

How can we tackle disinformation in a way that respects human rights?

The challenge

Disinformation—or “fake news” as it is sometimes termed—broadly refers to the deliberate spreading of false or misleading information. It is not a new or even recent phenomenon – anxieties around it can be found throughout history. But in recent years, as digital technologies have increased the scale, speed and ease with which information can be distributed, it has become an increasing concern for governments and other actors around the world.

These concerns often have a legitimate basis. Few would argue that we don’t need to protect elections and democratic processes from interferences, and there are clear risks to public health from inaccurate stories about vaccinations, or the efficacy of certain medicines or treatments.

But the spectre of disinformation, and particularly “fake news”, is now routinely evoked by politicians and public figures as a means of dismissing and denigrating news reports and criticism they simply dislike, or discrediting media and journalists more broadly. And a new wave of legislative proposals around the world is seeking to impose often severe penalties—including, in some cases, prison—on those seen to be spreading disinformation. While these proposals vary, many pose real risks to freedom of expression.

The challenge, therefore, is to frame and address disinformation in a way which respects, rather than undermines, human rights. Doing so requires a better understanding of the phenomenon itself, how it impacts upon human rights, and how to analyse proposals to tackle disinformation from a human rights perspective.

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Understanding disinformation

While the term “fake news” is commonly used, it is an unhelpful way of referring to the problem that needs to be addressed for several reasons:

- Information which is deemed “fake” might not necessarily be entirely false, but a mixture of truth and falsity, or simply misleading in the context in which it appears;
- The scope of information which can be false or misleading extends well beyond what is ordinarily considered to be “news”;
- The term fails to take into consideration the intention of those sharing the information, and whether or not they know that it is false or misleading; and
- The term has been appropriated by many politicians and their supporters to denigrate news coverage or reporting which they simply dislike.

Instead of creating and using a new term which fails to accurately describe the phenomenon, there are a number of well-established terms—such as disinformation, misinformation and propaganda—which have clearer definitions:

- **Disinformation:** False, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit.
- **Misinformation:** The inadvertent or unintentional spread of false or inaccurate information without malicious intent.
- **Propaganda:** Information, especially of a biased or misleading nature, used to promote a political cause or point of view.

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Why is disinformation a human rights issue?

Disinformation, and the responses to it, can impact a number of human rights, including:

The right to free and fair elections (Article 25, International Covenant on Civil and Political Rights): An election or referendum must guarantee the free expression of the will of the electors. Where disinformation is used to mislead voters, however, this undermines voters' ability to make decisions on a fully informed and free basis, and potentially, therefore, the results of the election or referendum itself.

The right to health (Article 12, International Covenant on Economic, Social and Cultural Rights): Everyone has the right to the highest attainable standard of physical or mental health. Disinformation may undermine this if it leads to individuals being misled about healthcare and what they can do to protect their own health. In particular, false, inaccurate or misleading information about the side effects of particular measures – such as medicines or vaccinations – may dissuade people from taking them, thereby jeopardising their health.

The right to freedom of expression (Article 19(2), International Covenant on Civil and Political Rights): The right to freedom of expression includes the right to search for and receive information. This is undermined in cases where information received is false, inaccurate or misleading, but is accepted or acted upon by the recipient. Restrictions on disinformation, if overly broad, can also lead to legitimate expression being curtailed.

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How to analyse proposals from a human rights perspective

Under international human rights law, any restriction on the information that people are able to search for, receive or impart must meet three tests: it must (i) have a legal basis, (ii) pursue a legitimate aim, and (iii) be necessary and proportionate to achieving that aim. Key questions to ask when looking at proposals to tackle disinformation therefore include:

- **Is the basis for any restrictions on what information individuals can search for, receive or impart set out in law?** If not, this will fail the first test of permissible restrictions.
- **Is there clarity over the precise scope of the law so that individuals will know what is and is not restricted?** If not, this will also fail the first test. General prohibitions based on vague or ambiguous ideas such as “false news” or “non-objective information” would fail the test.
- **Is speech restricted only where it is in pursuance of a legitimate aim?** A legitimate aim might be protecting individuals from a particular harm (e.g. risks to their health), or supporting a broader legitimate interest (e.g. preventing crime or ensuring electoral integrity).
- **Are there exceptions or defences where the individual reasonably believed the information to be true?**
- **Are determinations made by a by an independent and impartial judicial authority?**
- **Are any responses or sanctions proportionate?** Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.
- **Are intermediaries liable for third party content?** General liability would not be permissible under international human rights law. More targeted liability might be, but only where either the intermediary specifically intervenes in relation to the content (such as by reviewing it and then making a deliberate decision not to remove it) or where it refuses to obey an order by an independent and impartial body (such as a court) to remove it, despite having the technical capacity.

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Alternatives

There are a range of alternative approaches, other than general legislative prohibitions, which human rights defenders can advocate for. These include:

- Media and information literacy programmes
- Encouraging independent and verified fact-checking
- Effective data protection legislation which tackles micro-targeting and surveillance advertising based on user data
- Transparency around advertising and political campaigning, particularly at election times

About GPD

Global Partners Digital (GPD) is a social purpose company dedicated to fostering a digital environment underpinned by human rights and democratic values.

We do this by making policy spaces and processes more open, inclusive and transparent, and by facilitating strategic, informed and coordinated engagement in these processes by public interest actors.

Work with us

You can find all our work on online content regulation at gp-digital.org/insight/businessandhumanrights

If you're interested in collaborating with us, email Richard Wingfield (richard@gp-digital.org).

