Enforcement Act did not create new duties to delete content and relies on the violation of enumerated criminal law norms.

A. Criminal Law

Under German criminal law, there are several provisions that prohibit the assertion or dissemination of personal information that is either false or cannot be proved to be true.²¹ A

¹⁷ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken [Netzwerkdurchsetzungsgesetz] [NetzDG] [Act to Improve the Enforcement of Rights on Social Networks] [Network Enforcement Act] [NetzDG], Sept. 1, 2017, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 3352, <http://www.gesetze-im-internet.de/netzdg/NetzDG.pdf>, archived at <http://perma.cc/5HML-PQT5>, unofficial English translation available at https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf;jsessionid=AD99C47B2608D12B014859D5FF786F29.2_cid289?_blob=publicationFile&v=2, archived at <http://perma.cc/186H-GTY4>.

¹⁸ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken [Netzwerkdurchsetzungsgesetz] [NetzDG] [Act to Improve the Enforcement of Rights on Social Networks] [Network Enforcement Act] [NetzDG], Sept. 1, 2017, BGBl. I at 3352, art. 3, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl117s3352.pdf, archived at <http://perma.cc/5QZR-TYVD>.

¹⁹ EU Code of Practice on Disinformation (Sept. 2018), https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=54454, archived at <http://perma.cc/456J-N5HV>; *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Tackling Online Disinformation: A European Approach*, COM (2018) 236 final (Apr. 26, 2018), at 9, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0236&rid=2>, archived at <http://perma.cc/MMP9-4VP7>.

²⁰ For an overview, see Jenny Gesley, *European Union: Commission Proposes EU-Wide Code of Practice to Combat Fake News Online*, GLOBAL LEGAL MONITOR (May 11, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-commission-proposes-eu-wide-code-of-practice-to-combat-fake-news-online/>, archived at <http://perma.cc/75EG-QUD7>.

²¹ STRAFGESETZBUCH [StGB] [CRIMINAL CODE], Nov. 13, 199, BGBl. I at 3322, as amended, §§ 186, 187, <http://www.gesetze-im-internet.de/stgb/StGB.pdf>, archived at <http://perma.cc/X8TS-UCBK>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf (English version updated through Oct. 10, 2013), archived at <http://perma.cc/335U-E4RV>.

requirement is that the information is capable of defaming a person or of negatively affecting public opinion of the person.²² The crime of defamation is punishable with imprisonment not exceeding one year or a fine and, if it was committed publicly or through the dissemination of written materials, with imprisonment not exceeding two years or a fine.²³ If the defamation was done intentionally, the term of imprisonment may not exceed two years or a fine; if it was committed publicly, in a meeting, or through the dissemination of written materials, it will be punished with imprisonment not exceeding five years or with a fine.²⁴ If the defamation is directed towards a politician and it makes his or her public activities substantially more difficult, the punishment ranges from three months' to five years' imprisonment.²⁵ Social networks are generally considered public places, except when information is posted in closed groups.

Defamation and intentional defamation are only prosecuted upon the request of the victim.²⁶ The Public Prosecutor, however, will only open an investigation if it is in the public interest.²⁷

In addition to a criminal prosecution, a person who has been defamed may also sue for libel in civil court and request a preliminary injunction.²⁸

B. Media Law

The media law states that electronic information and communication services (“telemedia”)²⁹ that provide journalistic content must conform to recognized journalistic standards, in particular when they completely or partially reproduce texts or visual contents of periodical print media.³⁰

²² *Id.*

²³ *Id.* § 186.

²⁴ *Id.* § 187.

²⁵ *Id.* § 188.

²⁶ *Id.* § 194, para. 1.

²⁷ STRAFPROZESSORDNUNG [StPO] [CODE OF CRIMINAL PROCEDURE], Apr. 7, 1987, BGBL. I at 1074, 1319, as amended, §§ 374, 376, <http://www.gesetze-im-internet.de/stpo/StPO.pdf>, archived at <http://perma.cc/68A4-GZZF>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.pdf (English version updated through Apr. 23, 2014), archived at <http://perma.cc/9V5G-GUDE>.

²⁸ ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], Dec. 5, 2005, BGBL. I at 3202; BGBL. 2006 I at 431; BGBL 2007 I at 1781, as amended, §§ 935, 940, <http://www.gesetze-im-internet.de/zpo/ZPO.pdf>, archived at <http://perma.cc/MB6Z-7ZZ6>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.pdf, archived at <http://perma.cc/9TLR-A3VD>.

²⁹ Telemediengesetz [TMG] [Telemedia Act], Feb. 26, 2007, BGBL. I at 179, as amended, § 1, para. 1, <http://www.gesetze-im-internet.de/tmg/TMG.pdf>, archived at <http://perma.cc/3YJK-9N48>, unofficial English translation available at https://www.huntonprivacyblog.com/wp-content/uploads/sites/28/2016/02/Telemedia_Act_TMA_.pdf (English version not updated), archived at <http://perma.cc/77GL-8FNF>.

³⁰ Staatsvertrag für Rundfunk und Telemedien [Rundfunkstaatsvertrag] [RStV] [Interstate Treaty on Broadcasting and Telemedia] [Interstate Broadcasting Treaty], Aug. 31, 1991, as amended, art. 54, para. 2, https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Rundfunkstaatsvertrag_RStV.pdf, archived at <http://perma.cc/U5GH-BE8V>, unofficial English translation available at https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/

This means that news must be “verified by the provider prior to their [sic] transmission with the diligence appropriate to the circumstances concerning their content, source and truthfulness.”³¹ However, the law does not provide any consequences for a violation of journalistic standards. The only sanctions available to the German Press Council (Deutscher Presserat) are public reprimands.³² In addition, the Press Code (Pressekodex) enforced by the German Press Council is only applicable to people who have voluntarily agreed to be bound by it, which is typically not the case for social media platforms or persons posting content on social media platforms.

C. Host Provider Liability

Host providers are generally not liable for false information published by third parties on their platforms as long as they do not have actual knowledge of the rights violation.³³ However, once they are notified of the rights violation, they must delete the content immediately in order to avoid liability.³⁴ The notification itself must be so specific and provide enough information that the host provider has a basis to qualify and verify the illegality of the posted information.³⁵ However, in practice, host providers have regularly ignored notifications, which was one of the reasons for enacting the Network Enforcement Act, described below.

D. Network Enforcement Act

One of the objectives of the Network Enforcement Act, adopted in 2017, was to fight fake news in light of the events during the last US election campaign. The explanatory memorandum stated that

fighting fake news on social networks [is] a priority. To do so requires improvements in law enforcement on social networks in order to promptly remove objectively criminal content, such as incitement to hatred, abuse, defamation or content that could lead to a breach of the peace by misleading authorities into thinking a crime has been committed.³⁶

[Gesetze Staatsvertraege/Rundfunkstaatsvertrag_RStV_20_english_version.pdf](#) (English version updated through Sept. 1, 2017), archived at <http://perma.cc/7LF3-5D2W>.

³¹ *Id.*

³² Presserat [German Press Council], Publizistische Grundsätze [Pressekodex] [German Press Code] (2017), Complaints Procedure, § 12, para. 5, in conjunction with Press Code, § 16, https://www.presserat.de/fileadmin/user_upload/Downloads_Dateien/Pressekodex2017_web.pdf, archived at <http://perma.cc/2S8C-CB3L>, English translation available at https://www.presserat.de/fileadmin/user_upload/Downloads_Dateien/Pressekodex2017english.pdf, archived at <http://perma.cc/AA56-Z4K7>.

³³ Telemedia Act, § 10.

³⁴ *Id.*

³⁵ Oberlandesgericht Hamburg [OLG Hamburg] [Higher Regional Court Hamburg, Mar. 2, 2010, docket no. 7 U 70/09, 7 MULTIMEDIA UND RECHT [MMR] 490, 491 (2010).

³⁶ BT-Drs. 18/12356, at 1, <http://dip21.bundestag.de/dip21/btd/18/123/1812356.pdf>, archived at <http://perma.cc/MD44-LD9G>, English version available at <http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2017&num=127&dLang=EN>, archived at <http://perma.cc/BAE2-KAIX>.

Surveys conducted on the deletion practices of social networks revealed that the voluntary commitments of social media platforms were insufficient. The government concluded that

[s]ince the current mechanisms and the voluntary measures agreed on by social networks are inadequate and given the significant problems in enforcing the current law, it is necessary to introduce rules to make social networks comply on pain of a fine in order to enable prompt, effective action against hate crime and other criminal content on the internet.³⁷

The Network Enforcement Act has been very controversial and has been criticized as unconstitutional, in particular with regard to free speech.³⁸ Several political parties have submitted proposals to amend the law.³⁹ However, none of the proposals have yet advanced very far.

As previously mentioned, the law in its current form does not create any new duties for social media platforms,⁴⁰ but imposes high fines for noncompliance with existing legal obligations.⁴¹

1. Scope of Application

The Network Enforcement Act is only applicable to social media networks that have two million or more registered users in Germany.⁴² Social media networks are defined as “telemedia service providers that operate online platforms with the intent to make a profit and on which users can share content with other users or make that content publicly available.”⁴³ The Act does not apply to platforms that post original journalistic content, or to email or messaging services.⁴⁴

2. Removal of Illegal Hosted Content

The Act obligates the covered social media networks to remove content that is “clearly illegal” within twenty-four hours after receiving a user complaint.⁴⁵ If the illegality of the content is not obvious on its face, the social network has seven days to investigate and delete it. The seven-day

³⁷ *Id.* at 2.

³⁸ For a summary of the criticism, see Georg Nolte, *Hate-Speech, Fake-News, das »Netzwerkdurchsetzungsgesetz« und Vielfaltsicherung durch Suchmaschinen* [*Hate Speech, Fake News, the "Network Enforcement Act" and Assuring Diversity Through Search Engines*], 61 ZEITSCHRIFT FÜR URHEBER- UND MEDIENRECHT [ZUM] 552, 554 (2017).

³⁹ See, e.g., the draft act submitted by the Green Party, BT-Drs. 19/5950, <http://dipbt.bundestag.de/dip21/btd/19/059/1905950.pdf>, archived at <http://perma.cc/FBW8-FJDP>.

⁴⁰ With the exception of reporting requirements.

⁴¹ See also Jenny Gesley, *Germany: Social Media Platforms to Be Held Accountable for Hosted Content Under "Facebook Act"*, GLOBAL LEGAL MONITOR (July 11, 2017), <http://www.loc.gov/law/foreign-news/article/germany-social-media-platforms-to-be-held-accountable-for-hosted-content-under-facebook-act/>, archived at <http://perma.cc/KX9D-V6JL>.

⁴² Network Enforcement Act, § 1, paras. 1, 2.

⁴³ *Id.* § 1, para. 1, sentence 1.

⁴⁴ *Id.* § 1, para. 1, sentences 2, 3.

⁴⁵ *Id.* § 3, para. 2, no. 2.

deadline may be extended if additional facts are necessary to determine the truthfulness of the information or if the social network hires an outside agency to perform the vetting process (a recognized “Agency of Regulated Self-Regulation”).

In order to determine whether an act is “illegal,” the Network Enforcement Act refers to the Criminal Code, in particular to the provisions on dissemination of propaganda material or use of symbols of unconstitutional organizations, encouragement of the commission of a serious violent offense endangering the state, commission of treasonous forgery, public incitement to crime, incitement to hatred, and defamation, among others.⁴⁶

3. Complaint Mechanism and Biannual Reports

The social media platforms are obligated to offer their users an easy and transparent complaint mechanism that is constantly available.⁴⁷ The decisions taken with regard to the complaint and the reasoning behind accepting or rejecting it must be communicated to the complainant and the affected user without undue delay.⁴⁸

Social media networks that receive more than one hundred complaints about illegal content in a calendar year are required to publish biannual reports in German on how they deal with these complaints. The report has to be published in the Federal Gazette and on the homepage of the social media network one month after the end of each half-year period.⁴⁹ The report must be easily identifiable, immediately accessible, and permanently available.⁵⁰ It must include information on the general efforts to prevent illegal actions on the platform, a description of the complaint procedure, the number of complaints received, the number and qualifications of employees who are handling the complaints, the network’s association memberships, the number of times an external party has been used to decide the illegality of the content, the number of complaints that led to the content being deleted, the time it took to delete the content, and measures that were taken to inform the complainant and the member who posted the deleted content.⁵¹

4. Fines

A social media network that intentionally or negligently violates certain of the abovementioned obligations may be fined up to €50million (about US\$57.8 million).⁵² If the Ministry of Justice wants to fine a company because it considers the content that was not deleted to be illegal, it must

⁴⁶ *Id.* § 1, para. 3.

⁴⁷ *Id.* § 3, para. 1.

⁴⁸ *Id.* § 3, para. 2, no. 5.

⁴⁹ *Id.* § 2, para. 1.

⁵⁰ *Id.*

⁵¹ *Id.* § 2, para. 2.

⁵² *Id.* § 4, in conjunction with Gesetz über Ordnungswidrigkeiten [OWiG] [Act on Regulatory Offenses], Feb. 19, 1987, BGBl. I at 602, as amended, § 30, para. 2, sentence 3, http://www.gesetze-im-internet.de/owig_1968/OWiG.pdf, archived at <http://perma.cc/CSB5-6UHE>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_owig/englisch_owig.pdf, archived at <http://perma.cc/3U36-ZJLL>.

first obtain a court decision to this effect.⁵³ The court decision is final and binding on the Ministry of Justice.⁵⁴

III. Access to Accurate Legal Information

The German federal and state governments as well as the courts provide free access to legal information online. The Federal Law Gazette as well as all the state law gazettes can be viewed online.⁵⁵ The Federal Law Gazette is also available as a free app.⁵⁶ The Federal Ministry of Justice publishes almost all laws online and provides English translations for selected laws.⁵⁷ The same website provides links to administrative regulations of the Federal Ministries⁵⁸ and to the jurisprudence of all federal courts.⁵⁹ The Justice Portal of the Federation and the states provides links to the jurisprudence of all federal as well as state courts.⁶⁰ It also provides access to various other online services, including links to all state legislation.⁶¹

On the website of the German Bundestag (parliament), citizens can access parliamentary documentation for the Bundestag and the Bundesrat, the constitutional body through which the states participate in the legislative process, including draft laws and explanatory memoranda, verbatim records of parliamentary sessions, and answers to parliamentary requests, among others.⁶²

⁵³ Network Enforcement Act, § 4, paras. 4, 5.

⁵⁴ *Id.* § 4, para. 5.

⁵⁵ For the Federal Law Gazette, see http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl119005.pdf (last visited Feb. 27, 2019), archived at <http://perma.cc/RHK8-AHHJ>.

⁵⁶ *BGBL. Mobile* [*Mobile Federal Law Gazette*], BUNDESANZEIGER VERLAG [BUNDESANZEIGER PUBLISHING COMPANY], <http://mobile.bgbl.de/> (last visited Feb. 27, 2019), archived at <http://perma.cc/4QLA-LFVE>.

⁵⁷ *Gesetze/Verordnungen alphabetisch sortiert* [*Statutes/Regulations Sorted Alphabetically*], BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ [FEDERAL MINISTRY FOR JUSTICE AND CONSUMER PROTECTION], <http://www.gesetze-im-internet.de/aktuell.html> (last visited Feb. 27, 2019), archived at <http://perma.cc/6BRW-3Z6Q>.

⁵⁸ *Verwaltungsvorschriften nach Normgeber sortiert* [*Administrative Regulations Sorted by Author*], BUNDESREGIERUNG [FEDERAL GOVERNMENT], <http://www.verwaltungsvorschriften-im-internet.de/erlassstellen.html> (last visited Feb. 27, 2019), archived at <http://perma.cc/WT9W-YA3Z>.

⁵⁹ *Rechtsprechung im Internet* [*Jurisprudence Online*], BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ [FEDERAL MINISTRY FOR JUSTICE AND CONSUMER PROTECTION], <http://www.recht-sprechung-im-internet.de/jportal/portal/page/bsjrsprod.psm1> (last visited Feb. 27, 2019), archived at <http://perma.cc/PL37-WL7C>.

⁶⁰ JUSTIZPORTAL DES BUNDES UND DER LÄNDER [JUSTICE PORTAL OF THE FEDERATION AND THE STATES], <https://justiz.de/onlinedienste/rechtsprechung/index.php> (last visited Feb. 27, 2019), archived at <http://perma.cc/4CU8-7ALM>.

⁶¹ *Onlinedienste* [*Online Services*], JUSTIZPORTAL DES BUNDES UND DER LÄNDER, <https://justiz.de/onlinedienste/index.php> (last visited Feb. 27, 2019), archived at <http://perma.cc/75NU-BN8M>.

⁶² DEUTSCHER BUNDESTAG, DOKUMENTATIONS- UND INFORMATIONSSYSTEM [DIP] [PARLIAMENTARY MATERIAL INFORMATION SYSTEM], <http://dipbt.bundestag.de/dip21.web/bt> (last visited Feb. 27, 2019), archived at <http://perma.cc/D7B2-95DR>.

Israel

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SUMMARY Israeli legislators and officials have raised concerns over threats posed by the possible dissemination of false information by private individuals and foreign powers. These concerns have been heightened by the approaching 2019 elections and warnings by Israel’s heads of security services.

A high-level committee of experts appointed by the President to examine the current law on campaign advertising (“propaganda”) issued its report in November 2017. The report recommended extending application of the substantive provisions of the Elections (Modes of Propaganda) Law to the internet and social platforms to ensure fairness and transparency, and to require disclosure of the identifying information of those persons on whose behalf the election advertisement was published. Bills based on the committee’s recommendations, as well as other pending bills addressing threats posed by the dissemination of fake news, have not yet been adopted.

Opponents of government control of the dissemination of information have opined that such control constitutes a threat to the democratic nature of the state because, among other things, it would violate freedom of expression.

In adjudicating fake news-related claims, judicial bodies have evaluated legal aspects of the dissemination of fake news based on general principles of law. The Israel Central Elections Committee has ordered the Ministry of Education to remove misleading information intending to serve as promotional material in violation of the Elections (Modes of Propaganda) Law. Addressing non-election-related misleading and defamatory information, the Tel Aviv District Court recognized liability for defamation under the Prohibition on Defamation Law, 5725-1965 for sharing defamatory posts on Facebook.

Israeli media and international corporations active in Israel have, for their part, adopted policies to confront threats posed by fake news. While one of Israel’s leading newspapers has launched a fact-checking system, both Facebook and Google have announced the adoption of special measures designed to block certain types of election-related ads.

I. Introduction

Many in Israel have shared concerns about the dissemination of false information (“fake news”), especially in the digital era. These concerns are reflected in legislative developments as well as in media and academic reports.

A 2017 report by the Knesset (Israel’s parliament) Information and Research Center (KIRC) recognized that dissemination of fake news as real facts was not a new phenomenon, as it had

apparently existed even before the invention of print.¹ However, the availability of cyber technology in modern times might facilitate much larger-scale manipulation of political processes by both private individuals recruited by political rivals and by foreign powers.²

Concerns regarding the impact of technology on the dissemination of fake news have resulted in various legislative and judicial developments. Israel's Central Elections Committee has similarly engaged in attempts to protect the integrity of elections. Israeli media, Google, and Facebook, on their part, have also undertaken various commitments to fight the phenomenon.

This report describes potential threats posed by fake news to the Israeli legal system and especially to the upcoming April 2019 elections. The report discusses legislative and administrative steps taken by Israeli government agencies and by the private sector to counter fake news.

II. Means of Viral Dissemination of Fake News

KIRC's report surveys the potential means of cyber dissemination of fake news, including social bots, active measures, and hybrid warfare.

A. Social Bots

Social bots consist of digital algorithms that are designed to look like real social media users, thereby serving as a platform for the intentional dissemination of content for a variety of interests, including commercial, political, or criminal, all designed to use a fictitious identity to influence the flow of information and its dissemination.³

B. Active Measures

Active measures may include certain overt and covert techniques used to influence the policies of another government, undermine confidence in its leaders and institutions, disrupt international relations, and discredit and weaken governmental and nongovernmental opponents. Citing Professor Roy Godson's written testimony to the US Senate Select Committee on Intelligence on March 30, 2017, KIRC's report notes that active measures frequently involve

¹ ROI GOLDSMIDT, KIRC, DISSEMINATION OF FALSE INFORMATION ON THE INTERNET AND CYBERATTACKS FOR INFLUENCE ON ELECTIONS 3 (June 11, 2017), https://fs.knesset.gov.il/globaldocs/MMM/17103500-0233-e711-80d4-00155d0aee17/2_17103500-0233-e711-80d4-00155d0aee17_11_6989.pdf, archived at <https://perma.cc/5LTZ-FV23> (citing Jacob Soll, *The Long and Brutal History of Fake News*, POLITICO MAGAZINE (Dec. 18, 2016), <https://www.politico.com/magazine/story/2016/12/fake-news-history-long-violent-214535>, archived at <https://perma.cc/RF52-6PZR>).

² David Siman-Tov et al., *Cyber Threats to Democratic Processes*, 1(3) CYBER, INTELLIGENCE & SECURITY 51, 53 (Dec. 2017), http://www.inss.org.il/wp-content/uploads/2018/01/CyberENG1.3_6-53-65.pdf, archived at <https://perma.cc/E4VZ-8JWW>.

³ Goldsmidt, *supra* note 1, at 3-5.

attempts to deceive foreign governmental and nongovernmental actors or mass audiences, and to distort their perception of reality.⁴

C. Hybrid Warfare

Citing Christopher Chivvis's testimony before the US House Armed Services Committee on March 22, 2017, KIRC's report notes that one of the main characteristics of hybrid warfare is that it concentrates on the targeted country's population itself, including by cyberattacks and political influence.⁵

III. Government Publications

Free access to legal information and services in Israel is available on a national law portal.⁶ The Ministry of Justice website routinely posts copies of legal publications published in *Rashumot* (the official gazette).⁷ The Israeli Judicial Authority website publishes Supreme Court decisions and provides access to a variety of services.⁸ Government ministries and the Prime Minister's office maintain websites and post information via such websites.

IV. Specific Warning of Foreign Threats to the Integrity of the 2019 Elections

Awareness of potential threats posed by false news has increased, particularly in the context of elections. According to Israeli scholars,

[c]yber threats to the election process in democratic countries may be categorized as threats that aim to disrupt the process through technological tools designed to corrupt information systems and the polling and voting systems, and as material threats to democratic institutions by sully their good name and by undermining the public's faith in them. While the first category of threats is well known and countries are well prepared to contend with them, the second—which is more abstract—is a new type of threat that requires appropriate consideration and analysis.⁹

⁴ *Id.* at 5 (citing *Disinformation: A Primer in Russian Active Measures and Influence Campaigns: Hearing Before the Senate Select Committee on Intelligence*, 115th Cong. 11 (Mar. 30, 2017) (Written Testimony of Roy Godson, <https://www.intelligence.senate.gov/sites/default/files/documents/os-rgodson-033017.pdf>, archived at <https://perma.cc/BXD6-RYQQ>).

⁵ *Id.* at 6 (citing *Understanding Russian "Hybrid Warfare" and What Can Be Done about It: Hearing Before the House Armed Services Committee*, 115th Cong. 59 (Mar. 22, 2017) (Testimony of Christopher S. Chivvis), <https://www.govinfo.gov/content/pkg/CHRG-115hrg25088/pdf/CHRG-115hrg25088.pdf>, archived at <https://perma.cc/8ANA-GA98>).

⁶ GOVERNMENT SERVICES AND INFORMATION PORTAL, <https://www.gov.il/> (last visited Feb. 5, 2019), archived at <https://perma.cc/VD6Q-NBT3>.

⁷ *Rashumot*, MINISTRY OF JUSTICE, https://www.gov.il/he/Departments/official_gazette (in Hebrew; last visited Feb. 5, 2019), archived at <https://perma.cc/K7G6-CT73>.

⁸ THE ISRAELI JUDICIAL AUTHORITY, https://www.gov.il/he/Departments/the_judicial_authority (in Hebrew; last visited Feb. 5, 2019). archived at <https://perma.cc/22EG-WXH7>. Limited content is available in other languages, including English.

⁹ Siman-Tov et al., *supra* note 2, at 52.

Concerns over online dissemination of misleading information have been heightened in anticipation of the upcoming Israeli national elections scheduled for April 9, 2019.¹⁰ According to Israeli news reports, on January 7, 2019, Nadav Argaman, Israel's Shin Bet (General Security Service) Chief, said that a foreign country intends to intervene in Israel's upcoming election via hackers and cyber technology, but that "it remains unclear at this point what the foreign nation's political interests are."¹¹

Erez Kriner, former head of the Shin Bet Agency for Cybersecurity, opined that there were several regional entities, in addition to Russia, that might be interested in influencing the Israeli elections: Turkey, Syria, Iran, the Palestinian Authority, and Hamas.¹² An Israeli cybersecurity company, however, estimated that Iran, Russia, and China pose the biggest threats, as they seek "to influence the outcome of elections or undermine confidence in the democratic process . . . [and] have the most money and people."¹³

Among threats to the conduct of fair elections are voter data breaches, the hacking of party systems, and denial-of-service attacks on official sites:

In the end, however, what might present the biggest threat comes from people trying to manipulate opinions by disseminating misleading information online; for example, by using fake Facebook profiles. . . . [T]he number of bots – fictitious social media users – could be enormous. Bots can be set up and maintained for three or four years and activated as an election gets underway. . . . The challenge is to maintain credibility and public trust in the process Sometimes it's enough to force down a government site for a few hours in order to instill public doubts about the cleanliness of the system.¹⁴

According to Mossad (Israel's Secret Intelligence Service) Chief Tamir Pardo, "what we've seen so far with respect to bots and the distortion of information is just the tip of the iceberg. It is the greatest threat of recent years, and it threatens the basic values that we share – democracy and the world order created since World War Two."¹⁵

¹⁰ Amitai Ziv, *Massive Manipulation, Foreign Influence Campaign and Cyber: The Threats to Israel's Election, What's behind the Shin Bet Chief Warning that a 'Foreign Country' Intends to Intervene in the Israeli Election*, HAARETZ.COM (Jan. 9, 2019), <https://www.haaretz.com/israel-news/elections/massive-manipulation-foreign-influence-campaign-and-cyber-the-threats-to-israel-s-election-1.6822455>, archived at <https://perma.cc/Q2RG-KQME>.

¹¹ 'Foreign Country' Intends to Intervene in Israeli Elections, *Shin Bet Chief Says*, HAARETZ (Jan. 8, 2019), <https://www.haaretz.com/israel-news/elections/.premium-foreign-country-intends-to-intervene-in-israeli-elections-shin-bet-chief-says-1.6824615>, archived at <https://perma.cc/DM7P-Z69S>.

¹² Uri Berkowitz, "There Are At Least Four Countries in the Region that Will Be Interested in Influencing on the Elections in Israel," GLOBES (Jan. 10, 2019), <https://www.globes.co.il/news/article.aspx?did=1001268589> (in Hebrew), archived at <https://perma.cc/ZX64-CJW5>.

¹³ Ziv, *supra* note 10.

¹⁴ *Id.*

¹⁵ *Id.*

V. Committee for Examination of the Elections (Modes of Propaganda) Law

Concerns for threats to the election process in Israel led to the appointment of a special committee to examine the threats and find ways to address them.

On July 8, 2015, Israel's President Reuven Rivlin and Justice Salim Joubran, the Chairman of the Central Elections Committee (CEC) for the 20th Knesset, appointed the Committee for Examination of the Elections (Modes of Propaganda) Law, 5719-1959 (CEEMPL).¹⁶ This Law governs the broadcasting of election messages in Israel.¹⁷ The CEEMPL was established in response to past CEC chairs' recommendations to reform the Law, and adjust its provisions to reflect technological changes. The CEEMPL included former President of the Supreme Court Dorit Beinisch, former Minister of Justice Dan Meridor, former Knesset Member Itshak Levi, Professor Suzi Navot, and Professor Karin Nahon. The CEEMPL issued a comprehensive report and recommendations to the President on November 21, 2017.¹⁸ The report states that the Law was enacted in the pre-internet era.¹⁹ It provides that the Supreme Court has called on a number of occasions for reformation of the Law in view of technological and telecommunication developments that have taken place over the years.²⁰

One of the report's main recommendations was to extend the application of substantive provisions of the Law to the internet and to social platforms.²¹ An additional recommendation was to add to the Law a special provision specifying its objectives as the regulation of election propaganda, "[i]n fairness and transparency and in accordance with principles of freedom of expression, equal opportunity among candidates in elections and the dignity of men."²²

A draft bill proposed by the CEEMPL clarified that transparency required disclosure of identifying information of the person, candidate, or candidates' list on behalf of whom the election advertisement was published, including on the internet.²³

¹⁶ Elections (Modes of Propaganda) Law, 5719-1959, SEFER HAHUKIM [SH] [BOOK OF LAWS (official gazette)] 5719 No. 284 p. 138, *as amended*; Appointment Letter Re: the Committee for Examination of the Elections (Modes of Propaganda) Law, 5719-1959 (July 8, 2015), CEC, <http://bechirof.gov.il/election/Decisions/vadattaamula/Documents/KtavMinui.pdf> (in Hebrew), *archived at* <https://perma.cc/Q8H4-BFL4>.

¹⁷ Note that the word "propaganda" in Hebrew relates to election ads and does not necessarily have negative connotations, as it might in English. The term "propaganda" is being used in this report according to its Hebrew meaning and refers to political ads in general.

¹⁸ Report of the Committee for Examination of the Elections (Modes of Propaganda) Law, 5719-1959 (Jerusalem, 5778-2017), <http://bechirof.gov.il/election/Decisions/vadattaamula/Documents/-%20ביניש%20סופי%20זמח%20לפרסום%20.pdf> (in Hebrew), *archived at* <https://perma.cc/86WN-KZTT>.

¹⁹ *Id.* at 6-7.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 15.

²² *Id.* at 25.

²³ Proposed Text of Elections (Modes of Propaganda) Law (Consolidated Text of Existing Law with Committee's Recommendations), § 2A2, *id.* at 53 (this and other proposed bills in Hebrew).

VI. Legislative Responses

A. Bills Addressing Threats to Integrity of Election Process

Following the issuance of the CEEMPL report, the Knesset Constitution, Law and Justice Committee drafted the Elections (Modes of Propaganda) (Amendment No. 34) Bill, 5778-2018.²⁴ The bill proposes, among other things, adding a section 2A1 to the Propaganda Law.²⁵ The proposed section would require an election ad to include the name and address of the person responsible for ordering it. If that person acted on the behalf of a competing person, party, or a Knesset candidates' list, or on behalf of another body, the election ad would need to identify them.²⁶

The bill defines "election ad" as either "election propaganda done by a person competing in the election, by a body connected to a party group, a body active in the elections or on their behalf,"²⁷ or as "the content of election propaganda that was written or disseminated for a fee."²⁸ For the purpose of transparency of the latter, a fee includes monetary and nonmonetary payment, provision of service, or any other benefit.²⁹

According to the bill's explanatory notes, the distribution of any election ad, including on internet platforms and social media, is subject to the requirement of transparency. This requirement does not apply to ads circulated by individuals acting on their own, who are not paid or who do not pay for writing or distributing the ads.³⁰

Although the bill passed the first of the three readings required for adoption into legislation, there appears to have been no further progress regarding its adoption.³¹

An additional bill focusing on the transparency of election propaganda was proposed by six Knesset Members on November 5, 2018. This private members' draft bill does not appear to have yet been considered.³²

²⁴ Elections (Modes of Propaganda) (Amendment No. 34), 5778-2018, HATSAOT HOK [HH] [KNESSET DRAFT BILLS] No. 805 p. 273 (July 11, 2018), https://fs.knesset.gov.il//20/law/20_ls1_503185.pdf, archived at <https://perma.cc/S6GH-NJU5>.

²⁵ *Id.* § 5.

²⁶ Proposed section 2A1(a), *id.* For information on the election system see *Elections for the Knesset*, <https://main.knesset.gov.il/en/mk/pages/elections.aspx> (last visited Jan. 17, 2019), archived at <https://perma.cc/3EFR-8CU5>.

²⁷ Proposed section 2A1(b), Elections (Modes of Propaganda) (Amendment No. 34), 5778-2018, § 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, Explanatory Notes, at 275.

³¹ *Id.*

³² Elections (Modes of Propaganda) (Restricting Financing of Unidentified Propaganda) Draft Bill for Preliminary Reading, 5778-2018 (filed Nov. 5, 2018), <https://main.knesset.gov.il/Activity/Legislation/>

B. Bill Addressing Foreign Propaganda

A private members bill targeting propaganda directed by foreign countries was submitted on December 3, 2018, by three Knesset Members. According to explanatory notes to this bill, its intention was “to prevent advertising propaganda from abroad, or by corporations that are prohibited from donating to Knesset candidates’ lists.”³³

The bill proposes to authorize the head of the CEC, who is a serving justice in the Supreme Court, to issue an injunction preventing the receipt of prohibited donations, monetary or otherwise, in accordance with the Parties Financing Law, 5733-1973.³⁴

C. “Facebook Laws”

Two additional bills were submitted to the Knesset in December 2016. The bills, dubbed “Facebook Laws,” called for the removal of prohibited content from the internet. The first was a private members bill that required a webmaster to remove from a social platform content that incites the commission of terrorist acts and sought to impose fines on violators.³⁵

The government submitted its own bill on December 28, 2016. The government bill called for authorizing the Administrative Matters Court, under conditions enumerated by law, to issue a decree requiring the removal or disabling of the identification of content that constitutes a criminal act where there was a real possibility that continued publication would harm the safety of a person, public safety, or state security.³⁶ The bill was reportedly withdrawn per Prime Minister Netanyahu’s request.³⁷

[Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2074696](https://perma.cc/5PD8-FXWS) (click on link at left), archived at <https://perma.cc/5PD8-FXWS>.

³³ Elections (Modes of Propaganda) (Amendment- Injunctions against Propaganda from a Foreign Country) Draft Bill for Preliminary Reading, 5779-2018 (filed Dec. 3, 2019), <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2076227> (click on link at left), archived at <https://perma.cc/S5YM-9HLN>.

³⁴ *Id.*; Political Parties (Financing) Law 5733-1973, SH, 5733 No. 680 p. 52. For information on the financing of national elections in Israel see Ruth Levush, *Campaign Finance: Israel*, LAW LIBRARY OF CONGRESS (Apr. 2009), <https://www.loc.gov/law/help/campaign-finance/israel.php>, archived at <https://perma.cc/9L63-BLF2>.

³⁵ Removal of Inciting Advertisement Published on a Social Network Platform, Bill, 5776-2016 (Private Members Draft Bill) (June 27, 2016), <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=577014>, archived at <https://perma.cc/4GSB-RX8R>.

³⁶ Removal from the Internet of Content the Publication of which Constitutes an Offence, Bill 5777-2016, HATSAOT HOK (Government), Issue No. 1104 p. 741 (Dec. 28, 2016), available at <https://www.justice.gov.il/Units/Reshomot/publications/Pages/Bill.aspx> (click on Issue No. 1104), archived at <https://perma.cc/2UM2-UC2T>.

³⁷ Moran Azulai, *Netanyahu Ordered to Stop Legislative Procedure for Enactment of “Facebook Law”*, YNET (July 18, 2018), <https://www.ynet.co.il/articles/0,7340,L-5312098,00.html>, archived at <https://perma.cc/5WF4-GWB7>; see also Rafaela Goichman, *Facebook Law Returns: Arden Requests Netanyahu to Re-Promote the Bill*, THE MARKER (Dec. 4, 2018), <https://www.themarker.com/technation/1.6719704>, archived at <https://perma.cc/8KT5-TDQI>.

A private members bill combining the two 2016 Facebook Bills was submitted on July 17, 2018. The 2018 bill called for facilitating, under relevant conditions, the issuance of content removal decrees within forty-eight hours from the filing of an application. It further authorized the issuance of decrees for the removal of content the publication of which constituted a basis for the conviction of a person for an offense. Under certain circumstances, the bill called for authorizing consideration of inadmissible evidence in evaluating the merits of content removal requests.³⁸ Opponents of the bill argued that it constituted a threat to the democratic nature of the state, as it would violate freedom of expression and allow censorship to be imposed *ex parte*, and would be based on inadmissible evidence.³⁹

VII. CEC and Court Decisions Involving “False News”

A. Duty of Government to Distribute Accurate Information

A decision rendered on January 20, 2019, by Hanan Melcer, Deputy Supreme Court President and Chairman of the CEC, addresses the dissemination of misleading information by government institutions in the guise of election propaganda.⁴⁰

The case involves a petition filed with the CEC against Minister of Education Naftali Benet, who is a candidate in the upcoming election, and the Ministry of Education requesting a halt to the dissemination of an allegedly false message produced by the Ministry asserting that the Minister has been successful in reducing classroom size throughout Israel during Benet’s tenure.⁴¹

Accepting the petition, Melcer recognized that the message constituted “election propaganda” within the meaning of the Election (Modes of Propaganda) Law, and could not be produced or broadcast with public money.⁴² Melcer’s conclusion was based on an examination of the broadcast’s “dominant objective” as reflected not only by the external circumstances of its publication, but also its substance:

Therefore, the accuracy of the information presented in the publication, biased editing of material data, omission of details, which may affect the messages presented in the publication may also testify to the propaganda purpose which lies at the basis of the publication, and cast doubt on attempts to present it as useful [and] informative to the public.⁴³

³⁸ Prevention of Perpetrating Offenses by Publication on the Internet (Removal of Content) 5778-2018 (July 17, 2018), https://fs.knesset.gov.il//20/law/20_ls2_503728.pdf, archived at <https://perma.cc/BX8A-2NPE>.

³⁹ Omer Kabir, *The Law for Facebook Censorship in Israel Approved for Second and Third Reading*, CALCALIST (July 15, 2018), <https://www.calcalist.co.il/internet/articles/0,7340,L-3742306,00.html> (in Hebrew), archived at <https://perma.cc/24E4-3XBT>.

⁴⁰ Election Case 3/21 Shahar Ben Meir v. Naftali Benet, Minister of Education et al., THE CENTRAL ELECTION COMMITTEE FOR THE 21 KNESSET (Jan. 20, 2019), https://bechirot21.bechirot.gov.il/election/Decisions/AllDecisions/knesset21/documents/tbk_3.21.pdf (in Hebrew), archived at <https://perma.cc/Y2YY-543Y>.

⁴¹ *Id.* ¶¶ 2-3.

⁴² *Id.* ¶ 20.

⁴³ *Id.* ¶ 29.

The broadcast of such a message, according to Melcer, violates the constitutional foundation for equality required in the Knesset elections process as it gives preference to the incumbent in relation to other candidates. This inequality, Melcer emphasized, was

[r]einforced by the phenomenon of “false news” (Fake News), which has gained momentum in recent years. The need for publications to be accurate and devoid of any bias or political touch, and it constitutes another reason for imposing a duty on the public authority to adhere to the truth and accuracy in every detail given on its behalf to the public.⁴⁴

The fear of dissemination of false information, justifies, in Melcer’s opinion, a sharpening of the guidelines and directives relating to government publications, to ensure that the “competent authority will fulfill its function only within the framework of its authority and will not obstruct public officials in activity in violation of . . . [election and government service laws].”⁴⁵

Melcer held that any publication intended to be produced or disseminated by a controlled body (generally state and local government and bodies receiving government funding) should be examined by its legal adviser for a determination of its accuracy and compliance with requirements under the Propaganda Law. Publications produced or disseminated in the absence of approval by the legal adviser will be deemed in violation of the prohibition on use of public assets in connection with election under the Propaganda Law.⁴⁶

The petition was accepted and the respondents were ordered to refrain from publishing the message and to remove it from any internet sites under their control. The Ministry was also ordered to remove the name of the Minister from any references to the Ministry’s programs.⁴⁷

B. Liability of Individual Facebook Users for Publication of Defamatory “Fake News”

On January 16, 2018, the Tel Aviv District Court partially accepted an appeal over a decision of the Tel Aviv Circuit Court rejecting a suit to recognize liability under the Prohibition on Defamation Law, 5725-1965 (the Defamation Law)⁴⁸ for the act of “liking” and sharing two defamatory posts on Facebook.⁴⁹

⁴⁴ *Id.* ¶ 30.

⁴⁵ *Id.* ¶ 32.

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 39.

⁴⁸ Prohibition on Defamation Law, 5725-1965, SH 5725 No. 464, p. 240, *as amended*.

⁴⁹ CC (TA) 35757-10-16 Needaily Telecommunications Ltd. v. Yoel Shaul et al. (decision by Judge Yashayau Shanler with Kobi Vardi and Enat Ravid concurring, Jan. 16, 2019), available in the Takdin Legal Database (in Hebrew, by subscription). For a summary of the decision see Ruth Levush, *Israel: Court Distinguishes Between Facebook’s “Share” and “Like” For Defamation Lawsuit*, GLOBAL LEGAL MONITOR (Feb. 5, 2019), <https://www.loc.gov/law/foreign-news/article/israel-court-distinguishes-between-facebooks-share-and-like-for-defamation-lawsuit/>, archived at <https://perma.cc/3P24-39U6>.

Analyzing the differences between sharing and liking, the Court held that contrary to liking, sharing is based on the intention of a user to transmit content. It therefore complies with the requirement under the Defamation Law that defamatory content must be intended for a specific person other than the actual injured person and must in fact be delivered to the other person.⁵⁰

VIII. Nongovernmental Responses to Fake News

A. Media Fact Checking

Reflecting concerns over fake news, one of Israel's leading newspaper, *Globes*, established a fact checking system, the "Whistle." According to *Globes*,

[t]he whistle system deals with public statements made by public figures in order to provide the news consumers an essential tool for their informed and critical examination. Through a quick, comprehensive, balanced, and real-time examination of statements regarding the day's issues, the whistle seeks to lead a more credible, accurate and factual public and media discourse in Israel.

The principles that guide the work of the whistle are precision, accuracy of facts and details, and the use of reliable and open sources (without the use of anonymous sources), regardless of the speaker's identity or the position presented in examined statement. The whistle system operates according to the Press Council Code of Ethics and the Ethics Code of the International Network of Fact-Finding Organizations (IFCN)

The whistle system ranks the statements measured according to the following scores:

- The statement is correct and accurate.
- For the most part, the statement is correct, but it contains an incorrect or inaccurate component.
- Partly true – Part of the statement is correct and incomplete, or it does not contain any significant details that may change its meaning.
- For the most part, a small part of the statement is false and incorrect, or it omits fundamental details in a way that creates a significant deception about its meaning.
- Wrong statement is not at all true.
- Deceptive statement creates false representation or impression, although it is based on the correct facts⁵¹

B. Facebook's Blocking of Paid Election Ads and Fake News

According to Israeli media, Facebook has announced that it will block anonymous paid Israeli political ads on its site prior to the April 9, 2019, Knesset election. According to its new policy, "advertisers on Facebook will be required to provide a verified local contact person and

⁵⁰ CC (TA) 35757-10-16, ¶¶ 69–74.

⁵¹ *The Whistle of Globes*, GLOBES, <https://www.thewhistle.co.il/aboutUs> (in Hebrew; last visited Feb. 5, 2019), archived at <https://perma.cc/EM2Q-M4KA>.

disclosure [sic] what was paid for the ad and by whom.”⁵² Facebook’s commitment to block anonymous ads might address fraudulent depiction of political parties’ sponsored ads in the guise of private ads.⁵³

In a January 31, 2019 press release,, Facebook announced that it had

removed 783 Pages, groups and accounts for engaging in coordinated inauthentic behavior tied to Iran. There were multiple sets of activity, each localized for a specific country or region, including . . . Israel The Page administrators and account owners typically represented themselves as locals, often using fake accounts, and posted news stories on current events. This included commentary that repurposed Iranian state media’s reporting on topics like Israel-Palestine relations.⁵⁴

C. Google’s Blocking of Personalized Advertising During the 2019 Election Period

Google reportedly informed Israeli media companies in early February 2019 that they will not be able to execute personal advertising on the company’s systems until after the April 9 elections. This means that Google will block all advertising options related to segmentation (advertising to a segmented audience), retargeting, and using a list of names to anyone engaged in political advertising.⁵⁵

⁵² Chaim Levinson, *Facebook to Block Anonymous Paid Political Ads Before Israel’s Election*, HAARETZ (Jan. 28, 2019), <https://www.haaretz.com/israel-news/elections/.premium-facebook-to-block-anonymous-paid-political-ads-before-israel-s-election-1.6883187>, archived at <https://perma.cc/BB3S-ARRZ>.

⁵³ *Id.*

⁵⁴ *Removing Coordinated Inauthentic Behavior from Iran*, FACEBOOK NEWSROOM (Jan. 31, 2019), <https://newsroom.fb.com/news/2019/01/removing-cib-iran/>, archived at <https://perma.cc/K2HX-D4CE>.

⁵⁵ Anat Bain Lubobitz, *Google’s Dramatic Decision - Stops Personalized Advertising During Election Time*, GLOBES (Feb. 2, 2019), <https://www.globes.co.il/news/article.aspx?did=1001272384> (in Hebrew), archived at <https://perma.cc/75FT-EW2P>.

Japan

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SUMMARY Fake news has been of concern to the Japanese government and the public in recent years. Several laws exist that can be utilized to counter fake news. A study group of the Ministry of Internal Affairs and Communications is deliberating measures to counter fake news. The government also provides texts of laws and the official gazette online for free.

I. Overview of the “Fake News” Phenomenon

Leading Japanese newspapers have become embroiled in a number of fake news scandals in recent years. One such example involved a famous fake news case circulated by the *Asahi Shimbun*, one of the leading newspapers in Japan, which published many articles in the 1980s and 90s on the comfort women issue. Among other things, some of its reports relied on an individual who falsely “claimed he had forcibly taken Korean women to wartime Japanese military brothels.”¹ It took a long time for these articles to be corrected. The *Asahi Shimbun* admitted that serious errors had been made in the articles and apologized in its print edition and on its website in 2014.² Another leading newspaper, the *Mainichi*, published online vulgar articles that “were sourced from unreliable Japanese tabloids” from 2001 to 2008, when it admitted that many stories in the articles were untrue and ceased publishing the series.³

Fake news through social media is also becoming a serious issue, although it appears there are not as many extreme fake news cases in Japan as in other countries. The difficulty of the Japanese language for foreigners prevents fake news postings from outside Japan, according to one expert in journalism.⁴

¹ *Asahi Shimbun Retracts Two More Articles on Sex Slaves*, JAPAN TIMES (Dec. 24, 2014), <https://www.japantimes.co.jp/news/2014/12/24/national/asahi-shimbun-retracts-two-more-articles-on-sex-slaves/>, archived at <https://perma.cc/CD45-4XZP>.

² 慰安婦報道検証 第三者委員会 [Examination of Comfort Women Reports, Third Party Committee], ASAHI SHIMBUN, <http://www.asahi.com/shimbun/3rd/3rd.html> (last visited Feb. 27, 2019), archived at <https://perma.cc/K67E-UJX5>. The Committee’s abridged report dated December 22, 2014, is available in English at <http://www.asahi.com/shimbun/3rd/report20150728e.pdf>, archived at <https://perma.cc/H73R-WSU3>.

³ Matthew Moore, *Japanese Newspaper Admits Infamous Sex Column Was Untrue*, TELEGRAPH (July 22, 2008), <https://www.telegraph.co.uk/news/newstopics/howaboutthat/2443937/Japanese-newspaper-admits-infamous-sex-column-was-untrue.html>, archived at <https://perma.cc/33UX-6NVU>.

⁴ 藤代裕之 [Hiroyuki Fujii], フェイクニュースへの危機感が乏しい日本政府、問題は若者より中高年のリテラシー [Japanese Government Lacks the Sense of Impending Crisis of Fake News, At Issue Is News Literacy of Middle-aged and Older, Not Young People], YAHOO JAPAN NEWS (June 21, 2018), <https://news.yahoo.co.jp/byline/fujisiro/20180621-00086295/>, archived at <https://perma.cc/72DH-8TAB>.

It appears that the government and many people are particularly concerned about post-disaster fake news. One such notable case involved a false tweet just after the 2016 Kumamoto earthquake by a person far from the City of Kumamoto stating, and appearing to depict via an attached photograph, that a lion in the Kumamoto Zoo was on the loose because of damage caused by the earthquake. Many neighbors were scared and the Zoo received more than a hundred phone calls inquiring about the matter.⁵ After an earthquake in Hokkaido in 2018, many fake news reports concerning infrastructure, such as water and cell phone availability, were spread.⁶ Fake news circulated during elections for public office is also of concern to experts.⁷ The 2018 Okinawa gubernatorial election was the first public election in which an enormous volume of fake social media news was distributed. Media outlets and experts are calling for countermeasures against fake news.⁸

II. Countering “Fake News”

A. Broadcasting Act

Japanese law regulates broadcasters and establishes a system to keep broadcasting programs from distorting the facts. The Broadcasting Act states that, when a broadcaster edits broadcast programs, it must ensure the reporting does not distort the facts.⁹ The Broadcasting Act also states that a broadcaster must establish a deliberative body for broadcast programs in order to ensure that those programs are appropriate.¹⁰ “A broadcaster must set forth a basic plan relating to the program standards and editing of the broadcast programs and, when it intends to make amendments thereto, must consult with the deliberative body.”¹¹

In cases where the content of a broadcast is not factual, and the individual who was the subject of an infringement of rights owing to the broadcast complains within three months of the date of the broadcast, the broadcaster must, without delay, investigate whether the information broadcast was factual. If it finds that the matters were not factual, it must, within two days of the

⁵ フェイクニュース特集 あなたは被害者？加害者？ [*Fake News Special: Are You a Victim or Aggressor?*], CLOSE-UP GENDAI, NHK (Feb. 7, 2017), <http://www.nhk.or.jp/gendai/articles/3930/1.html>, archived at <https://perma.cc/H5JQ-WDHH>.

⁶ 服部良祐 [Ryosuke Hattori], 北海道地震でデマ拡散が止まらない真のメカニズム [*True Mechanism of Spreading False Rumors after Hokkaido Earthquake*], IT MEDIA (Sept. 11, 2018), <https://www.itmedia.co.jp/business/articles/1809/11/news036.html>, archived at <https://perma.cc/XG8X-PANY>.

⁷ 選挙の年 日本で“フェイクニュース”は... [*Election Year: “Fake News” in Japan ...*], NHK NEWS WEB (Dec. 25, 2018), <https://www3.nhk.or.jp/news/html/20181225/k10011759211000.html>, archived at <https://perma.cc/7Z84-2Q7G>.

⁸ 社説, 偽情報検証 新たな責務 [Editorial, *Examination of Fake Information, New Responsibilities*], OKINAWA TIMES (Oct. 16, 2018), <https://www.okinawatimes.co.jp/articles/-/330433>, archived at <https://perma.cc/K9V6-S37G>.

⁹ Broadcasting Act, Act No. 132 of 1950, amended by Act No. 96 of 2014, art. 4, para. 1, item 3, <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=broadcasting&ia=03&ph=&x=0&y=0&ky=&page=1&vm=02>, archived at <https://perma.cc/HA6K-YXC2>.

¹⁰ *Id.* art. 6, para. 1.

¹¹ *Id.* art. 6, para. 3.

day of making this finding, broadcast a correction or revocation using an appropriate method through the same broadcasting equipment as the broadcasting equipment used in the challenged broadcast.¹² A violator is punishable by a fine of not more than 500,000 yen (approximately US\$4,500).¹³ When a broadcaster discovers nonfactual particulars in its broadcasts on its own initiative, it must take the same measures.¹⁴

In addition, Nippon Hoso Kyokai (NHK), a government-affiliated public broadcasting corporation, was established based on the Broadcasting Act in order to provide quality programs for the public.¹⁵

B. Penal Code

The Penal Code has provisions that may be used to punish persons who post fake news.

One provision concerns defamation. A person who defames another by alleging facts in public is punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen, regardless of whether such facts are true or false.¹⁶ If such act is found to relate to matters of the public interest and to have been conducted solely for the benefit of the public, and if the alleged facts are proven to be true, the person is not punishable.¹⁷ Likewise, when the alleged facts concern a public officer or a candidate for election and are proven to be true, the person is not subject to punishment.¹⁸

Obstruction of business by spreading fake news is also punishable under the Penal Code. A person who damages the credit or obstructs the business of another by spreading false rumors is punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen (approximately US\$ 4,500). The person who falsely tweeted about a lion on the loose after the Kumamoto earthquake was arrested on the basis of this crime as he obstructed the business of the zoo, but he was not indicted.¹⁹

¹² *Id.* art. 9, para. 1.

¹³ *Id.* art. 186, para. 1.

¹⁴ *Id.* art. 9, para. 2.

¹⁵ *Id.* art. 15.

¹⁶ PENAL CODE, Act No. 45 of 1907, amended by Act No. 72 of 2017, art. 230, para. 1. A tentative translation of the Code as amended by Act No. 49 of 2013 is available on the Japanese Laws Translation website at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=penal&ia=03&ph=&x=0&y=0&ky=&page=4&vm=02>, archived at <https://perma.cc/8XK2-VZG3>.

¹⁷ *Id.* art. 230-2, para. 1.

¹⁸ *Id.* art. 230-2, para. 3.

¹⁹ “ライオン脱走”フェイクツイッター男を起訴猶予 [“Escaped Lion”, Fake Twitter Man, Not to Be Indicted], SANKEI (Mar. 22, 2017), <https://www.sankei.com/smp/west/news/170322/wst1703220056-s1.html>, archived at <https://perma.cc/P5XX-W67B>.

C. Election Law

The Public Offices Election Act states that anyone who conducts an election campaign via the internet must make his/her online contact information available for viewers or recipients of the information.²⁰ The purpose of this provision is to reduce the circulation of defamatory information and “spoofing” (i.e., impersonating another device or user for a malicious purposes).²¹

A person who seeks to make a candidate win or not win during an election by using a false name or status is punishable by imprisonment for not more than two years or a fine of not more than 300,000 yen (approximately US\$2,700).²² Likewise, a person who publicizes false information about a candidate for the purpose of making the candidate win is punishable by imprisonment for not more than two years or a fine of not more than 300,000 yen.²³ If a person publicizes false or distorted information about a candidate for the purpose of making the candidate lose, the person is punishable by imprisonment for not more than four years or a fine of not more than 1 million yen (approximately US\$9,000).²⁴

D. Internet Provider Law

The Act on the Limitation of Liability of Internet Providers exempts internet providers from liability when they prevent distribution of the infringing information of others. In cases where there is a reasonable ground for a provider to believe that the rights of others are infringed without due cause by distribution of the information via its service, the provider may block the information and is not liable for the conduct of the person who sent the information.²⁵ In addition, when a person alleging that his/her rights have been infringed by information distributed via a provider’s service asks the provider to take measures to prevent the infringing information from being transmitted, the provider must ask the sender of the infringing information whether he/she agrees with implementing the transmission prevention measures. If the provider does not receive a notice from the sender indicating disagreement within seven days, the provider is not liable to the sender for any damages caused by the distribution prevention measure implemented regarding the information.²⁶

²⁰ Public Offices Election Act, Act No. 100 of 1950, amended by Act No. 75 of 2018, art. 142-3, para. 3.

²¹ インターネット選挙運動等に関する各党協議会 [Consultative Meeting of Parties Concerning Online Campaign], 改正公職選挙法（インターネット選挙運動解禁）ガイドライン [Guidelines on Amended Public Offices Election Act (Lifting of Ban of Online Campaign)], at 29 (Apr. 26, 2013), http://www.soumu.go.jp/main_content/000_222706.pdf, archived at <https://perma.cc/QHH4-XFTN>.

²² Public Offices Election Act, art. 235-5.

²³ *Id.* art. 235, para. 1.

²⁴ *Id.* art. 235, para. 2.

²⁵ Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders, Act No. 137 of 2001, amended by Act No. 10 of 2013, art. 3, para. 2, item 1.

²⁶ *Id.* art. 3, para. 2, item 2.

The waiting period for the sender's reply is shortened from seven days to two days in cases where the request asking a provider to prevent distribution of defamatory information comes from an election candidate.²⁷ If the contact information of the sender of the defamatory information of the candidate is not available, the provider does not have to submit an inquiry to the sender.²⁸

E. Discussion of Countermeasures against Fake News in Government

The Ministry of Internal Affairs and Communications (MIC) formed the Platform Services Study Group and collected relevant agenda items from the public in October 2018.²⁹ In December 2018, the Study Group added the issue of fake news to the agenda.³⁰ In the Study Group's interim report, it stated that it would explore a self-cleaning mechanism for information, examine fact-checking systems, and study the voluntary cooperation between platform services and fact-checking organizations. The Study Group plans to issue its final report by the end of 2019.³¹

III. Efforts to Provide Accurate Legal Information

The Japanese government's e-Government website maintains an online database that includes laws, Cabinet orders, ordinances, and regulations.³² Government agencies' notifications and circulars are available on their websites, and also through e-Gov.³³ The content of official gazettes, including the text of legislation, can be searched on the National Printing Bureau's website.³⁴

²⁷ *Id.* art. 3-2, item 1.

²⁸ *Id.* art. 3-2, item 2.

²⁹ Press Release, MIC, 「プラットフォームサービスに関する研究会における検討アジェンダ（案）」に対する提案募集 [Accepting Proposals of “Agenda to Be Discussed at Platform Services Study Group”] (Oct. 19, 2018), http://www.soumu.go.jp/menu_news/s-news/01kiban18_01000052.html, archived at <https://perma.cc/PG4U-PFMY>.

³⁰ プラットフォームサービスに関する研究会の検討アジェンダ [Agenda of Platform Services Study Group], MIC (Dec. 21, 2018), http://www.soumu.go.jp/main_content/000591109.pdf, archived at <https://perma.cc/S2TK-ZBLC>.

³¹ MIC, プラットフォームサービスに関する研究会 中間報告書（案） [PLATFORM SERVICES STUDY GROUP INTERIM REPORT (draft)] 46 (Feb. 13, 2019), http://www.soumu.go.jp/main_content/000600599.pdf, archived at <https://perma.cc/9HC7-APG9>.

³² E-GOV 法令索引 [LAW SEARCH], https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0100/.

³³ 所管の法令・告示・通達等 [Laws, Notifications and Circulars on Their Jurisdictions], E-GOVERNMENT, <http://www.e-gov.go.jp/law/ordinance.html> (last visited Feb. 27, 2019).

³⁴ インターネット版官報 [OFFICIAL GAZETTE ON INTERNET], NATIONAL PRINTING BUREAU, <https://kanpou.npb.go.jp/> (last visited Feb. 27, 2019).

Kenya

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SUMMARY The spread of false information, particularly during election seasons, has recently presented challenges in Kenya. Kenya’s existing laws, particularly the Penal Code and the Information and Communications Act, bar the dissemination of false information in different contexts.

In 2017, the Communications Authority of Kenya issued guidelines that include provisions on the responsibility of mobile network operators and mobile virtual network operators to vet political messages they transmit. The Guidelines also require political content authors to ensure the accuracy of the content they publish. In addition, they direct social media platform administrators to moderate and control undesirable contents and social media service providers to take down accounts used in the dissemination of undesirable political content.

In May 2018, Kenya enacted the Computer Misuse and Cyber Crimes Act, which contains provisions that criminalize “false publication” and the “publication of false information.” The constitutionality of various parts of the Act, including these two provisions, were immediately challenged before the Constitutional and Human Rights Division of the Kenyan High Court, which suspended the implementation of the provisions pending an outcome of the case. It appears that the provisions remain suspended to date.

In March 2018, the United States Embassy in Kenya launched a one-year media literacy campaign aimed at countering the spread of false information in Kenya. The program has been expanded with the opening of an academic institution for the study of social media development and trends.

Kenya maintains an information portal, Kenya Law, for the dissemination of accurate and authoritative legal information, including legislation, parliamentary debates, and case law.

I. Introduction

The phenomenon of the spread of false news, primarily during election seasons, has been particularly challenging for Kenya in recent years. Although not a new problem, the permeation of false information through social media channels during the last few election cycles, particularly in the 2013 and 2017 election seasons, has been among the most notable in recent history.¹ One source described the phenomenon as follows:

¹ Kelsey Lilley, *Kenya’s Fake News Problem*, ATLANTIC COUNCIL (Aug. 10, 2017), <https://www.atlanticcouncil.org/blogs/new-atlanticist/kenya-s-fake-news-problem>, archived at <https://perma.cc/7JK6-W6ZZ>.

Facebook, WhatsApp and Twitter are perhaps the three most popular social media platforms in Kenya, and have been used to share opinions, predictions and fabrications alike before and after the election. There have been websites as well, designed to give the impression that they are authoritative sources of news, that have carried all sorts of (mis)information and propaganda. As has been widely reported, fake news articles and videos bearing CNN, BBC and even NTV Kenya logos were also disseminated and shared widely on social media platforms.²

This was not just a case of isolated incidents of improvised individual actions spreading rumors and misinformation; there were allegedly concerted, highly organized efforts to disseminate false information and narratives. The most notable example of this was the involvement of Cambridge Analytica, a United Kingdom-based political consultancy firm, as a prominent player in the 2013 and 2017 presidential election seasons. President Kenyatta of the Jubilee Party retained Cambridge Analytica to help manage his 2013 and 2017 presidential runs, both of which he won.³ Although the company denies any involvement in creating and pushing false information, Mark Turnbull, its managing director, was filmed boasting about his organization's influence over the Kenyan elections, stating "[w]e have rebranded the entire [Jubilee] party twice, written their manifesto, done two rounds of 50,000 surveys. . . Then we'd write all the speeches and we'd stage the whole thing. So just about every element of [President Uhuru Kenyatta's] campaign."⁴ On its website, the company is said to have presented its involvement in Kenya in the 2013 election as "the largest political research project ever conducted in East Africa," which enabled the crafting of a campaign "based on the electorate's real needs (jobs) and fears (tribal violence)."⁵

The circulation of false information was enhanced due to a number of factors, including a high level of internet penetration in the country and a growing acceptance of social media as a trusted source of news. Kenya ranks fourteenth in the world in internet speed and close to 90% of its population has internet access.⁶ A recent survey of two thousand Kenyans found that close to half of those surveyed received news about the general election through social media sources.⁷

² Nanjira Sambuli, *How Kenya Became the Latest Victim of 'Fake News'*, AL JAZEERA (Aug. 17, 2018), <https://www.aljazeera.com/indepth/opinion/2017/08/kenya-latest-victim-fake-news-170816121455181.html>, archived at <https://perma.cc/62U4-XUGG>.

³ Eric Auchard, *Cambridge Analytica State-Managed Kenya President's Campaigns: UK TV*, REUTERS (Mar. 19, 2018), <https://www.reuters.com/article/us-facebook-cambridge-analytica-kenya/cambridge-analytica-stage-managed-kenyan-presidents-campaigns-uk-tv-idUSKBN1GV300>, archived at <https://perma.cc/5ZA3-X7GD>.

⁴ Nick Miriello et al., *Kenyans Face a Fake News Epidemic*, VICE NEWS (Mar. 14, 2019), https://news.vice.com/en_us/article/43bdpm/kenyans-face-a-fake-news-epidemic-they-want-to-know-just-how-much-cambridge-analytica-and-facebook-are-to-blame, archived at <https://perma.cc/B462-LLBU>; Justina Crabtree, *Here's How Cambridge Analytica Played a Dominant Role in Kenya's Chaotic 2017 Elections*, CNBC (Mar. 23, 2018), <https://www.cnbc.com/2018/03/23/cambridge-analytica-and-its-role-in-kenya-2017-elections.html>, archived at <https://perma.cc/F386-VHXU>.

⁵ Crabtree, *supra* note 4.

⁶ Lily Kuo, *Kenya's Mobile Internet Beats the United States for Speed*, QUARTZ AFRICA (June 2017), <https://qz.com/africa/1001477/kenya-has-faster-mobile-internet-speeds-than-the-united-states/>, archived at <https://perma.cc/9LMV-YLJW>.

⁷ PORTLAND COMMUNICATIONS, *THE REALITY OF FAKE NEWS IN KENYA 7* (2017), <https://portland-communications.com/pdf/The-Reality-of-Fake-News-in-Kenya.pdf>, archived at <https://perma.cc/ICK5-VDGX>.

According to another source, during the 2017 election season, due in part to the loss of faith in mainstream media, growing number of Kenyans turned to social media for information.⁸ The source noted that the “dominance [of mainstream media] has been violently disrupted. Social media burst onto the scene as a new regime of information production and dissemination, operating unencumbered by the structural and political limitations the country’s mainstream media often face.”⁹

According to the above-noted survey, 90% of the participants “suspected having seen or heard false / inaccurate information [on social media] regarding the [2017] election.”¹⁰

Adding further complications is the country’s history of ethnic tension that often turns violent during election season. For instance, following the 2007 election ethnic based violence erupted, which claimed 1,400 lives and displaced as many as 600,000 people.¹¹ Although not at the scale of the 2007 post-election event, the 2017 election also saw some violence in which twenty-four people were killed.¹²

This report looks at existing and new initiatives to curb the spread of false information and the challenges associated with such endeavors.

II. Legal Framework

A. Existing Laws

1. Penal Code

The Penal Code criminalizes what it calls “alarming publications.” It states that “[a]ny person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanor.”¹³ A person found to have committed this offense is, on conviction, subject to a custodial sentence not exceeding two years and/or a fine.¹⁴ The Code further states that “[i]t shall be a defence to a charge under [the “alarming publications” clause] if the accused proves that, prior to publication, he took such

⁸ *Kenya’s 2017 Elections: How New Media Stole the Mainstream’s Thunder*, THE CONVERSATION (Dec. 14, 2017), <http://theconversation.com/kenyas-2017-elections-how-new-media-stole-the-mainstreams-thunder-88613>, archived <https://perma.cc/8K55-RHUC>.

⁹ *Id.*

¹⁰ PORTLAND COMMUNICATIONS, *supra* note 7, at 9.

¹¹ James Brownsell, *Kenya: What Went Wrong in 2007*, AL JAZEERA (Mar. 3, 2013), <https://www.aljazeera.com/indepth/features/2013/03/201333123153703492.html>, archived at <https://perma.cc/8F6R-X7ZS>.

¹² Briana Duggan et al., *24 Killed in Post-Election Violence in Kenya, Rights Group Says*, CNN (Aug. 13, 2017), <https://www.cnn.com/2017/08/12/africa/kenya-elections-protests/index.html>, archived at <https://perma.cc/2Z5R-LM3B>.

¹³ Penal Code of 1930, § 66, 16 LAWS OF KENYA, Cap. 63 (last updated Dec. 2014), <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063>, archived at <https://perma.cc/H9PR-FGLY>.

¹⁴ *Id.* § 36.

measures to verify the accuracy of the statement, rumour or report as to lead him reasonably to believe that it was true.”¹⁵

The Code also criminalizes defamation. The relevant provisions state:

194. Definition of libel

Any person who, by print, writing, painting or effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed libel.

195. Definition of defamatory matter.

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation; and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead.

196. Definition of publication

- (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.
- (2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

197. Definition of unlawful publication

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless –

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Chapter.¹⁶

2. Kenya Information and Communications Act

This Act criminalizes the “improper use” of a telecommunication system, stating that anyone who, through a licensed telecommunication system,

- (a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

¹⁵ *Id.* § 66.

¹⁶ *Id.*

commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.¹⁷

The Act also criminalizes unlawful the sending of misleading messages. It states that

[a]ny person who –

- (a) by means of radio communication, sends or attempts to send any message which to his knowledge is false or misleading and is to his knowledge likely to prejudice the efficiency of any safety-of-life service or endanger the safety of any person, or of any vessel, aircraft or vehicle, and, in particular, any message which to his knowledge falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or
- (b) otherwise than under the authority of the Minister for the time being responsible for internal security –
 - (i) uses any radio communication apparatus with intent to obtain information as to the contents, sender or addressee of any message, (whether sent by means of radio communication or not) which neither the person using the station or apparatus nor any person on whose behalf he is acting is authorised to receive; or
 - (ii) except in the course of legal proceedings or for the purposes of any report thereon, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of the radio communication station or radio communication apparatus by him or by any other person acting on his behalf,

commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.¹⁸

3. Guidelines on Prevention of Dissemination of Undesirable Bulk and Premium Rate Political Messages and Political Social Media Content via Electronic Communication Networks

In July 2017, based on authority accorded to it under the Kenya Information and Communications Act and the Kenya Information and Communications (Consumer Protection) Regulations, the Communications Authority of Kenya, in collaboration with the National Cohesion and Integration Commission, issued the Guidelines on Prevention of Dissemination of Undesirable Bulk and Premium Rate Political Messages and Political Social Media Content via Electronic Communication Networks (the Guidelines).¹⁹

¹⁷ Kenya Information and Communications Act No. 2 of 1998, § 29 (commencement of relevant sections, July 1, 1999), <http://www.kenyalaw.org/lex//actview.xql?actid=No. 2 of 1998>, archived at <https://perma.cc/W4EZ-RFT2>.

¹⁸ *Id.* § 44.

¹⁹ Communications Authority of Kenya & National Cohesion and Integration Commission, Guidelines on Prevention of Dissemination of Undesirable Bulk and Premium Rate Political Messages and Political Social Media Content via Electronic Communications Networks (Guidelines) (July 2017), <https://ca.go.ke/wp-content/uploads/2018/02/Guidelines-on-Prevention-of-Dissemination-of-Undesirable-Bulk-and-Premium-Rate-Political-Messages-and-Political-Social-Media-Content-Via-Electronic-Networks-1.pdf>, archived at <https://perma.cc/R62R-U252>; Kenya Information and Communications Act, §§ 23 & 25; Kenya Information

The Guidelines require that, before transmitting a political message,²⁰ mobile network operators (MNOs) and mobile virtual network operators (MVNOs) must vet its content to, among others, ensure that it is not misleading or confusing.²¹ It further states that content service providers must “take legal responsibility for the content of Political Messages and shall fully indemnify and keep indemnified MNOs and MVNOs against any claims that may arise out of those Political Messages.”²²

The Guidelines include a section on political social media guidelines. The “accuracy and accountability” clause in the section states that “[i]t shall be the responsibility of the political content author to authenticate, validate the source and truthfulness of their content prior to publishing to limit information that might spread rumors, mislead or cannot be supported by facts.”²³ The “truthful posting and publishing” clause states that “[p]olitical content authors shall at all times maintain honesty and accuracy in their publications and shall be responsible for all their content as published.”²⁴

In addition to political content authors, the Guidelines also impose certain responsibilities on social media platform administrators and social media service providers. The Guidelines state that “[i]t shall be the responsibility of the Administrator of a social media platform to moderate and control undesirable contents and discussions that have been brought to their attention on their platform.”²⁵ The Guidelines further state that “[s]ocial media service providers shall be required to pull down accounts used in disseminating undesirable political contents on their platform that have brought to their attention within 24 hours.”²⁶

Undesirable political content includes content containing information “that is likely to mislead through inaccuracy, ambiguity, exaggeration, omission or otherwise and it should be clear to the consumers when time-sensitive information was last updated.”²⁷

and Communications (Consumer Protection) Regulations, 2010, § 21 (Apr. 14, 2010), http://kenyalaw.org/LegalNotices/pop_in.php?file=392, archived at <https://perma.cc/P7CM-ESFV>.

²⁰ This is “content of a political nature originated by Political Parties and other individuals to the general public by SMS, MMS, premium messages, caller ring back tones, social media platform or any other similar medium that is capable of transmitting bulk content.” Guidelines § 5.

²¹ Guidelines §§ 7 & 8.

²² *Id.* § 11.

²³ *Id.* § 13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* § 5; Communications Authority of Kenya, [Sample] Content Service Provider License Granted by the Communications Authority of Kenya, Condition 1 (2015), <https://ca.go.ke/wp-content/uploads/2018/03/Modified-CSP-Licence-2015.pdf>, archived at <https://perma.cc/5NXA-FVDJ>.

The Guidelines state that anyone “who knowingly spreads undesirable political content via social media networks shall be penalized according to the [National Cohesion and Integration Act], Penal Code and other relevant laws.”²⁸

B. Recent Legislative Proposal

In May 2018, President Uhuru Kenyatta signed into law the Computer Misuse and Cyber Crimes Act.²⁹ This law includes a provision criminalizing “false publication,” which states as follows:

- (1) A person who intentionally publishes false, misleading or fictitious data or misinforms with intent that the data shall be considered or acted upon as authentic, with or without any financial gain, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.
- (2) Pursuant to Article 24 of the Constitution, the freedom of expression under Article 33 of the Constitution shall be limited in respect of the intentional publication of false, misleading or fictitious data or misinformation that –
 - (a) is likely to –
 - (i) propagate war; or
 - (ii) incite persons to violence;
 - (b) constitutes hate speech;
 - (c) advocates hatred that –
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - (ii) is based on any ground of discrimination specified or contemplated in Article 27(4) of the Constitution; or
 - (d) negatively affects the rights or reputations of others.³⁰

The Act also criminalizes the “publication of false information,” the elements of and punishment for which are as follows:

A person who knowingly publishes information that is false in print, broadcast, data or over a computer system, that is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person commits

²⁸ Guidelines § 13; National Cohesion and Integration Act No. 12 of 2008 (commencement Mar. 9, 2009), <http://kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202008>, archived at <https://perma.cc/YSE9-GZY9>.

²⁹ Matshelane Mamabolo, *Kenya’s Computer Misuse and Cybercrimes Bill Now Law*, IT WEB AFRICA (May 16, 2018), <http://www.itwebafrica.com/security/515-kenya/244229-kenyas-computer-misuse-and-cybercrimes-bill-now-law>, archived at <https://perma.cc/LD8K-Z87B>.

³⁰ Computer Misuse and Cybercrimes Act No 5 of 2018, § 22, KENYA GAZETTE SUPPLEMENT (SPECIAL ISSUE) No. 60 (May. 16, 2018), <http://www.kenyalaw.org/lex//actview.xql?actid=No.%205%20of%202018>, archived at <https://perma.cc/KD9J-V5GZ>

an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.³¹

During the parliamentary debate on the Bill for this Act, Aden Duale, the Majority Leader of Kenya's National Assembly, proposed an amendment to insert the crime of "publication of false information" into the Bill. He described the challenge of fake news, possible solutions to the challenge, and the sources of inspiration for the Bill language as follows:

Hon. Chair, I looked for the term "fake news" in law and I could not get it. There is nowhere in law I could find that term. This amendment proposes to introduce and define the scope of the offence of publication of false information to tackle emerging offences of fake news. The ingredients have been informed by the existing legislation from similar jurisdictions in the Philippines and Malaysia. The definition falls within the offences that relate to the scope of the offence within the Bill and that are conducted over a computer.

If Members can remember, the late Hon. Biwott "died" 10 times through fake news. Mugabe [former president of Zimbabwe] died five times through fake news. When Mzee Moi just went for a knee surgery in Israel, people decided to kill him. There is serious fake news and false publications. I want the Members to support it. The amendment does not offend the provisions of Article 34 of the Constitution. We really looked at it with the Legal Department of Parliament. If you publish false information, the offence is so grave that you either pay Kshs5 million or get a prison sentence not exceeding 10 years or both. Those people who use gadgets to create alarm, false news and publish to harm others must be dealt with under this law.³²

Critics have panned the law as another opportunity for the government to clampdown on freedom of expression. According to a university professor on democracy, "[t]here is a serious risk that, as has happened in the past with issues such as anti-terror legislation, governments manipulate a genuine issue in order to push repressive changes that are really designed to strengthen their own power."³³ James Wamathai, the Director of Partnerships at the Bloggers Association of Kenya (BAKE) noted that "[i]n the past several years, there have been attempts by the government to clamp down on the freedom of expression online. This Act is a testament of these efforts, especially after other sections were declared unconstitutional by the courts."³⁴

³¹ *Id.* § 23.

³² National Assembly Official Report 43 (Apr. 26, 2018), http://www.parliament.go.ke/sites/default/files/2017-05/Hansard_Report_-_Thursday_26th_April_2018A_1.pdf, archived at <https://perma.cc/C3DY-563V>.

³³ Dickens Olewe, *Kenya, Uganda and Tanzania 'Anti-Fake News Campaigns'*, BBC NEWS (May 16, 2018), <https://www.bbc.com/news/world-africa-44137769>, archived at <https://perma.cc/3HCB-LGDH>.

³⁴ Wamathai, *Justice Chacha Mwita Suspends 26 Sections of the Computer Misuse and Cybercrimes Act*, BLOGGERS ASSOCIATION OF KENYA (BAKE) (May 29, 2018), <https://www.blog.bake.co.ke/2018/05/29/justice-chacha-mwita-suspends-26-sections-of-the-computer-misuse-and-cybercrimes-act/>, archived at <https://perma.cc/5AYF-6P29>.

This criticisms reflect Kenya's recent regression in the area of press freedom. According to the 2018 Press Freedom Index, published by Reporters without Borders (RSF), Kenya ranks ninety-sixth in the world in press freedom.³⁵ According to RSF,

Kenya has seen a slow erosion of media freedom in recent years. The political situation and security concerns have been used since 2016 as grounds for restricting the freedom to inform. . . . Journalists can pay dearly for covering opposition events or for portraying President Uhuru Kenyatta's party and its flaws in a negative light. Four commercial TV channels were shut down at the start of 2018 for defying the president's ban on live coverage of opposition leader Raila Odinga's mock inauguration as president. The 2010 constitution guarantees freedom of information, but laws criminalize and gag the media.³⁶

On May 30, 2018, in response to a petition from BAKE challenging the constitutionality of many of its provisions and seeking a temporary conservatory order to prevent its implementation, the Constitutional and Human Rights Division of the High Court of Kenya at Nairobi temporarily (until July 18, 2018) suspended various provisions of the Computer Misuse and Cyber Crimes Act pending a full hearing on the matter.³⁷ The suspension order included the "false publication" and "publication of false information" clauses of the Act.³⁸ On June 11, 2018, the government returned to court seeking to have the suspension lifted. The Court rejected the government's petition to end the suspension.³⁹ It appears that these provisions currently remain suspended.

III. Education Campaign

On March 14, 2018, the United States Embassy in Kenya started a media literacy campaign known as "YALI Checks: Stop.Reflect.Verify." to counter the spread of false information in Kenya.⁴⁰ Launched with a mass email to the 47,000 members of the Kenya chapter of the Young African Leaders Initiative (YALI), the purpose of the campaign was described as follows:

Over the course of the year, the campaign will provide a mix of online activities, including an email series, an online quiz, blog posts, online chats, public outreach, educational videos, and an online pledge. The Embassy's five American Spaces, which reach across Kenya, will also provide platforms for in-person and virtual discussions with experts on media literacy tools. Additional components of the campaign will include tapping

³⁵ *Kenya*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/kenya> (last visited Mar. 18, 2019), archived at <https://perma.cc/J8NP-9W28>.

³⁶ *Id.*

³⁷ *Bloggers Association of Kenya (Bake) v Attorney General & 5 others* [2018] eKLR at 1, available at <http://kenyalaw.org/caselaw/cases/export/159286/pdf>, archived at <https://perma.cc/2TZJ-AB9P>.

³⁸ *Id.*

³⁹ *Id.* at 6.

⁴⁰ *Ambassador Godec and U.S. Embassy Counter Fake News with Media Literacy Campaign*, U.S. EMBASSY IN KENYA (Mar. 14, 2018), <https://ke.usembassy.gov/ambassador-godec-u-s-embassy-counter-fake-news-media-literacy-campaign/>, archived at <https://perma.cc/S2EG-5MPC>; *Yalichcks: Stop.Reflect.Verify*, YOUNG AFRICAN LEADERS INITIATIVE, <https://yali.state.gov/checks/> (last visited Mar. 19, 2019), archived at <https://perma.cc/D2DC-B2P2>.

Fulbright and other professional exchange programs to provide training opportunities both in Kenya and in the United States on ways to stop the spread of fake news.⁴¹

In an October 2018 report, the Office of Inspector General of the US Department of State highlighted the program as a success, noting that “[e]xpanding on the successes of the “YALI Checks” program, the [US] embassy launched Africa’s first academic institution for the study of social media development and trends, in partnership with U.S. International University–Africa in April 2018.”⁴²

IV. Government Legal Information Portals

Kenya maintains a central, free legal database where citizens can locate case law and legislation. Administered by the National Council for Law Reporting, a semi-autonomous state corporation, which is the official publisher of the Kenya Law Reports and the Laws of Kenya, this database serves as the official online source for government material.⁴³ Among other documents, it makes available case law, acts, subsidiary legislation, and records of parliamentary debates.⁴⁴ Some courts in the country also publish a limited number of their decisions on the judiciary website.⁴⁵

⁴¹ *Ambassador Godec and U.S. Embassy Counter Fake News with Media Literacy Campaign*, *supra* note 40.

⁴² OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF STATE & BROADCASTING BOARD OF GOVERNORS, INSPECTION OF EMBASSY NAIROBI, KENYA 16 (Oct. 2018), https://www.stateoig.gov/system/files/isp-i-19-08_0.pdf, archived at <https://perma.cc/T3VF-8SW7>.

⁴³ *About Us*, THE NATIONAL COUNCIL FOR LAW REPORTING, <http://kenyalaw.org/kl/index.php?id=115> (last visited Mar. 18, 2018), archived at <https://perma.cc/SD4N-FVE6>.

⁴⁴ *Id.*

⁴⁵ *Supreme Court: Decisions*, JUDICIARY, <https://www.judiciary.go.ke/courts/supreme-court/#decisions> (last visited Mar. 18, 2019), archived at <https://perma.cc/XKT3-MH5E>; *Court of Appeal: Decisions*, JUDICIARY, <https://www.judiciary.go.ke/courts/court-of-appeal/#decisions> (last visited, Mar. 18, 2019), archived at <https://perma.cc/W8LQ-ZBHH>.

Malaysia

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SUMMARY Malaysia’s Anti-Fake News Act 2018 was widely criticized when it was enacted in April 2018. Commentators and rights groups considered that the Act was vague and contained an overly broad definition of fake news, and the then-government was accused of seeking to stifle criticism of the administration. Following elections in May 2018, the new government sought to repeal the Act, but the bill was defeated in the upper house of the Parliament in September 2018. It is unclear at this stage whether the government will again seek its repeal or introduce amendments. The government also undertook to review and possibly repeal several other laws that are considered oppressive and restrictive of free speech, including those that have been used to target what could be termed “fake news.” However, despite earlier announcing an enforcement moratorium, it has recently indicated a willingness to apply some of these laws in certain situations.

A government agency operates a fact-checking portal and app, where people can search for and submit information being circulated online in order to check its accuracy. Agencies also use social media to correct false information related to government activities. In addition, legal information is available through government web portals, including statute law, regulations, bills and other parliamentary information, and court decisions.

I. Fake News and Freedom of Speech in Malaysia

Malaysia has consistently received a low rating in global indices related to freedom of speech, including the World Press Freedom Index, in which it was ranked 145 out of 180 countries in 2018,¹ and the Freedom House Freedom of the Press report, in which it was given a “not free” rating in 2017.² Freedom House also noted a decline in internet freedom in the country in 2018, primarily as a result of the passage and subsequent initial enforcement of the Anti-Fake News Act 2018.³

The Anti-Fake News Act 2018 was passed by the Malaysian Parliament in April 2018,⁴ a few weeks before national elections were to be held. The legislation was the subject of widespread

¹ See *Malaysia*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/malaysia> (last visited Feb. 27, 2019), archived at <https://perma.cc/P3KD-77MX>.

² *Freedom of the Press 2017: Malaysia*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-press/2017/malaysia> (last visited Feb. 27, 2019), archived at <https://perma.cc/NMN9-XPKM>.

³ *Freedom on the Net 2018: Malaysia*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-net/2018/malaysia> (last visited Feb. 27, 2019), archived at <https://perma.cc/Z2Y9-CD7L>.

⁴ See Kelly Buchanan, *Malaysia: Anti-Fake News Act Comes into Force*, GLOBAL LEGAL MONITOR (Apr. 19, 2018), <http://www.loc.gov/law/foreign-news/article/malaysia-anti-fake-news-act-comes-into-force/>.

criticism by human rights organizations and there were accusations that it was passed to curtail speech that was critical of the government, including reporting on corruption investigations that implicated the then-Prime Minister.⁵

The current coalition government, which was formed following the elections held in May 2018 and represents the first change in government in nearly sixty years,⁶ has undertaken to enhance human rights protections in Malaysia, including through the possible repeal or amendment of certain laws, including the Printing Presses and Publications Act 1984, Sedition Act 1948, Peaceful Assembly Act 2012, Prevention of Crime Act 1959, Security Offences (Special Measures) Act 2012, Prevention of Terrorism Act 2015, and mandatory death sentence provisions.⁷ As a result, commentators expressed hope for a “new dawn” for freedom of the press in the country.⁸

The new Prime Minister also initially promised to review and amend the Anti-Fake News Act 2018,⁹ but the government later introduced a bill for its full repeal.¹⁰ Explanatory information accompanying the bill states that it seeks to repeal the Act

due to the change in the policy of the Government that fake news may be dealt with under existing laws such as the Penal Code [Act 574], the Printing Presses and Publications Act 1984 [Act 301] and the Communications and Multimedia Act 1998 [Act 588]. As such, Act 803 is no longer relevant.¹¹

⁵ See *Malaysia Accused of Muzzling Critics with Jail Terms for Fake News*, THE GUARDIAN (Mar. 26, 2018), <https://www.theguardian.com/world/2018/mar/26/malaysia-accused-of-muzzling-critics-with-jail-term-for-fake-news>, archived at <https://perma.cc/3C55-YBCB>; *Malaysia: Anti-Fake News Act Should be Repealed in its Entirety*, ARTICLE 19 (Apr. 24, 2018), <https://www.article19.org/resources/malaysia-anti-fake-news-act-repealed-entirety/>, archived at <https://perma.cc/QQQ7-45L7>; *Malaysia: Drop Proposed ‘Fake News’ Law*, HUMAN RIGHTS WATCH (Mar. 29, 2018), <https://www.hrw.org/news/2018/03/29/malaysia-drop-proposed-fake-news-law>, archived at <https://perma.cc/R56R-XWXT>.

⁶ See *Malaysia Election: Opposition Scores Historic Victory*, BBC NEWS (May 10, 2018), <https://www.bbc.com/news/world-asia-44036178>, archived at <https://perma.cc/4FKT-7FGW>.

⁷ *Malaysia to Review Seven ‘Unsuitable’ National Security Laws: Muhyiddin*, CHANNEL NEWSASIA (May 22, 2018), <https://www.channelnewsasia.com/news/asia/malaysia-to-review-seven-unsuitable-national-security-laws-10257488>, archived at <https://perma.cc/EY9Q-2XQ4>.

⁸ Scilla Alecci, *After Black Magic, Censorship and Detention Comes New Dawn for Malaysian Press*, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS (June 6, 2018), <https://www.icij.org/blog/2018/06/after-black-magic-censorship-and-detention-comes-new-dawn-for-malaysian-press/>, archived at <https://perma.cc/HXK3-RQER>. See also Kristian Porter, *Hope for Media Freedom in Malaysia?*, PUBLIC MEDIA ALLIANCE (Sept. 14, 2018), <https://www.publicmediaalliance.org/hope-for-media-freedom-in-malaysia/>, archived at <https://perma.cc/EJ4E-F9L4>; David Boyle, *Malaysian Press Await Promised Reforms*, VOICE OF AMERICA (June 12, 2018), <https://www.voanews.com/a/malaysian-press-await-promised-reforms/4435008.html>, archived at <https://perma.cc/3JMD-8Z6Z>.

⁹ *Malaysia Will Review Not Revoke Fake News Law, Says Mahatir*, BBC NEWS (May 14, 2018), <https://www.bbc.com/news/world-asia-44104879>, archived at <https://perma.cc/ZF4F-S42T>.

¹⁰ *Anti-Fake News (Repeal) Bill 2018, D.R. 14/2018*, https://www.parlimen.gov.my/files/billindex/pdf/2018/DR/D.R.14_2018-ENG.pdf, archived at <https://perma.cc/HH6E-Z9DQ>.

¹¹ *Id.* at 2.

The lower house of the Parliament voted in favor of a repeal bill in August 2018. However, the upper house, which is still controlled by supporters of the previous government, voted against the bill in September 2018.¹² Under the Malaysian Constitution, the lower house can pass the bill again after a one-year period has elapsed and, should the upper house again fail to pass it, the bill can subsequently be presented for assent.¹³ It is unclear at this stage whether the government will propose amendments to the legislation or again seek its full repeal.

In October 2018, the government instituted a moratorium on the enforcement of provisions in certain laws that affect freedom of speech and other human rights, including the Sedition Act 1948, section 233 of the Communications and Multimedia Act 1998 (see below), and other laws that were subject to review.¹⁴ However, it has subsequently indicated that it could use these laws in response to emergency situations that threaten national security, public order, or race relations, such as riots that took place in November 2018 at a temple in Subang Jaya following the spread of information on social media regarding its possible relocation.¹⁵ In addition, the government recently announced that it had decided to retain two laws that had been under review, the Prevention of Crime Act 1959 and the Security Offences (Special Measures) Act 2012,¹⁶ and has proposed a new law to protect the monarchy from insult and criticism.¹⁷

Given this context, the problem of “fake news” in Malaysia can be difficult to define and assess. On the one hand, the country’s leaders have been accused of using similar terms and various laws to stifle dissent or criticism of the government.¹⁸ On the other, as in countries around the

¹² See *Bill to Repeal ‘Anti-Fake News’ Act in Malaysia Fails*, INTERNATIONAL FEDERATION OF JOURNALISTS (Sept. 13, 2018), <https://www.ifj.org/media-centre/news/detail/category/press-freedom/article/bill-to-repeal-anti-fake-news-act-in-malaysia-fails.html>, archived at <https://perma.cc/34RK-U6AU>; *Malaysia: Senate’s Rejection of Bill Abolishing Anti-Fake News Law a Backwards Step*, ARTICLE 19 (Sept. 13, 2018), <https://www.article19.org/resources/malaysia-senates-rejection-of-bill-abolishing-anti-fake-news-law-a-backwards-step/>, archived at <https://perma.cc/27NG-LSLF>.

¹³ FEDERAL CONSTITUTION OF MALAYSIA, art. 68, [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal Consti \(BI text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal Consti (BI text).pdf), archived at <https://perma.cc/F96H-K999>.

¹⁴ See Shakira Buang, *Temple Riots: Cabinet Gives Approval to Enforce Sedition Act*, MALAYSIKINI (Dec. 2, 2018), <https://www.malaysiakini.com/news/454395>, archived at <https://perma.cc/G59H-DMA8>.

¹⁵ *Id.* See also Nadia Hamid & Mohamad Ridzuan Anwar, *Moratorium on Draconian Laws Suspended on Issues Threatening National Security, Public Order, Race Relations*, NEW STRAITS TIMES (Dec. 3, 2018), <https://www.nst.com.my/news/nation/2018/12/436806/moratorium-draconian-laws-suspended-issues-threatening-national-security>; Press Release, Malaysian Bar, Don’t Break Your Promise, Pakatan Told After ‘Oppressive’ Laws Allowed For Use (Dec. 7, 2018), http://www.malaysianbar.org.my/legal/general_news/dont_break_your_promise_pakatan_told_after_oppressive_laws_allowed_for_use.html, archived at <https://perma.cc/DF5J-BV6H>.

¹⁶ See Press Release, Malaysian Bar, Government Must Fulfil Pledge to Abolish All Oppressive Laws (Jan. 5, 2019), http://www.malaysianbar.org.my/press_statements/press_release_%7C_government_must_fulfil_pledge_to_abolish_all_oppressive_laws.html, archived at <https://perma.cc/2B7W-5VPX>.

¹⁷ See *Malaysia: Law Proposed Against Criticizing Monarchy*, HUMAN RIGHTS WATCH (Jan. 11, 2019), <https://www.hrw.org/news/2019/01/11/malaysia-law-proposed-against-criticizing-monarchy>, archived at <https://perma.cc/M24C-KW9F>.

¹⁸ See HUMAN RIGHTS WATCH, *CREATING A CULTURE OF FEAR: THE CRIMINALIZATION OF PEACEFUL EXPRESSION IN MALAYSIA* (Oct. 26, 2015), <https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia>, archived at <https://perma.cc/UWF5-VZBC>.

world, there does exist a potential threat to democracy and society from various actors, including those in other countries, creating fake news and disseminating this anonymously using social media. One commentator on the Malaysian situation recently noted that,

[m]ore often than not, everyday fake news cases are relatively harmless. This points to an important fact to appreciate. The spectrum of harm caused by fake news is extremely broad, and legitimate questions abound on whether these cases need to be dealt with via the law.

Regardless, this makes the case for delicate legislating – legislators need to be deliberate in approaching any regulation on fake news. Regulating fake news inevitably raises questions of censorship and potential infringement of the fundamental freedom of speech. Contextually, no freedom is limitless but the onus is on legislators to restrict freedoms only to the extent absolutely necessary to achieve the goal.¹⁹

As with others who raised concerns about the legislation, he opined that the Anti-Fake News Act 2018 does not meet such a test as it is overly vague, contains a “problematically broad” definition of fake news, and imposes “disproportionately high” punishments on creators, disseminators, and publishers of such information.²⁰

II. National Approach to Fake News

A. Anti-Fake News Act 2018

The Anti-Fake News Act 2018 defines “fake news” as including “any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas.”²¹ The main offense provision in the Act states as follows:

Any person who, by any means, maliciously creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit [approx. US\$122,702] or to imprisonment for a term not exceeding six years or to both, and in the case of a continuing offence, to a further fine not exceeding three thousand ringgit [approx. US\$736] for every day during which the offence continues after conviction.²²

¹⁹ Harris Zainul, *No Silver Bullet for Fake News in Malaysia*, THE DIPLOMAT (Jan. 12, 2019), <https://thediplomat.com/2019/01/no-silver-bullet-for-fake-news-in-a-new-malaysia/>, archived at <https://perma.cc/ZUC9-LN2D>.

²⁰ *Id.* See also David Hutt, *The Real Problem with Malaysia’s Fake News Law*, THE DIPLOMAT (Apr. 2018), <https://thediplomat.com/2018/04/the-real-problem-with-malysias-fake-news-law/>, archived at <https://perma.cc/TGY7-688X>.

²¹ Anti-Fake News Act 2018 (Act 803), s 2, http://www.federalgazette.agc.gov.my/outputaktap/20180411_803_BI_WJW010830%20BI.pdf, archived at <https://perma.cc/E7JL-RGK3>.

²² *Id.* s 4(1).

A court may also order that a person convicted under this provision issue an apology.²³ Providing financial assistance for the purpose of committing the above offense is punishable by the same penalties included in the above provision,²⁴ while failure to immediately remove any publication containing fake news “after knowing or having reasonable grounds to believe that such publication contains fake news” is punishable by a fine of up to one hundred thousand ringgit (approx. US\$24,540).²⁵

The Act establishes a process for affected persons to seek a court order for the removal of a publication containing fake news.²⁶ If the person who is the subject of such an order fails to remove the content, a police officer or other authorized officer may take “necessary measures” to remove the publication.²⁷

The Act provides for its extraterritorial application, stating that where an offense is committed by any person, whether a Malaysian citizen or not, outside of Malaysia, and where the fake news concerns Malaysia or affects a Malaysian citizen, it may be dealt with as if it was committed within Malaysia.²⁸

B. Other Legislation

Provisions under several other pieces of legislation may also be utilized to target those accused of publishing or disseminating fake news. The below are among the laws that the new government stated it would review. However, as noted above, the government has recently faced criticism for failing to abolish certain laws and for apparently lifting an enforcement moratorium.

1. Communications and Multimedia Act 1998

Section 233 of the Communications and Multimedia Act 1998 states:

- (1) A person who—
 - (a) by means of any network facilities or network service or applications service knowingly—
 - (i) makes, creates or solicits; and
 - (ii) initiates the transmission of,

any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or

²³ *Id.* s 4(2).

²⁴ *Id.* s 5.

²⁵ *Id.* s 6.

²⁶ *Id.* s 7.

²⁷ *Id.* s 9.

²⁸ *Id.* s 3.

- (b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,

commits an offence.²⁹

The penalty for an offense under this provision is a fine of up to fifty thousand ringgit (approx. US\$12,270) or imprisonment for up to one year, or both, with a further fine of one thousand ringgit (approx. US\$245) applying for every day that the offense is continued after conviction.³⁰

2. *Printing Presses and Publications Act 1984*

The Printing Presses and Publications Act 1984 requires the licensing of persons who use a printing press and prohibits the use of printing presses for unlawful purposes, including producing any publication or document “which contains an incitement to violence against persons or property, counsels disobedience to the law or to any lawful order or which is or is likely to lead to a breach of the peace or to promote feelings of ill-will, hostility, enmity, hatred, disharmony or disunity.”³¹ The relevant government minister also has the “absolute discretion” to prohibit the printing, importation, sale, distribution, or possession of a publication that contains anything that is, or is likely to be, prejudicial to “public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be prejudicial to public interest or national interest.”³² Furthermore, section 8A of the Act provides:

Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit [approx. US\$4,908] or to both.³³

3. *Sedition Act 1948*

The Sedition Act 1948 criminalizes, among other acts, the printing, publishing, selling, offering for sale, distribution, or reproduction of any “seditious publication.”³⁴ Such publications are

²⁹ Communications and Multimedia Act 1998 (Act 588), s 233(1), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20588.pdf>, archived at <https://perma.cc/6UTK-59AD>.

³⁰ *Id.* s 233(3).

³¹ Printing Presses and Publications Act 1984 (Act 301), s 4(1)(b), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 301 - Printing Presses And Publications Act 1984.pdf>, archived at <https://perma.cc/J5JF-X5QF>.

³² *Id.* s 7(1).

³³ *Id.* s 8A(1).

³⁴ Sedition Act 1948 (Act 15), s 4(1)(c), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2015.pdf>, archived at <https://perma.cc/AS4W-ZLGH>, as amended by Sedition (Amendment) Act 2015 (A1485), http://www.federalgazette.agc.gov.my/outputaktap/20150604_A1485_BI_Act%20A1485.pdf, archived at <https://perma.cc/N5TK-THAQ>.

those with a “seditious tendency,” which includes, for example, having a tendency “to bring hatred or contempt or to excite disaffection against any Ruler” or “to promote feelings of ill will, hostility or hatred between different races or classes of the population of Malaysia.”³⁵

The penalty under this provision, which was increased by amendments to the Act in 2015, is imprisonment of between three and seven years.³⁶

Other changes to the Act in 2015 enabled the government, through the Malaysian Communications and Multimedia Commission (MCMC), to “block electronic media that is deemed to be seditious.”³⁷ The Act now allows the public prosecutor to seek an order from a Sessions Court prohibiting the making or circulation of a seditious publication that is found to be likely to lead to bodily injury or damage to property; or that appears to promote feelings of ill will, hostility or hatred between different races or classes of people in Malaysia, or between persons or groups on the grounds of religion.³⁸ Where such a publication is by electronic means, the order can

- (i) require the person making or circulating the prohibited publication to remove or cause to be removed wholly or partly the prohibited publication; and
- (ii) prohibit the person making or circulating the publication from accessing any electronic device.³⁹

In addition, a new provision allows a court to make an order “directing an officer authorized under the Communications and Multimedia Act 1998 [Act 588] to prevent access to such publication” where the person making or circulating it by electronic means cannot be identified.⁴⁰

4. Penal Code

The Penal Code contains the following offense of defamation:

Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation and shall also be liable to fine of such person, is said, except in the cases hereinafter excepted, to defame that person.⁴¹

³⁵ *Id.* s 3(1)(a) & (e), as amended.

³⁶ *Id.* s 4(1), as amended.

³⁷ *Malaysia Toughens Sedition Law to Include Online Media Ban, Mandatory Jail*, REUTERS (Apr. 10, 2015), <https://www.reuters.com/article/us-malaysia-lawmaking-sedition/malaysia-toughens-sedition-law-to-include-online-media-ban-mandatory-jail-idUSKBN0N10AD20150410>, archived at <https://perma.cc/M59U-EXFL>.

³⁸ Sedition Act 1948, s 10(1), as amended.

³⁹ *Id.* s 10(1A)(b), inserted by Sedition (Amendment) Act 2015.

⁴⁰ *Id.* s 10A, inserted by Sedition (Amendment) Act 2015.

⁴¹ PENAL CODE (Act 574), s 499, http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal Code ACT 574 - TP LULUS 21_2_2018.pdf, archived at <https://perma.cc/CK89-Q3JK>.

The Code penalizes defamation with imprisonment for up to two years.⁴²

Further provisions criminalize “intentional insult with intent to provoke a breach of the peace,” which is punishable with imprisonment for up to two years,⁴³ and the publication or circulation of any statement, rumor, or report

- (b) with intent to cause, or which his likely to cause, fear or alarm to the public, or to any section of the public where by any person may be induced to commit an offence against the State or against the public tranquillity; or
- (c) 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[.]⁴⁴

This offense is also punishable by imprisonment for up to two years.

C. **Sebenarnya.my Portal and App**

In March 2017, the MCMC launched the “sebenarnya.my” portal to enable the public to “check on the authenticity of news spread through social websites.”⁴⁵ In March 2018, the MCMC made the portal available as a smartphone app.⁴⁶ According to the MCMC, the portal has over one hundred strategic partners comprising twenty-two government ministries and almost one hundred agencies “that cover numerous sectors and fields.”⁴⁷

The portal remains active and publishes various fact-checking articles and statements in response to information being circulated online.⁴⁸ In November 2018, for example, in light of the temple riots referred to above, the MCMC urged people not to share or spread information that has not been proven to be true and reminded the public to “check and report on widely-shared fake news” using the portal.⁴⁹

⁴² *Id.* s 500.

⁴³ *Id.* s 504.

⁴⁴ *Id.* s 505(b) & (c).

⁴⁵ *SEBERARNYA.MY Portal Launched for Checking Validity of News*, THE STAR (Mar. 14, 2017), <https://www.the-star.com.my/news/nation/2017/03/14/sebenarnya-portal/>, archived at <https://perma.cc/7N58-G4T9>. See also Press Release, Malaysian Communications and Multimedia Commission (MCMC), *Sebenarnya.my Portal Launched, In Battle Against False News* (Mar. 14, 2017), <https://www.mcmc.gov.my/media/press-releases/sebenarnya-my-portal-launched,-in-a-battle-against>, archived at <https://perma.cc/GMR4-DSUB>.

⁴⁶ *Sebenarnya.my Launches Smartphone App*, THE SUN DAILY (Mar. 20, 2018), <https://www.thesundaily.my/archive/sebenaryamy-launches-smartphone-app-MUARCH534018>, archived at <https://perma.cc/FBY4-V5EN>.

⁴⁷ *Id.*

⁴⁸ See *Homepage*, SEBERARNYA.MY, <https://sebenarnya.my> (in Malaysian; last visited Feb. 28, 2019), archived at <https://perma.cc/N9AX-UPSX>.

⁴⁹ Angelin Yeoh, *MCMC: Stop Spreading False Online News that Could Disrupt National Harmony*, THE STAR (Nov. 27, 2018), <https://www.thestar.com.my/tech/tech-news/2018/11/27/mcmc-urge-users-to-be-mindful-on-social-media/>, archived at <https://perma.cc/45RT-MFS8>.

D. Education and Enforcement

The MCMC reported that in 2017 it held 561 fake news awareness programs through eighteen strategic partners and conducted awareness campaigns through public service announcements broadcast on television and radio.⁵⁰ It also “took action against 3,721 fake accounts in various social media platforms in which 80% of the perpetrators’ accounts were deleted for violating their terms and conditions.”⁵¹ At that time, criminal enforcement activities were based on section 233 of the Communications and Multimedia Act 1998, with forty investigating papers related to fake news being opened in 2017 and four cases brought before the court.⁵² A spokesman for the MCMC stated that it had “the capacity to prosecute individuals who spread false news within 24 hours after an offence is committed via social media.”⁵³

In April 2018, the MCMC reported that more than 50% of the instances of fake news that had been verified using the *sebenarnya.my* portal were being investigated.⁵⁴ By then, ten individuals had “been convicted after a lengthy court process” of breaching section 233 of the Communications and Multimedia Act in relation to spreading fake news. The MCMC noted that it was often difficult to detect the original publisher of fake news “as some 30% of the cases were using fake social media accounts.”⁵⁵

During the previous administration, there were also multiple actions taken against individuals under the Sedition Act 1948, including in relation to online speech,⁵⁶ although it is unclear to what extent these involved what might otherwise be considered “fake news.” In 2018, the current government dropped some Sedition Act prosecutions that had been brought by the previous government, and rights groups called for the remaining cases to also be withdrawn.⁵⁷

⁵⁰ *Sebenarnya.my Launches Smartphone App*, *supra* note 46.

⁵¹ *Id.*

⁵² *Id.* See also *Whatsapp, Facebook Main Sources of Fake News for Malaysians*, NEW STRAITS TIMES (Mar. 26, 2018), <https://www.nst.com.my/news/nation/2018/03/349523/whatsapp-facebook-main-sources-fake-news-malaysians>.

⁵³ Norhafzan Jaafar et al., *MCMC Can Catch Fake News Spreaders in 24 Hours*, NEW STRAITS TIMES (Mar. 8, 2018), <https://www.nst.com.my/news/nation/2018/03/343116/mcmc-can-catch-fake-news-spreaders-24-hours>.

⁵⁴ *Over 50% of 1500 Fake News Being Investigated: MCMC*, THE SUN DAILY (Apr. 18, 2018), <https://www.thesundaily.my/archive/over-50-1500-fake-news-being-investigated-mcmc-CUARCH541166>, archived at <https://perma.cc/N2N2-YH7S>.

⁵⁵ *Id.*

⁵⁶ See Press Release, Amnesty International, Malaysia: End Unprecedented Crackdown on Hundreds of Critics (Mar. 11, 2016), <https://www.amnesty.org/en/press-releases/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>, archived at <https://perma.cc/5JU9-UAVU>.

⁵⁷ *Malaysia: Drop Remaining Sedition Cases*, HUMAN RIGHTS WATCH (Aug. 1, 2018), <https://www.hrw.org/news/2018/08/01/malaysia-drop-remaining-sedition-cases>, archived at <https://perma.cc/EI7R-C9Z2>; *Malaysia: Acquittal of Zunar and Others Must Lead to Repeal of Draconian Law*, AMNESTY INTERNATIONAL (July 30, 2018), <https://www.amnesty.org/en/latest/news/2018/07/malaysia-acquittal-of-zunar-and-others-must-lead-to-repeal-of-draconian-sedition-law/>, archived at <http://perma.cc/IP4L-ZRSY>.

However, in January 2019, Malaysian police arrested three people for Sedition Act offenses after they posted comments on social media deemed insulting to Sultan Muhammad V.⁵⁸

The current Prime Minister, Mahathir Mohamad, was one of the first people investigated under the Anti-Fake News Act 2018, with authorities stating that the investigation related to false claims that his plane was sabotaged ahead of the election.⁵⁹ The first person convicted under the Act, in April 2018, was a Danish citizen who published a video on YouTube that made false claims about the length of time it took police in Kuala Lumpur to respond to a shooting incident. He was fined ten thousand ringgit (approx. US\$2,454) but opted instead to spend one month in prison.⁶⁰

More recent statistics and information regarding MCMC enforcement actions specifically related to fake news since the election of the new government have not been located. The MCMC website provides information to the public on complaint processes related to online content that refers to various laws and their respective enforcement agencies, including the Sedition Act and the Communications and Multimedia Act. It does not refer to the Anti-Fake News Act 2018.⁶¹ News reports on possible MCMC actions against individuals in relation to the November 2018 temple riots did not specify what legislation might be utilized for this purpose.⁶²

In addition to the *sebenaryna.my* portal, it appears that government entities also use social media to inform and educate the public regarding fake news. For example, in January 2019 the Ministry of Women, Family and Community used Twitter and Facebook to inform the public that a viral message regarding a curfew on young people was fake news.⁶³

⁵⁸ Emmanuel Santa Maria Chin, *Human Rights Group Slams Govt Following Arrests Under Sedition Act*, MALAY MAIL (Jan. 9, 2019), <https://www.malaymail.com/news/malaysia/2019/01/09/human-rights-group-slams-govt-following-arrests-under-sedition-act/1710758>, archived at <https://perma.cc/DK85-DE64>.

⁵⁹ Emily Chow & Praveen Menon, *Go Ahead, Charge Me Over Fake News, Says Malaysia's Mahathir of Plane Sabotage Claim*, REUTERS (May 4, 2018), <https://www.reuters.com/article/us-malaysia-election-fakenews/go-ahead-charge-me-over-fake-news-says-malaysias-mahathir-of-plane-sabotage-claim-idUSKBN1150DS>, archived at <https://perma.cc/ZF68-QYLL>.

⁶⁰ *First Person Convicted Under Malaysia's Fake News Law*, THE GUARDIAN (Apr. 30, 2018), <https://www.theguardian.com/world/2018/apr/30/first-person-convicted-under-malaysias-fake-news-law>, archived at <https://perma.cc/2DSR-3G8K>.

⁶¹ FAQs: 1. *What Are the Steps Required for Me to Lodge Complaints Regarding Content on the Internet?*, MCMC, <https://www.mcmc.gov.my/faqs/online-content-problems/what-are-the-steps-required-for-me-to-lodge-compla> (last visited Feb. 28, 2019), archived at <https://perma.cc/B6UC-ZJYV>.

⁶² *See MCMC Acts Over False Info on Temple Riots (Updated)*, THE SUN DAILY (Nov. 28, 2018), <https://www.thesundaily.my/local/mcmc-acts-over-false-info-on-temple-riots-updated-IX176280>, archived at <https://perma.cc/VX68-A4TU>.

⁶³ *Putrajaya Debunks Viral Message on Curfew for Those Below 18*, CHANNEL NEWSASIA (Jan. 22, 2019), <https://www.channelnewsasia.com/news/asia/malaysia-fake-news-curfew-teenagers-11151206>, archived at <https://perma.cc/URU4-L58A>.

III. Government Legal Information Portals

The Malaysian government provides online access to legal information through the Laws of Malaysia portal on the website of the Attorney-General's Chambers⁶⁴ as well as through the e-Federal Gazette portal (also maintained by the Attorney-General's Chambers).⁶⁵ The Laws of Malaysia site contains federal statute law, while the e-Federal Gazette contains federal laws and regulations published in the official gazette, dating back to 2011.⁶⁶ In addition, published judgments of the federal courts are made available online on the website of the Office of the Chief Registrar of Federal Courts,⁶⁷ and bills, order papers, and records of parliamentary proceedings are published on the Malaysian Parliament website.⁶⁸

The Official E-Syariah Portal provides access to information related to Islamic law in Malaysia, including state-level statutes, case status information, and court procedures.⁶⁹ State-level law portals also include those of Sabah⁷⁰ and Sarawak,⁷¹ which have a higher degree of legislative autonomy compared to other states. Court judgments are available on the website of the High Court in Sabah and Sarawak.⁷²

⁶⁴ *Laws of Malaysia (L.O.M.)*, ATTORNEY-GENERAL'S CHAMBERS OF MALAYSIA, http://www.agc.gov.my/agcportal/index.php?r=portal2/lom&menu_id=VXlsMDIEclhJVXIcUd6c0JreVhEUT09 (last visited Feb. 28, 2019), archived at <https://perma.cc/3WQE-NL3P>.

⁶⁵ *Homepage*, E-FEDERAL GAZETTE, <http://www.federalgazette.agc.gov.my> (last visited Feb. 28, 2019), archived at <https://perma.cc/K3J4-ND5M>.

⁶⁶ *Frequently Asked Questions (FAQs)*, E-FEDERAL GAZETTE, http://www.federalgazette.agc.gov.my/eng_main/main_faqs.php (last visited Feb. 28, 2019), archived at <https://perma.cc/5EJX-M6RB>.

⁶⁷ *Grounds of Judgment*, OFFICE OF THE CHIEF REGISTRAR, FEDERAL COURT OF MALAYSIA, <http://www.kehakiman.gov.my/en/grounds-judgment> (last updated Feb. 26, 2019), archived at <https://perma.cc/428H-UPWV>.

⁶⁸ *Homepage*, PARLIAMENT OF MALAYSIA, <https://www.parlimen.gov.my/> (last visited Feb. 28, 2019), archived at <https://perma.cc/3SDH-WFWK>.

⁶⁹ *Homepage*, E-SYARIAH OFFICIAL PORTAL, <http://www.esyariah.gov.my/> (last updated Jan. 1, 2019), archived at <https://perma.cc/J97X-GUGV>.

⁷⁰ *Homepage*, SABAH LOWNET, SABAH STATE ATTORNEY-GENERAL'S CHAMBERS, <http://www.lawnet.sabah.gov.my/> (last visited Feb. 28, 2019), archived at <https://perma.cc/9NOB-UHN9>.

⁷¹ *Homepage*, SARAWAK LOWNET, <http://lawnet.sarawak.gov.my/lawnet/Law/TLnetPubHome.jsp> (last visited Feb. 28, 2019), archived at <https://perma.cc/8SFS-68YS>.

⁷² *Homepage*, HIGH COURT IN SABAH & SARAWAK, <https://judiciary.kehakiman.gov.my/portals/> (last visited Feb. 28, 2019), archived at <https://perma.cc/EM63-GVPV>.

Nicaragua

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I. Introduction

Nicaragua has not enacted a general law specifically aimed at protecting the objectivity of news regardless of the media source or prohibiting the creation and dissemination of “fake news.” However, some provisions can be found in the Penal Code protecting individuals from false news that affects their reputation, and the Election Law contains additional provisions regulating electoral advertisements.

II. Legal Framework

A. Penal Code

The Nicaraguan Penal Code uses the concept of “day fines” to determine applicable fines, with each day fine calculated on the basis of a third of the daily income of the convicted person. If that income cannot be determined, the minimum wage of the industrial sector in which the convicted person works will be taken as the basis for calculating the fine.¹

The Penal Code punishes with day fines of one hundred to two hundred days anyone who falsely imputes to another the commission of or participation in a specific crime (*calumnia*). A false imputation that is publicized is penalized with a day fine of 120 to three hundred days.² Similarly, the crime of defamation (*injurias*) is penalized with a day fine of one hundred to two hundred days. If the defamation was publicized, the fine is increased to two hundred to three hundred day fines.³

B. Electoral Law

The Electoral Law prohibits the dissemination of electoral advertising with a view to damaging the integrity of registered candidates or calling for abstention from voting or violence. All such material must be withdrawn from circulation by the appropriate authority.⁴

¹ CÓDIGO PENAL, Ley No. 641, art. 64, LA GACETA [L.G.], May 5-9, 2008, <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/5c6133ebd4b985e50625744f005a5b2e?OpenDocument>, archived at <https://perma.cc/B37H-T43G>.

² *Id.* art. 202.

³ *Id.* art. 203.

⁴ Ley Electoral, Ley No. 331, art. 87, L.G., Sept. 4, 2012, <http://legislacion.asamblea.gob.ni/normaweb.nsf/3133c0d121ea3897062568a1005e0f89/8abab8f0a5a0cfd306257a830079bc60?OpenDocument>, archived at <https://perma.cc/C6MZ-V32Z>.

The Law provides that political parties or alliances of parties must strictly respect the ethical standards, morals, and due consideration between them, the nominated candidates, and the Nicaraguan people. The Law prohibits denigrating, offending, or disqualifying political adversaries in the political organizations' advertising and states that any criminal action involving defamation and slander committed against political candidates will be heard in accordance with the general legislation,⁵ which is the Penal Code.

⁵ *Id.* art. 107.

Russia

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SUMMARY The Russian Federation has been the subject of international criticism owing to its role in producing and disseminating fake news during and after the 2016 Presidential Elections in the US. Fake news is mostly distributed through social media networks, which are widely available to the population in the Russian Federation.

Recently, the Russian Federation enacted legislation aimed at countering fake news. This legislation complements the existing Federal Law on Information, Information Technologies and the Protection of Information, which is the main piece of legislation addressing the spread of inaccurate or false information. Anti-defamation and anti-libel provisions of the Criminal Code establish liability and punitive measures for spreading libelous news.

Legislation of Russian Federation provides for access to legal information. Several official legal information portals provide free access to legal information and judicial acts.

I. Introduction

The Russian Federation has been the subject of international criticism for creating and disseminating fake news during and after the 2016 US Presidential Elections. The internet has been used as the main medium for disseminating fake news. Internet penetration is at a relatively high level in the Russian Federation, and according to the statistics portal Statista, it is projected that the number of internet users will increase steadily through 2022.¹ Social networks have been the main channels for disseminating fake news. Statistics show that in 2017, 47% of the Russian population had an active account or accounts with major social networks, with the most dominant networks being YouTube and VKontakte.²

The Russian Federation has created an infrastructure for the production and dissemination of fake news. One of the channels that produces and distributes fake news is the Internet Research Agency, a Russian entity created ostensibly to conduct internet research, but in reality serving as an internet troll-producing machine with the aim of shaping political landscapes internationally and domestically.³ According to the US Director of National Intelligence, the Internet Research

¹ *Forecast of Internet Users in Russia from 2015 to 2022*, STATISTA, <https://www.statista.com/statistics/567007/predicted-number-of-internet-users-in-russia/>, archived at <https://perma.cc/L87M-DHOD>.

² *Penetration of Leading Social Networks in Russia as of 4th Quarter 2017*, STATISTA, <https://www.statista.com/statistics/284447/russia-social-network-penetration/>, archived at <https://perma.cc/6FAT-F9Z4>.

³ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, BACKGROUND TO “ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS”: THE ANALYTIC PROCESS AND CYBER INCIDENT ATTRIBUTION (Jan. 6, 2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf, archived at <https://perma.cc/FW3T-JUY2>.

Agency employs an army of “content creators” who in reality created and multiplied fake social media accounts to conduct a widespread disinformation campaign during the 2016 US Presidential Elections. Additionally, other media outlets such as *Russia Today* and the Sputnik Information Agency were implicated for producing and disseminating fake news through various social media and other channels.⁴

The topic of fake news has been the subject of heated debates in the political discourse of the Russian Federation. Recently, the State Duma (the lower chamber of the Russian legislature) had to publish on its website a rebuttal of the fake legal news concerning a supposed measure under consideration that would have banned Russian citizens from purchasing a car if they do not have a parking space.⁵ This example along with others was used by the group of deputies who introduced anti-fake news legislation that was later enacted. The enforcement of these laws, which are discussed in more detail below, remains problematic, as expressed by various government agencies and law enforcement bodies.

II. Legal Framework

In March 2019, Russia adopted two anti-fake news laws, amending existing legislation governing the accuracy of information and prescribing monetary punitive measures for disseminating fake news.⁶ The Federal Law on Information, Information Technologies and the Protection of Information (Information Law) prescribes legal standards for the production and dissemination of trustworthy information.⁷ The Law is the main legislation in the information management field. Certain provisions of the Criminal Code prescribe punitive measures for the distribution of inaccurate, libelous, and false information, and for defamation.

A. Federal Law on Information, Information Technologies and Protection of Information

The Information Law contains provisions aimed at countering dissemination of inaccurate or untrue information.⁸ Article 3, paragraph 6 of the Law stipulates that the reliability and trustworthiness of information is one of the principles for the legal regulation of information.⁹

⁴ *Id.*

⁵ *The State Duma Does Not Consider the Initiative to Ban the Purchase of a Car without a Parking Space*, STATE DUMA (Feb. 17, 2019), <http://duma.gov.ru/news/29804/> (in Russian), archived at <https://perma.cc/W63T-4FL9>.

⁶ Federal Law No. 31-FZ of March 18, 2019, on Amending Article 15-3 of the Federal Law on Information, Information Technologies and Protection of Information (hereinafter Law on Amending Article 15-3 of the Information Law), <http://publication.pravo.gov.ru/Document/View/0001201903180031> (in Russian), archived at <https://perma.cc/7YEP-QHU8>; Federal Law No. 27-FZ of March 18, 2019 on Amending the Code of Administrative Violations, <http://publication.pravo.gov.ru/Document/View/0001201903180021?index=1&rangeSize=1> (in Russian), archived at <https://perma.cc/E3CL-H6KM>.

⁷ Federalnii Zakon No. 149-FZ ob Informatsii, Informatsionnih Tekhnologiiah i o Zashchite Informatsii [Federal Law on Information, Information Technologies and Protection of Information (hereinafter Information Law)] N149-FZ, July 27, 2006, available on the official legal information portal at <http://pravo.gov.ru/proxy/ips/?docbody&nd=102108264>, archived at <https://perma.cc/M75Q-8EBC>.

⁸ *Id.*

⁹ *Id.* art. 3 para. 6.

The Law guarantees freedom of dissemination of information unless it is aimed at “propaganda of war, [or] incitement of national, racial, or religious hatred and enmity, as well as other information for the dissemination of which criminal or administrative responsibility is provided.”¹⁰

If the news is distributed through a news aggregator, the owner of aggregator (only Russian physical or legal persons can own news aggregators) must be responsible for verifying the validity of socially significant facts, as well as preventing the use of the news aggregator to conceal or falsify socially significant information, and disseminate false socially significant news information under the guise of reliable messages.¹¹

If any facts reflecting the falsification of socially significant information are found on the news aggregator, together with the distribution of unreliable information of social significance under the guise of reliable messages and distribution of news information in violation of the legislation of the Russian Federation, the authorized state bodies have the right to apply to the federal executive body exercising control and supervision functions in the field of mass media, mass communications, information technologies (Roskomnadzor) to take necessary measures to stop the distribution of such information.¹²

If the information is distributed in violation of the law, the Prosecutor General of the Russian Federation or his deputies may petition Roskomnadzor with a demand to cease the distribution of said information.¹³

B. Criminal Code

Libel and defamation are punished under the provisions of the Criminal Code. The Code defines libel as “dissemination of knowingly false information, discrediting the honor and dignity of another person or undermining his reputation.”¹⁴ The Code stipulates differentiated punishments for libel (monetary, compulsory public works, or imprisonment) based on its impact. Paragraph 2 of article 128.1 states that “the libel contained in a public statement, a publicly displayed work or the media, is punishable with a fine of up to 1 million rubles (approximately US\$15,000) or an amount equal to the salary or other income of the convicted person for a period of up to one year, or compulsory work for a period of up to 240 hours.”¹⁵

Special (more stringent) provisions of the Criminal Code aim to counter libel and defamation of persons involved in the administration of justice (judges, jurors, prosecutors, investigators,

¹⁰ *Id.* art. 10.

¹¹ *Id.* art 10(4) paras. 2, 3, 12.

¹² *Id.* para. 8.

¹³ *Id.* art. 15.3.

¹⁴ UGOLOVNII KODEKS ROSSIISKOI FEDERATSII [CRIMINAL CODE OF THE RUSSIAN FEDERATION], June 5, 1996, as amended, art. 128.1, <http://pravo.gov.ru/proxy/ips/?docbody&nd=102041891>, archived at <https://perma.cc/APZ9-5MZ8>.

¹⁵ *Id.* (translation by the author).

persons conducting an inquiry, and bailiffs).¹⁶ According to article 298.1 of the Criminal Code, libel and defamation of a judge, juror, or other person involved in the administration of justice is punishable by a fine of up to 2 million rubles (approximately US\$30,000) or an amount equal to the salary or other income of the convicted person for a period of up to three years, or compulsory work for a period of up to 360 hours. Defaming the prosecutor, the investigator, or other person involved in the criminal investigation is punishable with a fine of up to 1 million rubles or in the amount of the salary or other income of the convicted person for a period of up to two years, or compulsory work for a period of up to 320 hours. Knowingly defaming persons engaged in the administration of justice and criminal proceedings involving the commission of grave crimes is punishable with a fine of up to 5 million rubles (approximately US\$75,000) or an amount equal to the salary or other income of the convicted person for a period of up to three years, or by compulsory work for up to 480 hours.¹⁷

C. Anti-Fake News Laws

1. Overview

In March 2019 two laws aimed at countering the creation and dissemination of fake news were adopted.¹⁸ The laws establish fines for knowingly spreading fake news, which is defined as socially-significant false information distributed under the guise of truthful messages if they create a threat of endangering people's lives, health, or property; create possibilities for mass violations of public order or public security; or may hinder the work of transportation and social infrastructure, credit institutions, lines of communications, industry, and energy enterprises.¹⁹ According to a legislator who introduced this Law, the level of trustworthiness of information will be determined by Prosecutor General's office.²⁰ The latter will forward to Roskomnadzor a demand to take measures on limiting access to such an information.²¹

The Law on Amending Article 15-3 of the Information Law states that Roskomnadzor is to inform the editorial body of an on-line publication concerning removal of fake news. Upon receipt of a notice from Roskomnadzor, the editorial body must immediately take steps to remove such information and if it fails to do so Roskomnadzor must take steps to limit access to the online publication. In such cases the internet service provider must also immediately block access to the sites where the fake news is published.²²

¹⁶ *Id.* art. 298.1.

¹⁷ *Id.*

¹⁸ Law on Amending Article 15-3 of the Information Law, *supra* note 6; Law on Amending the Code of Administrative Violations, *supra* note 6.

¹⁹ Law on Amending Article 15-3 of the Information Law, *supra* note 6, § 1.

²⁰ *What Are Fake News and What Punishment Their Spreading Entails*, STATE DUMA, <http://duma.gov.ru/news/29982/> (in Russian; last visited Mar. 18, 2019), archived at <https://perma.cc/G5D2-9LGC>.

²¹ *Id.*

²² Law on Amending Article 15-3 of the Information Law, *supra* note 6, arts. 1.1, 1.2, 1.3, 1.4.

The Law on Amending the Code of Administrative Violations prescribes the following monetary punishments for spreading fake news.

- For implicated citizens: From 30,000 to 100,000 rubles (approximately US\$458 to \$1,528). For repeat violations the amount of fines will be from 100,000 to 300,000 rubles (approximately US\$1,528 to \$4,580).
- For implicated officials: From 60,000 to 200,000 thousand rubles (approximately US\$916 to \$3,000). For repeat violations the fines are set in the amount of 300,000 to 600,000 rubles (approximately US\$4,580 to \$9,100).
- For implicated legal persons: From 200,000 to 500,000 rubles (approximately US\$3,000 to \$7,600) and confiscation of offending tools. For repeat violations the fines are set in the amount of 500,000 to 1 million rubles.²³

Should the dissemination of fake information cause the “death of a person or harm to human health or property, a massive disturbance of public order and (or) public safety, the cessation of the functioning of life support facilities, transport or social infrastructure, communications, credit institutions energy or industry,” fines are as follows:

- For implicated citizens: From 300,000 to 400,000 rubles (approximately US\$4,580 \$6,100);
- For implicated officials: From 600,000 to 900,000 rubles (US\$9,100 to \$13,700); and
- For implicated legal entities: From 1 million to 1.5 million rubles (approximately US\$15,270 to \$22,900).²⁴

2. Reactions to the Laws

The laws were passed by the Federation Council (the upper house of the Russian legislature) notwithstanding wide criticism from various government agencies and ministries, including the Ministry of Justice, Roskomnadzor, the Ministry of Communication, and the Office of the Prosecutor General.²⁵ As noted by the representative of the Office of the Prosecutor General, the broad wording of the bills would require extensive and costly linguistic expertise. Additionally, she noted that bills do not specify sufficient criteria for extrajudicial blocking of sites. In her opinion, this may entail “an unreasonable restriction of the constitutional rights of citizens to free

²³ Law on Amending the Code of Administrative Violations, *supra* note 6.

²⁴ *Id.*

²⁵ *The General Prosecutor’s Office Did Not Support Bills on Insulting Authorities and Fake News*, VEDOMOSTI (Jan. 14, 2018), <https://www.vedomosti.ru/politics/news/2019/01/14/791325-genprokuratura-oskorbleniyah> (in Russian), archived at <https://perma.cc/QDJ4-BY65>.

dissemination of information.”²⁶ Similar concerns regarding proposed bills were expressed by the representatives of the Ministry of Justice, Ministry of Communication, and Roskomnadzor.²⁷

The passage of the laws has been met with criticism from various nongovernmental organizations as well. For example, members of the Free Speech Association, PEN-Moscow Association, and St. Petersburg PEN Club issued an open letter expressing the opinion that the newly-passed laws restrict constitutional freedoms of free speech and “establish the right of an official, at his own discretion, without investigation and trial, by his sole decision, to forbid the dissemination of any information” and indefinitely and “immediately” block any media resources on the internet.

Writers consider these bills as a manifestation of bureaucratic arbitrariness, a violation of the constitutional rights of citizens, and the creation of “unbearable discriminatory conditions for the Russian media industry,” as well as actual state repression against the entire journalistic and literary community.²⁸

However, the spokesperson for the President of the Russian Federation expressed the opinion that a similar regulatory framework exists in many European countries, and that the reservations about the laws for being far-reaching in their scope are not justified based on past experience.²⁹

III. Access to Legal Information

The Information Law provides for the right to search, disseminate, produce, and transfer information.³⁰ Article 8 of the Law provides that citizens and organizations must have the right to access, *inter alia*, regulatory legal acts affecting the rights, freedoms, and duties of a person and citizens, as well as those governing the legal status of organizations and prescribing the powers of state bodies and those of local government.³¹ Information concerning the activities of state and local government bodies is provided free of charge.³² The Decree of the President of 1995 on Presidential Programs of Legal Informatization established the foundations for the digitization of legal information.³³ Additionally, the Federal Law on Ensuring Access to Information on the

²⁶ *Id.*

²⁷ *Ministry of Communications Will Not Support Bills about Fakes in the Media and About Insulting the Authorities*, RIA-NOVOSTI (Jan. 14, 2019), <https://ria.ru/20190114/1549324352.html> (in Russian), archived at <https://perma.cc/R8P4-MMD9>.

²⁸ *Council of Federation Approves Anti-Fake News Law and Law Prohibiting Disrespectful Treatment of Authorities*, NEWSRU.COM (Mar. 13, 2019), https://www.newsru.com/russia/13mar2019/fake_accept.html (in Russian), archived at <https://perma.cc/6CY6-Q24Q>.

²⁹ *Id.*

³⁰ Information Law art. 3.

³¹ *Id.* art. 8, para. 4(1).

³² *Id.*

³³ Ukaz Presidenta Rossiiskoi Federatsii o Prezidentsikh Programmakh Pravovoi Informatizatsii [Decree of the President of Russian Federation on Programs of Legal Informatization], No. 808, Aug. 4, 1995, <http://pravo.gov.ru/proxy/ips/?docbody=&firstDoc=1&lastDoc=1&nd=102036941>, archived at <https://perma.cc/5YZG-33WY>.

Activities of State Bodies and Local Self-Government Bodies provides the legal framework for access to governmental information, based on the principles of transparency, accuracy, and accessibility.³⁴

Currently, legal information is available through the official legal information portal.³⁵ A centralized internet portal provides information about court decisions and other judicial acts.³⁶ Additionally, the State Duma provides a searchable database of bills.³⁷

³⁴ Federal'nii Zakon ob Obespechenii Dostupa k Informatsii o Deyatel'nosti Gosudarstvennikh Organov i Organov Mestnogo Samoupravleniya [Federal Law "On Ensuring Access to Information on the Activities of State Bodies and Local Self-Government Bodies"], No. 8-FZ Feb. 9, 2009, art. 4, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102127629>, archived at <https://perma.cc/9WMX-5BS2>.

³⁵ See <http://www.pravo.gov.ru/>, archived at <https://perma.cc/4DV4-9U67>.

³⁶ PRAVOSUDIIE [JUSTICE], <https://sudrf.ru/>, archived at <https://perma.cc/4GKD-44RZ>.

³⁷ GOSDUMA [STATE DUMA], <http://duma.gov.ru/legislative/lawmaking/>, archived at <https://perma.cc/N8JW-282M>.

Sweden

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SUMMARY Sweden has both state media and non-state media. State media are funded through a fee collected as part of the income tax system. Non-state media receive funding from the state, provided they have more than 1,500 subscribers.

Sweden protects free speech, access to public information, and the anonymity of sources in its Constitution. Types of speech that are not allowed include crimes against persons such as defamation, insults, threats, and hate speech (“racial agitation”), and crimes against the state such as the instigation of war. Information may also not be shared in the media when it violates secrecy provisions or endangers national security. All persons have a right to share information with the media without repercussions.

Media publications and broadcasts are bound by law, and media outlets must correct erroneous information. Several ethical boards enforce ethical compliance with media laws. The enforcement of laws and principles that forbid the publication of erroneous information is done by the Chancellor for Justice, the Swedish Broadcasting Commission, and self-regulatory boards. Crimes such as defamation or war instigation are addressed through the regular court system with the Chancellor of Justice acting as the prosecutor. Such “crimes against the freedoms of the press,” as they are called, are subject to fines or imprisonment.

There are also self-regulatory and voluntary ethical guidelines both for media publishers and individual journalists. The punishment for publishers includes monetary fines, which are determined by the publication’s circulation. Individual journalists may also be fined or excluded from the Union of Journalists.

All legislation must be made available free of charge. Laws are published online, and the online versions of laws are considered official. Legislative material from the Parliament and the government is also published online, as are some court cases, including Supreme Court precedent cases. In addition, the Supreme Court publishes most of its most recent cases, as well as leave for appeal decisions, on its website.

No new laws relating to fake news are currently pending before the Parliament. The media industry has voluntarily adopted several measures to combat fake news, however.

I. Introduction

A. Swedish Media Landscape

Sweden has three main state broadcasters of media content – Swedish Radio (Sveriges Radio, SR), Swedish Educational Radio (Sveriges Utbildningsradion, UR), and Swedish Television (Sveriges

Television, SVT)—that together are considered public services.¹ Until January 1, 2019, they were funded through a separate TV and radio fee paid by all Swedish residents who had a television set or a TV receiver (certain computers included).² Starting in fiscal year (calendar year) 2019, public services SR, UR, and SVT are now funded through the income tax.³

Swedish state media are independent of the government. They receive funding from the government, but must adhere to principles of impartiality and accuracy, and must not consult with the government or Parliament prior to producing content.⁴ They must also broadcast in a manner that is viewable by 99.8% of the Swedish population residing in Sweden.⁵ Answering a question from a member of Parliament, the then Minister for Culture Alice Bah Kuhne in 2018 stated that because of this independence the government could not intervene in state media to ensure that they did not distribute fake news.⁶

All non-state media are eligible for a state grant provided that they have more than 1,500 subscribers.⁷

B. Reports of Fake News

A number of reports of fake news have been circulating in Sweden and about Sweden abroad,⁸ including locally produced fake news during the 2018 national election.⁹ Fake news was

¹ Regeringsbeslut [GOVERNMENT DECISION] No. 83, Dec. 12, 2013, https://www.svt.se/omoss/media/filer_public/06/1f/061fc8d0-dfba-441c-9740-59639eafbe29/sandningstillstand_2014_-_2019.pdf, archived at <https://perma.cc/FQ72-V68B>; LAG OM FINANSIERING AV RADIO OCH TV I ALLMÄNHETENS TJÄNST [ACT ON FINANCING RADIO AND TV FOR PUBLIC SERVICE] (Svensk författningssamling [SFS] 2018:1893), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20181893-om-finansiering-av-radio-och-tv-i_sfs-2018-1893, archived at <https://perma.cc/SW2U-4WEA>.

² Elin Hofverberg, *Sweden: Public TV and Radio Service Fee System Reformed, New Tax Introduced*, GLOBAL LEGAL MONITOR (Dec. 14, 2018), <http://www.loc.gov/law/foreign-news/article/sweden-public-tv-and-radio-service-fee-system-reformed-new-tax-introduced/>, archived at <https://perma.cc/482L-FCK4>.

³ LAG OM FINANSIERING AV RADIO OCH TV I ALLMÄNHETENS TJÄNST.

⁴ 13 Regeringsbeslut 83, *supra* note 1; 4 kap. 8 § RADIO- OCH TV LAG [RADIO AND TV LAW] (SFS 2010:696), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696, archived at <https://perma.cc/Z6E8-J9NH>.

⁵ 1 § Regeringsbeslut 83, *supra* note 1.

⁶ Ku2018/00151/MF Fake news i SVT, Svar på skriftlig fråga 2017/18:692 besvarad av Kultur- och demokratiminister Alice Bah Kuhnke (MP) (Feb. 7, 2018), http://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/fake-news-i-svt_H512692, archived at <https://perma.cc/Y9FA-SSVN>.

⁷ *Applying for a Press and Media Subsidy*, MPRT (Aug. 3, 2018), <https://www.mprt.se/en/applying-for-a-press-subsidy/>, archived at <https://perma.cc/469A-3T7G>.

⁸ E.g., Christine Masters, *Fake News Article Lauds Official Cryptocurrency Adoption by Sweden*, CRYPTOVEST (Dec. 20, 2018), <https://cryptovest.com/news/fake-news-article-lauds-official-cryptocurrency-adoption-by-sweden/>, archived at <https://perma.cc/4NZD-WTYU>.

⁹ Leonid Bershidsky, *Fake News Takes Its Toll on Sweden's Elections*, BLOOMBERG (Nov. 15, 2019), <https://www.bloomberg.com/opinion/articles/2018-11-15/fake-news-roiled-sweden-s-elections-but-it-was-homegrown>; see also Morgan Meaker, *Inside the Online Disinformation War Trying to Tear Sweden Apart*, WIRED (Sept. 9, 2018), <https://www.wired.co.uk/article/sweden-election-polls-far-right>, archived at <https://perma.cc/U5Z8-X584>.

reportedly prevalent during the 2018 election.¹⁰ SR also reported on fake news being disseminated by Russia.¹¹

C. National Legislation

1. Constitutional Protections of Free Speech, Press, Access to Information, and the Right to Inform Media

a. Free Speech

Free speech is protected in the Swedish Constitution.¹² The Swedish Constitution consists of four Acts: the Instrument of Government (Regeringsformen, RF),¹³ the Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlagen, YGL),¹⁴ the Freedoms of the Press Act (Tryckfrihetsförordningen, TF),¹⁵ and the Succession Act (Successionsordningen, SO).¹⁶ The right to publish is guaranteed by the TF,¹⁷ the goal of which is to "ensure a free exchange of ideas, free enlightenment, and free artistic expression."¹⁸

¹⁰ Alice Cuddy, *1 in 3 News Articles Shared about Sweden Election Are Fake, Finds Study*, EURONEWS (Sept. 6, 2018), <https://www.euronews.com/2018/09/06/1-in-3-news-articles-shared-about-sweden-election-are-fake>, archived at <https://perma.cc/GCY9-QP6D>; Freja Hedman et al., *News and Political Information Consumption in Sweden: Mapping the 2018 Swedish General Election on Twitter* COMPROM DATAMEMO 2018.3 (Sept. 6, 2018), <http://comprop.oii.ox.ac.uk/research/sweden-election/>, archived at <https://perma.cc/XU6D-UH28>.

¹¹ *Report: Russia Spread Fake News and Disinformation in Sweden*, SVERIGES RADIO (Jan. 9, 2017), <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6604516>, archived at <https://perma.cc/TD44-CQYJ>.

¹² 2 kap. 1 § REGERINGSFORMEN [RF] [INSTRUMENT OF GOVERNMENT] (SFS 1974:152), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform_sfs-1974-152, archived at <https://perma.cc/Z8N6-BKWX>.

¹³ *Id.*

¹⁴ YTTRANDEFRIHETSGRUNDLAG [YGL] [FUNDAMENTAL LAW ON FREEDOMS OF EXPRESSION] (SFS 1991:1469), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/yttrandefrihetsgrundlag-19911469_sfs-1991-1469, archived at <https://perma.cc/G3GS-2WNL>.

¹⁵ TRYCKFRIHETSFORORDNING [TF] [FREEDOMS OF THE PRESS ACT] (SFS 1949:105), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105_sfs-1949-105, archived at <https://perma.cc/PU77-9KDG>.

¹⁶ SUCCESSIONSORDNING [SUCCESSION ACT] (SFS 1810:0926), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/successionsordning-18100926_sfs-1810-0926, archived at <https://perma.cc/8EAE-IBV9>; 1 kap. 3 § RF.

¹⁷ *Id.* 1 kap. 1 §.

¹⁸ *Id.* (all translations by author).

b. Public Access to Information

Everyone has a right to request documents from public agencies.¹⁹ The public has the right of public access to all documents held by the government and government agencies, subject to secrecy law.²⁰

c. Right to Inform Media

The right to inform media (*meddelarfriheten*) is the right of public officials to leak information to the media.²¹ Under the Constitution individuals have the right to anonymously inform the media.²² This right may only be limited through law.²³ The right to inform media is limited through the Public Access and Secrecy Act (Offentlighets- och Sekretesslagen, OSL).²⁴ The government or a government agency may not investigate the identity of the person that informed the media,²⁵ nor may the government or an agency take any measures against a person who has shared such information.²⁶ The same applies to any organization that receives public funding or conducts public functions—i.e., private employees that work at privately run health clinics, homes for the elderly, etc.²⁷

2. *Limits to Free Speech – Criminalization of Defamation, Insults, and Hate Speech*

Balancing constitutional freedoms, Sweden has specified limits on free speech in the TF that consist of crimes against persons and crimes against the state.²⁸ They are nevertheless all called *tryckrihetsbrott* (crimes against the freedoms of the press) and are prosecuted by the Chancellor of Justice (Justitiekanslern, JK).²⁹ These acts are also criminalized in the Penal Code.³⁰

¹⁹ 2 kap. 1 and 2 §§ TF.

²⁰ *Id.* 2 kap. 1 and 2 §§; OFFENTLIGHETS- OCH SEKRETESSLAGEN [OSL] [PUBLIC ACCESS AND SECRECY ACT] (SFS 2009:400), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400, archived at <https://perma.cc/AS25-22LH>.

²¹ 1 kap. 7 § TF.

²² *Id.* 1 kap. 7 § and 3 kap. 2 §.

²³ 3 kap. 2 § TF.

²⁴ 10 kap. 14 § OSL.

²⁵ 3 kap. 5 § TF.

²⁶ *Id.* 3 kap. 6 §.

²⁷ *Id.* 3 kap. 5 and 6 §§.

²⁸ 5 kap. 1 § YGL (referring to 7 kap. 2-20 §§ TF).

²⁹ 9 kap. 2 § TF.

³⁰ BROTTSBALKEN [BrB] [CRIMINAL CODE] (SFS 1962:700), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700, archived at <https://perma.cc/4FOE-Q8WA>.

a. Crimes Against Persons

Sweden has criminalized printed (print or online), or broadcasted (over TV or radio) crimes against persons such as threats (*hot*),³¹ defamation (*ärekränkning*),³² and insults (*förolämpning*).³³ In addition Sweden has criminalized “hate speech” when it can be considered “racial agitation” (*hets mot folkgrupp*), which is defined as “a statement or other message that is spread/disseminated that threatens, or expresses condescension (*missaktning*) against, an ethnic group or another group of persons based on race, skin color, national or ethnic origin, faith, sexual orientation, gender, or gender identity or expression (*könsöverskridande*).”³⁴ The publication of untrue statements in itself is not considered hate speech.

The truth of an insult or defamatory statement is generally not a legitimate defense against such crimes under Swedish law.³⁵ Thus, if a truthful statement (e.g., person X has been convicted of rape) is spread with the intent of causing that person harm, or harming his or her standing in society, it is still defamation.³⁶ These crimes are punishable with a fine or imprisonment of up to six months for insults³⁷ and two years for defamatory statements.³⁸ These crimes can also be committed against a deceased person, provided that it is hurtful to his or her family, or because of the time that has elapsed since the person’s death.³⁹

b. Crimes against the State

In addition to crimes against persons, Sweden has also criminalized crimes against the state, including spying.⁴⁰ Information disseminated regarding the Swedish military is considered spying even if the information is false.⁴¹ Thus, publishing fake news about Swedish military operations, military holdings, etc. is a crime.⁴² Also, publishing certain documents that are deemed secret is criminalized, if publication risks the nation’s security.⁴³ The accuracy of the information is not relevant. Any publication of such information, true or false, is a crime.⁴⁴ Other

³¹ *Id.* 7 kap. 1 §.

³² *Id.* 7 kap. 2 §.

³³ 7 kap. 3 § TF; 5 kap. 1 § BrB.

³⁴ 7 kap. 6 § TF; 16 kap. 8 § BrB.

³⁵ 5 kap. 1 § 2 st BrB.

³⁶ 5 kap. 1 § BrB.

³⁷ *Id.* 5 kap. 3.

³⁸ *Id.* 5 kap. 1 -2 §§.

³⁹ *Id.* 5 kap. 4.

⁴⁰ 7 kap. 14 § TF.

⁴¹ *Id.*

⁴² *Id.* 7 kap. 19 §.

⁴³ *Id.* 7 kap. 15 §.

⁴⁴ *Id.*

crimes include instigation of war (*krigsanstiftan*)⁴⁵ and upheaval (*uppror*),⁴⁶ crimes against a citizen's freedoms (*medborgerlig frihet*),⁴⁷ treason (*högförräderi*),⁴⁸ and threats against servants of the state (*hot mot tjänsteman*).⁴⁹ During times of war false rumors about the state are specifically criminalized.⁵⁰ Thus, Swedish media corporations may not publish information that risks the security of the state. It is the publisher (*ansvarig utgivare*) that is responsible for any violation.⁵¹ In addition unlawful depictions of violence (*olaga våldsskildring*) are a crime.⁵²

3. Legislation on Media

In addition to the freedoms and limits on the press found in the Constitution and the Criminal Code, all Swedish broadcast media are governed by the Radio and TV Act (Radio-och TV lag). That Act provides that broadcasters must adhere to the fundamental principles of a democratic society, all people's equal value, and each individual human's freedoms and dignity.⁵³ The law also requires that if information has been incorrectly presented (i.e., is false) it must be corrected.⁵⁴

4. Journalistic Rules of Conduct

In addition to the rules above, journalists operating in Sweden are also bound by the professional ethical rules (*Journalistiska Yrkesregler*) published by the Swedish Union of Journalists (Svenska Journalist Förbundet, SJF).⁵⁵ These rules do not include a specific duty of truthfulness, but do specify that a journalist should not falsify interviews or pictures.⁵⁶ The rules currently in force were adopted in 2014;⁵⁷ it is possible that future updates to these rules will address fake news.

⁴⁵ 7 kap. 13 § TF.

⁴⁶ *Id.* 7 kap. 10 §.

⁴⁷ *Id.* 7 kap. 11 §.

⁴⁸ *Id.* 7 kap. 12 §.

⁴⁹ *Id.* 7 kap. 8 §.

⁵⁰ *Id.* 7 kap. 19 §.

⁵¹ *Id.* 8 kap. 1 §.

⁵² *Id.* 7 kap. 7 §.

⁵³ 5 kap. 1 § RADIO- OCH TV-LAG.

⁵⁴ *Id.* 5 kap. 4 §.

⁵⁵ *Yrkesregler*, SJF (May 16, 2018), <https://www.sjf.se/yrkesfragor/yrkesetik/spelregler-press-radio-och-tv/yrkesregler>, archived at <https://perma.cc/ZT5E-BYX8>.

⁵⁶ *Id.* art. 9.

⁵⁷ *Yrkesregler*, SJF, *supra* note 55.

The Swedish Union of Journalists Member Congress meets about every four years. It last met in 2018 and discussed the risk of letting creators of fake news become members as part of a discussion to open up membership to a wider network of writers.⁵⁸

II. Enforcement of Legislation and Other Measures Undertaken to Fight Fake News

A. Self-Regulation of Media Content

In addition to constitutional limits in the form of offenses against the freedoms of the press and the freedoms of expression (*tryckfrihetsbrott*), the Swedish Media are constrained by several voluntary codes of conduct, including that of the Press Council (Pressens Opinionsnämnd, PON).⁵⁹ These all include provisions on publishing unfounded statements, and could thus be used in combatting fake news.

1. Press Ombudsman and Press Council

The Press Ombudsman (PO) (Allmänhetens pressombudsman) is responsible for investigating, at the request of an individual or on its own initiative, possible violations of “the use of good publishing practices,” which include accuracy of the information published.⁶⁰ The PO refers cases to the PON when it finds that a violation has taken place.⁶¹ The PO review specifically includes social media content.⁶²

PON is responsible for determining what constitutes “the use of good publishing practices.”⁶³ Examples of established violations relating to the truthfulness of an article include a recent decision against *Aftonbladet* for publishing what PON deemed to be allegations without a proper basis.⁶⁴ In addition, the publication had failed to give the person mentioned by name a chance to comment or defend himself against the allegations when it emailed numerous questions shortly before the publishing deadline.⁶⁵ Moreover, *Aftonbladet* was criticized for not publishing any

⁵⁸ *Kongressen*, SJF (Mar 27, 2018), <https://www.sjf.se/omoss/kongressen>, archived at <https://perma.cc/XK9T-YZ55>; MOTIONER MED YTTRANDE, JOURNALIST KONGRESSEN 2018, at 7, https://www.sjf.se/system/files/2018-08/motioner_med_yttranden_journalistkongressen2018.pdf, archived at <https://perma.cc/U5WM-LKAK>.

⁵⁹ E.g., Elin Hofverberg, *Sweden: Swedish Media Criticized by Swedish Press Council for Publishing Names of #MeToo Accused Without Cause*, GLOBAL LEGAL MONITOR (Oct. 4, 2018), <http://www.loc.gov/law/foreign-news/article/sweden-swedish-media-criticized-by-swedish-press-council-for-publishing-names-of-metoo-accused-without-cause/>, archived at <https://perma.cc/N4FN-SWTH>.

⁶⁰ 1 § Instruktion for Allmänhetens Pressombudsman [Instruction for the Press Ombudsman], PO-PON, <https://po.se/om-oss/instruktion-for-allmanhetens-pressombudsman-po/> (last visited Mar. 25, 2019), archived at <https://perma.cc/S2C7-GZL4>.

⁶¹ *Id.*

⁶² *Id.* 1 § c.

⁶³ 1 § Stadgar för Pressens Opinionsnämnd [Bylaws for the Press Council], PO-PON, <https://po.se/om-oss/stadgar-for-pressens-opinionsnamnd-pon/>, archived at <https://perma.cc/4QGG-IB7E>.

⁶⁴ *Aftonbladet fälls för publicering om Stadsteaterns förre chef*, PON (Mar. 11, 2019), <https://po.se/fallningar/aftonbladet-falls-for-publicering-om-stadsteaterns-forre-chef/>, archived at <https://perma.cc/KY5G-7W2C>.

⁶⁵ *Id.*

comments from persons now working with the accused individual.⁶⁶ Lastly, *Aftonbladet* was criticized for not validating the accuracy of the information it published.⁶⁷ PON noted that “[our conclusion] does not mean that the stories must be biased or false, only that the uncertainty surrounding them is considerable.”⁶⁸ Specifically, PON cited a reference to an alleged forced abortion, which from the sources seems to have been described as “advised her to undergo an abortion.”⁶⁹ In another case decided on February 19, 2019, PON found that publication of incorrect information regarding a person’s health was a violation of the ethical guidelines.⁷⁰

PON has previously explained that “[a] fundamental prerequisite for publishing must be that publishing is compatible with good publishing customs and that there is evidence to substantiate the information.”⁷¹ Thus, the publication of false information violates the ethical rules. However, the maximum fine to be paid by the publisher for such violations is only SEK 32,000 (about US\$3,500).⁷²

2. Journalistic Professional Ethical Board

The Journalistic Professional Ethical Board (Yrkesetiskanämnden)⁷³ determines whether or not journalists should be criticized (*klandrade*) in relation to the Professional Code of Conduct (see above).⁷⁴ Whether the Professional Ethical Board has received any requests for review in relation to recent fake news is unclear, as it has not published any decisions since May 2017.⁷⁵

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Expressen publicerade felaktiga uppgifter om filmskådespelares hälsa*, PO-PON (Feb. 19, 2019), <https://po.se/fallningar/expressen-publicerade-felaktiga-uppgifter-om-filmskadespelares-halsa/>, archived at <https://perma.cc/DDE8-PPJ2>.

⁷¹ *Svenska Dagbladet klandras för publicering om NN [namn angivet]*, PO-PON (June 25, 2018), <https://po.se/fallningar/svenska-dagbladet-klandras-for-publicering-om-nn-namn-angivet/>, archived at <https://perma.cc/VKR6-C8EA>; see also Elin Hofverberg, *Sweden: Swedish Media Criticized by Swedish Press Council for Publishing Names of #MeToo Accused Without Cause*, GLOBAL LEGAL MONITOR (Oct. 4, 2018), <http://www.loc.gov/law/foreign-news/article/sweden-swedish-media-criticized-by-swedish-press-council-for-publishing-names-of-metoo-accused-without-cause/>, archived at <https://perma.cc/Y3BQ-K6KM>.

⁷² *Hur går det till?*, PO-PON, <https://po.se/hur-gar-det-till/> (last visited Mar. 25, 2019), archived at <https://perma.cc/7BCD-QYKE>.

⁷³ *Yrkesetiska nämnden*, SJF (May 24, 2018), <https://www.sjf.se/yrkesfragor/yrkesetik/yrkesetiska-namnden>, archived at <https://perma.cc/UXE8-L3FE>.

⁷⁴ See above, Part I(C)(4).

⁷⁵ *Beslut*, SJF (Jan. 17, 2019), <https://www.sjf.se/yrkesfragor/yrkesetik/yrkesetiska-namnden/beslut>, archived at <https://perma.cc/ATL6-28Z3>.

3. Proposed New System of Self-Regulation

In 2018, the Swedish media corporations proposed an alternative self-regulatory system, the Ethics Committee of the Media (*Mediernas Etiska Nämnd*), that would replace the PO and PON, but this system has yet to become a reality.⁷⁶

B. Other Review

The Swedish Broadcasting Commission (Granskningsnämnden) is part of the Swedish Press and Broadcasting Authority (Myndigheten för press, radio och tv). It is responsible for ensuring compliance with the TV and Radio Act.⁷⁷ The Commission specifically investigates whether media corporations adhere to the principles of impartiality, factuality, and respect for privacy (private life).⁷⁸ Only state media must conform to the provisions on impartiality.⁷⁹

In relation to fake news it is especially the provision on factuality that becomes relevant. News, as reported, must be factual, which means that it must be supported by sources. If the information turns out to be false the media provider must later rectify and clarify the information.⁸⁰ For example, in a case regarding a radio program broadcast by the SR, the program did not mention that a person described as poor was the owner of a condominium (*bostadsrätt*), which meant that the information was so misleading that it violated the principle of factuality.⁸¹ In another example, on March 18, 2019, the Broadcasting Commission criticized the SVT in airing a program lacking in factuality on gangs in a suburb of Gothenburg.⁸² However, it did not find that the transgression was so great as to be deemed a violation.⁸³

In addition to providing fact-based written information, pictures used together with a program or news article must be factual and impartial. For example, the SVT used the party symbol and the picture of a representative for the populist and anti-immigration party Swedish Democrats together with text stating that school principals wanted to ban Nazi parties from schools. That was deemed a violation of the rules on impartiality and factuality (*saklighet*).⁸⁴ In 2013 the board

⁷⁶ Casten Almqvist et al., *Medierna inför ett nytt etiskt system*, EXPRESSEN (Apr. 3, 2018), <https://www.expressen.se/debatt/medierna-infor-ett-nytt-etiskt-system/>, archived at <https://perma.cc/DV6H-8ZZN>.

⁷⁷ 16 kap. 2 § RADIO & TV-LAGEN.

⁷⁸ *Krav och regler för medierna*, MPRT (Jan. 2, 2017), <https://www.mprt.se/sv/att-sanda/krav-och-regler/>, archived at <https://perma.cc/45KJ-PRX8>.

⁷⁹ *Id.*

⁸⁰ E.g., *Tillämpning av regler*, MPRT, <https://www.mprt.se/sv/att-sanda/krav-och-regler/tillampning-av-regler/> (last visited Mar. 5, 2019), archived at <https://perma.cc/JR37-Z2H8>.

⁸¹ *Id.* (scroll to "Kluset land – Ingen är vän med en fattig, P1").

⁸² Granskningsnämnden för radio- och tv, Beslut 2019-03-18 Dnr: 18/02663, <https://www.mprt.se/case/decisions/229222.pdf>, archived at <https://perma.cc/628Z-C7AR>.

⁸³ *Id.*

⁸⁴ *Id.*

published a guide to its decisions on impartiality; considering that it is dated, it does not address recent controversies surrounding fake news.⁸⁵

C. Courts and Case Law

As mentioned above, violations of freedoms of the press (*tryckfrihetsbrott*) are generally prosecuted by the Chancellor of Justice and sanctioned with a monetary fine or a prison sentence.⁸⁶ For example, in 1989, the Swedish Supreme Court sentenced a person to fifty day fines on the basis that he (as the responsible program director) had published defamatory statements against two persons that lacked sufficient factual basis.⁸⁷ The Chancellor of Justice will not prosecute cases unless there is a public interest in doing so. For instance, in an April 2019 decision the Chancellor of Justice found that sixteen acts of publication constituted defamation, but as fourteen of the online publications had been removed or amended she decided to not press charges.⁸⁸ The Chancellor of Justice is not the prosecutor of all crimes related to freedoms of the press—for instance, crimes against the right to inform in cases where private corporations perform public functions such as providing education.⁸⁹

D. Comments by the Government and Other Government Agencies

Although government representatives and government agencies have made several statements against fake news, no actual legislation has been presented to the Swedish Parliament. However, the Nordic countries have collectively joined forces to combat fake news, proposing coordination of their national security strategies.⁹⁰ In addition, the Swedish Defense Minister Peter Hultqvist has, together with the then Danish Defense Minister, publicly aired his fear about fake news in an op-ed piece, stating that fake news generated by Russia is a danger to Swedish security.⁹¹ Also,

⁸⁵ GRANSKAT OCH KLART – TEMA OPARTISKHET/STÄLLNINGSTAGANDE, GRANSKNINGSNÄMNDENS PRAXISSAMLING (2013), <https://www.mprt.se/documents/publikationer/gok%20tema/granskatochklart-tema-opartiskhet-stallningstagande-2013.pdf>, archived at <https://perma.cc/5P23-SRCH>.

⁸⁶ 7 kap. TF; 5 kap. and 16 kap. BrB. See Part I(C)(2), above.

⁸⁷ Nytt Juridiskt Arkiv [NJA](Swedish Supreme Court Reporter) 1987 s. 285, summary available at <https://lagen.nu/dom/nja/1987s285>, archived at <https://perma.cc/A8NR-IJWW>.

⁸⁸ Justitiekanslern lägger ned förundersökningen om yttrandefrihetsbrottet förtal [Chancellor of Justice drops investigation on violation of the press, defamation], Diariernr: 6677-18-3.2 / Apr. 1, 2019, <https://www.jk.se/beslut-och-yttrandan/2019/04/6677-18-32/?Tryck->, archived at <https://perma.cc/2W9B-7ADH>.

⁸⁹ See determination by the Chancellor of Justice *in* Justitiekanslern är inte behörig åklagare vid brott mot lagen (2017:151) om meddelarskydd i vissa enskilda verksamheter [The Chancellor of Justice is Not the Appropriate Prosecutor for Crimes against the Law on Right to Inform in Certain Private Corporations] (Diariernr: 1137-18-3.2 / Beslutsdatum: 13 feb 2018), <https://www.jk.se/beslut-och-yttrandan/2018/02/1137-18-32/?Tryck->, archived at <https://perma.cc/F3RN-J2TE>.

⁹⁰ Press Release, Nordic Council, Nordic Fightback against Fake News (Oct. 30, 2018), <https://www.norden.org/en/news/nordic-fightback-against-fake-news>, archived at <https://perma.cc/W8YL-LABR>.

⁹¹ Peter Hultqvist & Claus Hjort Frederiksen, Op-ed., “Ryska ‘fake news’ – en fara för våra länder”, REGERINGEN (Aug. 31, 2017), <https://www.regeringen.se/debattartiklar/2017/08/ryska-fake-news---en-fara-for-vara-lander/>, archived at <https://perma.cc/R6RX-5TZK>.

the Swedish Civil Contingency Agency (Myndigheten för samhällsberedskap, MSB) is focusing on fake news,⁹² following an instruction by the government.⁹³

E. Nongovernmental Responses to Fake News

In addition to government measures to increase public awareness of fake news, private entities, especially media corporations, are also trying to educate the public about the prevalence of fake news. For instance, during the 2018 election the two largest Stockholm-based media corporations, which own Dagens Nyheter (DN) and Svenska Dagbladet (SCT), respectively, collaborated with public service companies SVT and SR to review the accuracy of election coverage and statements.⁹⁴ In addition, the publishers of the Swedish cartoon *Bamse* are aiming to teach Swedish children about the consequences of fake news through cartoon strips, showing how a false rumor about Bamse (the cartoon bear) losing his powers (super-strength) is disseminated as part of an online news story.⁹⁵

III. Accuracy of and Access to Legal Material

A. Online Access to Legal Materials

Sweden provides free online access to laws, statutes, and certain court documents.⁹⁶ As of April 1, 2018, the online version of the Swedish gazette, *Svensk författningssamling*, is considered the official version.⁹⁷ To guarantee its accuracy, the online law is provided with an electronic stamp.⁹⁸ However, to be able to view the stamp the user must use a computer that has software for the

⁹² Nationell handlingsplan for samhällets informations och cybersakerhet, MSB (Mar. 5, 2019), <https://www.msb.se/sv/Om-MSB/Nyheter-och-press/Nyheter/Nyheter-fran-MSB/Nationell-handlingsplan-for-samhällets-informations--och-cybersakerhet/>, archived at <https://perma.cc/GZ7U-MMWC>.

⁹³ Nationell strategi för samhällets informations- och cybersäkerhet [National Strategy for Society's Information and Cybersecurity], Skr. 2016/17:213, <https://www.regeringen.se/4a095b/contentassets/00a3e76fcee44f54af2399b82ee1307f/skr-201617-213-bilaga-uppdatering-om-genomforandet.pdf>, archived at <https://perma.cc/3UAA-BQRY>.

⁹⁴ FAKTISKT, <https://faktiskt.se> (last visited Mar. 19, 2019), archived at <https://perma.cc/XR8R-S6SM>.

⁹⁵ S. Rep. No. 115-21 (2018), at 111, <https://www.foreign.senate.gov/imo/media/doc/FinalRR.pdf> (citing Lee Roden, *Why This Swedish Comic Hero Is Going to Teach Kids about Fake News*, THE LOCAL (Jan. 16, 2017), <https://www.thelocal.se/20170116/why-this-swedish-comic-hero-is-going-to-teach-kids-about-fake-news-bamse>, archived at <https://perma.cc/M4DE-NEBY>). Original *Bamse* cartoon on file with author.

⁹⁶ SVENSK FÖRFATTNINGSSAMLING, <https://svenskforfattningssamling.se/>, archived at <https://perma.cc/B965-YNS2>; DOMSTOL.se, <https://www.domstol.se>, archived at <https://perma.cc/4WA9-HS3H>; LAGRUMMET, <https://www.lagrummet.se>, archived at <https://perma.cc/D4UM-D2SR>.

⁹⁷ 5 § LAG OM KUNGÖRANDE AV LAGAR OCH ANDRA FÖRFATTNINGAR [ACT ON PROCLAMATION OF LAWS AND OTHER REGULATIONS] (SFS 1976:633), http://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/lag-1976633-om-kungorande-av-lagar-och-andra_sfs-1976-633, archived at <https://perma.cc/4FNJ-DKGY>.

⁹⁸ *Om Svensk författningssamling*, SVENSK FÖRFATTNINGSSAMLING <https://svenskforfattningssamling.se/om-svensk-forfattningssamling.html> (last visited Mar. 20, 2019), archived at <https://perma.cc/5T54-HQYV>.

validation of certificates.⁹⁹ The “About” section of the Swedish gazette’s official website does not include information on how such software works, where a user may find the needed software, or how the user may use it.¹⁰⁰ The stamp is thus not readily available to the layperson user. Online versions of laws are provided both on the gazette website and on the national Parliament (Riksdagen) website.¹⁰¹ Only the text on the gazette webpage is legally binding.¹⁰²

According to an explanatory text in the bill preceding the adoption of the law governing electronic publication of laws, by making its laws official in the online version, Sweden has made itself more susceptible to internet attacks.¹⁰³ Threats that are connected to online access include the manipulation of content, disruptions to access, and the online preservation of previous laws. Other risks also include natural disasters, power outages, and any failure to immediately recognize these threats.¹⁰⁴ Safety measures include making backup copies of stored information and the possibility of issuing emergency proclamations in other forms (including broadcasting them on television).¹⁰⁵

In addition to officially publishing all its legislation online, Sweden is legally required to maintain a legal database online.¹⁰⁶ Information that must be provided in the database includes the following:¹⁰⁷

- An index of all government commissions (*statliga kommittéer*) with information on government decisions, members, and work plans
- Committee directives
- Explanatory notes to government regulations
- Government reports that are published in the *Swedish Government Official Reports (Statens offentliga utredningar, SOU)* and the *Department Series (Departementsserien, Ds)*
- Government bills (*Regerings propositioner*)

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ RIKSDAGEN, <http://www.riksdagen.se>, archived at <https://perma.cc/MKF8-4L6Z>; *Dokument & lagar (4 950 träffar)*, RIKSDAGEN, <https://www.riksdagen.se/sv/dokument-lagar/?doktyp=sfs&dokstat=gallande+sfs> (last visited Mar. 19, 2019), archived at <https://perma.cc/LKS4-B7CV>.

¹⁰² 5 § LAG OM KUNGÖRANDE AV LAGAR OCH ANDRA FÖRFATTNINGAR.

¹⁰³ Proposition [Prop.] 2015/16:157 Elektroniskt kungörande av författningar [Electronic Proclamation of Legislation], at 13, <https://www.regeringen.se/496f5b/contentassets/cdb84f2bef484af58d845f2ac47a2408/151615700webb.pdf>, archived at <https://perma.cc/RGY8-F4KX>.

¹⁰⁴ *Id.* at 13-14.

¹⁰⁵ *Id.* at 14; 4 and 7 §§ LAG OM KUNGÖRANDE AV LAGAR OCH ANDRA FÖRFATTNINGAR.

¹⁰⁶ 1 § Rättsinformationsförordning [Regulation on Legal Information] (SFS 1999:175), <http://rkrattsbaser.gov.se/sfst?bet=1999:175>, archived at <https://perma.cc/F3Q2-6K2A>.

¹⁰⁷ *Id.* 3-8 §§.

- Swedish case law and legal precedent
- International agreements

In addition, information from municipalities may be included in the legal database.¹⁰⁸

With regard to case law the courts may exercise their own discretion and judgment to determine which cases may be included in an online database; moreover, certain cases need only be made available in summaries (*referat*).¹⁰⁹ However, all cases are subject to the access principle (*offentlighetsprincipen*), meaning that anyone has a right to access them.¹¹⁰

Court cases that are considered to include legal precedent are publicly available online at Lagrummet.se.¹¹¹ In addition, many recent Supreme Court decisions, including leave for appeal decisions, are published on the Supreme Court's website.¹¹² However, the official version is still the version published in the Supreme Court Reporter, *Nytt Juridiskt Arkiv*.

As required by law, the Parliament makes all of its information (legislative materials such as committee reports, government reports, bills, and voting records) available for free online.¹¹³ It is unclear what it does to ensure that the information displayed is not altered.

B. Requirement that Legal Material Forming Basis of Violation Be Freely Available

The Swedish Supreme Court in 2017 determined that referral in a law to a set of standards for lasers that were only available subject to a fee violated the principle of legality (*legalitetsprincipen*), and the provision could not constitute a basis for a violation, as a perpetrator could not be expected to know of the contents of the standard.¹¹⁴

¹⁰⁸ *Id.* 9 §.

¹⁰⁹ 6, 6a, and 7 §§.

¹¹⁰ 2 kap. 1 § TF.

¹¹¹ *Vägledande avgöranden*, DOMSTOL, <http://www.domstol.se/Ladda-ner--bestall/Vagledande-avgoranden/> (last visited Feb. 26, 2019), archived at <https://perma.cc/2E33-5SKG>.

¹¹² *Högsta domstolens vägledande domar och beslut (prejudikat)*, HÖGSTADOMSTOLEN (Sept. 12, 2017), <http://www.hogstodomstolen.se/Avgoranden/Vagledande-domar-och-beslut-prejudikat/>, archived at <https://perma.cc/593U-GC7Y>.

¹¹³ 5 § Rättsinformationsförordning; *Dokument & lagar*, RIKSDAGEN, <http://www.riksdagen.se/sv/dokument-lagar/> (last visited Mar. 21, 2019), archived at <https://perma.cc/V6YC-EB87>.

¹¹⁴ Supreme Court Decision Ö 4833-16, Mar. 15, 2017, HÖGSTA DOMSTOLEN, http://www.hogstodomstolen.se/Domstolar/hogstodomstolen/Avgoranden/2017/2017-03-15_Ö_4833-16_Beslut.pdf (in Swedish), archived at <https://perma.cc/72KN-HQFF>; see also Elin Hofverberg, *Sweden: Court Rules Legislation Must Be Made Available Free of Charge*, GLOBAL LEGAL MONITOR (Mar. 29, 2017), <http://www.loc.gov/law/foreign-news/article/sweden-court-rules-legislation-must-be-made-available-free-of-charge/>, archived at <https://perma.cc/LKC4-4I66>.

United Kingdom

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SUMMARY “Fake news” has been present in the UK for several centuries. It has recently become an issue that poses a potential national security threat, with foreign actors seeking to influence UK citizens. The UK does not currently have any legislation that regulates the validity of news posted by online platforms. Several government reports have been issued on this subject that have recommended the introduction of a duty on tech companies to remove content identified as harmful or face fines. The government is currently in the process of compiling a white paper that will set out a framework of how it will approach issues caused by fake news posted online.

I. Introduction

“Fake news” is not a new phenomenon in the United Kingdom. In 1688, the Privy Council issued a proclamation that prohibited spreading false information.¹ With modern technology facilitating the distribution of information to a wide audience, and traditional channels of information being discarded for digital and social media platforms, the problem of false information being spread has become far more problematic than in 1688.²

The government has noted that,

[i]n the era of fake news and concerted propaganda by hostile states, supporting a free media also means countering the incoming tides of disinformation. While it has never been easier to publish and receive information, it has also never been easier to spread lies and conspiracy theories. Social media offers a malign opportunity to whip up hatred and incite violence against vulnerable minorities.³

Over time, the term “fake news” has developed a variety of meanings. To help provide clarity and consistency, the Digital, Culture, Media and Sport Committee recommended that the

¹ “By the King, a Proclamation to Restrain the Spreading of False News” (1685–1688), available at <https://quod.lib.umich.edu/e/eebo/A87488.0001.001/1:1?rgn=div1;view=fulltext>, archived at <https://perma.cc/T5YD-78EG>.

² HM GOVERNMENT, NATIONAL SECURITY CAPABILITY REVIEW (2018) at 34, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705347/6.4391_CO_National-Security-Review_web.pdf, archived at <https://perma.cc/7FVT-3PFL>.

³ *Britain Champions Free Speech, so We're Leading the War on Fake News: Article by Jeremy Hunt* (Nov. 1, 2018), GOV.UK, <https://www.gov.uk/government/speeches/britain-champions-free-speech-so-were-leading-the-war-on-fake-news-article-by-jeremy-hunt>, archived at <https://perma.cc/X7YW-MZNK>.

government not use the term “fake news” and instead use, and define, the words “misinformation” and “disinformation.”⁴ The government has defined these terms as follows:

[D]isinformation [i]s the deliberate creation and sharing of false and/or manipulated information that is intended to deceive and mislead audiences, either for the purposes of causing harm, or for political, personal or financial gain. ‘Misinformation’ refers to the inadvertent sharing of false information.⁵

II. Current Approach to Fake News

While there is currently no legislation that prohibits the online publication of fake news, the government is taking the issue seriously and is carefully investigating the impact of such news and the possibility of introducing legislation:

Traditional channels have been largely discarded in favour of digital and social media platforms. This is combined with a decline of trust in traditional sources of information and the era of so-called ‘fake news’. In parallel, the rules of the game have changed. The democratization of information, and the means to exploit it, has allowed hostile actors to exert disproportionate influence in competition with the public interest.⁶

If ‘fake news’ is tolerated and becomes commonplace, there would be grave consequences for public attitudes, democratic processes and for the conduct of public life. The risks increase with the growth in the use of social media, but the associated problems would not be confined to such material. Without reassurance that the false and the genuine are being distinguished, there is a real risk of “contamination” across all sources – with public trust and confidence in public life declining further still, whatever the origin of the information or its channel of communication. As the problem gets worse, mere allegations will undermine the credibility of facts which actually are accurate.⁷

The government considers that misinformation and disinformation are “fourth generation espionage” and are taking action on multiple levels to help counter this threat.⁸ It notes that a “whole-of-society approach to defensive and offensive measures in the information space is necessary to ensure protection against physical and cognitive attack and subversion of society,

⁴ THE DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, DISINFORMATION AND ‘FAKE NEWS’: INTERIM REPORT, HC 363 (2018) ¶ 14, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/363/363.pdf>, archived at <https://perma.cc/DF8J-4PDG>.

⁵ HOUSE OF COMMONS DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, DISINFORMATION AND ‘FAKE NEWS’: GOVERNMENT RESPONSE TO THE COMMITTEE’S FIFTH REPORT OF SESSION 2017–19, HC 1630 (2018), at 2, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1630/1630.pdf>, archived at <https://perma.cc/E92S-4GGC>.

⁶ HM GOVERNMENT, *supra* note 2, at 34.

⁷ COMMITTEE ON STANDARDS IN PUBLIC LIFE, FAKE NEWS AND THE NOLAN PRINCIPLES (Mar. 6, 2017), <https://cspl.blog.gov.uk/2017/03/06/fake-news-and-the-nolan-principles/>, archived at <https://perma.cc/KQM7-IMFF>.

⁸ MI6 ‘C’ Speech on Fourth Generation Espionage, Foreign & Commonwealth Office, Secret Intelligence Service, and Alex Younger (Dec. 3, 2018), <https://www.gov.uk/government/speeches/mi6-c-speech-on-fourth-generation-espionage>, archived at <https://perma.cc/9GUH-C2VC>.

for example, through legislation and execution.”⁹ In the wake of Russian disinformation after the poisoning of Sergei Skripal and others in England,¹⁰ when the government “judged the Russian state promulgated at least 38 false disinformation narratives around this criminal act,”¹¹ the Prime Minister announced that the intelligence services would be responsible for identifying social media platforms that distribute misinformation and disinformation under the recently introduced Fusion Doctrine. This doctrine provides the

Government must use the full suite of security, economic, diplomatic and influence capabilities to deliver our national security goals. This means strategic communications are to be considered with the same seriousness as financial or military options.¹²

The UK already has considerable experience in strategic communications. Until recently, these had been directed towards domestic campaigns, such as to promote road safety or help stop individuals from smoking. The UK also has experience countering online propaganda and it, along with other international partners, launched the Counter-Daesh Communications Cell in 2015 with the aim of defeating Daesh (the so-called Islamic State). In 2017, the government noted that its activities resulted in a drop in propaganda output of 75%.¹³ Given the influx of misinformation and disinformation campaigns, in 2018 the government announced that it “will significantly expand the National Security Communications Team,”¹⁴ and this is discussed further below.

III. Legislation to Protect Objectivity of the News and Ensure Accuracy

As noted above, the UK currently does not have legislation directly applying to news provided exclusively online. A number of government departments, including the Electoral Commission, the Office of Communications (Ofcom) and the Digital, Culture, Media and Sport Committee, as well as an independent review, have been tasked with investigating the impact of fake news, and to provide recommendations on how to ensure that citizens have access to accurate, factual information.

The UK does not have a regulatory body that oversees the various social media platforms and online written content as a whole. The closest regulatory body to address these types of issues is Ofcom, established under the Communications Act 2003 to enforce content standards across television and radio broadcasters, including rules that require accuracy and impartiality, and the

⁹ MINISTRY OF DEFENCE, GLOBAL STRATEGIC TRENDS THE FUTURE STARTS TODAY 16 (6th ed. 2018), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771309/Global_Strategic_Trends_-_The_Future_Starts_Today.pdf, archived at <https://perma.cc/S8HV-7WK3>.

¹⁰ PM Statement on the Salisbury Investigation, Prime Minister’s Office, 10 Downing Street and The Rt Hon Theresa May MP (Sept. 5, 2018), <https://www.gov.uk/government/speeches/pm-statement-on-the-salisbury-investigation-5-september-2018>, archived at <https://perma.cc/6N7G-ADKC>.

¹¹ HOUSE OF COMMONS DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, *supra* note 5, at 16.

¹² Alex Aiken, “Disinformation Is a Continuing Threat to Our Values and Our Democracy,” GOVERNMENT COMMUNICATION SERVICE BLOG (June 12, 2018), <https://gcs.civilservice.gov.uk/disinformation>, archived at <https://perma.cc/CJ8H-JKXB>.

¹³ HM GOVERNMENT, *supra* note 2, at 34.

¹⁴ *Id.*

UK's media and telecommunications companies.¹⁵ Ofcom has argued the regulation of television and radio broadcasting and lack of regulation of online content has led to "a 'standards lottery' that allows social media platforms to take advantage of lax regulation while traditional broadcasters have to follow tough rules on protecting audiences."¹⁶ Ofcom has called for more regulation over social media, specifically Facebook, YouTube, and Twitter, particularly regulation that would require the platforms to quickly and effectively remove inappropriate content or be fined.¹⁷ Ofcom has further proposed that transparency should be increased across all platforms to enable audiences to understand why they are being targeted by certain material.¹⁸ Both Ofcom and the Digital, Culture, Media and Sport Committee have proposed that "the Government uses the rules given to Ofcom under the Communications Act to set and enforce contents standards for television and radio broadcasters, including rules relating to accuracy and impartiality, as a basis for setting standards for online content."¹⁹

IV. Reports into the Regulation of Online Content

A number of government reports have recently been issued that, among other issues, consider whether the UK should introduce laws to regulate the accuracy of news on online platforms. Summaries of two of the most recent reports relating to fake news are provided below. The government is currently working on a white paper, entitled *Online Harms*, which "will set out a new framework for ensuring disinformation is tackled effectively, while respecting freedom of expression and promoting innovation."²⁰

A. Cairncross Review

In 2018, the Prime Minister requested that Dame Frances Cairncross undertake an independent investigation into "the sustainability of the production and distribution of high quality journalism [considering that] significant changes to technology and consumer behaviour are posing problems for high-quality journalism, both in the UK and globally."²¹ The final report was published in 2019 and determined, among other things, that "[i]nvestigative journalism and democracy reporting are the areas of journalism most worthy and most under threat [and] . . .

¹⁵ Communications Act 2003, c. 21, <https://www.legislation.gov.uk/ukpga/2003/21>, archived at <https://perma.cc/5NAX-VJH7>.

¹⁶ Aliya Ram & Nic Fildes, *Ofcom Outlines Case for Regulating Social Media Networks*, FINANCIAL TIMES (London) (Sept. 18, 2018) (by subscription).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ OFCOM, ADDRESSING HARMFUL ONLINE CONTENT 2 (Sept. 18, 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0022/120991/Addressing-harmful-online-content.pdf, archived at <https://perma.cc/ZPN9-BWK7>.

²⁰ Home Office in the Media Blog: Monday 18 February (Feb. 18, 2019), <https://homeofficemedia.blog.gov.uk/2019/02/18/home-office-in-the-media-blog-monday-18-february/>, archived at <https://perma.cc/3BI4-QK8S>.

²¹ Press Release, Cairncross Report Recommends Levelling of the Playing Field for UK Journalism, Department for Digital, Culture, Media & Sport and The Rt Hon Jeremy Wright MP (Feb. 12, 2019), <https://www.gov.uk/government/news/cairncross-report-recommends-levelling-of-the-playing-field-for-uk-journalism>, archived at <https://perma.cc/WNK8-659G>.

that, given the evidence of a market failure in the supply of public-interest news, public intervention may be the only remedy.”²² The Cairncross Review recommended that every online platform should have a quality obligation for any news on its platform and that the platform should be overseen by a regulator with investigative powers.²³ The report made several other key recommendations, including the following:

- Introducing “codes of conduct to rebalance the relationship between publishers and online platforms”²⁴
- Placing online platforms under regulatory supervision
- Creating a new, independent, Institute to help continue the future provision of public-interest news
- Launching a new Innovation Fund to improve the supply of public interest news
- Introducing tax relief to encourage the payment for online news content
- Developing a media literacy strategy²⁵

The report further recommended an Institute for Public Interest News be established to focus on ensuring a robust system of local and regional news.²⁶

B. Digital, Culture, Media and Sport Committee: Fake News and Misinformation

The Digital, Culture, Media and Sport Committee released their final report on fake news and misinformation in late February 2019. The committee’s chair, Damian Collins, stated,

[w]e need a radical shift in the balance of power between the platforms and the people. The age of inadequate self regulation must come to an end. The rights of the citizen need to be established in statute, by requiring the tech companies to adhere to a code of conduct written into law by Parliament, and overseen by an independent regulator.²⁷

The report recommended that laws be introduced to establish a legal duty of care for companies that host online content and to provide

. . . for clear legal liabilities to be established for tech companies to act against harmful or illegal content on their sites, and calls for a compulsory Code of Ethics defining what constitutes harmful content.

²² THE CAIRNCROSS REVIEW, A SUSTAINABLE FUTURE FOR JOURNALISM 7 (Feb. 2019), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DC_MS_Cairncross_Review_.pdf, archived at <https://perma.cc/624J-37RW>.

²³ Press Release, Department for Digital, Culture, Media & Sport and The Rt Hon Jeremy Wright MP, *supra* note 21.

²⁴ THE CAIRNCROSS REVIEW, *supra* note 22, at 10.

²⁵ *Id.*; Press Release, *supra* note 21.

²⁶ *Id.*

²⁷ OFCOM, *supra* note 19, at 2.

An independent regulator should be responsible for monitoring tech companies, backed by statutory powers to launch legal action against companies in breach of the code. Companies failing obligations on harmful or illegal content would face hefty fines.²⁸

The committee recommended that any new regulator be funded through a levy on tech companies operating in the UK.²⁹ The committee further recommended that a new category be created for social media companies that would tighten the liabilities of tech companies that are “not necessarily either a ‘platform’ or a ‘publisher.’ This approach would see the tech companies assume legal liability for content identified as harmful after it has been posted by users.”³⁰ Ofcom responded positively to this recommendation of placing responsibility on platforms for the content that they host.³¹

The report touched upon the issue of the influence of information provided on social media platforms on the electoral process, noting that electoral law has failed to take into account new technologies and the move to online micro-targeted campaigning, which has rendered the current laws “not fit for purpose.”³² The committee recommended updating current electoral legislation to take into account current technology and include provisions that are “explicit on the illegal influencing of the democratic process by foreign players.”³³ The committee called for electoral law to cover all political campaigning, and the inclusion of a legal definition of what constitutes digital campaigning and online political advertising, as well as requiring clear banners on all political advertisements and videos that identify the source of advertising and the advertiser.³⁴ This echoes recommendations made by the Electoral Commission, which noted that, while electoral law covered the funding of online campaigning, the law should be updated to provide “more clarity over who is spending what, and where and how, and bigger sanctions for those who break the rules.”³⁵

²⁸ *Democracy Is at Risk From the Relentless Targeting of Citizens with Disinformation*, HOUSE OF COMMONS, <https://houseofcommons.shorthandstories.com/dcms-committee-disinformation-fake-news/index.html> (last visited Feb. 25, 2019), archived at <https://perma.cc/LM8H-R2XV>.

²⁹ HOUSE OF COMMONS DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, DISINFORMATION AND ‘FAKE NEWS’: FINAL REPORT, 2019, H.C. 1791, <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1791/1791.pdf>, archived at <https://perma.cc/5H2X-G2WU>.

³⁰ *Id.* ¶ 14.

³¹ *Id.* ¶ 13.

³² *Id.* ¶ 211.

³³ *Id.* ¶ 249.

³⁴ *Democracy Is at Risk*, *supra* note 28.

³⁵ ELECTORAL COMMISSION, DIGITAL CAMPAIGNING INCREASING TRANSPARENCY FOR VOTERS 1 (June 2018), https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf, archived at <https://perma.cc/ED2T-WXL4>

V. National Approach to Countering Fake News

The government has stated it faces three challenges when tackling the spread of fake news:

- identifying misinformation and disinformation;
- choosing how to respond to such information; and
- ensuring that government information is available and “highly visible to the public”³⁶ to reassure citizens of the facts, rather than work to rebut the false information.³⁷

Government strategy towards tackling “fake news” has two aspects: pre-emptive responses aimed to counter misinformation surrounding predictable events, such as elections, and responses that follow a predetermined plan for unforeseen events.³⁸

While the regulatory approach to countering misinformation is currently under consideration, and in the wake of a series of false stories posted online that were damaging to the Conservative Party and the government,³⁹ the Cabinet Office established a Rapid Response Unit in April 2018 to help the government meet its policy of “reclaiming a fact based public debate.”⁴⁰

The Rapid Response Unit operates from within the executive branch of the government and is comprised of “specialists including analyst-editors, data scientists, media and digital experts.”⁴¹ The role of the Rapid Response Unit is to “monitor[] news and information being shared and engaged with online to identify emerging issues with speed, accuracy and with integrity.”⁴² The results of this monitoring “helps government understand the current media environment and assess the effectiveness of their public communications.”⁴³

³⁶ GOVERNMENT COMMUNICATION SERVICE, 5 TRENDS IN LEADING-EDGE COMMUNICATIONS 7 (Oct. 2018), available at <https://gcs.civilservice.gov.uk/wp-content/uploads/2018/10/5-Trends.pdf>, archived at <https://perma.cc/4BDP-TRN>.

³⁷ *Id.* at 7.

³⁸ *Id.*

³⁹ Francis Elliot, *Whitehall's Online Rapid Response Unit Will Block Fake News*, THE TIMES (London) (Jan. 20, 2018), <https://www.thetimes.co.uk/article/whitehall-s-online-rapid-response-unit-will-block-fake-news-bjkkv8sqp>, archived at <https://perma.cc/CX64-EZX9>.

⁴⁰ Alex Aiken Introduces the Rapid Response Unit, GOVERNMENT COMMUNICATION SERVICE (July 19, 2018), <https://gcs.civilservice.gov.uk/news/alex-aiken-introduces-the-rapid-response-unit/>, archived at <https://perma.cc/837J-UF2U>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ GOVERNMENT COMMUNICATION SERVICE, *supra* note 36, at 9.

The Rapid Response Unit has developed a model with the acronym FACT to help it identify and respond to misleading online content:

Find: Constantly monitor online news sources and publicly available social media posts to identify themes/discussions/stories that promote false and misleading information relating to HMG [Her Majesty's Government]. This may be misinformation or disinformation.

Assess: Assess the scale of engagement with the risk identified and establish whether it is appropriate to respond to the content. Flag to relevant press offices and advisors, with a recommended approach to response. This is almost never direct rebuttal.

Create: Create appropriate content with the aim of rebalancing the narrative and promoting official HMG information. This may be a press office line, a social media post, or the creation of a new asset.

Target: Target content to ensure HMG information is highly visible and accessible to the public.⁴⁴

The government has emphasized that the Rapid Response Unit is not a rebuttal, or fake news unit.⁴⁵ Instead, it focuses on checking trends in new sources and, where certain search terms indicate a bias in results, it works to optimize government pages to appear higher in search results or will activate social media content to help “rebalance the narrative and reassure those who were most engaged with the topic.”⁴⁶ An example provided from the government demonstrates action the Rapid Response Unit took after it detected misinformation:

[F]ollowing the Syria airstrikes, the unit identified that a number of false narratives from alternative news sources were gaining traction online. These “alt-news” sources are biased and rely on sensationalism rather than facts to pique readers’ interest.

Due to the way that search engine algorithms work, when people searched for information on the strikes, these unreliable sources were appearing above official UK government information. In fact, no government information was appearing on the first 15 pages of Google results. We know that search is an excellent indicator of intention. It can reflect bias in information received from elsewhere.

The unit therefore ensured those using search terms that indicated bias— such as ‘false flag’ — were presented with factual information on the UK’s response. The RRU improved the ranking from below 200 to number 1 within a matter of hours. Information on UKAID’s work in the region was also immediately amplified amongst audiences demonstrating the highest levels of interest in humanitarian issues affecting displaced Syrians.⁴⁷

The Rapid Response Unit works closely with the National Security Communications Team, particularly in times of crisis, to provide highly visible public information.⁴⁸ Examples of this action include countering misinformation on the origin of the nerve agent used to poison former

⁴⁴ *Id.* at 7.

⁴⁵ Alex Aiken *Introduces the Rapid Response Unit*, *supra* note 40.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ GOVERNMENT COMMUNICATION SERVICE, *supra* note 366, at 9.

Russian operatives in England, and the implementation of targeted digital communications to audiences during military action in Syria.⁴⁹

VI. Ensuring Accurate Legal Information is Publicly Available

The UK has a robust system in place of publishing government information online. It provides its legislation free online via Legislation.gov.uk,⁵⁰ and the courts and tribunals judiciary provide judgments online.⁵¹ Parliament also provides up-to-date copies of bills being debated before Parliament,⁵² along with the debates in Parliament⁵³ and committee and other government reports.⁵⁴

VII. Conclusion

The government is responding to the issues posed by fake news and is currently in the process of considering different approaches to regulating such information. Reports from committees and an independent reviewer has recommended that legislation be introduced to place liability on technology companies in the UK to remove content that contains misinformation or disinformation, or face considerable fines. The government will issue a white paper that will outline its approach on this subject in the fall of 2019.

⁴⁹ *Id.*

⁵⁰ Home, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/> (last visited Feb. 20, 2019), archived at <https://perma.cc/9CBH-TDQU>.

⁵¹ Judgments, COURTS AND TRIBUNALS JUDICIARY, <https://www.judiciary.uk/judgments/> (last visited Mar. 11, 2019), archived at <https://perma.cc/8ZYV-38BM>.

⁵² Bills and Legislation, PARLIAMENT.UK, <https://www.parliament.uk/business/bills-and-legislation/> (last visited Feb. 20, 2019), archived at <https://perma.cc/2J2E-8TD5>.

⁵³ Welcome to Hansard, UK PARLIAMENT, <https://hansard.parliament.uk/> (last visited Feb. 20, 2019), archived at <https://perma.cc/FPX3-9U5B>.

⁵⁴ Publications, GOV.UK, <https://www.gov.uk/government/publications> (last visited Feb. 20, 2019), archived at <https://perma.cc/BV6K-H3F2>.