

BILETA Response to the Culture, Media and Sport Committee's 'Fake news' inquiry

(See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry2/>)

This is a collaborative submission from a group of academics based in the UK with expertise in Information technology law and related areas. The preparation of the response has been funded by the British and Irish Law Education Law and Technology Association.

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This response has been approved by the Executive of BILETA (the British and Irish Law, Education and Technology Association <http://www.bileta.ac.uk/default.aspx>) and is therefore submitted on behalf of BILETA.

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Call for written submissions

The Culture, Media and Sport Committee are looking at ways to respond to the phenomenon of fake news, focusing in particular on the following questions:

- **What is 'fake news'? Where does biased but legitimate commentary shade into propaganda and lies?**

There are difficulties in defining fake news. One could define it as news without any basis in fact (with satire excluded). Typically it is made for profit rather than political persuasion. In essence, in the digital era, it has become easier and quicker to disseminate false information.

News organisations in a position of power should take responsibility to ensure that facts are checked. Verification, perhaps by groups run in a manner similar to Wikipedia, would be one method, rather than directly by the State. Trusted news organisations can provide a more balanced response to stories of dubious origin.

One of the issues has been that Facebook and other organisations will sometimes prioritise content that could be described as fake, based on the exploitation of their algorithms. Further, as discussed by law academic Danielle Citron, “people forward on what others think, even if the information is false, misleading or incomplete, because they think they have learned something valuable.”¹ The spread of potential fake news is made worse (rightly or wrongly) by the algorithms that prioritise content that could be of interest to an individual based on searches, rather than verification.

The question asked is a dangerous question. It is assuming that fake news may equate to “propaganda and lies”, but it would appear it is more factors pertaining to the desire to make profit, combined with a lack of regard and care for the accuracy of news, that is the main cause of the origination of so called fake news.

- **What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?**

Most critical to these questions is the issue of what “fake news” actually is. The media editor of BuzzFeed, Craig Silverman, raised a key concern in a talk he gave - "It means a lot of different things to different people." He also stated "I think the term 'fake news' has almost been rendered meaningless at this point."

¹ <https://www.theguardian.com/commentisfree/2016/apr/15/cyber-harassment-cyberbullying-revenge-porn-education-laws>

Silverman appears to suggest that it relates in part to when people or organisations in power and authority represent information as being fact when they should know that it is not. The critical issue, it would appear, is the credibility given to information by those who are considered a form of arbiter. People may realise when information is false due to it coming from a certain source, but when that source is considered to be of authenticated authority, that authority is in essence being misused.

Silverman also stressed that most fake news stems from a desire to make money, rather than any single political standpoint. He suggested that money as a driving force behind the creation of fake news is a good method by which to also identify it.

Another issue also relates to the underlying technology of sites such as Facebook and Twitter, which may inadvertently promote fake news stories. Silverman, again - "The last big one is the social network platforms and algorithmic filtering. I don't think Facebook had any idea that a lot of stuff that was false and misleading was getting as much traction as it was—their platform is so big it's impossible to monitor it at that level. Same with Google."

Objectivity and balance do not, of course, lose all value. It is, however, clear that it can be skewed by “fake news”; but that has always been the case. The main issue today is how “fake news” is interpreted; how it could be used to undermine press freedom. To focus on the twin issues of authenticated authority, and the desire to make money as the main cause of making patently false news, would be a means to avoid overregulation of the traditional journalism.

- **Is there any difference in the way people of different ages, social backgrounds, genders etc., use and respond to fake news?**

There has been a limited amount of research on this topic which has largely come to public attention since the US presidential elections of 2016 and as such much of the information available is not directly applicable to UK news consumers. However, given that studies of the young by both Stanford² in the US and Demos³ in the UK reached similar conclusions about lack of critical awareness in young people it seems permissible therefore to draw attention to some US data on adult behaviour in the absence of UK specific material.⁴

² The Stanford History Education Group, “Evaluating Information: The Cornerstone of Civic Online Reasoning” 2016 available online at

<https://sheg.stanford.edu/upload/V3LessonPlans/Executive%20Summary%2011.21.16.pdf>

³ Bartlett, J., and Miller, C., “Truth, Lies and the Internet a Report into Young People’s Digital Fluency” 2011 available online at https://www.demos.co.uk/files/Truth_-_web.pdf

⁴ The Pew Research Centre Study Mitchell, A., et al “How Americans, Encounter, Recall and Act Upon Digital News” 2017 available online at <http://www.journalism.org/2017/02/09/how-americans-encounter-recall-and-act-upon-digital-news/> which deals with news media consumption trends and the Pew Research Centre Study Barthel, L., et al “Many Americans Believe Fake News is Sowing Confusion” 2016 available online at <http://www.journalism.org/2016/12/15/many-americans-believe-fake-news-is-sowing-confusion/>

- Around three quarters of online news is garnered from news organisations/apps and social media with consumers drawing material from them on a roughly equal basis.
- Although over half the time the consumers polled could identify the source of news media they consumed, particularly when it was a recognised news organisation, a disturbingly high 10% named “Facebook” as a specific news outlet. Recall of news sources was lower in younger adults than in their older counterparts although news consumption rates were roughly the same.
- Around 4 out of 5 consumers are confident that they can identify “fake news”
- Around 1 in 3 claim that they see entirely false news online on a regular basis and around 1 in 2 claim that they see inaccurate news online on a regular basis.
- Around 1 in 4 admit passing on false news in some way and approximately half of those who have done so claim that they knew the news was false at the time.
- Material forwarded via email or text by friends and family seems to have the highest likelihood of being acted on in some way.
- Consumers appear to have preferred news “pathways” online and these appear to have topic correlation that is, consumers have personal preferred sources to gather news in general and personal preferred sources to gather news on specific topics.
- Concern and awareness about the issue of fake news seemed to transcend all usual demographics and boundaries.

Thus, one can tentatively suggest that there is a growing trend to gather news via social media, and that although most consumers consider themselves digitally literate enough to identify false reports, there is a statistically significant (though by no means large) portion of adults who clearly do not display sufficient critical skills to do so. There also seems to be a difficulty in this regard with the young as the Stanford and Demos studies suggest, although it should also be noted that these considered criticality of sources online in a general sense and not the specific phenomena of fake news. Finally, it should be recognised that social media suffers from an echo chamber effect which can cause further reporting of a false incident due to shares and retweets within the same social circle to be viewed in the same light as objective third party verification.

- **Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?**

There is a temptation to assume that fake news is made by those who stand directly to benefit from the detailed content of that news. However, as this specific question suggests, this can be

more esoteric in the sense that the content of the fake news can be directed purely by profit, and not necessarily by those who stand to gain from the content of that fake news.

For example, BuzzFeed News conducted an investigation which identified over one hundred websites that they deemed as being “pro-Trump”. These were based in Macedonia. The report indicated that they are responding purely to economic incentives, and that posting more sensationalist stories leads to more clicks, in particular when they are posted to Facebook. Focusing on news events in the US is desirable because US users are worth more per click than many other users within other countries (something confirmed by the Facebook earnings reports)⁵. Indeed, within the US, the issue of fake news would appear to be more pressing due to this fact.

In article carried out for Buzzfeed, an interview with someone who runs a website set up to generate user views, it was stated by the interviewee that “Yes, the info in the blogs is bad, false, and misleading but the rationale is that ‘if it gets the people to click on it and engage, then use it’⁶. A further interview carried out by Buzzfeed saw similar remarks: “I started the site for an easy way to make money,” said a 17-year-old who runs a site with four other people. “In Macedonia the economy is very weak and teenagers are not allowed to work, so we need to find creative ways to make some money. I’m a musician but I can’t afford music gear. Here in Macedonia the revenue from a small site is enough to afford many things.”

The data that comprises these websites are often aggregated from fringe and right wing US websites, which are then shared via Facebook. There is evidence that certain content, particularly right wing content, tends to be more likely to generate clicks than left wing content. For instance, in the Buzzfeed report, four of the five most liked posts from the Macedonian sites are false.

- **What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out 'fake news' from genuine reporting?**

User education and development of critical skills is always the preferable remedy for this kind of difficulty. It is particularly so in the field of politics where there can be vociferous and legitimate difference over the interpretation of facts. Education programmes, especially those aimed at the young are to be applauded (the BBC for instance has recently issued some very useful guidance for young web-users on dealing with “fake” news).⁷

Nevertheless, it is already practical to stop trends expanding on social media, Facebook is currently generating software capable of doing this available already as an entry requirement into

⁵ <https://techcrunch.com/2016/04/27/facebook-q1-2016-earnings/>

⁶ https://www.buzzfeed.com/craigsilverman/how-macedonia-became-a-global-hub-for-pro-trump-misinfo?utm_term=.cigi7Lvjp#.xaOLOWEL4

⁷ <http://www.bbc.co.uk/newsround/39032291>

certain markets.⁸ Google are also developing software to help auto moderate the comments that appear in online forums.⁹ The difficulty is that there are massive logistical (in terms of costs and burdens on service providers) and human rights issues involved – the CJEU has already highlighted this with regard to blocking and filtering for IP protection purposes¹⁰ There is also the perennial policy question of who should be permitted to set the parameters of what counts as fake, ISPs, platform providers or the state.

Thus, it is the considered view of this organisation that whilst technical measures are possible they are not desirable because of the potential for censorship/manipulation and unwarranted intrusion upon the rights of individuals. User education and co-operation with platforms to deal with issues like click bait “news” advertising phenomena are, in our view, more appropriate policy measures.

- **How can we educate people in how to assess and use different sources of news?**
 1. Make the reader act like a fact checker. Wineberg and McGrew of Stanford believe a solution is to get consumers to check facts and question the veracity of news sources. A set of protocols could be constructed to encourage people to follow link to other content to learn about the subject before reading it, to enable evaluation and to compare with other sources and materials.
 2. The Wikipedia system: the utilisation of a referencing system on checking the veracity of information. Over time, peer checking can lead to more accurate information and less biased postings. Editors create, refine, and fact-check content. There should be verifiability, neutrality and there should be no original research. Edits can be seen behind the page. Today, Wikipedia has been described as being as accurate as Encyclopaedia Britannica. Using a system such as this, perhaps using a form of “value mark”, it could be possible to verify news.

- **Are there differences between the UK and other countries in the degree to which people accept 'fake news', given our tradition of public service broadcasting and newspaper readership?**

Yes – it would appear that there are differences. It has been argued that in the UK the most popular news stories have tended to be those which are from more traditional news outlets, and that they are more based around exaggeration rather than being “fake” news as such. As noted

⁸ Isaac, M., “Facebook Said to Create Censorship Tool to Get Back Into China” New York Times available online at https://www.nytimes.com/2016/11/22/technology/facebook-censorship-tool-china.html?_r=0

⁹ Cellan Jones, R “Google’s Plan to make Talk Less Toxic” BBC available online at <http://www.bbc.co.uk/news/technology-39063863>

¹⁰ *SABAM v Netlog (C-360/10)* is particularly apropos here as it concerns filtering content on a social media site and reiterates the CJEU’s view that general filtering raises serious fundamental rights issues.

above, the US would appear to bring in the most money for fake news providers, whereas this difference in the UK would appear to mean that the market for fake news is more restricted in the UK. Regulation of potential fake news therefore might be more likely to focus on the traditional news outlets, rather than on those making fake news for services such as Facebook – fly-by-night services which target the US rather than the UK. See https://www.buzzfeed.com/jimwaterson/fake-news-sites-cant-compete-with-britains-partisan-newspape?utm_term=.me6ZKjKrN#.sr0o0L0rk

Nonetheless, there have been some high profile instances of possible fake news that has been widely spread within the UK. The September 2015 article produced by the Daily Mail concerning David Cameron’s relationship with a dead pig head was widely spread via twitter, yet the author of the newspaper article was nonetheless later able to verify the accuracy or truthfulness of the source. However, there is also the other variety of fake news – that of facts used in political campaigns. When these are repeated in the press, who is it that should hold responsibility for the facts? In the UK, where there is often press support of a particular party, fact verification is something that could become an issue with broader verification of fake news.

- **How have other governments responded to fake news?**

China

The issue of possible fake news in China is not new; issues relating to state censorship and dissent groups mean that much is branded as “fake” in some form or other. However, the most recent trends relating to fake news has led to China introducing more censorship.

Indeed, recent events in the US elections, as well as the threat of terrorism, have led to the Internet being described as dangerous and unwieldy at the 2016 World Internet Conference held in Wuzhen.

Furthermore, Ren Xialing, of the Cyberspace Administration of China (CAC), has recommended the identification for those who are posting fake news and rumours in order to result in criminal punishments.

Germany

Chancellor Angela Merkel has endorsed a proposal that would make publishing fake news a criminal offence, in particular those spread by social media, and would require social media sites to immediately remove fake news stories. There is a worry that it could influence the upcoming German elections. The law is likely to pass.

The German Government has also announced it is going to fine Facebook for the publication of fake news, and likewise, another individual in Germany is seeking to sue Facebook for his depiction as a terrorist.

Iran

The Government of Iran has declared that it will seek to regulate fake news, by expanding regulations covering public news channels, on the Telegram instant messaging app. Channels with 5000 or more members will need to have a licence. ICT minister Mahmoud Vaezi stated that fake news poses a challenge within Iran's rural and less developed regions.

Italy

Giovanni Pitruzzella, in charge of Italy's competition body since 2011, has argued that independent authorities with the support of the state should tackle fake news. He suggested that the system should operate like EU competition law, where the Commission can initiate proceedings against companies for breaches of competition law.

United States

One solution put forward by Marsha Blackburn is regulation by ISPs "If anyone is putting fake news out there, the ISPs have the obligation to, in some way, get that off the web."¹¹ Another idea, suggested by Ari Melber,¹² is that fake news can be regulated by the FTC similarly to fraudsters. It is suggested that the FTC could build a framework, or cooperate with Congress. However, there is the issue as to whether this would pass the power to decide what is fake news to unelected officials.

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¹¹ <http://www.dslreports.com/shownews/Trump-Advisor-Blackburn-Wants-ISPs-to-Pull-Fake-News-Offline-138450>

¹² <https://www.techdirt.com/articles/20170201/23481336610/bad-idea-worst-idea-having-ftc-regulate-fake-news.shtml>