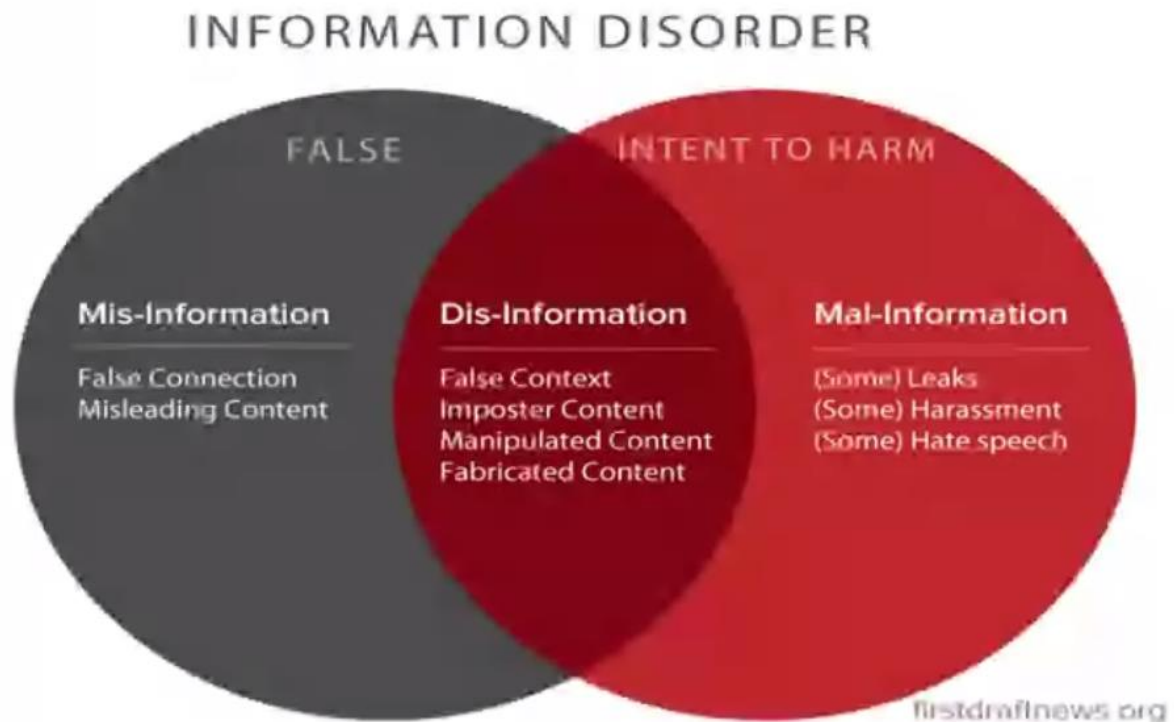


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## Disinformation: The Legislative Dilemma.



- **Disinformation:** is the intentional dissemination of misleading and wrongful information. It is presented in such a way as to purposely mislead, or is made with the intent to mislead. Often, disinformation will include some truthful components or contain “half-truths.” This makes it more difficult for the consumer to recognize something as disinformation and makes the content more believable, a subset of Disinformation is *political disinformation*, which is the intentional dissemination of false information seeking to shape perceptions around some aspect of political discourse.
- **Misinformation:** is the unintentional dissemination of misleading information. Misinformation need not be wholly false. Essentially misinformation is the inadvertent spread of false or misleading information, which does not result from a coordinated effort.
- **Fake News:** is often taken to mean any information from a news source that someone disagrees with. There is no standard definition of fake news. In fact, it’s been used by so many different people in so many different contexts in so many different ways that at it eludes precise definition.
- **Mal-information:** Accurate information used and/or presented in a way to inflict harm.

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Governments cannot be the arbiters of truth.

International standards for the freedom of  
expression must be respected.

“Anti-Fake News” laws violate the freedom of expression

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*General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are incompatible with international standards for restrictions on freedom of expression...and should be abolished.”*

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on “Fake News”, Disinformation and Propaganda*, para. 2(a) (March 3, 2017).

## Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - For respect of the rights or reputations of others.
  - For the protection of national security or of public order (order public), or of public health or morals.

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## Existing laws can be effective

- **Tort law: Intentional infliction of emotional distress; invasion of privacy**
- **Defamation/Libel and Slander**
- **Cyber-bullying**
- **Fraud**

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- **IIED** - publisher of a neo-Nazi website should pay more than \$14 million in damages for encouraging “an online anti-Semitic harassment and intimidation campaign” against a woman in 2016, a federal magistrate judge in Montana (IIED, Invasion of privacy and Montana Anti-Intimidation Act (cyber-bullying))
- **Taylor Dumpson**, the first black woman to serve as student government president at AU, in 2017 sued Andrew Anglin, the founder and editor of the Daily Stormer was awarded \$700,000; intentionally inflicted emotional distress on her and “interfered with her enjoyment of places of public accommodation” because she no longer felt safe on the AU campus. The judge agreed with Dumpson’s lawyers’ argument that because the AU campus is accessible to the public, it should be considered a “public accommodation.” racist online trolling activity can interfere with one’s equal access to a public accommodation.
- Defamation - **Leonard Pozner**, whose son 6-year-old Noah was killed in the 2012 Sandy Hook massacre, was awarded \$450,000 in damages by a Wisconsin jury from a defamation lawsuit filed in response to conspiracy theorists claiming the Newtown tragedy never occurred.
- **Libel** – Comedian and writer Dean Obeidallah has been awarded \$4.1 million in a lawsuit he filed against The Daily Stormer, libel and intentional infliction of emotional distress.

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### New laws are needed

- **Anti-Bot Laws**
- **Transparency in (political) advertising**
- **Independent Regulatory Agencies**
- **Complaint-and-review Mechanisms**

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- **Anti-bot laws**, can be utilized to limit the spread of disinformation because these laws make it more difficult to push content through bots, California became the first state in the United States, and possibly the first jurisdiction in the world, to try to reduce the power of bots through an “Anti-bot law.” The law requires that bots (or the person controlling them) reveal their “artificial identity” when they are used to sell a product or influence a voter. The law defines a “bot” as “an automated online account where all or substantially all of the actions or posts of that account are not the result of a person.” The Law makes it illegal “for any person to use a bot to communicate or interact with another person in California online, with the intent to mislead the other person about its artificial identity for the purpose of knowingly deceiving the person about the content of the communication in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election.” The only exception is where the person discloses its use of the bot in a manner that is “clear, conspicuous, and reasonably designed to inform persons with whom the bot communicates or interacts.” The law targets large platforms—those with 10 million or more unique monthly United States visitors. This limitation is largely appropriate: limiting the law to large platforms ensures that it will not unduly burden small businesses or community-run forums.
- **Transparency:** Disinformation is often disguised. The entity producing the troublesome content is not known. These entities, sometimes with ties to governmental agencies, mask their identities. Transparency laws aim to make social media users aware of where content comes from and which entity is supporting the production and publication of that content. Some types of transparency measures already exist. For example, the United States, France, and Ireland require social network companies to collect and disclose information to users about who paid for an advertisement or piece of sponsored content, and to share information about the audience that advertisers target. French legislation has transparency requirements: Transparency requirements – these legal requirements would mandate that platforms disclose information relevant to

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evaluating the credibility of information. These extensive disclosures would be sent to particular regulators or expert research groups who might then work to enforce rules and inform the public at large.

- **Honest Ads Act:** farthest the United States has gone in legislating against fake news is by introducing the Honest Ads Act (S.1989) in the US Senate. This bill would require digital platforms that have more than 50 million unique monthly visitors to maintain a record of advertisers who have spent more than \$500 on advertisements in the previous year. This record would be required to be made public and include a copy of the advertisement itself. French legislation has transparency requirements: Transparency requirements – these legal requirements would mandate that platforms disclose information relevant to evaluating the credibility of information. These extensive disclosures would be sent to particular regulators or expert research groups who might then work to enforce rules and inform the public at large.
- **Independent regulatory agency:** Establish a third-party regulatory agency to make sure that social media platforms are actually following through on fact-checking, advertisement disclosures, use of bots, etc. This idea is modelled after the Financial Industry Regulatory Authority (FINRA), a private corporation, and the Securities and Exchange Commission (SEC). If this type of agency were created, it would have to decide its own rules for matters like who makes up the agency, whether or not its decisions will be binding, what the accountability or enforcement mechanism, if any, will look like, Complaint and Review Mechanisms: require platforms with a minimum number of users to establish a complaint-and-review mechanism for content. This is based on the NetzDG law in Germany and Facebook's Oversight Board with some modifications. The review mechanism would be triggered through the submission, by any user, of a complaint requesting review of content on a variety of designated bases. The poster of the content could then be given a time-limited opportunity to respond. Where the poster of the questioned content responds, the law could envision one of three approaches: (a) the platform could then be required to conduct an investigation; or (b) the complaint could be referred to a private review mechanism set up and funded by platforms with government oversight; or (c) the complaint could be referred to the government for adjudication.

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MEDIA LITERACY INDEX 2018			
Cluster	Country	Score 2018 (100-0)	Ranking (1-35)
1	Finland	76	1
	Denmark	71	2
	Netherlands	70	3
	Sweden	69	4
	Estonia	69	5
	Ireland	68	6

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*Education* is likely to be the best avenue. Improved news literacy (High-quality education and having more and more educated people is a prerequisite for tackling the negative effects of fake news and post-truth")

**Finland and Sweden**, passed bills introducing media literacy skills classes in public high schools. (Washington state, Connecticut, Rhode Island and New Mexico - Several more states are expected to consider such bills in the coming year, including Arizona, New York and Hawaii.)

Positive relationship between the level of education and resilience to fake news, the OSI report said, with more knowledge and better critical-thinking skills guarding against fabricated information. Finland, Sweden and the Netherlands are among countries that teach digital literacy and critical thinking about misinformation to school children. Keys are good research skills and critical thinking.