Online challenges of electoral disinformation

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MAIN ARGUMENTS

- Online environment is a fertile ground for spread and dissemination of (election) disinformation.

- Censorship and online surveillance cannot be the answers to address online (election) disinformation, but research and monitoring efforts are needed.

- Media freedom, pluralism and independence, and quality journalism are antidotes to (election) disinformation, as are public awareness and media and digital literacy.

- The "True/False" paradigm is not conducive to positive solutions. A focus on "dangerous disinformation" causing serious harm and undermining the election integrity should perhaps be advisable.

- Long-term processes affect the receptiveness of a society to false narratives, social and cultural factors being the main drivers (cause-effect dilemma).

- Transparency, due process and privacy protection are key elements to improve the online public sphere, to make voters aware of the nature of the messages and regulators more effective in monitoring online campaigns.

Internet and social networks potentials to amplify disinformation

Potential scale and reach, velocity and pervasiveness, low barriers to entry (if any), personalized content and targeted micro messaging

Permanence of the messages, itinerancy of the messages, users' (perception of) anonymity, cross-jurisdictional character of the Internet

New technologies making manipulation, fabrication and dissemination of content simple (AI and automated tools), platforms fertile ground for computational propaganda, echo chambers, polarization and hyper-partisanship

The ability of political parties/candidates to bypass the journalistic mediation, avoid scrutiny and go directly to audiences; decline of trust in mainstream media ("horizontal" communication eroding confidence in the media)

The inability to easily debunk disinformation once it has gone viral; limited access to platforms' data for researchers; rise of instant messaging and closed group chat; disinformation invisible to researchers and policy-makers.

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CHALLENGES OF THE ONLINE DISINFORMATION

Pending issues and challenges

No clear or consistent definition of disinformation (among practitioners and in international law); shortage of specific OSCE commitments or other specific relevant international standards on disinformation and elections. Disinformation is generally not explicitly mentioned in national election laws.

Lack of clear evidence about the scale, dissemination or effects of disinformation in elections; correlation between disinformation and voting behaviour not proven. Lack of consensus among practitioners on which kinds of disinformation should be tackled with extreme measures (content restrictions) or soft measures (self-regulations, media literacy, fact-checking initiatives, etc.)

The "urgency to solve the problem", understandable to ensure effective remedies and prevent harm, becomes critical with the unintended (or intended) consequences of the measures adopted to address the disinformation dilemma (chilling effects on freedom of expression, illiberal legislation, "privatization of censorship" delegating private companies to remove (legal) content, etc.)

The "true/false" paradigm is not conducive to positive solutions. Some aggressive practices are not necessarily false, but aim at causing harm or disrupt elections, public order, if not territorial integrity. On the other hand, some false narratives are harmless. Some disinformation practices are dangerous for their divisive impact, rather than their misleading content.

PILLARS

*The right to **freedom of expression applies to all kinds of information and ideas**, including those that may shock, offend or disturb, and irrespective of the truth or falsehood of the content. **Freedom of expression may be restricted only in accordance with article 19 (3)** of the ICCPR. **Vague laws** that confer excessive discretion […] **are incompatible with article 19 (3)** of the ICCPR**. The prohibition of false information is not in itself a legitimate aim** under international human rights law.*

Disinformation is problematic, but so too are the responses of States and companies. *[…]***State regulation of social media** *should focus on enforcing* **transparency, due process** *rights for users and* **due diligence on human rights** *by companies.*

Companies continue to fail to provide adequate remedies *for wrongful actions taken on the basis of disinformation or misinformation. […]* **Lack of transparency and access to data** *continue to be the major failings of companies.* **Data protection** *is key to reorienting the advertisement-driven business model of the digital economy, which drives the information disorder and related human rights abuses.*

Diverse and reliable information is an obvious antidote to disinformation *and misinformation. […]* **Media information and digital literacy** *empowers people and builds their resilience against disinformation and misinformation.*

KEY ELEMENTS AND RECOMMENDATIONS

TRENDS AND RECOMMENDED ACTIONS

Any restrictions on speech must be regulated by law and pass the three-part test of legitimacy, necessity and proportionality. The principles of freedom of expression would not enable content restriction on the basis of false content alone. Permissible restrictions include advocacy of hatred that constitutes incitement to discrimination, hostility or violence (ICCPR)

Platforms are not media companies and should not be responsible for third-party content, however they should be responsible for the transparency and non-discrimination of their algorithms, for clearly labelling sponsored content as such, for identifying and disabling fake accounts, for protecting the privacy of users, for increasing transparency in campaign expenditures.

Civil society fact-checking initiatives proved efficacy in countering disinformation narratives, while state-run fact-checkers cannot sufficiently demonstrate their selection criteria, their due process and systematic methodology, which makes them vulnerable to criticism. Media pluralism and media literacy are long-term but effective antidotes to counter dangerous effects of disinformation.

Micro-targeting based on sensitive information violates human dignity, the right to freedom of (truthful) information and distorts public discourse - consent by the user should be required. New technologies and platforms make individuals vulnerable to having their personal data exploited.

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ATTEMPT TO BUILD A "PYRAMID OF DANGEROUS DISINFORMATION"

Most serious forms of organised disinformation (foreign interference, malicious coordinated inauthentic behaviour (CIB), propaganda for war, etc.)

SHOULD BE RESTRICTED
(HARD MEASURES)

Problematic disinformation (disinformation which may be restricted to protect rights of others or for protection of national security, public order, health or morals, etc.)

MAY BE RESTRICTED
(LEGAL OR SELF-REGULATION)

Lawful disinformation (disinformation raising concerns in terms of a healthy ecosystem, but protected: false content not disrupting the integrity of the elections)

SHOULD BE PROTECTED
(SOFT MEASURES)

Bearing in mind:

- Limited resources

- Limited period of observation

- Limited technical expertise on data protection, data mining and potential uses

- Mandate of the Election Observation Missions

- Observers' code of conduct (e.g. not interference + impartiality)

What can we do?

- Assess the respect of fundamental freedoms, including FoE online

- Assess the legal framework for online campaign, advertising, privacy and data protection

- Assess freedom and diversity of the online media sphere

- Assess the election campaign of contestants on social networks

- Assess the online campaign advertising

- Assess the role of EMBs and other oversight bodies

- Assess the response of legacy media to election disinformation (interplay, debunking, amplification)

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