**Submission to the UN Special Rapporteur on Freedom of Expression and Opinion**

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1. What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?

**Three key challenges for freedom of expression and opinion raised by disinformation:**

1. **Trust in the entire information realm has been eroded by disinformation, not just social media. Rampant spread of disinformation has increased dramatically via all vectors: on social media, in mainstream media and in political rhetoric more generally, with significant interplay between digital and non-digital realms. Furthermore, disinformation has been embraced by many political actors as an intentional strategy to undermine confidence in elections, and to erode trust in democratic institutions (legislatures and courts) and political opponents. Often starting at a pulpit in the physical world and reported on by mainstream media (as “newsworthy because expressed by a political leader), disinformation then gets amplified by politically oriented TV and radio shows, and further propagated on social media.**
2. **Government responses to the threat of disinformation** **have undermined freedom of expression in the name of security. Governments have enacted laws that criminalize disinformation and other harmful content, and then imposed liability on private sector platforms for that user generated content, with the threat of significant fines that motivate the private sector to censor speech. In fact, well-intentioned, democratically oriented governments have provided a model of platform liability for user-generated speech to authoritarian governments seeking to stifle dissent and control the information realm. (E.g., Germany’s NetzDG was copied by Russia and Venezuela, among many others.)**
3. **Private sector algorithmic promotion of disinformation has exacerbated the disinformation problem.** **Business models aimed at keeping users’ attention often rely on algorithmic promotion of content that is inflammatory but not accurate. While private sector platforms should not ban disinformation (that does not incite violence or hatred and lead to real world harm), they should choose not to amplify it. Instead, platforms should understand that their algorithmic promotion and demotion of content constitutes a form of their own free expression, and they should intentionally choose not to promote disinformation that undermines the quality of civic discourse.**

**The key point is that the threat of disinformation has eroded trust in the integrity of the entire information realm, which in turn has undermined confidence in democracy. This is not only or even primarily a “social media” problem. This is a much larger society-wide information integrity problem.**

1. a. What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?

**--Many governments have taken to criminalizing disinformation, especially in the pandemic context. Disinformation about disease, treatment and government responses to the pandemic are now subject to criminal liability around the world.**

**--Some governments are also moving toward criminalizing the spread of disinformation that causes social unrest or division. (e.g., Myanmar), without guidelines that define those terms.**

**--In general, governments have failed to apply the test of necessity, proportionality, and legality to such restrictions on disinformation, instead relying on vague articulation of threats to national security or public health.**

1. What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?

**--A primary impact of laws that criminalize disinformation is to provide cover to authoritarian governments that seek to censor speech and limit access to information.**

**--Even in context where repression is not the goal, free expression is violated.**

1. What measures have been taken to address any negative impact on human rights?

**--To some extent, the trend toward criminalization of disinformation has brought more attention to the human rights process principles of necessity, proportionality, and legality.**

**--One piece of good news: growing general awareness that this 3-part test must be met by governments when they infringe on freedom of expression for legitimate purposes, in order to adhere to international human rights law standards.**

1. a. What policies, procedures or other measure have digital tech companies introduced to address the problem of disinformation?

**Some private sector technology companies have become more proactive in combatting disinformation through a variety of measures:**

**--labeling posts that are not true or accurate**

**--taking down posts that could lead to “real world harm”**

**--suspending accounts that can reasonably be expected to incite violence through disinformation (e.g., Twitter de-platforming @realDonaldTrump.)**

**As a general matter, platforms should be more proactive in protecting the quality and integrity of civic discourse and exercise their own freedom of expression not to promote disinformation.**

1. To what extent do you find these measures to be fair, transparent and effective in protecting human rights, particularly freedom of opinion and expression?

**--In general, tech companies lack adequate transparency with respect to how platform rules are applied, interpreted or changed, as well as to how decisions rules about algorithmic promotion and demotion are made.**

1. What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?

**--Complaint mechanism that protect users’ procedural rights are also inadequate.**

**--Transparency and accountability mechanism are essential to protecting freedom of expression on digital platforms and should be the focal point of any new government regulation of social media platforms.**

1. Please share information on measures that you believe have been especially effective to protect the right to freedom of opinion and expression while addressing disinformation on social media platforms.

**--Some governments have been successful at instituting digital and media literacy or strategic communications programs to build up civic resilience to disinformation, most notably Finland.**

**--In addition, (same as 3c above), some private sector technology companies have become more proactive in combatting disinformation through a variety of measures:**

**--labeling posts that are not true or accurate**

**--taking down posts that could lead to “real world harm”**

**--suspending accounts that can reasonably be expected to incite violence through disinformation (e.g., Twitter de-platforming @realDonaldTrump.)**

**As a general matter, platforms should be more proactive in protecting the quality and integrity of civic discourse and exercise their own freedom of expression not to promote disinformation.**

1. Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, in particular the right to freedom of opinion and expression.

**--The trend toward government criminalization of disinformation has become a disingenuous but effective tool for repression and intimidation. This trend has fueled global erosion of freedom of expression and opinion.**

1. Please share any suggestions or recommendation you may have for the Special Raporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.

**--The UN SR FOE should convene a set of working meetings or establish a multi-stakeholder process to help governments, private sector technology platforms and civil society address the threat of disinformation without undermining freedom of expression – together.**

Please feel free to share any relevant documents, reports, news or academic articles that you believe should be considered by the Special Rapporteur in the preparation of her report.

**Several pieces that aim to address some dimensions of the threat of disinformation:**

o[Internet Platforms Should Exercise Their Own Free Expression to Protect Democracy](https://thehill.com/opinion/technology/511943-internet-platforms-should-exercise-their-own-free-expression-to-protect)

o[The Rights and Responsibilities of Internet Platforms](https://www.the-american-interest.com/2020/07/10/the-rights-and-responsibilities-of-internet-platforms/)

o [The COVID-19 Test of Democratic Governance](https://www.the-american-interest.com/2020/05/14/the-covid-19-test-of-democratic-governance/)