

FAKE NEWS AS A CHALLENGE FOR JOURNALISTIC STANDARDS IN MODERN DEMOCRACY

Prof. Dr. Udo Fink and Dr. Ines Gillich***

I. INTRODUCTION

In her commencement speech to Harvard University graduates in 2019, the German Chancellor Angela Merkel recalled how important it is to be “truthful in our attitude towards others and ourselves,” which “requires us not to describe lies as truth and truth as lies.”¹

Since U.S. President Donald Trump has accused newspapers and TV channels of disseminating “fake news” about him and his administration, this topic has been on the agenda for debate.² Recent activities of the now defunct British consulting company Cambridge Analytica have put the focus of this controversial debate more and more on social media. According to the testimony of a former Cambridge Analytica employee to the European Parliament in an official hearing, Cambridge Analytica not only sought to influence public opinion during the “Brexit” campaign but it was also involved in the 2016 U.S. presidential elections.³ The company was assisted in this process by obtaining access to the personal profiles of millions of Facebook users when they or their friends agreed to share their personal data with the app “thisisyourdigitallife.”⁴ Giving this app permission to access information of the user’s friends resulted in the

* Johannes Gutenberg–Universität Mainz (Germany).

** Johannes Gutenberg–Universität Mainz (Germany).

¹ Kate Sullivan & Maegan Vazquez, *Angela Merkel to Harvard Grads: ‘Tear Down Walls of Ignorance and Narrow-mindedness,’* CNN (May 31, 2019), <https://edition.cnn.com/2019/05/30/politics/angela-merkel-harvard-speech-walls/index.html>.

² For example, on May 9, 2018, U.S. President Trump mentioned on his Twitter account: “The Fake News is working overtime. Just reported that, despite the tremendous success we are having with the economy & all things else, 91% of the Network News about me is negative (Fake). Why do we work so hard in working with the media when it is corrupt? Take away credentials?” Donald J. Trump (@realDonaldTrump), TWITTER (May 9, 2018, 4:38 AM), <https://twitter.com/realDonaldTrump>.

³ In his testimony to the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs on June 4, 2018, Wylie said: “I don’t believe Brexit would have happened were it not for the data targeting technology and network of actors set up by Cambridge Analytica.” Ella Wills, *Cambridge Analytica Whistleblower Calls for Second Referendum as He Tells MEPs Data Scandal ‘Caused Brexit,’* STANDARD (June 4, 2018), <https://www.standard.co.uk/news/world/cambridge-analytica-whistleblower-calls-for-second-referendum-as-he-tells-meps-data-scandal-caused-a3855216.html>.

⁴ Issie Lapowsky, *Facebook Exposed 87 Million Users to Cambridge Analytica*, WIRED (Apr. 4, 2018), <https://www.wired.com/story/facebook-exposed-87-million-users-to-cambridge-analytica/>; Kevin Granville, *Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html>.

revelation of the personal data of millions of Facebook users.⁵ Cambridge Analytica then was able to use the data profiles to send targeted information or disinformation to try and influence voters in these campaigns.⁶

One of the major tools used by such companies are “bots,” which are software applications that run automated tasks over the internet.⁷ Bots can be used to create fake online profiles, and they can be programmed to operate social media accounts that automatically generate or disseminate content to other users of social platforms or otherwise interact with their accounts.⁸ These “social bots” are particularly active on Twitter, but they are also found on many other social media platforms that increasingly form part of the system of political communication in many countries. For instance, ahead of the 2019 European parliamentary election, Facebook announced that it had removed numerous accounts from its platform that were false or were spreading fake news.⁹ According to a recent study, sixty-six percent of all tweets that link to URLs for popular news and current event websites are made by suspected bots.¹⁰ The St. Petersburg-based Internet Research Agency, a Russian “troll farm” with supposedly close ties to the Russian Government, has become notorious for making widespread use of bots to manipulate public opinion by posting deliberately inflammatory or provocative comments.¹¹ The company employs dozens of specialists to spread its preferred views on Facebook, YouTube, and elsewhere.¹² In China, the so-called “50-Cent Party,” a group of commentators which are hired by Chinese authorities, uses a massive number of personal accounts to flood the internet with comments.¹³

⁵ Lapowsky, *supra* note 4.

⁶ Carole Cadwalladr & Emma Graham-Harrison, *Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach*, *GUARDIAN* (May 17, 2018), <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

⁷ Udo Fink, *Social Media in Election Campaigns: Free Speech or A Danger for Democracy?*, in *BIG DATA, POLITICAL CAMPAIGNING AND THE LAW: DEMOCRACY AND PRIVACY IN THE AGE OF MICRO-TARGETING* 102 (Normann Witzleb et al. eds., 2019).

⁸ Samuel Woolley & Marina Gorbis, *Social Media Bots Threaten Democracy. But We Are Not Helpless*, *GUARDIAN* (Oct. 16, 2017), <https://www.theguardian.com/commentisfree/2017/oct/16/bots-social-media-threaten-democracy-technology>.

⁹ Valentina Za & Raissa Kasolowsky, *Facebook Takes Down Fake Italian Accounts Ahead of EU Election*, *REUTERS* (May 12, 2019), <https://www.reuters.com/article/us-facebook-italy/facebook-takes-down-fake-italian-accounts-ahead-of-eu-election-idUSKCN1SI0M4>.

¹⁰ STEFAN WOJCIK ET AL., PEW RES. CTR., *BOTS IN THE TWITTERSPHERE* 4 (2018), https://www.pewinternet.org/wp-content/uploads/sites/9/2018/04/PI_2018.04.09_Twitter-Bots_FINAL.pdf.

¹¹ Fink, *supra* note 7, at 103.

¹² Dan Mangan & Mike Calia, *Special Counsel Mueller: Russians Conducted 'Information Warfare' Against US During Election to Help Donald Trump Win*, *CNBC* (Feb. 16, 2018), <https://www.cnn.com/2018/02/16/russians-indicted-in-special-counsel-robert-muellers-probe.html>.

¹³ See Michael Bristow, *China's Internet "Spin Doctors"*, *BBC NEWS* (Dec. 16, 2008), <http://news.bbc.co.uk/2/hi/asia-pacific/7783640.stm>; Gary King, Jennifer Pan & Margaret E. Roberts,

II. SHORT HISTORY OF FAKE NEWS

Fake news campaigns are not new and not necessarily linked with modern communication technology. Neither is disinformation a new phenomenon of the twenty-first century. History is full of examples of fake news, only the ways and means of disseminating them have changed. First, it was neighboring gossip and false testimony of political figures. Then, in 1493, the invention of the printing press by Johannes Gutenberg dramatically amplified the potential for disseminating disinformation. For example, in 1835, *The Sun*, a New York-based newspaper, published several articles about the discovery of life on the moon, accompanied by illustrations of humanoid bat-creatures and bearded blue unicorns presumably discovered by the astronomer Sir John Herschel.¹⁴ The so-called “Ems dispatch,” originally an internal message from the Prussian King to then Prussian Prime Minister Otto von Bismarck, had been shortened and edited by Bismarck with clear intent to incite France to declare the Franco-Prussian War in 1870.¹⁵ Another master of manipulation was Joseph Stalin, who ordered the use of ink and brush to wipe out disgraced revolutionaries from original photographs.¹⁶ One of the most famous manipulated pictures shows Lenin on a grandstand in Moscow; the original, which pictured Trotsky standing next to him, had been retouched.¹⁷

When radio became popular, Orson Welles used it to tell his version of the H. G. Wells’s novel, *The War of the Worlds*, in 1938.¹⁸ Wells reported “on air” about an atrocious attack of extraterrestrials starting on a farm in Grover’s Mill, New Jersey, and climaxing with a live report describing giant Martian war machines releasing clouds of poisonous smoke across New York City. Although preceded by a clear introductory remark that the show was a drama, the piece became famous for allegedly having caused mass panic.¹⁹ Some listeners, who had heard only a portion of the broadcast, mistook it for a genuine news broadcast. They shared the false reports with others and the media. Many newspapers assumed that the large number of phone calls and the scattered reports of listeners rushing about or

How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, Not Engaged Argument, 111 AM. POL. SCI. REV. 484 (2017).

¹⁴ JIM WILLIS, 100 MEDIA MOMENTS THAT CHANGED AMERICA 19 (2009).

¹⁵ GEOFFREY WAWRO, THE FRANCO-PRUSSIAN WAR: THE GERMAN CONQUEST OF FRANCE IN 1870–1871 37 (2003).

¹⁶ PETER STEPAN, PHOTOS THAT CHANGED THE WORLD: THE 20TH CENTURY 10 (2000).

¹⁷ *Id.*

¹⁸ Martin Chilton, *The War of the Worlds Panic Was a Myth*, TELEGRAPH (May 6, 2016), <https://www.telegraph.co.uk/radio/what-to-listen-to/the-war-of-the-worlds-panic-was-a-myth>.

¹⁹ *Id.*

even fleeing their homes proved the existence of a mass panic. But in reality, such behavior had never occurred.²⁰

Starting in 1933, the Nazi regime used radio and film as tools to indoctrinate the population, to spread hate speech against Jews and other minorities, and to attack foreign governments.²¹ The British Government also used propaganda and fake news during World War II. For example, the journalist Sefton Delmer, working for the British government, created a fictional German figure, an unrepentant Nazi called the “Chef,” who reported fake news about Germany.²²

III. EARLY ATTEMPTS TO REGULATE FAKE NEWS: THE “INTERNATIONAL BROADCASTING CONVENTION” OF 1936

The first multilateral undertaking to regulate peacetime propaganda was the “Convention Concerning the Use of Broadcasting in the Cause of Peace” of 1936.²³ The original nineteen Member States, all Members of the League of Nations, sought to react to the pervasive use of broadcasting for spreading aggressive political propaganda, especially by Germany and the Soviet Union before and during World War II.²⁴ Under Article 3 of the Convention, the Parties “mutually undertake to prohibit and, if occasion arises, to stop without delay within their respective territories any transmission likely to harm good international understanding by statements the incorrectness of which is or ought to be known to the persons responsible for the broadcast.”²⁵ According to the *travaux préparatoires* of the Convention, this obligation should also apply to news.²⁶

The Convention also establishes a duty to fact-check information before broadcasting. Article 4 states that the Parties “mutually undertake to ensure . . . that stations within their respective territories shall broadcast information concerning international relations, the accuracy of which shall have been verified—and that by all means within their power—by the

²⁰ *Id.*

²¹ See Nico Voigtländer & Hans-Joachim Voth, *Nazi Indoctrination and Anti-Semitic Beliefs in Germany*, 112 PROC. NAT'L ACAD. SCI. 7931, 7931 (2015), <https://www.pnas.org/content/pnas/112/26/7931.full.pdf>.

²² Matthew Shaer, *Fighting the Nazis With Fake News*, SMITHSONIAN MAG. (Apr. 2017), <https://www.smithsonianmag.com/history/fighting-nazis-fake-news-180962481>.

²³ International Convention Concerning the Use of Broadcasting in the Cause of Peace, Sept. 23, 1936, 186 L.N.T.S. 301 [hereinafter International Convention].

²⁴ John B. Whitton, *War by Radio*, FOREIGN AFF. (Apr. 1941), <https://www.foreignaffairs.com/articles/1941-04-01/war-radio>.

²⁵ International Convention, *supra* note 23, at 309.

²⁶ *Preliminary Draft International Agreement for the Use of Broadcasting in the Cause of Peace*, League of Nations Doc. C.12.1934.XII (1934).

persons responsible for broadcasting the information.”²⁷ With respect to private broadcasters, under Article 6, the Member States

mutually undertake to include appropriate clauses for the guidance of any autonomous broadcasting organizations, either in the constitutive charter of a national institution, or in the conditions imposed upon a concessionary company, or in the rules applicable to other private concerns, and to take the necessary measures to ensure the application of these clauses.²⁸

The International Broadcasting Convention is still in force today and other states, including Hungary and the Russian Federation, have acceded to it.²⁹ The Convention, however, has not played a significant role in practice.

IV. “FAKE NEWS” AND “DISTORTED NEWS”

Despite various proposals by scholars to define “fake news” and to distinguish it from other forms of distorted or misleading information, there is still no consensus on the definition of this concept. According to some scholars, “fake news” describes deliberately false factual statements, i.e. lies, distributed through news channels.³⁰ Others conceive a broader meaning to cover speech that is presented in such a way as to make its recipients likely to draw certain false conclusions (distorted news or “fake news” in a broader sense).³¹ The EU High Level Expert Group (2018) has adopted a broad definition, characterizing “fake news” as disinformation that “includes all forms of false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit.”³² Distorted news in this sense conveys a certain presentation of true facts that cater to or reinforce the preconceptions of the audience, thus

²⁷ International Convention, *supra* note 23, at 309.

²⁸ *Id.* at 311.

²⁹ See *League of Nations Treaties: International Convention concerning the Use of Broadcasting in the Cause of Peace*, U.N. TREATY COLLECTION, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/LON/PARTII-1.en.pdf>.

³⁰ Mark Verstraete, Derek E. Bambauer & Jane R. Bambauer, *Identifying and Countering Fake News* 1, 5–9 (Ariz. Legal Stud. Discussion Paper No. 17-15), <https://ssrn.com/abstract=3007971>. For a similar definition, see Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31 J. ECON. PERSP. 211 (2017).

³¹ See HANNAH ARENDT, *BETWEEN PAST AND FUTURE: EIGHT EXERCISES IN POLITICAL THOUGHT* 251 (1961).

³² EUR. COMM’N, HIGH-LEVEL GRP. ON FAKE NEWS & ONLINE DISINFORMATION, *A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION* 5–6 (2018), <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation> [hereinafter *A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION*].

provoking them to draw false conclusions. An example of this would be reporting exclusively on statistics of crimes committed by immigrants, but ignoring studies that show crime generally decreasing while immigration is increasing.³³

A recent study found out that academic articles between 2003 and 2017 used the term “fake news” to refer to a range of different phenomena including news satire, news parody, fabrication, manipulation, advertising, and propaganda.³⁴ International bodies have not yet uniformly and clearly defined the concept of “fake news” in legally binding terms. For instance, in Resolution 2212 (2018), the Parliamentary Assembly of the Council of Europe considers “fake news,” “propaganda,” and “disinformation” to be different forms of manipulation.³⁵ In Resolution 2217 (2018), the Assembly considers “fake news” to be a form of “mass disinformation campaigns,” which constitute a technique of a “hybrid war.”³⁶ Also, the Organization for Security and Co-operation in Europe acknowledges “fake news” in the title of its 2017 joint declaration, but it only mentions “disinformation” and “propaganda” throughout the main text.³⁷

Domestic legislators are also struggling to find the right words to describe “fake news,” as recent debates and efforts to introduce anti-“fake news” laws demonstrate. For example, a proposed French law against “manipulation of information” originally left “fake news” undefined but its third draft now considers “fake news” to be “any allegation of a fact that is inaccurate or misleading.”³⁸ Under this legislation, judges would enjoin statements that are “likely to ‘distort the fairness of the election’ . . . and if their propagation on the internet was made ‘deliberately’ and ‘in an artificial or automatized and massive way.’”³⁹ The German Network Enforcement Act (NetzDG), passed on June 30, 2017, does not define “fake news.”⁴⁰ Rather, this statute requires large social media platforms to promptly remove “illegal content,” which, as defined in various provisions

³³ See, e.g., Anna Flagg, *The Myth of the Criminal Immigrant*, N.Y. TIMES (Mar. 30, 2018), <https://www.nytimes.com/interactive/2018/03/30/upshot/crime-immigration-myth.html>.

³⁴ Edson C. Tandoc, Jr., Zheng Wei Lim & Richard Ling, *Defining “Fake News”: A Typology of Scholarly Definitions*, 6 DIGITAL JOURNALISM 137, 141 (2018).

³⁵ The Protection of Editorial Integrity, Eur. Parl. Ass. Res. 2212, at paras. 8.7, 9.5 (2018).

³⁶ The Legal Challenges Related to Hybrid War and Human Rights Obligations, Eur. Parl. Ass. Res. 2217, at para. 3 (2018).

³⁷ See Special Rapporteur on Freedom of Opinion and Expression et al., *Joint Declaration on Freedom of Expression and “Fake News,” Disinformation and Propaganda* (2017), <https://www.osce.org/fom/302796>.

³⁸ Thomas Hochmann, *Shedding Light or Shooting in the Dark – How to Define Fake News?*, VERFASSUNGSBLOG (Sept. 5, 2018), <https://verfassungsblog.de/shedding-light-or-shooting-in-the-dark-how-to-define-fake-news/>.

³⁹ *Id.*

⁴⁰ See Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken [Network Enforcement Act], Sept. 1, 2017, BGBl I (Ger.).

of the German Criminal Code, ranges widely from insult of public office to actual threats of violence.⁴¹ An Italian legislative act proposed but not adopted in 2017 defined “fake news” as “false, exaggerated, or biased” news reports online.⁴² In 2018, the Italian Ministry of Interior further aimed to combat “fake news” by introducing a system of reporting “manifestly biased and unfounded news” and openly defamatory content.⁴³

The lack of a consistent and uniform definition of “fake news” makes legal regulation problematic. “Fake news” in the strict sense, understood as the deliberate dissemination of false statements of facts, are verifiable—a statement of fact is either objectively true or false. Therefore, from a general and policy perspective, legal regulation of social media platforms may be an effective tool to combat “fake news” and to promote a free market of information.

V. THE “FREE MARKET OF INFORMATION”

Without any doubt, free speech is essential for democracy. Information about relevant political topics and a pluralistic market of ideas enable citizens to make reasonable decisions, especially in elections or referenda. But legal regulation has to ensure that the process of disseminating facts and opinions is self-determined and not state-controlled. As Ernst-Wolfgang Böckenförde, former judge of the German Federal Constitutional Court, once stated: “Every liberal, secularised state lives from preconditions which it cannot guarantee itself. A liberal state can . . . only succeed if the freedom which it grants its citizens is self-regulated from within, as a result of the moral substance of each individual and the homogeneity of its society.”⁴⁴ Justice Oliver Wendell Holmes, dissenting in *Abrams v. United States*, wrote:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.⁴⁵

⁴¹ *Id.* § 1.

⁴² Sofia Verza, *Tackling Fake News, the Italian Way*, RESOURCE CENTRE (May 22, 2018), <https://www.rcmediafreedom.eu/Tools/Legal-Resources/Tackling-fake-news-the-Italian-way>.

⁴³ *Id.*

⁴⁴ Fink, *supra* note 7, at 99 (quoting ERNST-WOLFGANG BÖCKENFÖRDE, STAAT, GESELLSCHAFT, FREIHEIT: STUDIEN ZUR STAATSTHEORIE UND ZUM VERFASSUNGSRECHT 60 (1976)).

⁴⁵ *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

But was Justice Holmes right? Does this mean that any state interference with the free flow of information is dangerous for democracy and legally unjustified? Should all individuals be free to decide for themselves which information and opinion is relevant for them? Or rather, should the use of free speech in itself be limited by public interests such as democracy, transparency, and personal honour of other persons? Can a democracy be allowed to leave its fate entirely to the free market of information?

These questions are not new, but are asked again in the “internet age.” The immense opportunities offered by the internet make the dissemination of false information easy. Interestingly, statements that seriously disregard the integrity of facts are particularly popular among users.⁴⁶ False reports spread exponentially and surpass the reach of renowned news sites.⁴⁷ With each interaction, their reception increases like in a snowball system. Their success is often induced by emotionalizing and polarizing contents.⁴⁸ The suggestive power of disinformation increases even further through audio-visual innovations, such as the so-called “deep fakes.”⁴⁹ Moreover, disinformation can heat up the socio-political climate and mislead the democratic decision-making process, especially when it takes place during pre-electoral periods. The Brexit vote has shown that the deception of even a fraction of the potential voters can determine the political fate of an entire nation.⁵⁰

VI. THE ROLE OF TRADITIONAL MEDIA

Traditionally, free speech has depended vitally on mass media like newspapers, books, radio, and television. These sources spread facts, encourage public accountability, and multiply opinions. The European Court of Human Rights has characterized these functions as the “vital public-watchdog role of the press.”⁵¹ But the press and other traditional mass media are no longer the only watchdogs. Recently, the Court has accepted that the activities of civil society organizations, which the Court has described as “social watchdog[s],” may justify protection similar to that

⁴⁶ See Karsten Schmehl, *Das sind 8 der erfolgreichsten Falschmeldungen auf Facebook 2018*, BUZZFEED (Dec. 14, 2018), <https://www.buzzfeed.com/de/karstenschmehl/falschmeldungen-facebook-2018-fakes-luegen-fake-news> (discussing the “most popular” fake news on Facebook in 2018).

⁴⁷ See Soroush Vosoughi et al., *The Spread of True and False News Online*, 359 SCI. MAG. 1146 (2018).

⁴⁸ See *id.*

⁴⁹ See Robert Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy and National Security*, 107 CALIF. L. REV. 1753 (2019).

⁵⁰ Uri Freidman, *Should the Brexit Vote Have Happened at All?*, ATLANTIC (June 27, 2016), <https://www.theatlantic.com/international/archive/2016/06/brexit-vote-referendum-democracy/488654/>.

⁵¹ *Goodwin v. The United Kingdom*, 22 Eur. H.R. Rep. 123, at para. 39 (1996).

afforded to the press.⁵² It would not be a big step to extend this reasoning to social media platforms operating on the internet.

An important characteristic distinguishing traditional media from social network platforms is that traditional media has a bottleneck, with journalists serving as gatekeepers of the news.⁵³ The editor of a newspaper decides which information or opinion will be published. Newspapers usually have a political leaning—a conservative newspaper will not usually publish socialist ideas and vice versa. The freedom of the press is thus understood to guarantee the freedom of journalistic activity in a broad sense. The protection extends from the procurement of information to the dissemination of news and opinions. It includes the right to determine, maintain, change, and implement the political leaning and contents of a newspaper.⁵⁴ The underlying rationale is that competition in news markets promotes truth or, as Justice Holmes stated in *Abrams v. United States*, “the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . . That at any rate is the theory of our Constitution.”⁵⁵

In contrast, public broadcasting stations are committed to serving the public interest. Their primary mission is to enable the general public to take part in democratic discourse by exposing its members to a wide range of viewpoints and opinions. Public broadcasters following the model of the British Broadcasting Corporation, for example, are legally obligated to inform in a balanced way, avoiding one-sided political opinions.⁵⁶ Broadcasting regulation is less “liberal” compared to that of the press and film. The German Constitutional Court gives two reasons for that: First, broadcasting plays a special role in public communication, being suggestive, current, and having spread-effect.⁵⁷ Second, there is a specific risk of market failures when it comes to private broadcasting.⁵⁸ At least in Germany, public broadcasting has a reputation for professional journalism that is not one-sided, while private broadcasting is definitely not on the same level.⁵⁹ Private broadcasters are generally apt to pursue market-driven objectives, which leads to programs that are attractive to a mass audience

⁵² *Magyar Helsinki Bizottság v. Hungary*, App. No. 18030/11, Eur. Ct. H.R., at para. 25 (2016).

⁵³ See Gabrielle Tutherford, *What Is the Role of Gatekeeping Journalists in Today's Media Environment?*, MEDIUM (May 18, 2017), <https://medium.com/@gabrielleterutherford/what-is-the-role-of-gatekeeping-journalists-in-today-s-media-environment-2034a30ba850>.

⁵⁴ Cf. BVerfGE 52, 283 (297).

⁵⁵ *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

⁵⁶ Karin Wahl-Jorgensen et al., *Rethinking Balance and Impartiality in Journalism? How the BBC Attempted and Failed to Change the Paradigm*, 18 JOURNALISM 781, 800 (2017).

⁵⁷ See BVerfGE 90, 60 (87).

⁵⁸ See *id.*

⁵⁹ Fink, *supra* note 7, at 101.

but do not represent the whole range of information, experiences, and values existing in our society.⁶⁰ This is the main reason for the German Federal Constitutional Court (1) acknowledging that public broadcasting has an indispensable role in securing media plurality in a democratic society and (2) accepting the constitutional validity of a system of public financing through a compulsory charge on every household.⁶¹

VII. OLD-FASHIONED MEDIA VERSUS THE INTERNET

Ideally, traditional media works as a guarantor for valuable information. Quality press and broadcasters only publish news gathered by professional journalists who follow certain core principles like truthfulness, accuracy, objectivity, impartiality, fairness, and public accountability.⁶²

The internet has enabled more voices to reach a broad audience. This seems to make the communication landscape more pluralistic, maybe even more democratic. The classic “gatekeepers” are no longer necessary to disseminate facts and opinions. Everybody can use social media, chat rooms, or blogs to share their own ideas with others and, in principle, everybody else can access these ideas.⁶³ This makes our worldwide market of ideas far more colourful. It also functions to a certain point as a safeguard against a one-sided information policy of governments that are not founded on democratic legitimation and do not allow free press and broadcasting. As Justice Louis D. Brandeis wrote in his concurring opinion in the case *Whitney v. California*: “The remedy to be applied [to falsehood and fallacy] is more speech, not enforced silence.”⁶⁴

However, for some time now, we have been able to observe that completely unregulated speech can also be a danger for democracy and specifically for free elections and referenda.⁶⁵ Of course, traditional media has never been free of one-sided or even fake news. But at least the public generally knows or can find out who is responsible for the reported facts and ideas.⁶⁶ Newspapers have reputations for being right or left wing, or for

⁶⁰ *See id.*

⁶¹ *See id.* at n.14 (“This charge currently gives public broadcasters access to about 8 billion Euro per year.”).

⁶² *See IFJ Global Charter of Ethics for Journalists*, INT’L FED’N OF JOURNALISTS, <https://www.ifj.org/who/rules-and-policy/principles-on-conduct-of-journalism.html> (last visited Apr. 17, 2020).

⁶³ *See* Anand Giridharadas, *The New Gatekeepers of Media*, N.Y. TIMES (Apr. 8, 2011), www.nytimes.com/2011/04/09/us/09iht-currents09.html.

⁶⁴ *Whitney v. California*, 274 U.S. 357, 377 (1927).

⁶⁵ Fink, *supra* note 7, at 101.

⁶⁶ For instance, under German law each newspaper is obliged to publish an “*impressum*,” which contains information about the publisher, all journalists of the newspaper, and the person responsible for a specific article. Fink, *supra* note 7, at 101 n.11.

being serious or sensationalist. Since traditionally there is good and bad journalism, people are able to categorize specific commentaries and have developed standards to evaluate the truth of specific information.⁶⁷

In contrast, where news is published by non-traditional media on the internet, the reliability of information and its sources is often more difficult to evaluate.⁶⁸ News on the internet can be published by private individuals or groups who lack the means or even the goodwill to check their information. In other cases, the published information originates from foreign states or agencies who have a range of agendas and intentions, with fake news becoming an issue of increasing concern.⁶⁹ Thus, commentators note that the emergence of social media marks the beginning of a new age of the public sphere.⁷⁰ The internet allows for the publishing of content without the economic or educational entrance barriers. It facilitates the formation of groups and the creation of a “global village.” Such decentralized and horizontal discussion cannot be supervised with the same instruments as the centrally-organized, traditional mass media, therefore leaving behind a regulation and control vacuum.

VIII. THE EU COMMISSION CAMPAIGN

In 2018, as a consequence of scandals like the Cambridge Analytica involvement in the Brexit referendum, the EU Commission started a campaign called “Tackling Online Disinformation,” explaining that:

While technologies offer new and easy ways, notably through social media, to disseminate information on a large scale and with speed and precision, they can also be used as powerful echo chambers for disinformation campaigns. Disinformation erodes trust in institutions and in digital and traditional media and harms our democracies by hampering the ability of citizens to take informed decisions. It can polarise debates, create or deepen tensions in society and undermine electoral systems, and thus have a wider impact on European security.⁷¹

⁶⁷ Fran Yeoman, *The Value of Professional Journalism*, INDEPENDENT (Dec. 4, 2013), <https://www.independent.co.uk/voices/comment/the-value-of-professional-journalism-8982792.html>.

⁶⁸ Zeynep Tufekci, *It's the (Democracy-Poisoning) Golden Age of Free Speech*, WIRED (Jan. 16, 2018), www.wired.com/story/free-speech-issue-tech-turmoil-new-censorship.

⁶⁹ Nick Anstead & Ben O'Loughlin, *Social Media Analysis and Public Opinion: The 2010 UK General Election*, 20 J. COMPUTER-MEDIATED COMM. 204 (2015).

⁷⁰ JURGEN HABERMAS, *THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY* 24 (1991).

⁷¹ *Tackling Online Disinformation*, EUR. COMM'N (April 26, 2018), http://europa.eu/rapid/press-release_MEMO-18-3371_en.htm.

Disinformation “even erodes free speech by manipulating people’s views and covertly influencing their decisions.”⁷² In light of these considerations, “[t]he Commission expressed the view that public authorities have a duty to make citizens aware of and protect them against such activities,” and it proposed three remedies to tackle the issue: “an EU-wide Code of Practice on Disinformation, support for an independent network of fact-checkers, and tools to stimulate quality journalism.”⁷³

From these reports it becomes clear that the Commission—at least in the short term—opts for self-regulatory instruments. The Commission’s approach has been heavily criticized. Critics claim that purely self-regulatory instruments grounded on civil society initiatives are insufficient.⁷⁴ Moreover, the unilateral initiatives of the EU Member States might lead to a patchwork of varying legislative solutions that will be difficult to harmonize at a later stage.⁷⁵ Given the international dimension of the problem, any attempt to find solutions therefore requires an action (at least) at the EU level. The European Union appears better suited than its Member States to define the specific roles of different actors (social platforms, news media, and users) and to determine their responsibilities in the light of common guiding principles.

Despite the need for multilateral regulation, it must also be borne in mind that the European Union can address this issue through legal acts only if the specific measure finds a legal basis in the EU treaties.⁷⁶ While the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of certain “European policies,” particularly in the area of competition law,⁷⁷ the European Union treaties do not explicitly confer competences on the EU organs in the areas of regulation of free speech or the protection of democracy. Article 11 of the Charter of Fundamental Rights provides for the protection of freedom of expression.⁷⁸ But this provision cannot serve as a basis for legal acts. The same can be stated for the specific problem of “fake news” during an electoral process. According

⁷² Fink, *supra* note 7, at 104.

⁷³ *Id.*

⁷⁴ Roberto Mastroianni, *Fake News, Free Speech and Democracy: A (Bad) Lesson from Italy?*, 25 *Sw. J. INT’L L.* 42, 74 (2019).

⁷⁵ *Id.*

⁷⁶ Consolidated Version of the Treaty on European Union, art. 9, para. 1, Oct. 26, 2012, 2012 O.J. (C 326) 18 [hereinafter TEU] (“Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.”)

⁷⁷ Consolidated Version of the Treaty on the Functioning of the European Union, arts. 101–109, Oct. 26, 2012, 2012 O.J. (C 326) 88 [hereinafter TFEU].

⁷⁸ Charter of Fundamental Rights of the European Union, art. 11, Dec. 18, 2000, 2000 O.J. (C 364) 11.

to Article 2 of the Treaty of the European Union (TEU), the European Union is based on the principle of democracy.⁷⁹ General elections to the European Parliament take place every five years, but they are only partially governed by common European rules, such as the principle of proportional representation and incompatibilities with a mandate as a Member of the European Parliament.⁸⁰ Article 223(1) of the TFEU empowers the European Parliament to “draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States,” and it establishes that the Council shall then decide upon the necessary provisions.⁸¹ However, the EU organs have not made use of this competence until recently. Thus, the electoral system and the number of constituencies are still governed by national laws of the Member States.

A competence of the European Union to legislate in this area, therefore, could only be established on the grounds of the “harmonization clause” of Article 114 of the TFEU.⁸² This provision gives the EU the authority to create uniform standards applicable across the common market.⁸³ It has served as a legal basis for a number of EU directives concerning electronic communication and media services.⁸⁴ The same rationale could apply to an EU act regulating “fake news” since inconsistent national laws could prompt a Member State to restrict a particular internet service based in another Member State, thus hampering the proper functioning of the common market.

Putting the question of the European Union’s competence to enact legislation aside, it is also questionable whether more stringent EU acts on “fake news” or disinformation, which substantively go beyond proposals of self-regulatory instruments, would be consistent with the right of free speech as enshrined in the EU Charter of Fundamental Rights and the European Convention on Human Rights. The right to free speech, however, is not absolutely protected in Europe but can be restricted under certain conditions, such as to serve a legitimate aim in the public interest, to protect

⁷⁹ TEU art. 2.

⁸⁰ *See Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage*, annexed to Council Decision 76/787, 1976 O.J. (L 278) 1 (Euratom).

⁸¹ TFEU art. 223, para. 1.

⁸² TFEU art. 114 (“The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.”)

⁸³ *See id.*

⁸⁴ *See, e.g.,* Council Directive 2000/31, art. 4, 2000 O.J. (L 178) 1 (EC); Council Directive 2010/13, art. 53, para. 1, 2010 O.J. (L 95) 1 (EU).

the rights of others, or to stay within the confines of the principle of proportionality.⁸⁵ In this context, the question of journalistic standards for the dissemination of speech is of major importance.

IX. FREE SPEECH AND JOURNALISTIC STANDARDS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The intentional dissemination of wrong facts, hiding one's own identity, or the deceptive use of bots in public discourse are not only incompatible with the precepts of professional journalism, but they also pose serious challenges to the concept of freedom of expression under Article 10 of the European Convention on Human Rights. In *Pentikäinen v. Finland*, the Grand Chamber of the European Court of Human Rights (ECtHR) held that the "protection afforded by Article 10 of the Convention to journalists is subject to the provision that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism."⁸⁶

While the ECtHR's case law makes clear that the concept of responsible journalism is founded primarily on issues relating to the contents of a publication, it also means that journalists exercising their freedom of expression are not absolved from other duties and responsibilities. In *Pentikäinen v. Finland*, the ECtHR further noted that

paragraph 2 of Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to media coverage of matters of serious public concern. In particular, and notwithstanding the vital role played by the media in a democratic society, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that, as journalists, Article 10 affords them a cast-iron defence.⁸⁷

In that case, the applicant's failure to obey a police order to leave the scene of a demonstration that had turned into a riot was a relevant, if not decisive, consideration when determining whether that person acted responsibly.⁸⁸ With some variation, these principles are applicable to non-professional media like blogs and other private postings.⁸⁹

In *Társaság a Szabadságjogokért v. Hungary*, a case originating in 2005, the applicant before the ECtHR was "a non-governmental

⁸⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10(2), Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights].

⁸⁶ *Pentikäinen v. Finland*, App. No. 11882/10, Eur. Ct. H.R., at para. 90 (2015).

⁸⁷ *Id.* at para. 91.

⁸⁸ *Id.* at paras. 57, 109.

⁸⁹ *See Id.*

organisation whose declared aim is to promote fundamental rights [and] to strengthen civil society and the rule of law in Hungary.”⁹⁰ The ECtHR stated:

The function of the press includes the creation of forums for public debate. However, the realisation of this function is not limited to the media or professional journalists. In the present case, the preparation of the forum of public debate was conducted by a non-governmental organisation. The purpose of the applicant’s activities can therefore be said to have been an essential element of informed public debate. The Court has repeatedly recognised civil society’s important contribution to the discussion of public affairs. . . . In these circumstances, the Court is satisfied that its activities warrant similar Convention protection to that afforded to the press.⁹¹

Pentikäinen and Társaság a Szabadságjogokért show that freedom of the press and all other forms of (electronic) media depend on the ability and willingness of news organizations to inform people about socially relevant topics. The yardstick to evaluate the relevance of their publications is their level of journalistic professionalism. Only information derived from trustworthy sources and double-checked under professional standards can lead to a well-informed society being able to perform democratic rights.

Human rights obligations from the European Convention on Human Rights, however, are not directly applicable between private persons or private organizations.⁹² This leads to the question of whether Member States have a duty under the Convention to implement journalistic standards for speech on internet platforms and to target the dissemination of “fake news” under domestic law.

X. DUTIES OF MEMBER STATES UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

All Member States of the European Convention on Human Rights have the duty to grant conditions under which democratic processes run in

⁹⁰ *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, Eur. Ct. H.R., at para. 9 (2009).

⁹¹ *Id.* at para. 27.

⁹² See, e.g., European Convention on Human Rights, *supra* note 85, at art. 10(1) (“This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.” (emphasis added)); *id.* at art. 8(2) (“There shall be no interference by a public authority with the exercise of this right.” (emphasis added)).

conformity with the Convention.⁹³ Their obligation to enable a free flow of information makes it imperative for Member States to create legal and factual conditions that minimise the occurrence of this type of undemocratic influence.⁹⁴

These obligations are specifically important during election campaigns affected by Article 3 of Protocol No. 1 to the European Convention on Human Rights. This provision stipulates: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”⁹⁵ Interpreting this provision in the light of the Preamble of the Convention, according to which fundamental human rights and freedoms are best maintained by “an effective political democracy,” it can be held that Article 3 of Protocol No. 1, enshrining a characteristic principle of democracy, is of prime importance in the Convention system.⁹⁶

The provision on free elections under Article 3 of Protocol No. 1 differs from other Convention rights. The difference appears in its wording, which contains neither a direct reference to a subjective “right” nor to a prohibition. Rather, the provision is phrased as an obligation of the Member States.⁹⁷ Unlike all the other rights of the Convention, the wording does not refer to individuals who can invoke a particular right, but to the “free expression of the opinion of the people.”⁹⁸ Despite this wording, the ECtHR understood this provision as containing a subjective right that can be invoked by individuals, whether they are active voters, passive voters, or political parties.⁹⁹

The ECtHR was asked to interpret this provision for the first time in the case of *Mathieu-Mohin and Clerfayt v. Belgium*, where the Court noted that “the primary obligation in the field concerned is not one of abstention or non-interference, as with the majority of the civil and political rights, but one of adoption by the State of positive measures to ‘hold’ democratic elections.”¹⁰⁰ The ECtHR has since ruled that Article 3 of Protocol No. 1

⁹³ See European Convention on Human Rights, *supra* note 85, pmb1.

⁹⁴ Cf. Matthias Klatt, *Positive Obligations under the European Convention on Human Rights*, 71 ZaöRV 691, 691 (2011).

⁹⁵ Council of Europe, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, Mar. 20, 1952, E.T.S. No. 005 [hereinafter First Protocol].

⁹⁶ See *Mathieu-Mohin and Clerfayt v. Belgium*, 10 Eur. H.R. Rep. 1 (1987).

⁹⁷ Compare First Protocol, *supra* note 94, at art. 3 (“The High Contracting Parties undertake to hold free elections.”), with *id.* at art. 2 (No person shall be denied the right to education.”).

⁹⁸ *Id.* at art. 3.

⁹⁹ CHRISTOPH GRABENWARTER, EUROPEAN CONVENTION ON HUMAN RIGHTS: COMMENTARY 399–409 (2014).

¹⁰⁰ *Mathieu-Mohin and Clerfayt v. Belgium*, 10 Eur. H.R. Rep. 1, at para. 50 (1987).

not only applies to elections of national parliaments, but also to regional deliberative bodies as well as to the European Parliament.¹⁰¹

With respect to the positive obligations of the Member States under the Convention, the ECtHR has adopted a fairly pragmatic approach. In its interpretation of the Convention, the Court gives Member States a margin of appreciation in implementing such obligations under domestic law.¹⁰² Yet the ECtHR demands that the rights and obligations be effective and that all measures concerned be proportionate.¹⁰³ In *Aliyev v. Azerbaijan*, the Court stated:

The rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for ‘implied limitations’ and Contracting States have a wide margin of appreciation in the sphere of elections. It is, however, for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. In particular, it has to satisfy itself, among other things, that the conditions in which individual rights are exercised in the course of the electoral process do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness. Such conditions must not thwart the free expression of the people in the choice of the legislature—in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.¹⁰⁴

In summary, the guarantee of free and democratic elections under the European Convention of Human Rights means much more than just that Member States must allow their citizens to vote in, or to stand for, elections. There is a close link between democratic elections and all human rights under the Convention that guarantees a free flow of information.¹⁰⁵ Article 3 of Protocol No. 1 requires that Member States make sure during election campaigns that the people can exercise their rights to express an

¹⁰¹ See *Mathews v. United Kingdom*, ECtHR Appl. no. 24833/94 (1999); *Py v. France*, 2005-1 Eur. Ct. H.R. 25; *Ždanoka v. Latvia*, App. No. 58278/00, Eur. Ct. H.R. (2006).

¹⁰² *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights: Right to Free Elections*, EUR. COURT OF HUMAN RIGHTS (Apr. 30, 2019), https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf.

¹⁰³ *Id.*

¹⁰⁴ *Aliyev v. Azerbaijan*, App. No. 18705/06, Eur. Ct. H.R., at para. 71 (2010) (internal citations omitted).

¹⁰⁵ See *Bowman v. United Kingdom*, App. No. 24839/94, Eur. Ct. H.R., at para. 42 (1998) (“Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other: for example, freedom of expression is one of the conditions necessary to ensure the free expression of the opinion of the people in the choice of the legislation.”).

opinion, to get information about politically relevant facts, to assemble, and to found and run political parties or other civil associations.

Yet there remains uncertainty about the suitable approach to reach this goal. As to the level of control exercised by the ECtHR with respect to the margin of appreciation of the States, three different levels of control—though not always applied consistently by the Court—can be distinguished: (1) whether the Member State has not taken protective measures at all or whether the measures taken are obviously completely inadequate, or if the actions taken were manifestly without reasonable foundation;¹⁰⁶ (2) whether the Member State has taken sufficiently into account all the relevant circumstances of the case and therefore applied its margin of appreciation correctly;¹⁰⁷ and (3) situations in which the ECtHR assumes a very narrow margin of appreciation and substitutes the States arguments with its own notions.¹⁰⁸

Even a reduced level of control or a mere obviousness test by the ECtHR does not give the Member States carte blanche, and the ECtHR has found violations of positive duties to act.¹⁰⁹ Likewise, the ECtHR assumes an increased level of control if the rights at issue are of paramount importance.

In conclusion, the extent of the margin of appreciation afforded to the Member States with respect to the implementation of positive obligations, and the level of control exercised by the ECtHR, depends on the respective human rights affected and the impact on public societal interests. Considering the fundamental value of free elections for democracy, it thus can be argued that during election campaigns, the margin of appreciation with respect to positive measures on “fake news” is extremely limited. In other words, States are legally obliged to take positive legislative measures.

In this regard, the recommendations identified by the Study Group installed by the European Union Commission to tackle online disinformation serve as examples of positive measures that Member States could potentially take:

1. enhance transparency of online news, involving an adequate and privacy-compliant sharing of data about the systems that enable their circulation online;

¹⁰⁶ See Heike Krieger, *Positive Verpflichtungen unter der EMRK: Unentbehrliches Element einer gemein-europäischen Grundrechtsdogmatik, leeres Versprechen oder Grenze der Justiziabilität?*, ZaöRV 187, 210 (2014), https://www.zaoerv.de/74_2014/74_2014_2_a_187_214.pdf. See also *Stec and Others v. United Kingdom*, 2005-X Eur. Ct. H.R. 321.

¹⁰⁷ See Krieger, *supra* note 106.

¹⁰⁸ See *id.*

¹⁰⁹ See, e.g., *Budayeva and Others v. Russia*, 2008-II Eur. Ct. H.R. 267.

2. promote media and information literacy to counter disinformation and help users navigate the digital media environment;
3. develop tools for empowering users and journalists to tackle disinformation and foster a positive engagement with fast-evolving information technologies;
4. safeguard the diversity and sustainability of the European news media ecosystem, and
5. promote continued research on the impact of disinformation in Europe to evaluate the measures taken by different actors and constantly adjust the necessary responses.¹¹⁰

In 2019, social media companies, including Google, Facebook, and Twitter, voluntarily signed on to a Code of Conduct containing a range of commitments against disinformation and for greater transparency of political advertising.¹¹¹ Self-regulation may be a useful way to tackle the problem but, when confronted with fundamental legal problems, might be insufficient.

Thus, it is not unlikely that the ECtHR could hold in future cases that the Member States of the European Convention on Human Rights are under the positive obligation to prescribe journalistic standards that must be applied by professionals and (online) platforms.

Scholars have proposed that that platforms such as Facebook should legally be treated like press publishers, having the same journalistic duties of care like press organs.¹¹² This could include ensuring that “fake news” cannot be published on the platform in the first place. Others discuss whether States must offer certain digital services themselves or only ensure that they are provided by private individuals.¹¹³ Here, one might consider whether the German system—the liberal press model versus the highly regulated public broadcasting model—can serve as a role model for regulatory questions concerning digital platforms.

XI. CONCLUSION

Recent developments and revelations have highlighted new risks for democracy, privacy, and even free speech on the internet. Without question, there remains an urgent need for profound solutions to consolidate

¹¹⁰ See A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION, *supra* note 32, at 5–6.

¹¹¹ *Code of Practice Against Disinformation: Commission Takes Note of the Progress Made by Online Platforms and Urges Them to Step Up Their Efforts*, EUR. COMM’N (Mar. 20, 2019), https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_1757.

¹¹² See, e.g., MIKE ANANNY, TOW CTR. FOR DIG. JOURNALISM, THE PARTNERSHIP PRESS: LESSONS FOR PLATFORM-PUBLISHER COLLABORATIONS AS FACEBOOK AND NEWS OUTLETS TEAM TO FIGHT MISINFORMATION, (2018), <https://academiccommons.columbia.edu/doi/10.7916/D85B1JG9>.

¹¹³ A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION, *supra* note 32, at 19.

competing interests as far as possible. These interests include the free flow of information, transparent and trustworthy news reporting on the basis of accepted rules of professional journalism, and the protection of privacy and democratic decision making. It will not be easy to balance these principles in a fair and effective way, and the rapid change of our electronic world will soon provide us with new challenges.