



ADMM Cybersecurity and  
Information Centre of Excellence

# UPDATE ON THE INFORMATION DOMAIN

Issue 10/22 (October)

## Opportunities & Pitfalls in Legislating Social Media

### INTRODUCTION

1. Over the years, the number of social media users has increased tremendously. At its core, social media platforms, such as Facebook, Twitter and Instagram, hold out the promise of connecting people and allowing them to share information with one another across the globe. However, these platforms have also been exploited to amplify misinformation and other harmful content such as terrorist propaganda or hate speeches towards a marginalised community.
2. According to *The Diplomat*, there have been growing concerns among various authorities that users may view these social media platforms as authentic news outlets. This can be problematic as such users may then be misinformed by unverified content online and may even go on to further disseminate the fake news. For instance, as *CPA Canada* reported, misinformation and conspiracies have been increasingly sighted in numerous social media posts over the past two years.
3. *The Hill* reported that, even the employment of tens of thousands of staff — for instance, Meta’s Trust & Safety Team of more than 40,000 moderators — is insufficient to regulate the sheer volume of digital content on social media platforms. Despite the longstanding prevalence of misinformation and harmful content online, many social media companies have yet to implement effective measures to curb the problems. As such, many have called for governments to play a greater role in combatting misinformation.

## *Legislating Social Media Platforms*

4. According to *Law Fare Blog*, lawmakers around the world might feel compelled by increasing public pressure to find ways to mitigate the effects of misinformation and harmful online content. Some lawmakers view legislations as one of the few concrete solutions to tackle the issues of misinformation. Other remedies such as digital literacy programmes and signposting<sup>1</sup> have also been adopted in some countries like the UK and the Philippines, especially in the immediate term.<sup>2</sup> Therefore, governments in various parts of the world have begun looking into legislating social media platforms.

5. Such legislation typically puts the onus on social media companies to comply with certain requirements. Failure to do so may either result in fines or having their platforms blocked by the government. For instance, as *The Diplomat* reported, Indonesia issued the Ministerial Regulation 5 (MR5)<sup>3</sup> in July 2022, which allows the government to issue fines to any social media platforms that fail to comply with the rules. Another prominent example would be the online safety-focused legislation, called the Digital Services Act (DSA)<sup>4</sup>, which was given the final approval recently by the Council of the European Union (EU). The approved legislation will require a new ‘notice and action’ procedure for reporting illegal content by government or state agencies and for the potential removal or blocking of access to certain content by tech companies. Big tech companies are also obliged to carry out annual assessments to identify systemic risks associated with their services and address such risks. Similarly, Singapore passed a bill named Protection from Online Falsehoods and Manipulation Act (POFMA) in 2019.<sup>5</sup> Under POFMA, internet service providers may be ordered to disable access to a declared online location in Singapore where a falsehood is being communicated and failure to comply renders the internet service provider liable to a fine. Both *Business Times* and *The Diplomat* also reported that Vietnam is preparing new rules<sup>6</sup> for social media companies to limit the type of social media accounts that can post news-related content.

<sup>1</sup> Signposting refers to the use of phrases and words to guide the reader through the content.

<sup>2</sup> Digital literacy programmes have to be constantly reviewed and stay afloat of the latest digital trends to achieve desirable results. Hence, it has limited efficacy in the immediate time due to the ever-changing digital landscape.

<sup>3</sup> The new regulation stipulates that tech companies are now obliged to complete registration with Indonesia’s Ministry of Information and Communications Technology. Failure to comply with the requirements would result in the termination of services provided by the companies.

<sup>4</sup> Essentially an overhaul of the region’s social media and e-commerce rules, DSA is a law that aims to limit the spread of illegal content online by establishing a new set of obligations for private actors with the aim to create a secure and safe online environment for all. The DSA applies to only hosting services, marketplaces, and online platforms that offer services in the EU.

<sup>5</sup> POFMA prohibits the communication of false statements of fact in Singapore. Any person or entity that breaks the law will liable to a fine up to \$100,000 for individuals and/or a term of imprisonment up to 10 years. For non-individuals, a fine up to \$1 million will be imposed.

<sup>6</sup> The rules include establishing a legal basis for controlling news dissemination on platforms like Facebook and YouTube while placing a significant moderation burden on platform providers.

6. According to *Forbes*, social media companies have long been shielded from legal liability regarding the content that users publish on their platform under laws such as the US's Section 230 of the Communications Decency Act.<sup>7</sup> The new wave of legislations hold major online social media platforms, such as Meta and Twitter, accountable for illegal and harmful content instead of individual users who upload them. This pushes social media companies to deepen efforts in tackling the spread of misinformation or extreme content by malicious actors online.

7. One of the pitfalls of the legislative approach is that it imposes significant burdens on the social media and tech companies. According to *The Washington Post*, with each new rule demanded by the US Congress or lawmakers, the companies would need to hire more moderators and build software to screen for potentially problematic content. Smaller social media companies like Etsy or Yelp are in an even tougher position, as they do not have the financial wherewithal to resist all the challenges that they might face under the law.

8. Legislating social media and tech companies is not an easy feat, especially due to the potential public backlash revolving around freedom of speech. Some legislations' requirements can be rather broad, and give a lot of power to the government to monitor or censor online content. The *E&T* reported that the current form of the UK's Online Safety Bill<sup>9</sup> was criticised as it did not require the authorities to bear the burden of proof. This meant that an individual could be prosecuted if authorities believed that the offender intended to cause harm. The bill was also said to focus too heavily on moderating content and the impact of user-generated content on individuals, instead of conducting serious checks on the social media platform's algorithms that drive the spread of online falsehood and harm.

<sup>7</sup> Section 230 of the Communications Decency Act states that no computer service providers shall be treated as the publisher or speaker of any information, published by another content provider, meaning its own users.

<sup>8</sup> The Online Safety Bill empowers the government to levy heavy fines or even block access to sites that offend people. Residents can already be published for online statements that court deems offensive under the 2003 communications act and this bill expands the potential scope of such cases.

## ASSESSMENT

9. Regardless of the potential for abuse, many still call for stronger government interventions as they are deemed necessary to limit acute dangers and to moderate hostile content on social media platforms. In order to achieve a balance between individuals' rights to freedom of speech and limiting hostile content – as pointed out by several human rights lawyers – governments or lawmakers should focus on legislating social media firms' algorithms and policies, and not regulating individual pieces of content.

10. Ultimately, these legislations aim to achieve greater transparency of these social media policies and algorithms, and also provide the impetus and opportunities for governments and social media or tech companies to work together to tackle the issues of misinformation and harmful content. According to *The Daily Star*, as governments around the world are moving forward with social media reforms, policy or lawmakers could seek recommendations from various human rights experts or public stakeholders on their policy drafts or proposals. *Campaign Asia* also reported that lawmakers should collaborate and engage in legislative discussions with social media companies. Such engagements would strengthen the working relationship between governments and private tech companies, so that effective and morally-defensible legislations could be developed.

## CONTACT DETAILS

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