**Stranger Than Fiction:**

**The Truth Behind “Fake News”**

Over the past three years, ‘fake news’ has become something of a buzz word. Analysis by Google Trends shows that the term gained relevance in American Google searches and entered the mainstream discourse during the 2016 presidential elections. The ‘fake news’ phenomenon has recently attracted much international attention with committees set up around the world to investigate the issue.

‘Fake news’ is not new. Rapid dissemination of false information arrived alongside the invention of the printing press in the 15th century. The ACCC Inquiry into Digital Platforms (ACCC Inquiry) acknowledged that issues of ‘authenticity and quality news’ are not new but warned that ‘these problems are potentially magnified online’. Similar conclusions have been made by governments around the world and this article takes a look at some of the international efforts to tackle this ‘fake news’ phenomenon.

**Defining “Fake News”**

The term ‘fake news’ is tossed around with a myriad of meanings: to describe fabricated news stories; to identify misrepresentations; even to dismiss information one disagrees with, and short-circuit debate. There is a hint of irony in the fact that this term wielded to identify misinformation and falsehood, does itself lack a settled definition.

A United Kingdom Government inquiry took a broad view of the term, finding that it could include: fabricated and manipulated content, imposter content, misleading content, accurate content shared in a misleading context and in some instances, satire and parody. The UK inquiry concluded that the term ‘fake news’ is bandied around with so many meanings that it should in fact be rejected and replaced with settled definitions of ‘misinformation’ and ‘disinformation’.

The European Union has also rejected the term ‘fake news’, arguing it simplifies the complex problem of disinformation: ‘false information deliberately created and spread to influence public opinion or obscure the truth’. A similar theme emerges from government inquiries in Singapore, which focus on ‘deliberate online falsehoods’ motivated by ideologies, politics and prejudices.

The following definition succinctly captures the concept:

‘[Fake news] is the dissemination of false information via media channels (print, broadcast, online). This can be deliberate (disinformation), but can also be the result of an honest mistake or negligence (misinformation)”

**Reasons for concern**

News and journalism are widely acknowledged that issues of ‘authenticity and quality news’ are not new but warned that ‘these problems are potentially magnified online’. Similar conclusions have been made by governments around the world and this article takes a look at some of the international efforts to tackle this ‘fake news’ phenomenon.

(a) ‘Clickbait’: the online news and media environment is a largely advertising driven model based on ‘clicks’. This environment encourages sensationalised or viral content and headline grabbers known as ‘clickbait’;

(b) ‘Filter bubbles’: digital platforms often use algorithms to select the content its users see based on their previous behaviour and preferences. This can create a ‘filter bubble’, in which personalised content is shared among like-minded users heightening polarisation and strengthening disinformation;

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2. Ibid 13
7. Select Committee, Report of the Select Committee on Deliberate Online Falsehoods Executive Summary (2018) 2
8. Fake News: A Roadmap, NATO Strategic Centre for Strategic Communications, Riga and King’s Centre for Strategic Communications (KCSE), January 2018, 19.
9. above n 3, 243
The Code is voluntary and implements self-regulated standards. On 16 October 2018 the Code was signed by Google, Facebook, Twitter and Mozilla. Other signatories include European communication and advertising associations. The key elements to the Code are:

(a) it defines ‘disinformation’ as ‘verifiably false or misleading information which:

(i) is created, presented and disseminated for economic gain or to intentionally deceive the public; and

(ii) may cause public harm (threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens health, the environment or security)’

(b) the code includes a number of commitments, such as:

(i) creating policies to disrupt the monetisation incentives for misrepresenting information about oneself (commitment 1);

(ii) further efforts to clearly distinguish advertisements from news content (commitment 2);

(iii) putting in place clear policies regarding identity and the misuse of automated bots (commitment 5);

(iv) investing in technological means to prioritise relevant authentic and authoritative information in searches and feeds (commitment 8);

(v) supporting good faith independent efforts to track disinformation such as independent fact-checking bodies (commitment 12).

(c) Measures taken under the Code must fit within the existing Charter of Fundamental Rights of the European Union, particularly, freedom of expression in article 11.

(d) Signatories have published and agreed to follow a range of best practice policies, annexed to the code. These include: Facebook ‘Fake News’ Policy, Google Policy on misrepresentation and Twitter Political Campaigning Policy.

On 29 January this year, the Signatories published their first self-assessment reports setting out the measures they had taken to meet their commitments under the Code. The EU noted that these reports showed some progress, particularly in removing fake accounts, but additional action is still required.16

The effectiveness of this self-regulatory code remains to be seen but it does represent engagement with the issue of ‘fake news’ at a platform level. The EU will conduct a comprehensive assessment of the code at the end of this year, noting that if results are unsatisfactory, further regulatory measures will be considered.17

**Singapore**

In Singapore, a parliamentary Select Committee took written submissions and conducted public hearings, concluding with a report that made 22 recommendations on disinformation. The report made similar recommendations to those made by the EU, regarding public education, upskilling journalists and establishing a media industry based fact-checking body.

However, in contrast to the EU efforts, the Select Committee report in Singapore has made clear that legislative action is required.18 The legislative recommendations include:

13 Ibid 5.
17 Ibid.
(a) legislating a “de-monetisation regime” that would cut off digital advertising revenue against purveyors of online falsehoods (recommendation 15);

(b) where a requisite of criminal culpability is met, impose criminal sanctions on perpetrators of deliberate online falsehoods, including use of inauthentic accounts or bots (recommendation 16); and

(c) increase government powers to swiftly disrupt the spread of disinformation, such as take-down powers and access blocking, with judicial oversight (recommendation 12).

These measures are noticeably more forceful than those made in the UK and the EU, and the Select Committee did consider that these measures could harm free speech. However, the Committee concluded that the measures were necessary given ‘that online falsehoods undermine democracy and harm the democratic contestation of ideas, which freedom of speech serves to protect’.19

The exact form of the proposed legislation is not yet clear but reports suggest it will be tabled this year.

United Kingdom

After an 18 month inquiry by a Committee of the House of Commons, on 14 February this year the ‘Disinformation and ‘fake news’: Final Report’ (UK Report) was published.

Like the inquiries in the EU and Singapore, this inquiry considered issues such as foreign interference, online advertising and the impact of algorithms used by digital platforms. Recommendations included making digital literacy a ‘fourth pillar of education’ and amending electoral and political advertising laws. However, the most unique of the recommendations are those aimed at what the UK Report calls ‘big tech companies’ such as Facebook.

A substantial part of the UK Report is dedicated to Facebook and the Cambridge Analytica scandal, in which Facebook ‘allowed applications and application developers to harvest the personal information of its customers who had not given their informed consent’.20 Mark Zuckerberg was asked to appear before the Committee and the UK Report is critical of that fact he choose not to do so. While the report does make some comments about other platforms such as Google, the primary focus is Facebook.

The recommendations aimed at ‘big tech companies’ like Facebook seek to expand the potential scope of these companies legal liability and include:

(a) developing a new category to cover tech companies that are neither ‘publishers’ nor passive ‘platforms’. The aim of this would be to catch social media platforms like Facebook and ensure they can assume legal liability for content posted by users that is identified as harmful;

(b) establishing an independent regulator to implement a compulsory code of ethics for tech companies that defines harmful content. This code would establish clear legal liability for tech companies to act against agreed harmful and illegal content on their platform; and

(c) imposing a levy on tech companies operating in the UK to help fund the work of the Information Commission Office, which could act as an effective “sheriff in the Wild West of the Internet”21.

The Final Report is a clear indication that efforts to tackle disinformation in the UK will target at digital platforms like Facebook. Like in the EU, it seems that efforts are intended to complement existing data protection regulations like the GDPR. The report was only recently released so it remains unclear which recommendations will be followed and the form any legislation would take. Questions that still need to be resolved include a definition of ‘harmful content’. The Final Report suggests ‘big tech companies’ should have legal responsibilities for ‘harmful content’ online but this term is not defined.

Way Forward

International efforts to tackle disinformation are still in their infancy. There are clear challenges still ahead and it remains to be seen how effective the measures proposed will be. As we continue to watch this space, there are sure to be many lessons learnt from the successes, of lack thereof, of international efforts to address this ‘fake news’ phenomenon.

Contributions & Comments

Contributions and Comments are sought from the members and non-members of CAMLA, including features, articles, and case notes. Suggestions and comments on the content and format of the Communications Law Bulletin are also welcomed.

Contributions in electronic format and comments should be forwarded to the editors of the Communications Law Bulletin at: clbeditors@gmail.com

19 Select Committee of the Thirteen Parliament of Singapore Report of the Select Committee on Deliberate Online Falsehoods Executive Summary (2018) 10 [56].
20 Digital Media and Sport Committee, Disinformation and ‘fake news’: Final Report, HC 1791 (2019) 21
21 Ibid 18.