

## Digital Disinformation and the Need for Internet Co-regulation in Malaysia

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### ABSTRACT

The spread of fake news on Covid19 is causing public unrest and suspicion among citizens which is a challenge for countries facing the pandemic. The misinformation or disinformation which stems from uncertainties, unrest, and anxiety because of movement control order procedures, financial and economic hardship caused wrong information to spread like fire. Called as 'info-demic', it becomes a second source of virulent information that requires arresting just like the pandemic itself. Controlling fake news in the time of pandemic is a daunting problem that slaps Internet regulation at its face. On the Internet, lies spreads faster than truth and correcting misinformation means tonnes of work. This paper examines Internet self- and co-regulatory approaches in selected jurisdictions to reduce the impact of fake news on governments, industry, and private actors. In applying content analysis as a qualitative research method, the first section analysed specific legislations enacted by parliaments to criminalise the acts of disseminating and publishing fake news. The second section examines legislative and administrative efforts to impose civil and criminal liability on platform providers to monitor online content. The final section analysed self-regulatory efforts to introduce online fact-checking portals and awareness campaigns. This paper argues that Internet self-regulation scheme in Malaysia is not bringing the desired result in the scope of maintaining peace and security of the nation. Considering how dangerous disinformation can cause to the society, more so in global emergency like the present Covid19 pandemic, it is submitted that Internet co-regulation is more suitable if the social, moral and cultural fabric of the society is to be maintained.

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## INTRODUCTION

The world is striving hard to curb the spread of COVID19 outbreak. As of 15<sup>th</sup> April 2020, the Ministry of Health Malaysia has recorded more than 5000 positive COVID19 cases and is expected to rise further in the months to come. As the government has instructed for movement control order since 18<sup>th</sup> March 2020, the public are being served with fake news on digital media on a daily basis, which spreads faster than the real news. For example, on March 28<sup>th</sup> the public was shocked by a suicide case at Serdang Hospital. Rumours were that the victim committed suicide because he was tested positive with COVID19. Upon clarification, the Ministry of Health confirmed that the news was fake (Astro Awani, 2020).

As countries stepped up on their fight against COVID19 virus, there is another source of worry - misinformation regarding the spread, containment measures as well as source of virus spread. Why is disinformation as dangerous as the virus itself that it is labelled as 'infodemic'? In Malaysia, the authorities are extremely careful with the information they released. The daily briefing by the Director General of Health are imbued with carefully crafted words containing a count of daily infections, death, and the possible cluster. In none of the briefings are the identity of the patients revealed - just Case 1041 who came back from Italy aged 58 years old. All these daily chorus is to protect the privacy of

the patients as well as to allay unnecessary fears, social stigma and blame game which is spreading like wildfire in Malaysia since the beginning of the COVID19.

Misinformation, disinformation or the glamour term 'fake news' may not seem to be a new animal – but “digital disinformation” has slapped Internet regulation in its face (Marsden et al., 2020). Considering the decentralised nature of the Internet where data flows beyond borders, imposing restrictions on online fake news has proven to be a huge challenge for regulators and governments. As legal solutions may assist to a certain extent, the bigger question is whether policymakers need to look beyond Internet self-regulation to successfully curb fake news. Marsden, whilst acknowledging that there is no single solution, believes that the effort “should not fall solely on national governments or supranational bodies” nor “companies”. In his opinion, all content regulation efforts should aim towards Internet co-regulation to achieve sustainable results (Marsden et al., 2020).

The term fake news was popularised by Donald Trump in his United States Presidential Election in 2016 and since then has become the buzzword of the day (Allcott & Gentzkow, 2017a). So whenever fake news appears in any part of the world the global community must somehow connect them to the events which had occurred during the United States' Presidential Election in 2016, no matter how remote the link is. In Japan, Germany, Egypt, Kenya, Malaysia and other countries, fake news has

become a daunting issue (The Law Library of Congress, 2019). While the Malaysian government has repealed the *Anti-fake News Act 2018* in December 2019, more is to be desired of its next approach to address online fake news (Shankar, 2019). In this regard, we examine Internet self- and co-regulatory approaches in selected jurisdictions to reduce the impact of fake news to governments, industry, and private actors.

## MATERIALS AND METHODS

This work adopts qualitative research method through content analysis of relevant literatures and semi-structured interview with the Malaysian Communications and Multimedia Commission. The first section analysed self-regulation practised in Malaysia and criticised the pitfalls of such approach. The second part looked at co-regulation and what it had done to reduce fake news. The third part examined at specific legislations enacted by parliaments that criminalised the acts of disseminating and publishing fake news through comparative analysis. This includes efforts to impose civil and criminal liability on platform providers to monitor online content. In the final section, we analysed efforts to introduce online fact-checking portals and awareness campaigns. These measures suggest that while policymakers take a step forward in curtailing access to fake news online, a self-regulatory approach may no longer be adequate to deal with the fake news, as explained in the next part.

## Fake News Regulation in Malaysia via Internet Self-Regulation

The introduction of the Multimedia Super Corridor project in 1991 and the enactment of the MSC Bill of Guarantee has paved the way for the introduction of an Internet self-regulation regime in Malaysia. In particular, the Bill of Guarantee No. 7 promises that there shall be no censorship of the Internet to support the development of the communications and multimedia industry in Malaysia. This is further supported by the enactment of the *Communications and Multimedia Act 1998* that provides in Section 3(3) to declare that nothing in the Act shall be construed as Internet censorship. Section 124 of the *Communications and Multimedia Act 1998* (CMA) demonstrates the type of Internet self-regulation adopted in Malaysia. In pursuant to this, the CMA commissioned the drafting of an industry Content Code in 2004 as the code of conduct for the members of the communications and multimedia industry. As the status of the code remains an industry guideline with no statutory force, compliance to the code is sought through regulatory and licensing controls (Azmi, 2004; Daud & Jalil, 2017).

Self-regulatory control is executed through three means: 1) the enactment of legislations, 2) issuing takedown notices, and 3) advocacy and education. Sections 211 and 233 of the CMA mandate content application service providers or other persons using content application services to abstain from providing 'false content'. However, one may only be accountable under the said provisions if he communicates false content

with the intent to “annoy, abuse, threaten or harass any person”. The High Court’s judgment in *Public Prosecutor v. Rutinin Suhaimin* [2013] 2 CLJ 427 confirmed that actual annoyance of fake news victim need not be proven but tendencies would do.

Between 2000 and 2018, the problem of fake news intensified to an extent that it caused chaos in the society. When it starts to disrupt the smooth functioning of the government by becoming political propaganda, the Malaysian government came up with the *Anti-fake News Act 2018*. The Act provides a broad spectrum of legal framework that criminalises fake news, whether online or in print. If the perpetrator is found guilty, he may be punished up to a maximum of RM500,000 or ten years imprisonment. Since the introduction of the Act, there has been only a single prosecution, which involved a Danish citizen (Tariq, 2018). Criticised as being draconian and a form of political manoeuvring, when the government changed, the Act was quickly tabled for repeal in late 2018 (Lourdes, 2018). Unfortunately, the move to repeal the Act did not find support at the House of Senate which was dominated by members of the opposition party. Due to political pressure, the Act was presented again for the 2<sup>nd</sup> time to be repealed (Shankar, 2019). The change of events later came to side with the government when in December 2019, the repeal was approved by the House of Senate. With the repeal, a vacuum exists for a more effective weapon against fake news and some has expressed the desire again for Malaysia to come up with the right redress

(Wong, 2019). The Act deserved repeal as substantive provisions in the Act was not sufficiently considered prior to enforcement (Daud & Zulhuda, 2020).

The events that took place in Malaysia exemplifies that self-regulation, alone, is not strong enough to reduce fake news, what more eliminate it. This warrants a change of policy, that self-regulation be complemented with a set of strong legislative measures. Such approach is called the co-regulatory approach (Daud & Zulhuda, 2020). This idea is not new and has been propagated by scholars including Marsden. Marsden strongly advocates for regulatory framework to shift towards Internet co-regulation as self-regulation alone has proven ineffective to combat fake news (Marsden et al., 2020; Marsden, 2011). The paper now moves to discuss Internet co-regulation.

### Internet Co-Regulation

Co-regulation requires a clear government involvement that involves giving “explicit legislative backing in some form for the regulatory arrangements” (The Organisation for Economic Co-operation and Development, n.d.). The UK Ofcom reiterates that “the statutory regulator is responsible for overseeing the effectiveness of co-regulation, and retain powers to intervene where necessary.” (UK Office of Communication, 2006). Machill expanded the interpretation of Internet co-regulation to mean “joint responsibility of all affected parties” where the regulator serves as the “final authority” that provided corrective

measures when self-regulation failed (Machill et al., 2002). Co-regulation returns the social responsibility that is originally set for the society (or Internet actors) “within a system that places its trust in market forces while still remaining true to the notion of social responsibility.”

In this regard, co-regulation involves minimal government intervention to ensure the effectiveness of the governance and “reserves its power to intervene only when the self-regulatory system fails”. Marsden found self-regulatory mechanisms such as adopting industry codes to co-exist in a co-regulation framework to be the ideal choice particularly if supported with statutory enforcement (Marsden, 2011). By co-sharing the burden of enforcement, this may reduce the operational costs incurred in direct regulation and resolve the inefficiency experienced in self-regulation due to its voluntary nature and less transparent process in the implementation of the framework (Daud, 2019). One example of Internet co-regulation framework worthy of mention is the Australian that involves the following: -

1. A strong partnership between government, industry actors, and Internet users.
2. The Internet industry to develop its own code of practice, accreditation, or content rating schemes with legislative backing from the government.
3. The co-regulatory scheme is supported by the government enforcement mechanism and strong laws. (Bartle & Vass, 2005)

On the other hand, the European co-regulation involves multinational cooperation between the EU members to regulate a wider sectors of Internet governance, including pan-European games rating system (administered by Pan European Game Information, PEGI), the regulation of child pornography (collaboratively administered by the UK’s Internet Watch Foundation and INHOPE) and the administration of domain names.

Considering how fake news travels at the speed of light, it is submitted that Internet co-regulation is a more suitable regulatory framework that empower regulators, intermediaries, and Internet users to take part in curbing its spread. The next part provides a comparative analysis on how other countries regulate fake news as part of Internet self- and co-regulatory approaches undertaken at national level.

### **Enactment of Fake News Legislations**

Malaysia is not alone in enacting fake news legislation, although it is amongst the earliest as there are many others who are in the same boat. In this regard, the United States Library of Congress conducted a survey on 15 countries which had adopted regulatory mechanisms that ranged in between aggressive to passive (The Law Library of Congress, 2019). Examples include Germany, France, and China.

Fake news legislations may be confused with defamation or hate speech legislations. What constitute fake news remains unclear as fake information constitute either a defamation or hate speech, depending on



its effects about the news and people around him. Furthermore, there are several shades or level of truthfulness and falsity and at times it is difficult to gauge. The final arbiter of the truth is unknown and cannot be guaranteed (Allcott & Gentzkow, 2017b). In most instances, the court system, with the ability to bring evidence and witness and cross examine them may be the suitable venue to determine the truthfulness of a piece of information. Consequently, countries like Germany and France render the courts as the final arbiter of truth. (Duffy, 2014).

Under Article 1 of the French Electoral Code, for three months preceding an election, a judge may order “any proportional and necessary measure” to stop the “deliberate, artificial or automatic and massive” dissemination of fake or misleading information online. A public prosecutor, a candidate, a political group or party, or any person with a particular standing can bring fake news case before the judge who must rule on the motion within forty-eight hours. However, one would certainly understand that time is of essence when it comes to speedy and expedient remedies as court proceedings require time and resources. It is thus unclear to what extent has the French system has been successful in establishing the truthfulness of a piece of information fast enough to stem the fire of fake news.

Another contentious issue is the definition of fake news itself. This has become the subject of heated debate as many fake news legislations adopt a very wide definition as to what constitute fake news. One example of such broad definition can

be found in Section 2 of the *Malaysian Fake News Act 2018* (repealed) which defines ‘fake news’ as “any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas”. In the Russian legislation, the term ‘fake news’ is defined as “socially-significant false information distributed under the guise of truthful messages if they create a threat of endangering people’s lives, health, or property; create possibilities for mass violations of public order or public security; or may hinder the work of transportation and social infrastructure, credit institutions, lines of communications, industry, and energy enterprises.”

China has also criminalised the offence of “fabricating false information on [a] dangerous situation, epidemic, disaster or alert and disseminate such information via [an] information network or any other media while clearly knowing that it is fabricated, thereby seriously disturbing public order.” France through its *1881 Freedom of the Press Law* has criminalised acts that “disturb public peace through the publication, dissemination, or reproduction of fake news in bad faith.” Bad-faith publication, dissemination, or reproduction of forged or altered items, or items falsely attributed to third parties is also prohibited.

In the above statutory definitions, ‘fake news’ has been given a broad interpretation. This calls for specificity and clarity for fear of unconstitutional suppression of free speech (Emma, 2019; The Law Library of

Congress, 2019). In the above definitions, one can note that any information which may be partially or wholly incorrect or misleading may be classified as fake news. The ensuing issue is who determines the falsity of the information. The problem with such administrative measures is that eventually the power to decide falls on the executive. Which means, it will ultimately be the government of the day or the Minister as the arbiter of truth. To that extent, there is a need to obtain redress if the ministerial discretion is wrongly made. Countries like Singapore allows the dissatisfied party to appeal against any ministerial decision for an order of correction or takedown, but this is ultimately subject to due course of law. It is plausible if civil societies fear that these legislations will more likely be used as political weapons rather than to stem the dissemination of fake news that can harm the society, for which legislation is initially designed.

Canada legislated on fake news through Section 181 of the *Canada's Criminal Code*. Unfortunately, by the virtue of *R v. Zundel* in 1992, the Canadian Supreme Court had declared the provision to be unconstitutional for being a violation of freedom of expression. Since then the legislature had removed the provision and it ceased to have legal effect. The same development could be traced in Kenya in the *Bloggers Association of Kenya (Bake) v Attorney General & 5 others* [2018] eKLR. The plaintiff challenged the constitutionality of various fake news provisions in the *Kenya Computer Misuse and Cyber Crimes Act*

2018. The Constitutional and Human Rights Division of the High Court of Kenya has suspended the implementation of those provisions pending full hearing of the above case.

On the other hand, Sweden focuses on a self-regulatory mechanism through creating “professional organisations of journalists and other media providers and strengthening ethics rules” (The Law Library of Congress, 2019). Malaysia has also called for the establishment of a media council to co-regulate media affairs (The Star, 2019). This effort is in line with the European Union’s introduction of the EU Code of Practice on Disinformation. European Council had established the European Union’s External Action Service (EEAS) to review ‘disinformation’ content on a weekly basis (Tariq, 2018).

The next section explores the second mechanism in the regulation of fake news through notice and take down procedures, backed with the imposition of civil and criminal liability upon failure to act.

### **Imposing Civil and Criminal Liability on Mere Conduits**

Mere conduits or internet intermediaries do not play any role in the production of content. Being intermediaries, they also do not undertake active editorial role when content passes through their network, but merely facilitates “transactions between third parties on the Internet” (The Organisation for Economic Co-operation and Development, 2010). Being intermediaries, they control the gateway to the transmission of content

and are in the ideal position to act. Formerly developed as a mechanism to control the transmission of copyright infringing material, it is equally an ideal platform to stem the dissemination of fake news. The next part focuses on developments in Germany. Germany is specifically reviewed due to its fake news legislations that impose regulation at intermediaries' level, which is rather unique. On the other hand, Singapore adopts administrative measures through legislative controls. Germany's case is discussed as follows.

### **Germany – Notice and Takedown Reformed?**

On 1 January 2018 Germany introduced its Network Enforcement Act known in Germany as the 'Netzwerkdurchsetzungsgesetz' law or 'NetzDG' law in short. The law does not aim to create new types of offenses such as to criminalise fake news. Instead, this law creates new obligations for large-scale social media platforms with more than two million members to remove "manifestly unlawful" content. Social media platforms must evaluate what acts amount to 'manifestly unlawful' by reference to the 22 provisions included in Germany's criminal code, such as: "incitement to hatred", "dissemination of depictions of violence", and "forming terrorist organizations" and "the use of symbols of unconstitutional organizations" (Tworek & Leerssen, 2019).

Criminal offences are categorised into 22 provisions under the *Germany Criminal Code*. By virtue of the NetzDG law, social media platforms are obliged to create a

complaint mechanism in any form that is accessible to their viewers to allow visitors to lodge complaints about the availability of fake news on social media sites. In general, Internet intermediaries are not liable for any third-party illegal content hosted on their platforms. However, once a complaint is received, the intermediaries and social media platforms must investigate and determine whether the content is 'manifestly unlawful' and expected to remove it within 24 hours. Category (b) (c) and (g) consists of content that can be identified easily to be unlawful on face value itself. But the other categories may require more effort and evidence to be substantiated. Contents that fall within of such category must be investigated within 7 days. Any social media networks that fail to act will face up to 50 million euros in fine.

In this regard, the NetzDG law puts the responsibility to judge 'manifestly unlawful' contents on the shoulders of social media platforms. Contrary to the common practices of 'notice and takedown' in copyright infringement or illegal content cases, social media platforms are not required to notify its subscribers to takedown illegal content posted by them. They 'judge' whether the content is 'manifestly unlawful' and remove them. The NetzDG law does not require any court order for the social media platforms to execute content removal, nor does it provide any form of appeal through formal court processes. This has created heated debates and civil unrest in Germany as netizens were concerned that the NetzDG law might cause chilling effects on free speech (Tworek &



Leerssen, 2019). Instead it may turn into a form of privatised censorship by private companies which conveniently removes online content to avoid from being fined. Wenzel Michalski, the German director of Human Rights Watch was correct to say that “governments and the public have valid concerns about the proliferation of illegal or abusive content online, but the new German law is fundamentally flawed,” ... “It is vague, overbroad, and turns private companies into overzealous censors to avoid steep fines, leaving users with no judicial oversight or right to appeal” (Human Rights Watch, 2018).

Echikson and Knodt conducted a study on the effectiveness of content removal rate. The results are reproduced in the Table 1.

According to the study, Facebook with its huge size was reported to achieve 76.4% removal rate due to the complexity of the reporting feature on its page. This is low compared to YouTube, Twitter and Change.org which recorded more than 90% removal rate due to their simple and accessible reporting features. These sites use the ‘flagging’ feature which can directly capture any fake content on the site. Echikson and Knodt reported that these social media platforms remove fake content based on

its breaches of the community guidelines rather than compliance with the NetzDG law. The law also requires the social media platforms to submit a semi-annual report on its content moderation practices should they receive more than 100 complaints per year. This somehow imposes transparency requirements so that content removal practices can be reviewed and evaluated by the government from time to time. Since the NetzDG law is still in its baby steps, the full effects of its legal provisions remain to be unknown.

#### **Administrative Measures - The Case of Singapore**

Singapore has also passed its *Protection from Online Falsehoods and Manipulation Act* (POFMA) in June 2019 to “prevent the electronic communication in Singapore of false statements of fact, to suppress support for and counteract the effects of such communication, to safeguard against the use of online accounts for such communication and for information manipulation and to enable measures to be taken to enhance transparency of online political advertisements”. POFMA enables any minister in Singapore to issue directions under Part 3 of the Act in the

Table 1  
*The effectiveness of content removal rate*

Platform	Total Items Reported	Total Removal Rate	Removal within 24 hours
Facebook	1704	362 (21.2%)	76.4%
Google (YouTube)	241827	58297 (27.1%)	93%
Twitter	264818	28645 (10.8%)	93.8%
Change.org	1257	332 (26.4%)	92.7%

Source: (Echikson & Knodt, 2018)

forms of Correction Direction and Stop Communication Direction. The general idea is that POFMA empowers any minister in Singapore to issue a ministerial direction to correct and cease from communicating any false news accessible to the Singaporean public. Section 16 further authorises the Minister of Communications and Information of Singapore to direct the Info-communications Media Development Authority to “order the internet access service provider to take reasonable steps to disable access by end-users in Singapore to the online location”. Non-compliance to the access-blocking order is a criminal offense under POFMA. To provide some check and balance, Section 17 provides that any Directions under Part 3 may be appealed to the High Court within a certain period as prescribed by the Rules of Court.

The Singapore approach goes one step beyond taking down and disabling access. It also enables the Minister to order the end-user to issue corrections to the false news. In that sense it is more progressive than simply blocking and taking down. By issuing correction, end users would be able to receive the correct information. Part 4 of POFMA specifically deals with the liability of internet intermediaries with respect to false publications. In this regard, Section 20 empowers any minister to issue direction to any internet intermediary that carries “(a) material that contains or consists of a false statement of fact has been or is being communicated in Singapore;” and that “(b) the Minister is of the opinion that it is in the public interest to issue the Direction”.

Such direction may be issued in the form of Targeted Correction Direction which requires the internet intermediaries to communicate notice(s) to all end-users in Singapore who have access to the subject material by means of that service. Section 22 further authorises any minister to issue a Disabling Direction to any internet intermediaries to disable access to false content accessible to Singaporean users. Any contravention to the above ministerial direction is a criminal offense punishable with fines and imprisonment.

The third approach is the introduction of online fact-checking portals and awareness campaigns, which is discussed below.

### **Online Fact-checking Portals and Awareness Campaigns**

Other than legislative means, Malaysia has also introduced an online fact checking portal *Sebenarnya.my* which is maintained by the Malaysian Communications and Multimedia Commission (MCMC). This portal serves to provide clarification on any alleged false information relating to government agencies in Malaysia. MCMC has also been routinely issuing advisory warnings to WhatsApp Group administrators to monitor fake news or false content in their respective WhatsApp groups. However, to what extent such warnings translate into legal liability for WhatsApp group administrators remains unclear. What is clear is that if the group administrators serves as passive managers without any active monitoring or publishing, they can cover themselves as the ‘innocent carrier’

under the CMA (Daud & Zulhuda, 2020). These measures have also been carried out in other governments as well such as the United Kingdom and Russia by websites whose role is to list and verify any false content in their country.

Some countries such as Sweden and Kenya approach the fake news issue by educating citizens about their dangers and risks. For example, Sweden designed a “famous cartoon character to teach children about the dangers of fake news through a cartoon strip that illustrates what happens to the bear’s super-strength when false rumours are circulated about him” (The Law Library of Congress, 2019).

The United Kingdom government recently announced its commitment to fight fake news through the allocation of £18 million over 3 years to fight disinformation and fake news across Eastern Europe and strengthen independent media in the Western Balkans (Foreign & Commonwealth Office UK, 2019). The government opines that “it is more important to inform citizens of the facts than to simply rebut false information”. In response, a Rapid Response Unit within the executive branch was established to monitor news and engage with the public online.

Similarly, the Chinese government launched a government online platform known as Piyao or ‘Refuting Rumors’ to broadcast real news sourced from government agencies and state-owned media. The Chinese Central Cyberspace Affairs Commission in association with the Xinhua news agency have integrated over 40

local rumour-refuting platforms that apply artificial intelligence to identify rumours. Like other countries, the Chinese media has regularly reported and corrected any online rumours. President Xi Jinping has reiterated China’s commitment to build a “clean and clear” Internet.

## RESULT AND DISCUSSION

Amidst all legal, technological, and social efforts undertaken by governments around the world, one may come to conclusion that ‘one size does not fit all’ and maybe one solution is not enough? With the mess that we are facing, a single solution, be it just self-regulation, notice and take down procedure, administrative and criminal approaches would not be comprehensive to combat fake news.

Due to the all the weaknesses of all the various approaches, co-regulation is more suited to Malaysian environment. The proposed framework includes the following component:

- (a) Law: Enactment of specific piece of legislation that renders the publication and circulation of fake news as an offense. This includes having provisions for fact corrections and takedowns, whereby the authority issuing them may depend on an independent regulator, or as may be appointed by a minister(s). Such legislations should place liability on the platform providers with significant numbers of users to monitor, correct and remove fake news upon user

notification. This should also come together with harsh penalty should the platforms fail to comply.

- (b) Technology: Platform providers should co-regulate by deploying artificial intelligence, machine learning, bots and enabling content moderation features. Recognising that these features may under-block or over-block content, therefore human intervention remains necessary (Marsden et al., 2020).
- (c) Social: To create an online fact-checking portal maintained by independent agencies in collaboration with the media. The effort should also extend to holding awareness campaigns to instil knowledge for the public on how to detect and report fake news to stop its further circulation.

In this manner, every part of the information cycle is entrusted to each player in a co-regulation style. Whilst lawmakers play the role of enacting legislations, technology should be deployed to help identify fake news through content moderation or flagging as was done by Facebook and YouTube. Finally, there must be continuous public engagement to instil awareness on the dangers of fake news. As discussed above, Malaysia is into a great start via having the government-led fact-checking portal, *Sebenarnya.my*. It may be given a co-regulatory flavour by supporting the factchecks with independent agencies in collaboration with the media.

Considering these co-regulatory initiatives to combat fake news, we argue that cyberspace freedom must be balanced with the constitutional right to freedom of expression. The notion of Internet censorship has proven to chill, over-block, and under-block free expression online. It has failed to apply human judgments in analysing the actual context where computers do all the thinking and decisions at network level. There needs to be a combination of human judgment and machine automation by applying mixed approaches in regulation mechanisms.

Parliaments play vital role in criminalising fake news through enabling legislations. Legislations create legal and administrative measures to provide avenues to verify and reduce its availability online. In this regard, it is proposed that the repealed *Anti Fake-news Act 2018* to be re-enacted given its specific objective aimed to curtail fake news both offline and online. Approaches taken by Germany in enacting the NetzDG law may also be considered where technological measures implemented by platform providers through takedown, content moderation, flagging and machine learning are enforced. Social measures come in to complete the co-regulatory efforts where at the end, human must make the final decision whether to take action, what type of action and against whom.

In this regard, we argue that co-regulation framework would not restrict the right to freedom of expression. Restrictions and

countermeasures offered in the framework are the least restrictive if compared to the damage caused by Internet censorship as well as unwarranted ‘cyberspace freedom’ promulgated by Barlow (1996).

## CONCLUSION

In short, men create technology, and therefore it is absurd to blame technology for the harm it has caused to men. Fake news is not new issue as it has existed since the beginning of humanity. This paper wishes to reiterate that there is nothing good in fake news, except for giving false hope to some in return for fooling the others. It creates unnecessary worries and trauma to those who choose to believe the news. Criminalising fake news may not be too difficult for legislators but the better question to ask is how severe the punishments should be. Given the extent of damage that fake news has caused, it is justifiable and least restrictive measure to enact laws that serve as deterrence and education to the public. Today, it is no longer relevant to simply put blind trust in Internet self-regulation as rightly put by the UK Digital Secretary Jeremy Wright, “The era of self-regulation for online companies is over. Voluntary actions from industry to tackle online harms have not been applied consistently or gone far enough. Tech can be an incredible force for good and we want the sector to be part of the solution in protecting their users” (Department for Culture Digital Media and Sports United Kingdom, 2019). It is time for Malaysia to move towards co-regulation to achieve digital well-being

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