Fake news law: Calibrated approach, but nimbleness needed

Consider the reach of false information in deciding on course of action, and require tech firms to use AI to flag dubious accounts

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On Monday, Minister for Law and Home Affairs K. Shanmugam tabled the Protection from Online Falsehoods and Manipulation Bill in Parliament. The Bill was almost two years in the making, since the Government first mentioned in 2017 that it would legislate against "fake news".

The tabling of the Bill comes after regulatory moves around the world, such as in Germany, France and, more recently, Australia. Even Facebook chief executive Mark Zuckerberg has called for governments to take more involved in regulating the Internet.

The Bill is an acknowledgement that legislation is necessary in a fast-evolving and whole-of-society approach is required to increase people's competency in tackling the scourge.

These components of the Bill stand - interventions for falsehoods that are published online, and the prevention of the publication and dissemination of falsehoods through a proposed Code of Practice for tech companies. The Bill provides a calibrated response to the problem of online falsehoods. Nevertheless, more can be done to maintain the balance between a free and open Internet and intervention and prevention.

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One clear merit of the Bill is that it allows for calibrated responses to counter online falsehoods.

First, the Bill targets only "false or misleading statements of fact", and non-nominees, criticism, satire or parody. It provides a right of appeal to High Court and judicial review to minimize potential censorship. This is important as one key concern flagged by members of the Select Committee, including the authors, is that legislation should not stifle free speech.

Second, the Bill sets down directions are reserved for extreme situations where falsehoods pose egregious harm to society. The take-down order, which is part of the Stop-Communication Direction, would require the person who committed and the false statement to remove it from an online location within a specified time period. Besides considering the falsity of the statement of fact, as well as the boundaries of the reach of the falsehoods, the Bill also sets out a time limit to prevent durational harms.

In addition, the Bill also provides for a number of tools, such as the defamation of public officer and public figure. The idea is to target anti-social communication in areas that may potentially put Singapore at risk of an epidemic similar to what the United States is facing. However, an over-reaction on take-down measures risk creating a "Strank-Effect" - named after entrepreneur Barbra Streisand, who attracted more public attention to her residence when the media tried to prevent the release of her photographs - where attempts to suppress a falsehood result in an unintended consequence of driving more attention to the falsehood itself.

Third, the Government can require relevant parties to make retraction statements that are published online. As falsehoods are often distributed quickly, considering the credibility of the poster and public interest, the potential reach of a falsehood should also be considered.

As part of a 50-year framework to guide legislative acts in one proposed by the Select Committee for the Bill, we had recommended that "consequences" - in terms of detention and expulsion - of a falsehood should be considered.

Some falsehoods die a natural death because the consequences of no action, or no reaction, is perceived to be too small. Such small falsehoods should not be given the oxygen to grow bigger.

This is the reason why the Bill recognises that some falsehoods may only require a retraction or a correction, and not necessarily a take-down order.

Finally, the Bill strikes a balance between the harm caused by falsehoods and the interest of the public in opposing falsehoods. The Bill does this by ensuring that the public interest in opposing falsehoods is not outweighed by the right of the provider of information or opinion.