

The Regulation of Online Disinformation in Singapore

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Abstract: IT-savvy Singapore is typically seen by many governments as a model for governance, especially in the technology space. Understandably, when Singapore passed its Protection Against Online Falsehoods and Misinformation Act in 2019 to address misleading information, many took notice. This article discusses the process of the passage and early uses of the law. The distinctive features of the law are that it can only be used by the government (not citizens), against falsehoods online (not offline) and the truthfulness of a statement is determined by a government minister, with an appeal to the court in the event the truthfulness of the statement is disputed. Statements are allowed to stay online on condition that a correction statement by the Singapore Government is inserted on the same page. While platforms and online media have all complied when given such “correction directions”, one overseas Singaporean user has resisted and has had his Facebook page geo-blocked in Singapore. The Singaporean approach suggests that while it can work, there are limitations to the law.

Keywords: social media, Singapore, fake news, anti-fake news law, misinformation, disinformation, Facebook, freedom of expression, censorship

Chapter 1. Introduction

When the Singapore Government presented the Protection Against Online Falsehoods and Misinformation Bill in 2019, it was immediately criticised by several parties including the International Commission of Jurists, which said the law made the government “the sole arbiter of what information is permissible online and what is not”.¹

1 ICJ, “Singapore: Parliament must reject internet regulation bill that threatens freedom of expression.” April 4, 2019, accessed July 6, 2021, <https://www.icj.org/singapore-parliament-must-reject-internet-regulation-bill-that-threatens-freedom-of-expression/>.

Notwithstanding the criticism, and perhaps because of the legend of Singapore being more information-technology savvy, the law has been studied in several countries. It was viewed favourably when compared with the Malaysian anti-misinformation law that was eventually scrapped.² Nigeria's anti-social media bill, which failed to pass, was titled "Protection from Internet Falsehood and Manipulation and for Other Related Matters Bill". The similarity in title and content led to criticism of plagiarism.³ Sri Lanka studied the Singapore law before passing its own anti-fake news.⁴

Many governments have been reluctant to move in early to regulate platforms. First, this is partly due to the international dominance of philosophies that favour experimentation and innovation in new markets. Second, because of the challenges in regulating many areas of digital platforms that have accumulated over 20 or more years of efforts in regulation and governance of Internet, social and mobile media and apps. Ironically, in some respects digital platforms can be easy to identify for regulation purposes – because of their 'platform' characteristics, and especially because many of the large ones have conspicuous owners or custodians. However, the platforms are not often subject to licensing regimes, nor is the nature of their offending services, public concerns, or 'market failures' easy to address – as the case of content moderation shows (where automation and algorithms can only go so far).

Singapore has typically wished to cultivate the business, economic, productivity, and social connectivity of platforms, with the kind of open and facilitative approach it has used for ICTs over many years. This can be seen in the 'sandbox' approach to fintech apps, where the Singapore Government, like a number of others, has sought to fashion a new 'light-touch' regulatory approach to a clearly highly lucrative emerging area of digital platforms. However, the major exception for Singapore has been the regulation of particular kinds of Internet content that are not consistent with its norms and expectations on appropriate types of speech, or do not respect social cohesion (especially in relation to racial and intercultural

2 Kok, 2021.

3 Sunday Aborisade, "Anti-social media bill: Senator defends alleged plagiarism of Singapore statute," *Punch Newspapers*, accessed June 23, 2021, <https://punchng.com/anti-social-media-bill-senator-defends-alleged-plagiarism-of-singapore-statute/>.

4 Shreetesh Angwalkar and Roxanne Powell, "Culture Matters: Sri Lanka Implements Singapore Style Law to Control Fake News," *Spherex*, accessed June 23, 2021, <https://spherex.com/regulation/sri-lanka-implements-singapore-style-law-to-control-fake-news/>.

harmony). So Singapore has had a longstanding set of approaches to governing freedoms of expression on the Internet.⁵

Fake news and misinformation is a leading area world-wide where due to mounting concerns in recent years governments have been prepared to step in. This is certainly the explicit rationale for Singapore's Protection Against Online Falsehoods and Misinformation Act (POFMA), which it has insisted upon, in the face of criticisms that the law is the latest instance of Singapore's emphasis on keeping a tight rein on freedom of expression, especially with the new possibilities of communication via Internet, blogs, and mobile and social media platforms. The public discussion and consultation on the POFMA reforms, and especially the most dramatic moments in the parliamentary committee proceedings showed an implacable will- ingness of key government figures to send a strong message to digital platform operators. This is all the more impressive, given the power of the transnational operators of these firm – and also in the face of Singapore's keen desire to establish itself as the preferred Asia-Pacific headquarters of marquee tech firms.

Having conceded on POFMA (or having little choice but to do so), digital platforms based in Singapore are keen to head off at the pass, so to speak, other tendencies in platform regulation gathering momentum elsewhere.⁶ The digital platforms are clearly more comfortable with Singapore's stance on privacy and data regulation (although privacy concerns have surged with data collection and use in COVID-19 public health surveillance – e.g. via contact tracing apps and QR check-ins) or its light to moderate consumer protections in relation to digital services, products, and platforms. So, it is likely that the platforms see POFMA as a continuation of Singapore's long-running efforts in censorship and control of information, content, and types and contexts of expression that is deemed inappropriate or offensive.

This article aims to explain how the POFMA came to pass.

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- 5 Howard Lee and Terence Lee, "From contempt of court to fake news: public legitimisation and governance in mediated Singapore," *Media International Australia* 173, no. 1 (June 2019), <https://doi.org/10.1177/1329878X19853074>; Peng Hwa Ang and Berlinda Nadarajan, "Censorship and the Internet: a Singapore perspective," *Communications of the ACM* 39, no. 6 (June 1996), <https://doi.org/10.1145/228503.228520>.
 - 6 Terry Flew et al., "Return of the regulatory state: A stakeholder analysis of Australia's Digital Platforms Inquiry and online news policy," *The Information Society* 37, no. 2 (2021), <https://doi.org/10.1080/01972243.2020.1870597>.

Chapter 2. Context

Back in 2014, the first author had encountered Metamorphosis, an NGO in Skopje, Macedonia (now called North Macedonia), that was fact-checking Macedonian newspapers. It was such a novel idea that the first author remembered it but as it was not part of the research agenda, it was not pursued.

Then in the 2016 US Presidential election, the BBC uncovered a city in Macedonia that was “getting rich from fake news”.⁷ Law Minister K. Shanmugam said in Parliament in April 2017 that the Singapore Government was “seriously considering” a law to combat “fake news” as current laws were inadequate.⁸ Two months later, he added that such a law was a “no-brainer”.⁹

Then in an unusual move, the government convened a Parliamentary Select Committee in 2018 to study the issue and seek feedback from experts and the public.¹⁰ Altogether 167 written representations were received of which 65 individuals and organisations gave oral presentations that eventually lasted two working weeks.¹¹

Two persons’ feedback stood out in the hearing. The first was Facebook’s vice-president of public policy for Asia-Pacific, Simon Milner. He admitted that the company had been remiss in its handling of the Cambridge Analytica issue.¹²

The second was Oxford visiting scholar Thum Ping Tjin, who in his submission to the Select Committee asserted that “‘fake news’ has not, historically, had much of an impact in Singapore — with one major exception: the People’s Action Party government has, historically, spread ‘fake news’ for narrow party-political gain”.¹³ Thum, on the last day of the Committee’s meeting, was then subjected to a six-hour exchange with

7 Emma Jane Kirby, "The city getting rich from fake news," BBC, accessed June 23, 2021, <https://www.bbc.com/news/magazine-38168281>.

8 Rachel Au-Yong, "Parliament: Government to review laws to tackle fake news," The Straits Times, accessed June 23, 2021, <https://www.straitstimes.com/politics/parliament-government-to-review-laws-to-tackle-fake-news>.

9 Seow Bei Yi and Nur Asyiqin M. Salleh, "Shanmugam sets out strategies in battle against fake news," The Straits Times, accessed June 23, 2021, <https://www.straitstimes.com/singapore/shanmugam-sets-out-strategies-in-battle-against-fake-news>.

10 Seow, 2018a.

11 Sim, 2018.

12 Seow, 2018b.

13 Ping Tjin Thum, "Submission to the Select Committee on Deliberate Online Falsehoods, Parliament of Singapore. Written Representation 83," 1, accessed

Minister Shanmugam in his capacity as Select Committee member who questioned Thum's research and his position at the University of Oxford. Among the issues raised by Minister Shanmugam was the veracity of a 2013 paper in which Thum alleged that false information was used by the government to justify preventive detention in Operation Coldstore in 1963.¹⁴

The Singapore-based human rights organisation, Maruah, said that the Committee appeared to be "overly focused, through a process of intense interrogation, on showing that the witnesses were propagators of 'falsehoods'".¹⁵ The Chair of the Committee later said that "no weight" had been given to Thum's views.¹⁶

Chapter 3. What is PoFMA/ How Does PoFMA Work

The Act defines a "statement of fact" as "a statement which a reasonable person seeing, hearing or otherwise perceiving it would consider to be a representation of fact" (S. 2(2a)). This uses the fabled "reasonable person" as the yardstick to determine facticity. This would be an objective standard.

On the other hand, what is false or misleading is not clearly defined. Under the Act, a statement is deemed to be false "if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears" (S. 2(2b)). Oddly, the reasonable person is absent, which suggests a subjective standard.

June 23, 2021, <https://www.parliament.gov.sg/docs/default-source/sconlinefalsehoods/written-representation-83.pdf>.

- 14 In Operation Coldstore, 113 persons were arrested in a covert security operation that the government said was "aimed at crippling the Communist open front organisation" that threatened Singapore's internal security. Current scholarship differs on the degree of the Communist threat. While Thum argues that the Communist threat was inflated, another scholar (Ramakrishna, Kumar (2015). *Original Sin: Revising the Revisionist Critique of the 1963 Operation Coldstore in Singapore*. Singapore: ISEAS Publishing) argues otherwise.
- 15 Low Youjin, "Maruah slams Select Committee's 'confrontational stance'," today, accessed June 29, 2021, <https://www.todayonline.com/singapore/maruah-slams-select-committees-confrontational-stance>.
- 16 Faris Mokhtar, "No weight given to historian Thum Ping Tijn's views and he 'clearly lied' about credentials, says committee," today, accessed June 29, 2021, <https://www.todayonline.com/singapore/no-weight-given-historian-thum-ping-tjins-views-he-not-credible-representor-select>.

Under the Protection from Online Falsehood and Manipulation Act, which passed in 2018, any Minister can issue a “correction direction” to statements made online that are false in his or her view and if the Minister thinks that it is in the public interest to issue such a direction (Section 11).

The public interest test is defined in S. 8(3) as false statements that may:

- be prejudicial to the security of Singapore or any part of Singapore;
- be prejudicial to public health, public safety, public tranquillity or public finances;
- be prejudicial to the friendly relations of Singapore with other countries;
- influence the outcome of an election to the office of President, a general election of Members of Parliament, a by-election of a Member of Parliament, or a referendum;
- incite feelings of enmity, hatred or ill-will between different groups of persons; or
- diminish public confidence in the performance of any duty or function of, or in the exercise of any power by, the Government, an Organ of State, a statutory board, or a part of the Government, an Organ of State or a statutory board,

While subparagraphs (a) to (e) are mentioned in the freedom of speech clause in Article 14 of the Singapore Constitution, subparagraph S. 8(3)(f) (diminish public confidence) may be questionable because it is not specifically mentioned in that Article.

As practised, the correction direction means posting a correction in a prominent position but the original post stays. Such a direction, in the face of a resistant author, would require the cooperation of the online host or platform.

In the government’s view, because “[c]ensorship entails banning or suppressing offending material” and the government has “not banned or suppressed” the post, there is no censorship.¹⁷

Minister Shanmugam said that the correction direction “actually encourages greater democracy” because it encourages more information. He

17 Justin Ong, “In letter to Washington Post, Govt refutes Pofma criticism, saying it ‘has not suppressed anything,’” today, accessed June 29, 2021, <https://www.todayonline.com/singapore/letter-washington-post-govt-responds-pofma-criticism-saying-it-has-not-suppressed-anything>.

said, “You can argue censorship only if your article is taken down. But your article is there. So, what are you embarrassed about?”¹⁸

The law also empowers the Minister to issue a “stop communication direction” (S. 12). So far, no such direction has been issued. The correction direction could also be “targeted” (S. 21) so that only those who received the original post would see the correction. It could also be “general” (S. 23) so that those who visit the platform or site but not the specific page would also view the correction. Most of the correction directions have been targeted.

A general correction was issued in May 2021 after an Indian politician asserted that a new Singapore variant especially dangerous for children was spreading to India.¹⁹ In such an order, Facebook, Twitter and the newspaper and magazine conglomerate Singapore Press Holdings (SPH) was directed to post such a general correction such that all users would see the correction, even if they had not seen the original post.

For offenders who do not comply with correction or stop directions, access to the site or platform may be blocked through an “access blocking order” that is given to an intermediary or service provider (S. 28). For recalcitrant offenders, even if they comply with the correction or stop directions, access may also be denied they have had more than three such directions in a six-month period. Alex Tan, who had run as an opposition candidate during the general election of 2011, is the only person who has been issued such a blocking order. In February 2020, Facebook was ordered to block access to Tan’s page as he had not posted corrections following at least three correction orders dating from November 2019. The more recent posts concerned the COVID-19 situation in Singapore. Tan’s page was designated a Declared Online Location (S. 32) and Facebook was issued a disabling order to block the page.²⁰

18 Aqil Haziq Mahmud, “POFMA encourages democracy, does not disadvantage opposition: Shanmugam on upcoming General Election,” Channel News Asia, accessed June 29, 2021, <https://www.channelnewsasia.com/news/singapore/pofma-democracy-disadvantage-opposition-election-ge-shanmugam-12857488>.

19 “Pofma correction directions to be issued to Facebook, Twitter, SPH Magazines over 'Singapore' variant of Covid-19 falsehood,” Today, accessed June 29, 2021, <https://www.todayonline.com/singapore/pofma-correction-directions-facebook-twitter-sph-magazines-singapore-variant-falsehood>.

20 “Facebook blocks Singapore users' access to States Times Review page,” Channel News Asia, accessed June 29, 2021, <https://www.channelnewsasia.com/news/singapore/facebook-blocks-singapore-users-access-states-times-review-pofma-12446952>; Info-Communications Media Development Authority, *Protection from Online Falsehoods And Manipulation Act 2019 (Act 18 Of 2019) Notice of Declaration Under*

Of all the orders, Facebook appears most concerned about the access blocking order. It said: “We believe orders like this are disproportionate and contradict the government’s claim that POFMA would not be used as a censorship tool” (BBC News 2020).²¹

Chapter 4. Issues

The Protection Against Online Falsehoods and Misinformation Bill was the subject of much controversy when it was first presented. Academics from the authors’ university, including the first author, petitioned to say that academic research could be caught under the Act because new research when first presented could run counter to conventional wisdom and so may be deemed as false. There had been an incident years before when two authors were criticised for being inaccurate in their findings that had used data from the government’s website that were incomplete.²²

The current Education Minister Ye Kung Ong said that the two economists would not have been caught under the new law because they did not fabricate data nor cause public alarm.²³

The most significant concern was over the power of any minister to decide whether a statement was false and to order a correction. Thus, the government can invoke the law, but ordinary citizens may not.

Also contentious was the determination of facticity. The Minister for Law Shanmugam in the second reading of the Bill reiterated the distinction between facts, which the law was intended to cover, and opinion, which the Bill did not. He added that the ultimate arbiter would not be

Section 32(5) of Act. (424). [POFMA/DC/2020/02-02; AG/LEGIS/SL/256B/2015/4 Vol. 1]. <https://www.egazette.com.sg/pdf.aspx?ct=gg&yr=2020&filename=20gg0442.pdf>.

- 21 “Facebook expresses ‘deep concern’ after Singapore orders page block,” BBC News, accessed June 29, 2021, <https://www.bbc.com/news/world-asia-51556620>.
- 22 “Singapore attacks ‘foreigners get most new jobs’ claim,” The Star, Accessed June 29, 2021, <https://www.thestar.com.my/news/regional/2003/08/02/singapore-attack-s-foreigners-get-most-new-jobs-claim>.
- 23 Janice Lim, “Education Minister explains why fake news laws don’t apply to erroneous 2003 study on job creation,” Today, accessed June 29, 2021, <https://www.todayonline.com/singapore/academics-will-not-be-caught-proposed-laws-if-they-abide-research-discipline-education>.

the government but a judge.²⁴ But after the Bill was passed, the Deputy Attorney-General in a court case said that the law did cover matters of interpretation and that a correction direction may be issued based on the minister's interpretation.²⁵

Further, S. 61 of the Act empowers the Minister of Communication and Information, under whose purview to Act falls, to exempt "any person or class of persons from any provision of this Act." It has been pointed out that, taken at face value, this means the Minister may exempt all his or her fellow ministers from having to meet the requirement of truthfulness or potential harm when issuing a direction. Taken in good faith, the writers Wijaya and Thuraisingam suggest that the exemption may be for criminal liability. But then this would be interfering with the judicial process. In any event, the provision could do with clarity through legislation or judicial review (2019).

Chapter 5. Use

Since POFMA came into force in October 2019 to July 2020, 71 orders have been issued. The most frequent recipients of the orders have been activists and opposition political figures.²⁶ The first POFMA order was directed to Brad Bowyer, an opposition political figure, for a Facebook post that questioned the independence of government-linked investment companies.²⁷ The next three correction directions were issued to persons who were affiliated with opposition political parties. This led Nominated Member of Parliament Walter Theseira to ask if "the Government was setting up 'speed traps where opposition politicians drive and not elsewhere'". Information Minister S. Iswaran replied that the use of POFMA against

24 Parliament Singapore, *Singapore Parliamentary Debates*, Vol. 94, Sitting No: 104, Sitting date: May 7, <https://sprs.parl.gov.sg/search/fullreport?sittingdate=07-05-2019>.

25 Rei Kurohi, "Fake news law does cover matters of interpretation: AGC," *Straits Times*, January 18, 2020, <https://www.straitstimes.com/singapore/fake-news-law-do-es-cover-matters-of-interpretation-agc>.

26 Andrea Carson and Liam Fallon, *Fighting Fake News: A Study of Online Misinformation Regulation in the Asia Pacific* (Melbourne: La Trobe, 2021), <https://doi.org/10.26181/60640ea43558f>.

27 "POFMA Office directs Brad Bowyer to correct Facebook post in first use of 'fake news' law," Channel News Asia, accessed June 29, 2021 <https://www.channelnewsasia.com/news/singapore/brad-bowyer-facebook-post-falsehood-pofma-fake-news-12122952>.

politicians was “an unfortunate convergence or coincidence”, adding that it was “just the consequence of their actions”.²⁸

Of the correction directions issued from November 2019 to July 2020, 12 were directed at foreign entities. And of these, 10 were directed at Alex Tan’s Facebook page and his clutch of websites; Tan was affiliated with an opposition political party but had moved to live in Australia.

Chapter 6. Comparison with Other Jurisdictions

How does the POFMA compare with the laws passed elsewhere?

Under Germany’s 2018 Network Enforcement Act (“Netzwerkdurchsetzungsgesetz”, colloquially referred to as the “Facebook Law” or “NetzDG”) social media platforms must remove “illegal content” (such as hate speech and pro-Nazi ideology) or face fines of up to €50 million. NetzDG empowers the authorities to remove content that are illegal under existing laws. Singapore’s POFMA law creates new offences for the intentional malicious spread of falsehoods. A speedy response, instead of removal of the content, is the primary focus.²⁹

France’s law empowers judges to remove misinformation during the election campaign upon the complaint of any political party or candidate. The judge must decide within 48 hours of the complaint if the information is manifestly false, was being disseminated widely online, and might compromise the outcome of the election. The law applies only during an election campaign. Unlike the Singapore law, any political party or candidate may invoke the law. On the other hand, the French law only provides for blocking of the content instead of a correction notice.³⁰

More recently, correction directions have been given over information surrounding the COVID-19 pandemic. A year after the passage of the bill, the state-owned TV news station, Channel News Asia, evaluated the effectiveness of the law. It suggests that by enabling the control of the

28 Janice Lim, “‘Unfortunate coincidence’ initial Pofma actions directed at opposition parties, affiliated figures: Iswaran,” Today, accessed June 29, 2021, <https://www.todayonline.com/singapore/unfortunate-coincidence-first-four-pofma-actions-directed-opposition-politicians>.

29 Sashi Jayakumar, Benjamin Ang and Nur Diyanah Anwar, „Fake news and disinformation: Singapore perspectives,” in *Disinformation and Fake News*, eds. Sashi Jayakumar, Benjamin Ang and Nur Diyanah Anwar (Singapore: Palgrave Macmillan, 2020), 137-158, https://doi.org/10.1007/978-981-15-5876-4_11.

30 Jayakumar, Ang and Anwar, „Fake news and disinformation”.

spread of misinformation, POFMA may have contributed to the relative success of Singapore in taming the pandemic with low infection and low mortality rates.³¹

Chapter 7. What Next

That misinformation in the news may have serious practical consequences in life has been made most evident by the pandemic. However, the ways to battle the spread of misinformation have yet to be fully understood. For example, while social media have often been blamed for the rapid propagation of misinformation, some research suggests that the use of social media may in fact reduce the spread of misinformation when other variables are controlled.³² The reason is that the use of social media affords wider exposure to other information.

In that light, the process and outcome of the deployment of POFMA could well be reviewed. In the political sphere, it is not clear if there were any winners. Correction directions were issued during the 2020 General Election campaign period. Singapore's electioneering period is only nine days, the minimum specified by law. Because of the fact, that the turnaround time to file an appeal in court is nine days, a correction direction during the electioneering period has almost no chance of being reversed by the court. Did POFMA affect the campaigning or the election outcome? Opposition political leaders appear divided. One said that they could "take advantage" of the law to ferret out information by "forcing" the government to issue corrections on controversial statements. Another opposition figure received four correction directions, which meant that his social media posts had to be amended to include the correction from the government.³³ The view that POFMA was aimed at political figures was

31 Aqil Haziq Mahmud, "IN FOCUS: Has POFMA been effective? A look at the fake news law, 1 year since it kicked in," Channel News Asia, accessed June 29, 2021. <https://www.channelnewsasia.com/news/singapore/singapore-pofma-fake-news-law-1-year-kicked-in-13163404>.

32 Daniel Halpern, Sebastián Valenzuela, James Katz, and Juan Pablo Miranda, "From Belief in Conspiracy Theories to Trust in Others: Which Factors Influence Exposure, Believing and Sharing Fake News," in *Social computing and social media. Design, human behavior and analytics*, ed. Gabriele Meiselwitz (Cham: Springer, 2019), 217-232, https://doi.org/10.1007/978-3-030-21902-4_16.

33 Bhavan Jaipragas, "Has Singapore's fake news law passed the election test?" *South China Morning Post*, July 7, 2020, <https://www.scmp.com/week-asia/politics/article/3092228/has-singapores-fake-news-law-passed-election-test>.

strengthened when there were no directions issued for several months after the 2020 General Election. On the other hand, informal conversations suggests that such directions during electioneering may backfire by garnering underdog support for the opposition parties.

The somewhat technical but critical point of burden of proof itself will require review. At the time of writing, there was a point of law that had yet to be settled: on whom does the burden of proof lie to prove the truthfulness of a statement? That is, if a Minister were to issue a correction direction, would he or she have to prove that the statement in question was false? Or is the burden of proof on the individual to prove that the statement is true? Two conflicting cases have led to an appeal that has apparently yet to be decided.³⁴

Finally, using correction as the chief mechanism to address misinformation will require further follow up and research. It is known that there is a “boomerang effect” in persuasive messages where such messages have the opposite effect of the intended outcome. It would appear that the truth indeed is out there.

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34 Lydia Lam, “Judgment reserved in The Online Citizen, SDP’s POFMA appeals, as court grapples with legal issues including burden of proof,” *Channel News Asia*, accessed June 29, 2021, <https://www.channelnewsasia.com/news/singapore/toc-sdp-pofma-appeals-judgement-court-appeal-13121094>.

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