

Legislative Strategies to Tackle Misinformation and Disinformation: Lessons from Global Jurisdictions

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Abstract: The spread of misinformation and disinformation on social media has become a major concern in recent years. This is due in part to the ease with which false information can be shared and amplified online, as well as the fact that social media platforms often lack the resources or expertise to effectively moderate harmful content. Addressing the problem of misinformation and disinformation in parliaments is a complex challenge. This paper will explore the different types of misinformation and disinformation that are being spread in New Zealand; the ways in which misinformation and disinformation are being used to target Parliament; the impact of misinformation and disinformation on public trust in government; the challenges that parliaments face in addressing the problem of misinformation and disinformation; and the potential solutions that are being proposed to address the problem of misinformation and disinformation. It will also identify some legislative strategies that have been proposed as potential solutions to the growing problem of widespread misinformation and disinformation, including those adopted by the European Commission and the United Kingdom.

INTRODUCTION

The rapid growth of social media has facilitated the emergence of a decentralised technology that empowers individuals to initiate a cycle of violence.¹ The widespread dissemination of information via social media platforms has the potential to have negative physical consequences, particularly when it involves misinformation. Fake news, which can take many forms, including conspiracy theories, financial motivations, political agendas, entertainment purposes, and satirical content, is a prime example of how misleading information can spread quickly and have a real-world impact.² Conspiracy theories, a subset of fake news, have been linked to the spread of misinformation and deception. This phenomenon has the potential to have negative physical consequences because it can contribute to the radicalisation of both individuals and organisations, ultimately leading to instances of violence.³

Misinformation refers to the dissemination of erroneous or faulty information, whether it is done purposefully or unintentionally. In contrast, disinformation refers primarily to the deliberate dissemination of falsehoods with the intention to deceive. Fake news, on the other hand, relates to stirring ‘false, inaccurate, or misleading information designed, presented and promoted intentionally or unintentionally cause public harm or for profit.’⁴ There is also a connection between hate speech on the internet, and the spread of false information or disinformation, both of which are complex phenomenon.⁵ Both misinformation and disinformation can exacerbate the spread of hate speech by reinforcing existing prejudices and stereotypes or propagating erroneous claims about specific groups.⁶

To effectively mitigate the influence of misinformation on parliamentary processes, it is imperative to adopt a comprehensive and diversified strategy. The principal methods

¹ Peter Warren Singer and Emerson T Brooking, ‘LikeWar: The weaponization of social media’ *National Defense Industrial Association*, October 2018, p. 18 2.

² Lea Bader and Jochen Bender, ‘What is ‘fake news’ and ‘hate speech’ and how do they work in practice?’ *Central and Eastern European EDem and EGov Days* 342 2022, pp. 17-36 1.

³ Karen M. Douglas, Jan-Willem van Prooijen and Robbie M. Sutton, ‘Is the label ‘conspiracy theory’ a cause or a consequence of disbelief in alternative narratives?’ *British Journal of Psychology*, 113(3) 2022 p. 576.

⁴ Bader and Bender, ‘What is ‘fake news’ and ‘hate speech’ and how do they work in practice?’ , p. 18 1.

⁵ Matteo Cinelli and others, ‘*Dynamics of online hate and misinformation*’ *Scientific Reports* 11(1) 2021 p. 10.

⁶ Cinelli ‘*Dynamics of online hate and misinformation*’, p.10.

employed to discover and eradicate harmful content from online platforms are orientated around content moderation and community standards. However, in promoting inclusion and diversity can also offset misinformation by increasing cultural knowledge and empathy.⁷

The prevalence of misinformation has become increasingly apparent in recent times since it exerts a significant impact on political campaigns on a global scale. This was particularly seen in the 2016 United States (US) presidential elections, where the dissemination and likely influence of ‘fake news’ or other purposefully false or misleading content that presented itself appeared like news stories.⁸ Consequently, there are scholars and observers who hold concerns about the potential consequences that may arise from the extensive proliferation of fake news and different types of misinformation, particularly in relation to the fundamental principles of democracy.⁹ Despite the lack of evidence for these deceptive assertions, there is contention surrounding the notion that such material has the capacity to influence the result of a democratic electoral process.¹⁰ Some of the earliest journalistic coverage of false news emphasised its prevalence on social media platforms, particularly Facebook.¹¹ The analysis of web consumption data indicates a significant correlation between users’ tendency to visit Facebook prior to reading fake news stories, hence emphasising the considerable impact exerted by this particular social network.¹²

⁷ Peter Bille Larsen and Marjorie Pamintuan, ‘The Human Right to Science: From Fragmentation to Comprehensive Implementation?’ *South Centre, Geneva*, Research Paper, No. 163, 2022 p. 11.

⁸ Andrew Guess, Jonathan Nagler and Joshua Tucker, ‘Less than you think: Prevalence and predictors of fake news dissemination on Facebook’. *Science Advances* 5(1) 2019, p. 1

⁹ Guess, Nagler and Tucker, *Less than you think: Prevalence and predictors of fake news dissemination on Facebook*. 2019, p.1.

¹⁰ Hunt Allcott and Matthew Gentzkow, ‘Social Media and Fake News in the 2016 Election’. *The Journal of Economic Perspectives* 31(2) 2017 p. 212.

¹¹ Craig Silverman, ‘This Analysis Shows How Viral Fake Election News Stories Outperformed Real News On Facebook’ 2016. Accessed at: <<https://www.buzzfeednews.com/article/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>>.

¹² Guess, Nagler and Tucker, *Less than you think: Prevalence and predictors of fake news dissemination on Facebook*, 2019 p. 1.

UNRAVELLING THE CONSEQUENCES: IMPACT OF MISINFORMATION AND DISINFORMATION

The profound consequences of misinformation and disinformation are readily apparent in the terrorist attack that occurred in 2019, targeting two mosques in Christchurch. This heinous act was broadcast in real time on several social media platforms. Following this tragic event, the COVID-19 pandemic experienced a notable increase in the dissemination of inaccurate and misleading information pertaining to the efficacy and safety of vaccines, as well as other preventive measures like mask usage. This phenomenon has been commonly referred to as an 'infodemic.'¹³ During the COVID-19 pandemic, there were a lot more attacks on the internet than before.¹⁴ The increased occurrence of scientific illiteracy and the lack of robust evidence-based fact verification have amplified the level of scepticism towards scientific knowledge, making individuals more vulnerable to the influence of false news, misinformation, and conspiracy theories.¹⁵

There was a notable increase in animosity targeted towards Asian communities, underscoring the difficulty social media platforms encounter in effectively tackling many forms of misinformation. The current increase in cases can be attributed to the initial emergence of the pandemic in Wuhan, China, around the end of December 2019.¹⁶ Recent events surrounding the Corona pandemic provide a good illustration of this phenomenon. Statements ranging from 'the coronavirus is a harmless flu' to 'when vaccinating, a chip is implanted for monitoring,' to name just two examples, are examples of this phenomenon.¹⁷

¹³ Gilbert Wong, 'The battle against infodemic threat', *Mātātaki | The Challenge*, 25 October 2022. Accessed at: <<https://www.auckland.ac.nz/en/news/2022/10/25/battle-against-infodemic.html>>.

¹⁴ Larsen and Pamintuan, 'The Human Right to Science: From Fragmentation to Comprehensive Implementation?' *South Centre* 2022, p.8.

¹⁵ Larsen and Pamintuan, 'The Human Right to Science', p.8

¹⁶ Jess Berentson-Shaw and Marianne Elliot, 'Misinformation and Covid-19: a briefing for media', The Workshop, 2020, p.2 . Accessed at: < <https://www.theworkshop.org.nz/publications/misinformation-and-covid-19-a-briefing-for-media>>.

¹⁷ Bader and Bender, 'What is 'fake news' and 'hate speech' and how do they work in practice?'. *Central and Eastern European EDem and EGov Days*, 342, 2022 p.21

At the beginning of the Covid-19 pandemic, misinformation and disinformation circulated throughout New Zealand through a variety of platforms such as Facebook, Instagram, TikTok and Twitter, including social media, news websites, and messaging applications such as Whatsapp. The dissemination of incorrect information can have major repercussions, including the erosion of public trust in established institutions, the instigation of fear and panic, and the promotion of damaging conspiracy theories. In order to mitigate the dissemination of inaccurate information, New Zealand has adopted many strategies, including the implementation of public awareness initiatives, collaborations between governmental entities and online enterprises, and enhancements to the nation's media literacy as a whole.

The 2022 Wellington protest manifested as a highly divisive occurrence characterised by rallies that expressed opposition towards Covid-19 mandates and the implementation of lockdown measures. The aforementioned demonstrations were held at Parliament House and Molesworth Street, both centrally located in Wellington, under the backdrop of the ongoing COVID-19 pandemic.¹⁸ The protest emerged as a result of the New Zealand Convoy 2022, a large-scale vehicular convoy that traversed from the North to the South Island, culminating in a three-week occupation of the grounds of the Parliament.¹⁹

The protesters expressed allegiance with a wide range of causes, with a significant number expressing their dissent towards the mask and vaccine mandates implemented in New Zealand in response to the COVID-19 epidemic. Moreover, among the cohort of demonstrators, a distinct faction emerged that espoused far-right ideas, which included, but were not limited to, tenets associated with Trumpism, white nationalism, and Christian fundamentalism.²⁰ The nature of the demonstration underwent a

¹⁸ Tom Hunt, 'By the numbers: The 23 days of New Zealand's Parliament occupation', *Stuff*, 2023 Accessed at: <<https://www.stuff.co.nz/dominion-post/news/wellington/131356257/by-the-numbers-the-23-days-of-new-zealands-parliament-occupation>>.

¹⁹ Digby Werthmuller, 'Anti-mandate protesters convoy on both North and South Islands', *1News*. Accessed at: <<https://www.1news.co.nz/2022/02/07/anti-mandate-protesters-convoy-on-both-north-and-south-islands/>>.

²⁰ Rachel Sadler, 'In-fighting between Freedom and Rights Coalition, Counterspin continues at convoy protest after event 'hijacked'', *Newshub*, 2022. Accessed at < <https://www.newshub.co.nz/home/new-zealand/2022/02/in-fighting-between-freedom-and-rights-coalition-counterspin-continues-at-convoy-protest-after-event-hijacked.html>>.

transition from peaceful assemblies to displays of aggressiveness, which involved confrontations with law enforcement and acts of hostility specifically targeted towards students who were wearing masks.²¹

Initially, the law enforcement authorities adopted a permissive stance. However, when apprehensions over public health and safety grew more pronounced, they implemented measures to effectively respond to the developing circumstances.²² The demonstration reached its climax with the forcible expulsion of demonstrators, resulting in significant damage to public property on parliament grounds as a result of fire.²³ This disruptive incident coincided with a substantial COVID-19 pandemic in New Zealand, characterised by a notable surge in daily cases attributed to the Omicron strain, which persisted until the conclusion of the protests.

Notwithstanding the considerable disruption engendered by the protest, the New Zealand Government did not accede to the demonstrators' requests, which included the elimination of vaccine mandates.²⁴

The arrival of Posie Parker, (real name, Kellie-Jay Keen-Minshull) a prominent anti-transgender campaigner from the United Kingdom in March 2023, also serves as a noteworthy example that sheds light on an additional dimension of the consequences associated with the dissemination of inaccurate and misleading information.²⁵ Parker's anti-transgender discourse assumed the role of a 'motivational narrative' that disseminated especially among online communities that had been first established to

²¹ Ella Duggan and Raya Hotter, 'Covid-19 Omicron outbreak, Parliament protest: Wellington students kept away from school', *New Zealand Herald*, 2022. Accessed at: <<https://www.nzherald.co.nz/nz/covid-19-omicron-outbreak-parliament-protest-wellington-students-kept-away-from-school/XIWT3FQTQJ6BI42Y3EGAOQMLFY/>>.

²² Eva Corlett and Tess McClure, 'New Zealand police clash with anti-vaccine protesters at parliament, over 120 arrested', *The Guardian*, 10 February 2022, Accessed at: <<https://www.theguardian.com/world/2022/feb/10/new-zealand-police-clash-with-anti-vaccine-protesters-during-eviction-operation>>.

²³ Corlett, 'Fire and clashes break out at New Zealand parliament as police move in to clear protest'. *The Guardian*, 10 February 2022.

²⁴ Jack McKee, 'Protesters deliver anti-lockdown, vaccine messages to government', *RNZ*, 9 November 2021. Accessed at: <<https://www.rnz.co.nz/news/national/455307/protesters-deliver-anti-lockdown-vaccine-messages-to-government>>.

²⁵ 1News, 'What are Posie Parker's views and why are they so controversial?', *1News*, 2023, 24 March 2023. Accessed at: <<https://www.1news.co.nz/2023/03/24/what-are-posie-parkers-views-and-why-are-they-so-controversial/>>.

disseminate and sustain unfounded notions around Covid-19.²⁶ These online communities, many of which are far-right and conspiracy theory aligned, spread this anti-trans rhetoric leading to a measurable increase in hate and harm directed towards trans people.²⁷ This phenomenon is referred to as the ‘Parker effect’.²⁸

The visit of Parker to New Zealand, for the purpose of delivering speeches as a component of her *Let Women Speak* campaign, was also characterised by counter-protests by trans activists, that added to the polarisation of her message.²⁹ In this example, the dissemination of inaccurate information and deliberate dissemination of false information contributed to the development of a public discourse characterised by heightened unease and animosity. Parker's purpose - and the protests against her - exemplified the potential of false narratives to incite conflict and give rise to debates about the freedom of speech. This led to an act of violence involving the hurling of tomato juice at her at during her campaign in Auckland by trans activists.³⁰ As a result, she abandoned event in Auckland and further cancelled the planned event in Wellington.³¹

The aforementioned occurrences highlight the significance of promoting ethical practices in sharing information and developing strong media literacy abilities. The implementation of these procedures is crucial in order to alleviate the potential negative consequences that may arise from the spread of erroneous information, especially within the realm of intense social and political debates.

The examples above also demonstrate the complex challenges New Zealand confronts as a result of the escalating spread of misinformation and deception. Moreover, these examples demonstrate how the actions of individuals can undermine the public trust.³²

²⁶ Shanti Mathias, ‘Tracking the surge in online anti-trans hate’.

²⁷ Shanti Mathias, ‘Tracking the surge in online anti-trans hate’.

²⁸ Shanti Mathias, ‘Tracking the surge in online anti-trans hate’.

²⁹ Shanti Mathias, ‘Tracking the surge in online anti-trans hate’.

³⁰ Shanti Mathias, ‘Tracking the surge in online anti-trans hate’.

³¹ Sharon Brett Kelly, ‘Parker’s visit poses plenty of questions’, 30 March 2023 *RNZ*, Accessed at <<https://www.rnz.co.nz/programmes/the-detail/story/2018883814/parker-s-visit-poses-plenty-of-questions>>.

³² Michael Daubs, ‘Trust, misinformation and social in(ex)clusion’. June 2022 Accessed at: <<https://www.royalsociety.org.nz/what-we-do/our-expert-advice/speakers-science-forum/speakers-science->

This is a call for an assessment of the existing legislative framework and its robustness in dealing with the proliferation of groups spreading misinformation and disinformation.

RIISING TO THE CHALLENGE OF DISINFORMATION?

The Disinformation Project is an independent research group established in February 2020 that collaborates with various sectors to understand and respond to information disorders and their growing offline consequences. The Disinformation Project tackles all forms of misinformation and disinformation in New Zealand. Though it arose from the COVID-19 infodemic, this project targets all misinformation topics, including political, social and medical related misinformation, amongst others. Since August 2021, the Disinformation Project found that there was a notable increase in the number of postings in the form of ‘dangerous speech’, disinformation pertaining to far-right ideologies as well as the level of user interaction, encompassing likes, shares, and comments, with content that is detrimental in nature.³³ There was a noted increase of misinformation that commenced on 17 August 2021, coinciding with the enforcement of New Zealand’s Alert Level 4 Lockdown..³⁴ This was a time where more people resourced to online media to keep abreast with the pandemic and to interact with others. This led to excessive unfiltered information online to be spread, information that had not been fact checked.

The Project also found that prominent individuals in the public domain, such as parliamentarians, journalists, health experts, scholars, and community leaders, are subjected to deliberate and personalised acts of harassment and mistreatment.³⁵

forum-2022/speakers-science-forum-misinformation/>. Gilbert Wong, ‘The battle against infodemic threat’, *Mātātaki | The Challenge*, 25 October 2022. Accessed at:

<<https://www.auckland.ac.nz/en/news/2022/10/25/battle-against-infodemic.html>>.

³³ Kate Hannah, Sanjana Hattotuwa and Kayli Taylor, ‘Working Paper, Mis- and disinformation in Aotearoa New Zealand from 17 August to 5 November 2021’. *The Disinformation Project*, November 2021. Accessed at:

<<https://thedisinfoproject.org/wp-content/uploads/2022/04/2021-11-09-FINAL-working-paper-disinformation.pdf>>.

³⁴ Hannah, Hattotuwa and Taylor, *Working Paper, Mis- and disinformation in Aotearoa New Zealand from 17 August to 5 November 2021*, 2021 p. 7.

³⁵ Hannah, Hattotuwa and Taylor, *Working Paper*, p. 7.

According to the findings of the Disinformation Project's research, social media companies still need to enforce their code of conduct against individuals who distribute misinformation and disinformation. It was found that individuals spreading misinformation and disinformation take advantage of the increasing uncertainty and anxiety in communities due to the COVID-19 public health measures like vaccinations and lockdowns.³⁶ They do this to instil fear, alienation and division.³⁷ In addition, they focus on disseminating false information disproportionately targets marginalised and vulnerable communities, who already have reasons to distrust the government due to historical trauma and personal experiences of discrimination; thereby making them more likely to align and engage with conspiracy theories and disinformation.³⁸

Among the social media platforms, Telegram emerged as the primary platform for the spread of misinformation and disinformation in New Zealand.³⁹ This platform is notable for its lack of oversight or policies around misinformation and disinformation.⁴⁰

The enforcement of measures set by social media firms in their Community Standards and self-regulation to mitigate the spread of vaccine-related misinformation has been insufficient. This highlights the pressing need for a statutory duty of care to be imposed on these platforms.⁴¹ The dissemination of inaccurate information regarding vaccines persists.⁴² These actions have been extremely inefficient in deleting damaging and dangerous misinformation about coronavirus vaccinations; however, the scale of misinformation on Facebook, and consequently the consequence of their failure, is more extensive. According to a report issued by the Centre for Countering Digital Hate, the social media platforms in question have not demonstrated sufficient efficacy in addressing the issue of well-known anti-vaccine proponents who have consistently

³⁶ Hannah, Hattotuwa and Taylor, *Working Paper*, p. 2.

³⁷ Hannah, Hattotuwa and Taylor, *Working Paper*.

³⁸ Hannah, Hattotuwa and Taylor, *Working Paper*.

³⁹ Hannah, Hattotuwa and Taylor, *Working Paper*, p. 3

⁴⁰ Hannah, Hattotuwa and Taylor, *Working Paper*, p. 3

⁴¹ Rachel Sue Yin Tan, 'Social Media Platforms – Duty of Care' *Australasian Parliamentary Review* 36 (2) 2022, p. 161.

⁴² Center for Countering Digital Hate, 'The Disinformation Dozen – Why platforms must act on twelve leading online anti-vaxxers' 24 March 2021 Accessed at: <<https://counterhate.com/research/the-disinformation-dozen>>.

contravened their terms of service, nor have they effectively restricted access to the online platforms where these individuals disseminate their content.⁴³

The persistent nature of this issue necessitates immediate attention, as its resolution is crucial for the prosperity of democratic nations amidst the digital revolution. Addressing misinformation and disinformation requires a multifaceted approach that balances free speech while protecting individuals from harm.⁴⁴ This includes steps to encourage independent journalism and fact-checking endeavours, educate individuals on media literacy, and hold platforms accountable for damaging information.⁴⁵

COMBATING MISINFORMATION AND DISINFORMATION: A COMPARATIVE APPROACH OF LEGAL FRAMEWORKS

Having regard to the above experiences, it is clear that there is an important role for legislators and regulators when it comes to stemming the flow of misinformation. Past attempts to address the quality and accuracy of information online include the Online Safety Bill in the United Kingdom and The European Union's Digital Services Act. It is my contention that the passage of this legislation will, if successful, make platforms accountable for disseminating harmful content and obligate them to take measures to curb such dissemination. However, it has to be considered that regulating the content on the internet is problematic and controversial, as there are concerns about censorship and the right to freedom of speech.

The EU approach

The implementation of the Digital Services Act (DSA) on 26 August 2023, is a noteworthy achievement in the protection of digital rights inside the European Union

⁴³ Center for Countering Digital Hate, 'The Disinformation Dozen – Why platforms must act on twelve leading online anti-vaxxers' 24 March 2021.

⁴⁴ Molly Leshner, Hanna Pawelec and Arpitha Desai, 'Disentangling untruths online: Creators, spreaders and how to stop them', *OECD Going Digital Toolkit Notes*, No. 23 p. 19.

⁴⁵ Skylar Hughes, 'Lateral reading: The best media literacy tip to vet credible sources', Poynter. Accessed at: <<https://www.poynter.org/fact-checking/media-literacy/2023/lateral-reading-the-best-media-literacy-tip-to-vet-credible-sources/>>.

(EU) during the year 2023.⁴⁶ This landmark legislation represented a significant step forward in the EU's commitment to creating a fairer online environment.⁴⁷ The DSA, designed to modernise the existing e-Commerce Directive, establishes new legal obligations for online platforms.⁴⁸ It aims to enhance transparency regarding content removal and empower users with information on the reasons behind such actions.

The EU's authority to enact the DSA was granted through Directive (EU) 2015/1535, which empowered the European Commission to propose legislative measures in the field of technical regulations and Information Society services to regulate illegal content.⁴⁹

The definition of illegal internet content, as outlined by EU legislation, encompasses four distinct categories (i) material depicting child sexual abuse; (ii) hate speech that promotes racism and xenophobia; (iii) content related to terrorism; and (iv) material that violates Intellectual Property Rights.⁵⁰ The EU's approach to regulating illegal content encompasses both horizontal and vertical regulations. Horizontal regulation, which is analogous to an all-encompassing umbrella, is applied consistently to all harmful content platforms and types, including misinformation and disinformation.⁵¹ Vertical regulation, on the other hand, refers to measures that specifically target content that is illegal according to EU law. Referring to Article 7 of the DSA,

⁴⁶ Emma Roth, 'The EU's Digital Services Act goes into effect today: here's what that means', 23 August 2023. Accessed at: <<https://www.theverge.com/23845672/eu-digital-services-act-explained>>.

⁴⁷ Christoph Schmon and Paige Collings, 'The Adoption of the EU's Digital Services Act: A Landmark Year for Platform Regulation: 2022 in Review' Accessed at : <<https://www.eff.org/deeplinks/2022/12/adoption-eus-digital-services-act-landmark-year-platform-regulation-2022-year>> .

⁴⁸ Christoph Schmon and Paige Collings, 'The Adoption of the EU's Digital Services Act: A Landmark Year for Platform Regulation: 2022 in Review'.

⁴⁹ Council Directive of The European Parliament and of The Council [2015] *Official Journal of the European Union*, 2015/1535.

⁵⁰ Alexandre De Streel, Elise Defreyne, Hervé Jacquemin, Michèle Ledger, Alejandra Michel, Alessandra Innessi, Marion Goubet, Dawid USTOWSKI, 'Online Platforms 'Moderation of Illegal Content Online', Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, PE 652.718 2020, p.16.

⁵¹ Sally Broughton Micova and Alexandre de Streel, 'Digital Services Act – deepening the internal market and clarifying responsibilities for digital services' Accessed at: <https://cerre.eu/wp-content/uploads/2020/12/CERRE_DSA_deepening-the-internal-market-and-clarifying-responsibilities-for-digital-services_Full-report_cember2020.pdf>.

intermediary service providers will not lose their liability exemptions if they act in good faith and diligently, conduct voluntary investigations to find and remove illegal content or comply with EU and national laws. This commitment is aligned with the EU's efforts to enhance the existing framework at the horizontal level, ensuring that digital service providers have clear responsibilities in addressing issues of misinformation and disinformation.⁵²

The recently enacted DSA, designed to regulate online platforms, intermediaries and search engines, has been operational for a limited duration following its implementation, granting these entities a specified time frame for compliance until early 2024 to assure their adherence to its provisions. This period of transition holds significant importance for these entities as they must successfully adjust to the newly implemented regulations, establish the necessary mechanisms, and implement the appropriate procedures to effectively comply with the Act.⁵³ Considering the digital landscape continues to evolve, this time frame represents an opportunity for platforms, intermediaries and search engines to align with the evolving standards of digital governance and user protection. It remains to be seen whether the DSA is effectively achieving its intended goals. However, having said that it is a starting point.

Simultaneously, the European Commission endeavoured to tackle the issue of misinformation and disinformation by formulating the Code of Practice on Disinformation in 2022. The Code of Practice on Disinformation originated from the Digital Services Act (DSA) and aims to provide uniform regulations for digital material within the European Union (EU) member states.⁵⁴

The European Union's Code of Practice on Disinformation is a voluntary commitment with the goal of preventing the spread of disinformation.⁵⁵ It was initiated in response

⁵² Micova and de Streel, *'Digital Services Act – deepening the internal market and clarifying responsibilities for digital services'*.

⁵³ John Groom, Natasha Denton and Kathy Harford, *'European Union: The Digital Services Act – What is changing in the world of tech?'* Accessed at: <https://www.globalcompliancenews.com/2023/10/22/https-insightplus-bakermckenzie-com-bm-technology-media-telecommunications_1-european-union-the-digital-services-act-what-is-changing-in-the-world-of-tech_10172023/>.

⁵⁴ Hyunuk Kim and Dylan Walker, *'Leveraging volunteer fact checking to identify misinformation about COVID-19 in social media'* Harvard Kennedy School Misinformation Review, 2020. Accessed at: <[10.37016/mr-2020-021](https://doi.org/10.37016/mr-2020-021)>.

⁵⁵ European Commission, *'2022 Strengthened Code of Practice on Disinformation'*. Accessed at: <<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>>.

to concerns about the spread of misinformation and disinformation, and it involves signatories. These signatories include major technology companies such as Google, Facebook, and Twitter, in addition to advertising trade associations, media organisations, and civil society groups. Signatories commit to labelling political advertising appropriately, adhering to transparency rules, and disclosing methods for detecting and removing fake accounts, which are often instrumental in spreading disinformation.⁵⁶ They also pledge to promote media literacy among users and collaborate with media organisations and fact-checkers to identify trustworthy sources of news and combat misinformation.⁵⁷

One notable aspect of the Code is its emphasis on collaboration and communication among signatories and stakeholders, a crucial element in addressing the challenges posed by misinformation and disinformation in the digital age.⁵⁸ The Code is a vital move forward as it makes it a legal obligation for very large platforms to mitigate and make an assessment of risks.⁵⁹

The United Kingdom's approach

In 2017-2018 the government of the United Kingdom undertook an enquiry into the issue often known as 'fake news.' The inquiry was carried out by the Digital, Culture, Media, and Sport Committee over the period spanning from 2017 to 2018.⁶⁰ In 2019, the UK Government responded by publishing a White Paper addressing the issue of Online Harms. This paper presents a series of recommended legislative measures

⁵⁶ European Commission, '2022 Strengthened Code of Practice on Disinformation'.

⁵⁷ European Commission, '2022 Strengthened Code of Practice on Disinformation'.

⁵⁸ European Commission, 'Signatories of the 2022 Strengthened Code of Practice on Disinformation'. Accessed at: <<https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation>>

⁵⁹ Brooke Tanner, 'EU Code of Practice on Disinformation' Accessed at: <<https://www.brookings.edu/blog/techtank/2022/08/05/eu-code-of-practice-on-disinformation/>> .

⁶⁰ Jack Edmond, 'Potential responses to the threat of 'fake news' in a digitalised media environment'. *University of Otago*, 2018.

designed to establish a framework of responsibility for internet platforms with regards to the dissemination of harmful content.⁶¹

The UK employs a statutory approach to combat the spread of misinformation and disinformation. This approach includes enhancing media literacy, urging social media companies to assume content responsibility, improving transparency in political advertising, and establishing independent bodies to address these issues. Amid public health crises like the COVID-19 pandemic, efforts have been made to identify and respond to inaccurate or misleading information through initiatives such as the Rapid Review Panel.⁶² The UK's approach acknowledges the complexity of misinformation and disinformation challenges, highlighting the importance of a multifaceted response to safeguard digital integrity.⁶³

The United Kingdom has undertaken a multifaceted approach to address the challenges of misinformation and disinformation. Introduced in 2019, the Online Harm Reduction Bill aimed to establish statutory duties of care on social media platforms, primarily to mitigate the harm caused by internet use. This bill also proposed the creation of the Office of Communications (Ofcom), an independent body tasked with enforcing these duties and developing industry-informed codes of practice.⁶⁴ Ofcom's objective is to enforce a statutory duty of care for all online platform users, including those on Facebook, Instagram, Twitter, and TikTok.⁶⁵

⁶¹ William Perrin, 'Government online harms proposals reflect Carnegie UK Trust work', Linked In post, 5 January 2021. Accessed at: <https://www.linkedin.com/pulse/government-online-harms-proposals-reflect-carnegie-uk-william-perrin?trk=public_profile_article_view>.

⁶² Yuxi Wang, John Bye, Karam Bales, Deepti Gurdasai, Adityavarman Mehta, Mohammed Abba-Aji, David Stuckler & Martin McKee, 'Understanding and neutralising covid-19 misinformation and disinformation'. *BMJ* 379 2022 Accessed at: <<https://www.bmj.com/content/bmj/379/bmj-2022-070331.full.pdf>>.

⁶³ Wang, Bye, Bales, Gurdasai, Mehta, Abba-Aji, Stuckler & McKee, 'Understanding and neutralising covid-19 misinformation and disinformation'. *BMJ* 379 2022 Accessed at: <<https://www.bmj.com/content/bmj/379/bmj-2022-070331.full.pdf>>.

⁶⁴ Lorna Woods, 'The duty of care in the Online Harms White Paper'. *Journal of Media Law*, 11(1), 2019, pp. 6-17.

⁶⁵ House of Lords, Select Committee on Communications, Parliament of United Kingdom, *Regulating In A Digital World*, 2nd Report, Session 2017-19.

The Social Media Code of Practice also offers guidance to social media providers on actions to prevent bullying and offensive behaviour on their platforms.⁶⁶ This code, endorsed by major corporations like Facebook, Google, and Twitter, is reinforced by Section 103 of the *Digital Economy Act 2017*, rendering it a statutory code. It focuses on guiding platforms in preventing bullying and offensive conduct, distinct from the handling of illegal content.⁶⁷

In order to address the issue of misinformation and disinformation, the government of the United Kingdom has established the Centre for Data Ethics and Innovation (CDEI).⁶⁸ This organisation promotes the conscientious utilisation of data and artificial intelligence (AI) technologies.⁶⁹ While algorithms were initially relied upon to identify disinformation, they proved less effective than human moderators in distinguishing between harmful and benign content.⁷⁰ Misinformation's contextual and ambiguous nature challenges automated detection, particularly in the context of new phenomena like COVID-19.⁷¹

New Zealand

In the context of New Zealand, specific forms of misinformation (if deemed as objectionable by the Chief Censor) may be considered illegal. An example of this would be the prosecution of misinformation that advocates for criminal or terrorist activities, which can be carried out in accordance with the Films, Videos, and Publications Classification Act or the Crimes Act. Likewise, racial harassment is encompassed within

⁶⁶ House of Lords, Select Committee on Communications, Parliament of United Kingdom, *Regulating in A Digital World*, 2nd Report, Session 2017-19.

⁶⁷ Department for Digital, Culture, Media & Sport, 'Statutory guidance - Code of Practice for providers of online social media platforms' Accessed at: <<https://www.gov.uk/government/publications/code-of-practice-for-providers-of-online-social-media-platforms/code-of-practice-for-providers-of-online-social-media-platforms>>.

⁶⁸ Department for Science, Innovation and Technology, 'Centre for data Ethics and Innovation' Accessed at <<https://www.gov.uk/government/organisations/centre-for-data-ethics-and-innovation>>.

⁶⁹ Centre for Data Ethics and Innovation, 'The role of AI in addressing misinformation on social media platforms'. Accessed at: <<https://www.gov.uk/government/publications/the-role-of-ai-in-addressing-misinformation-on-social-media-platforms>>.

⁷⁰ Centre for Data Ethics and Innovation, 'The role of AI in addressing misinformation on social media'.

⁷¹ Centre for Data Ethics and Innovation, 'The role of AI in addressing misinformation on social media'.

the scope of the Human Rights Act, and the dissemination of false information on the internet with the intention of inflicting significant emotional distress can also entail legal ramifications.⁷²

This is achieved by virtue of Section 3 of the Harmful Digital Communications Act 2015 (NZ), which explicitly outlines its purpose is to

*... (a)deter, prevent, and mitigate harm caused to individuals by digital communications; and (b)provide victims of harmful digital communications with a quick and efficient means of redress.*⁷³

At the Global Internet Forum to Counter Terrorism held in Paris, France, the Christchurch Call emphasised the necessity of implementing more actions to mitigate the negative impact of online activities, such as imposing a responsibility on social media platforms to ensure user safety.⁷⁴ The Helen Clarke Foundation additionally promotes the proactive investment of social media firms in damage avoidance measures.⁷⁵

In addition, the manner in which the HDCA offers protection to users is by virtue of Section 6⁷⁶ which basically, sets forth 10 Communication Principles for users to follow and adhere to. It defines what is deemed as acceptable or unacceptable behaviour online; in context to its legislative purpose.⁷⁷

The Harmful Digital Communications Act (HDCA) encompasses a set of ten guiding principles. According to Principle 8 of the HDCA, it is specifically stated that digital communication shall refrain from inciting or promoting violence towards any

⁷² Henry Talbot and Alali Nusiebah, 'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'. Accessed at: <https://www.classificationoffice.govt.nz/news/news-items/the-edge-of-the-infodemic/> .

⁷³ *Harmful Digital Communications Act 2015* (NZ).

⁷⁴ Claire Mason and Kathy Errington, 'Anti-social media: reducing the spread of harm content on social media networks', Helen Clark Foundation, 14 May 2019. Accessed at: <https://helenclark.foundation/publications-and-media/anti-social-media/>.

⁷⁵ Claire Mason and Kathy Errington, 'Anti-social media: reducing the spread of harm content on social media networks', Helen Clark Foundation, 14 May 2019.

⁷⁶ *Harmful Digital Communications Act 2015* (NZ), s6.

⁷⁷ Edgar Pacheco and Neil Melhuish '2019 online hate speech insights', Netsafe – Online Safety Help and Advice for New Zealanders. Accessed at: <https://www.netsafe.org.nz/2019-online-hate-speech-insights>

individual. In more accessible language, this implies that there are legal restrictions on social media content that promotes or supports harm against individuals.⁷⁸ The aforementioned legal clause is activated in instances where a detrimental post or upload leads to harm, whereby 'harm' is explicitly defined as the infliction of significant emotional distress, as outlined in s4 of the legislation.⁷⁹

In order for a post to be deemed a criminal act, it is necessary to fulfil a three-part assessment as outlined in section 22 of the Harmful Digital Communications Act (HDCA):

The intention has to be proven to cause harm to the victim;

The post caused by the harm is judged by an ordinary reasonable person in the position of the victim; and

the post resulted in harm suffered by the victim.⁸⁰

In the context of New Zealand, all content intended for public consumption must undergo a thorough evaluation in accordance with the *Film, Videos, and Publications Act 1993* (NZ) (Classifications Act). This evaluation aims to ascertain whether the content in question satisfies the requirements of being non-objectionable. According to the provisions outlined in the *Classifications Act*, a publication is deemed 'objectionable' when it presents or addresses topics such as sex, horror, criminality, cruelty, or violence in a manner that has the potential to adversely impact the welfare of the general public.⁸¹ The responsibility of evaluating the categorisation of a publication lies with the Classification Office, whereby the Chief Sensor holds the ultimate authority in making the final determination.⁸²

⁷⁸ *Harmful Digital Communications Act 2015* (NZ), s6.

⁷⁹ *Harmful Digital Communications Act 2015* (NZ), s4.

⁸⁰ *Harmful Digital Communications Act 2015* (NZ), s22.

⁸¹ *Film, Video, and Publications Classifications Act 1993* (NZ), s3(1).

⁸² *Film, Video, and Publications Classifications Act 1993* (NZ), s3(1).

CULTIVATING MEDIA LITERACY

Like any other jurisdiction, COVID-19 has opened floodgates of fake news and disinformation in New Zealand.⁸³ According to the Classification Office, most New Zealanders trust government leaders, scientists, and the news media online and offline.⁸⁴ The Classification Office also reported that people who trust and use online-only sources of information are more apt to believe misinformation.⁸⁵ Nevertheless, it is imperative for New Zealand to examine analogous legal frameworks in order to effectively address the issue of misinformation and deception. An illustrative example of the application of this legal framework occurred in the context of the Christchurch shooting incident, wherein the judiciary scrutinised a manifesto that had been authored and disseminated online.

It is important to note that individuals in New Zealand acknowledge the seriousness of this matter as a societal preoccupation necessitating aggressive interventions. However, there exists a prevailing variety of viewpoints pertaining to the responsible parties and the appropriate methods via which they ought to address this issue.⁸⁶ A significant segment of the population is accountable for the dissemination of disinformation to governmental entities, news media outlets, and authoritative figures.⁸⁷ The role played by internet users and social media corporations is also considered crucial in tackling this issue.⁸⁸

The New Zealand government and in cooperation with Netsafe, a non-profit organisation, are working to provide the public with information on online safety issues to improve media literacy. They have also facilitated, through the development of a voluntary reporting infrastructure the report of fraud, privacy breaches, harassment and scams that users encounter towards law enforcement.⁸⁹

⁸³ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁴ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁵ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁶ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁷ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁸ Talbot and Nusiebah, *'The Edge of the Infodemic: Challenging Misinformation in Aotearoa'*.

⁸⁹ Rachel Sue Yin Tan, 'Social Media Platforms – Duty of Care' *Australasian Parliamentary Review* 36 (2) 2022, p. 160.

CONCLUSION

In summary, the aforementioned examples underscore the critical significance of actively advocating for ethical practises in the dissemination of information and cultivating strong media literacy skills, emphasising the importance of legislation and enforceable code of conduct. Within the confines of the parliamentary chambers, where crucial decisions with far-reaching implications for a nation's future are thoroughly discussed and considered, it is imperative to foster an environment where information can be shared openly and accessible to all. These decisions impact numerous individuals, making it essential that they are based on a solid basis of factual accuracy.

The cultivation of ethical information-sharing practises within Parliament necessitates the promotion of a dedication to truth, transparency, and accountability in the communication of individual lawmakers and institutional processes. Providing parliamentarians with comprehensive media literacy skills enables them to effectively navigate the extensive and frequently tumultuous realm of information in a discerning manner. These skills provide users with the ability to make well-informed, accountable, and efficient decisions by facilitating the critical examination of sources, recognition of bias, and distinction between trustworthy and questionable information.

Currently, New Zealand is lacking in a comprehensive regulatory framework that imposes legislative measures to address the issue of misinformation. It is imperative to adopt a coherent regulatory framework that encompasses both digital and non-digital platforms. The present administration's dedication to evaluating media regulation in light of the emergence of online harm is encouraging. However, additional inventive approaches are necessary, preferably guided by comparative examinations of alternative legal frameworks. The revision of the New Zealand *Classification Act* represents a singular step in the process, necessitating the implementation of supplementary measures.

Social media platforms and technology organisations, despite lacking legal obligations, possess an ethical duty to address the dissemination of misinformation and disinformation. Unfortunately, while there are efforts by these companies to curb misinformation, there are algorithms that purport and encourage misinformation and

disinformation.⁹⁰ We learn that three significant developments emerged as a result of the COVID-19 pandemic: a worldwide push for content moderation, increased utilisation of AI, and substantial investments in reducing the digital divide.⁹¹

The task of effectively regulating misinformation and disinformation poses a significant challenge, particularly when considering the need to strike a balance that upholds individuals' rights to freedom of speech and expression. Fact-checking resources and programmes aimed at promoting media literacy present a feasible solution. These programmes involve the application of critical information analysis, source evaluation, and evidence-seeking techniques. Although there is significant potential in their application, the efficacy of these measures relies on individuals taking personal accountability for the information they both consume and disseminate. While this objective may not always be attainable, it remains crucial in addressing the pervasive issue of misinformation.

In short, the mitigation of misinformation necessitates a comprehensive strategy encompassing legislative interventions, ethical communication practises, media literacy instruction, and cooperative efforts with digital platforms. As New Zealand traverses this intricate terrain, it has the opportunity to glean valuable insights from comparable jurisdictions and devise innovative measures to protect the veracity of information in the era of digitalisation.

⁹⁰ Kenneth Grad and Amanda Turnbull, 'Harmful Speech and The COVID-19 Penumbra' *Canadian Journal of Law and Technology*, Volume 19, No. 1, 2021, p. 17.

⁹¹ Grad and Turnbull, 'Harmful Speech and The COVID-19 Penumbra' p. 34
