

TOOLKIT

Addressing Online Misinformation Through Legislation

- Singapore’s Protection from Online Falsehoods and Manipulation Act (POFMA)
- Industry’s Position and Talking Points on Online Misinformation/false news

(as of Jan 2020)

1. Introduction

On 8 May 2019, the Singapore government passed the Protection from Online Falsehoods and Manipulation Act (POFMA), a far-reaching piece of legislation that gives authorities wide-ranging powers to deal with deliberate online falsehoods. Any government minister will have the power to direct individuals, publishers, internet platforms, and mainstream media to either post corrections or take down content, based on what the minister deems to be content deemed false and "against the public interest". The legislation was passed with overwhelming support from MPs, despite widespread international criticism about the law’s potential for misuse and to curb free speech. The law came into effect on 2 October 2019.

To prepare for conversations that may take place with governments around the region who may be considering similar legislation to deal with deliberate online falsehoods, AIC has developed this document to provide important background information about POFMA, the international response to the new law, and potential talking points around Industry’s stand on POFMA and the issue of dealing with online falsehoods.

2. Background: The Protection from Online Falsehoods and Manipulation Act (POFMA)

Timeline: Key milestones of POFMA

5 Jan 2018	Singapore’s Ministry of Communications and Information (MCI) and Ministry of Law (MinLaw) issued an informational Green Paper entitled <i>Deliberate Online Falsehoods: Challenges and Implications</i> . The Singapore Government asked Parliament to appoint a Select Committee to study the problem of deliberate online falsehoods and to recommend how Singapore should respond. Select committees have seldom been used in Singapore’s legislative history. The last time the government did so was in 1996 to examine the public healthcare system and the use of subsidies.
------------	---

11 Jan 2018	The Select Committee on Deliberate Online Falsehoods is formed. Chaired by Deputy Speaker Charles Chong, it comprises seven MPs from the ruling People's Action Party (PAP), one member from the opposition Workers Party and one Nominated MP. The Select Committee opens a public consultation calling for recommendations on addressing false news.
14-29 March 2019	The Committee receives 169 written representations from the public and invites 65 individuals and organisations from Singapore and abroad to give oral testimony to the Select committee over a three-week period. Those giving oral testimony represented a wide range of stakeholders including local and foreign academics, media companies, news publishers, telcos, technology companies, industry associations, NGOs and religious organisations.
20 Sep 2018	The <i>Report of the Select Committee on Deliberate Online Falsehoods</i> is published. The Committee urges a multi-stakeholder approach to address misinformation and makes 22 recommendations for different groups including government, industry, and media. The report recommends enacting legislation, urges technology companies to take proactive steps to tackle fake content on their platforms, and proposes creating a national framework to guide public education on falsehoods.
1 Apr 2019	The POFMA Bill is tabled for its first reading in Parliament. Numerous groups issue public statements expressing serious concern, including academia, journalists, NGOs, legal experts, and the Asia internet Coalition (AIC). The three Nominated MPs in Parliament also issue a formal statement of concern.
7 May 2019	The Bill is tabled for a second reading in Parliament. Ministers and up to 31 Members of Parliament speak out on the issue over two days.
8 May 2019	POFMA passed in Parliament with a majority of 72 to nine, with three Nominated Members of Parliament (NMP) abstaining.
25 June 2019	POFMA is gazetted into law.

Sept 2019	The government is setting up its administrative processes including the POFMA office under IMDA, as well as working with selected tech companies to develop detailed implementation guidelines and codes of practise ahead of the law’s implementation, which the government has said will be by 2019.
2 Oct 2019	POFMA comes into force
25 Nov	POFMA’s first application of a Corrective Order issued by Minister of Finance (Heng Swee Keat) to opposition party member Brad Bowyer for his Facebook page post critiquing Temasek investments . Bowyer adds complied with order and links the government statement to his post.
16 Jan 2020	<p>POFMA sees the first use of judicial appeal process by the Singapore Democratic Party (SDP), an opposition political party.</p> <p>SDP, which received a Corrective order on 14/12/19 over an article on employment issues, complies, but filed a first-stage appeal on 6/1/20 to the issuing Minister of Manpower Josephine Teo to cancel the order. After the Minister rejected the appeal, SDP filed a second-stage appeal to the High Court on 10 Jan 2020.</p> <p>On 16 Jan, the hearing was held behind closed doors after SDP’s request for an open court hearing was rejected by the Judge due to procedural rule. SDP and the Attorney General’s chambers (AGC, representing the MOM) have till 22 Jan to present its case.</p> <p>No date is set for judge’s ruling. (as of 2 Feb 2020, the outcome is pending)</p>

Key Features of POFMA

- Any government minister will have the power to direct individuals, publishers, internet platforms, and mainstream media to publish corrections to what the executive deems to be false statements that are "against the public interest". Critics of POFMA says that this makes the Singapore Government the ‘final arbiter of truth’.
- The Government notes that POFMA will only address false statements of facts, not opinions, viewpoints, satire or parody, however these types of speech are not expressly exempted or protected in the law.
- Apart from a lack of checks and balances, the legislation has been criticized as having vague and overly broad definitions of ‘false statements’ and ‘public interest’. Many groups have criticized POFMA for its potential use as a tool to suppress freedom of speech and expression.

- POFMA has been noted as lacking in judicial oversight, as any appeal must first go through the Minister who ordered the correction/removal and can only reach the courts if the Minister rejects the appeal. POFMA allows the courts to only rule on the veracity of the appeal, not on whether the Minister's order was in the 'public interest'.
- Imposition of criminal sanctions: the penalties for non-compliance are significant, ranging from S\$50,000 to S\$1,000,000. Technology companies not in compliance can face penalties of up to S\$1,000,000 per day for every day the content remains uncorrected/unremoved. Prison sentences for those deliberately spreading malicious information can be up to 10 years.
- The Government can shut down sites that promote fake news if they publish three falsehoods over a six-month period. They also plan to block profit streams to such sites; however, they have not specified how they will be achieved.
- Account restriction instructions can be issued by the Government to platforms to delete fake accounts, bot accounts, etc.
- [Codes of Practise](#) have been developed in coordination with specific internet companies to tackle false news upstream: to (a) prevent and counter the misuse of online accounts by anonymous/malicious actors (b) enhance the transparency of political advertising (c) enable downgrading/downranking of online falsehoods on a platform.
- The Codes of Practise are based on international norms such as the EU Code of Practice on Disinformation, as well as consultations with companies and world experts.
- Implementation: a POFMA Office has been set up as part of the Infocomm Media Development Authority (IMDA) to work with tech companies on the codes of practice's implementation, and to support Ministers' with implementation.
- Since the Law's came into force on 2 October 2019, it provided for temporary exemptions for certain platforms including Google Search, Facebook, Twitter, and Baidu, for an unnamed period. However the [exemptions were suspended](#) on 30 January due to the Wuhan coronavirus public health crisis.

3. Industry's Stand: Talking Points

AIC's views on using legislation to address deliberate online misinformation

- i) As an industry voice for internet policy in the Asia Pacific, the AIC recognises that the perpetration of deliberate online misinformation is a serious and highly complex issue. Addressing this issue requires a carefully considered approach and collaboration between multiple stakeholders, including industry, to address its many facets.
- ii) Our position, which echoes that of many experts around the world, is that prescriptive legislation should not be the first solution in addressing what is a highly nuanced and complex issue.
 - Determining whether the information is 'true' or 'false is a highly subjective, nuanced and difficult task.
 - Given the vastness of the Internet's global reach and accessibility, and the speed in which misinformation can travel, eliminating 'fake news' at scale is almost an impossibility.

- Using a blunt tool such as legislation to manage such a highly nuanced issue deprives government and society the opportunity to build critical thinking around information.
- iii) Legislation will not effectively tackle online misinformation. Instead there is a very real risk of compromising freedom of expression and speech via legislative tools that may cast a wider net than intended.
- iv) AIC members believe that the first line of defence in addressing harmful misinformation is to promote and inculcate digital, media and information literacy at every level. This should be driven by relevant stakeholders, including Industry, as a long-term commitment.
- v) In the last few years, AIC members have been working closely with regulators and governments worldwide to address harmful content on the Internet, including misinformation.
- AIC members have in place wide-ranging Community Standards, Rules and Policies that define user behaviour and repercussions for non-compliance, as well as prohibited content and behaviour. These policies are continuously monitored, updated and improved in line with the highly complicated and ever-morphing nature of harmful activities on the Internet.
 - Digital platforms are already increasingly investing in policies, procedures and product features that aim to prevent the spread of disinformation, while also balancing the complex interplay of this issue with the freedom of expression of their users.
 - Given the vastness of the Internet, most Internet companies have ‘notice and takedown’ processes that rely on both human oversight, together with the use of artificial intelligence (AI) and machine learning to identify fraudulent, illegal and non-compliant behaviours. Most platforms have host of reporting tools for users, organisations and governments to ‘flag’ inappropriate online content and request its removal.
 - Industry members have signed up to various self-regulatory codes of conduct including the [EU Code of Practice on Disinformation](#)
- vi) We remain committed to working closely with governments and other stakeholders to collectively develop effective solutions that reduce the prevalence and the impact of misinformation, while ensuring that this is not done at the expense of the tremendous economic, social and cultural benefits that a free and open Internet brings.

AIC's views on POFMA

1. AIC recognises the significant amount of work the Singapore government has done over the last two years to consult widely with stakeholders and seek expert views. This includes numerous dialogues and engagements with diverse stakeholders, before and after the law's passing, in order to share its thinking and approach.
2. However, POFMA is a first-of-its-kind piece of legislation. No other country in the world has passed such a far-reaching piece of legislation to address online misinformation.

- France's *Law to Combat the Manipulation of Information* (2018) focuses on election integrity by empowering judges to order the immediate removal of 'fake news' **during election campaigns.**
 - Germany's *Network Enforcement Act* (NetzDG – 2018) **specifically targets hate speech** on social networks. The bill was widely criticized locally for censoring free speech and giving too much power to social media companies.
3. POFMA grants broad powers to the Singapore government to issue a correction or take down order for anything they deem to be a 'false statement of fact', if they feel it is in the 'public interest' to do so. This puts an extraordinary amount of power in the hands of individual ministers.
 4. POFMA covers virtually all kinds of communication, including private messaging services, giving rise to a very real possibility of misuse (inadvertently or not) by the authorities charged with its implementation, as well as privacy concerns.
 5. While the AIC supports the intentions of POFMA, we have strong reservations on specific provisions – reservations that are jointly shared by journalists, legal experts, academics, and human rights representatives worldwide.
 6. The overwhelming consensus is that this Bill will impact freedom of expression and curtail the rights of individuals, Singaporean or otherwise, to freely express opinions and participate in informed discussions, even debates that are necessary to ensure executive transparency and accountability. *[See section on International Backlash Against POFMA]*
 7. Aligned on the overall intention of preventing harm from deliberate online falsehoods, AIC will support the government as it seeks to implement the law, including participating in dialogue and sharing industry feedback and concerns alike to ensure fair implementation, guided by jurisprudence and due process.

3. International Backlash Against POFMA

POFMA has met with strong criticism from a broad range of stakeholders in Singapore and globally, including journalists, legal experts, academics, human rights representatives, and international organisations such as the United Nations. Local politicians and publishers/media companies have been unanimously in support of the law, except for the three Nominated MPs in Parliament who issued an [official statement](#) of concern with recommendations for the government after the bill was tabled.

United Nations

- [Open letter](#) written by David Kaye, the United Nations special rapporteur on the right to freedom of expression, to the Singapore Government on 24 April 2019

- Kaye urged the government to reconsider the law, saying it was “deeply problematic” and would “serve as a basis to deter fully legitimate speech, especially public debate, criticism of government policy, and political dissent”.
- Kaye warned of the risk that the law’s “overbroad definition of falsehood will lead to the criminalization and suppression of a wide range of expressive conduct, including criticism of the government, and the expression of unpopular, controversial or minority opinions”.
- He also criticised the lack of independent review of ministers’ decisions and weaknesses in the planned appeals process.

The International Commission of Jurists (ICJ)

- [Press release](#) issued on 4 April 2019 in which the ICJ stated that “this bill, if passed, would make the government the sole arbiter of what information is permissible online and what is not, creating a real risk that the law will be misused to clamp down on opinions or information critical of the government”.
- The ICJ also stated that “the spread of misinformation online is a complex problem that cannot be effectively addressed by simply granting broad discretion to government officials to censor online expression. A multi-pronged approach that protects the rights to free expression, opinion and information is required, beginning with better media literacy education and free access to information, including opinions critical of the government”.

ASEAN Parliamentarians for Human Rights (APHR)

- In a [statement](#) published on the APHR website on 7 May 2019, APHR expressed concerns that “while states have a right and duty to guard against false content online, the vague language in this bill means it is easily open to abuse”.
- APHR stated that “the proposed ‘fake news’ bill flies in the face of international standards on freedom of expression. It is difficult to see how this is not just another attempt by the authorities to silence debate online,” and that the bill would “have the effect of discouraging people from voicing their views in fear of violating the law and facing heavy penalties”.

Academia

- Over 120 academics from Singapore and around the world signed a letter addressed to Singapore’s Education Minister Ong Ye Kung on 11 April 2019, expressing concerns about the impact of POFMA on academic research.
- Much of academic work, the letter stated, is intended to dispute “apparently established ‘facts’”, which are “continuously reappraised as new data and analysis become available over time”.
- The academics were concerned that “... for many phenomena it is not possible to state definitively what is a ‘fact’ proven for all time”, and that “POFMA is likely to make many academics hesitant to conduct or supervise research that might unknowingly fall afoul of POFMA or refer colleagues or students to faculty positions in Singapore’s respected universities”. The government dismisses their concerns and claims academia is not the intended target of the law.
- The letter and subsequent statements can be found [here](#)

Journalists

- 27 journalists signed a [letter](#) addressed to Singapore’s Minister for Communications and Information S Iswaran expressing concern over POFMA’s impact on their work.
- The letter criticised the Bill’s “failure to take into account the realities on the ground”, given that stories are filed by journalists “as situations develop and facts are still emerging”.
- These journalists stated that “news organisations might feel compelled to withhold important stories simply because certain facts cannot be fully ascertained”, particularly “in Singapore where it is often not possible to get a response in time from the government”.
- Countering government arguments that POFMA will apply only to statements of fact and not opinions, the signatories highlighted that the distinction between “statements of fact” and “opinion” is “not always clear”. “Opinion writers regularly cite facts to back up their positions, and a journalist’s interpretation and presentation of a set of facts might contradict a minister’s own understanding of what took place,” stressed the journalists.

Human Rights Watch (HRW)

- HRW said POFMA is a “disaster for online expression by ordinary Singaporeans,” and “a hammer blow against the independence of many online news portals” that “...will have a chilling effect on internet freedom throughout South-East Asia”.

5. AIC reference material

Media statement after law passed – 8 May 2019	link
Op-ed outlining Industry’s concerns with POFMA, published in <i>The Straits Times</i> - 4 May 2019	link
Media statement – when POFMA bill was tabled - 1 April 2019	(link)
Media Statement – after Select Committee Report was released - 20 Sept 2018	link