

Between Surveillance and Security: The Protection from Online Falsehoods and Manipulation Bill

Described as a “scourge” that could disrupt public discourse and threaten social order,¹ online falsehoods or ‘fake news’ has risen up the public agenda to capture the attention of policymakers and legislators in Singapore. In response, the Singapore Government introduced a new piece of legislation, the Protection from Online Falsehoods and Manipulation (POFMA) bill, to tackle fake news. The introduction of this new legislation did not come without controversy or resistance. This case study provides a broad overview of Singapore’s POFMA and examines the issues at stake.

Features of POFMA

The POFMA was first tabled by the Ministry of Law on 1 April 2019. According to the Ministry of Law, the bill aimed to protect society from the damage caused by deliberate online falsehoods as well as criminalise the actions of malicious actors who knowingly spread falsehoods or offer disinformation tools and services.² The bill was subsequently passed by Parliament on 8 May 2019, after two days of debate involving seven political office holders and 31 Members of Parliament.³

According to a first reading of the bill on 1 April 2019, the POFMA included the following key features:⁴

- The bill targeted falsehoods, not opinions, criticisms, satire or parody. A falsehood was defined as a statement of fact that was false or misleading.
- Corrections would be the primary action to a harmful online falsehood. The falsehood would not be removed. Facts would be put up alongside the falsehood. Online platforms might be required to ensure that those who had seen the falsehood also saw the correction.

¹ Nicholas Fang, “Getting Singaporeans Involved in the Fight against Fake News,” TODAYonline, July 4, 2019, <https://www.todayonline.com/commentary/getting-singaporeans-involved-fight-against-fake-news>.

² Kevin Kwang, “Singapore Proposes Multi-Pronged Law to Combat Online Falsehoods,” CNA, April 1, 2019, <https://www.channelnewsasia.com/news/singapore/singapore-proposes-multi-pronged-law-to-combat-online-falsehoods-11400614>.

³ Government of Singapore, “All You Need to Know about the Debate on Spores Proposed Fake News Laws,” 2019, <http://www.gov.sg/news/content/today-online---all-you-need-to-know-about-the-debate-on-spores-proposed-fake-news-laws>.

⁴ Ministry of Law, “New Bill to Protect Society from Online Falsehoods and Malicious Actors | Ministry of Law,” Press Releases, April 1, 2019, <http://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/New-Bill-to-Protect-society-from-Online-Falsehoods-and-Malicious-Actors.html>; Ministry of Law, “Protection from Online Falsehoods and Manipulation Bill: First Reading” (Singapore Parliament, April 1, 2019), <https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/New-Bill-to-Protect-society-from-Online-Falsehoods-and-Malicious-Actors.html>.

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- Criminal offences would apply to malicious actors. Malicious actors were defined as those who acted to deliberately undermine society using falsehoods.
- The Courts would have the final say on what was false. Any decision by the Government on what was false could be overridden by the Courts on appeal.

Importantly, the POFMA granted portfolio ministers the authority to assess the veracity of a statement and issue directives if a statement of fact turned out to be a deliberate falsehood, although aggrieved parties were able to make an appeal against the minister's decision in court.⁵ The rationale for granting ministers this authority was that the minister would, under the advice of his ministry's officials and resources, possess the necessary domain knowledge for making an assessment on whether a statement of fact was false.⁶ This aspect of the POFMA prompted criticisms and resistance from various quarters of Singapore's media and social landscape.

In order to implement, administer and enforce the POFMA, a POFMA Office would also be established within the Infocommunications Media Development Authority (IMDA).⁷ This Office would provide ministers with technical advice pertaining to existing precedents and the types and feasibility of levers available for dealing with deliberate falsehoods as well as ensure greater consistency across government in the implementation of the POFMA.⁸ The POFMA Office was also expected to work with technology companies to develop codes of practice and ensure that they complied with these codes.⁹

Criticisms and Resistance

Before and after the bill was passed, the POFMA met with significant resistance and criticisms from various sectors. For instance, all nine opposition Workers' Party members voted against the bill in Parliament, while three Nominated Members of Parliament abstained from voting on it. Much of this resistance stemmed from the Singapore government's track record in managing dissent. While existing media regulations such as the Telecommunications Act and Broadcasting Act had allowed the government to practise a significant extent of censorship as well as maintain the dominance of state-linked media companies,¹⁰ less formal exercises of power such as lawsuits against activists and journalists had established strong 'out-of-bounds' (OB) markers in Singapore's public discourse.¹¹

⁵ Aaron Chong, "Ministers Issuing Directives, with Scope for Judicial Oversight, Strikes Best Balance in Combating Fake News: Iswaran - CNA," May 8, 2019, <https://www.channelnewsasia.com/news/singapore/ministers-given-authority-issue-directives-fake-news-pofma-bill-11514544>.

⁶ Chong.

⁷ Amir Hussain, "IMDA to Set up POFMA Office to Administer Fake News Law: S Iswaran," May 8, 2019, <https://sg.news.yahoo.com/imda-to-set-up-pofma-office-to-administer-fake-news-law-s-iswaran-114357552.html>.

⁸ Chong, "Ministers Issuing Directives, with Scope for Judicial Oversight, Strikes Best Balance in Combating Fake News: Iswaran - CNA"; Hussain, "IMDA to Set up POFMA Office to Administer Fake News Law."

⁹ Chong, "Ministers Issuing Directives, with Scope for Judicial Oversight, Strikes Best Balance in Combating Fake News: Iswaran - CNA."

¹⁰ Cherian George, *Freedom from the Press: Journalism and State Power in Singapore* (Singapore: NUS Press, 2012); Terence Lee, *The Media, Cultural Control and Government in Singapore* (Taylor & Francis, 2010).

¹¹ Reporters Without Borders, "Singapore: Intolerant Government, Self-Censorship," Democracy Index (Paris, France: Reporters Without Borders, 2016), <https://rsf.org/en/singapore>; Yip Seng Cheong, *Ob Marker: My Straits Times Story* (Singapore: Straits Times Press, 2012).

Criticisms of POFMA generally came from activists, academics and journalists, with most of these criticisms centred on how the law granted the government too much power and authority, especially when it comes to determining the facticity of a post or issue.¹² These views arose from the fact that the POFMA allowed all ministers to issue “takedown orders” or request for corrections from online platforms and portals, if they had published deliberate falsehoods that were deemed harmful for the public interest.¹³ For instance, Workers’ Party Member of Parliament Low Thia Khiang compared the POFMA to “the actions of a dictatorial government that will resort to any means to hold on to absolute power”.¹⁴ Workers’ Party chief Pritam Singh also called the POFMA a “Damocles sword” for the government, rejecting the executive’s role as initial decision-maker with regard to false statements of fact under the POFMA as well as the uncertainty surrounding the circumstances under which a minister could issue takedown notices or demand a correction.¹⁵

Similar concerns were raised in a letter signed by 42 local and international journalists that was addressed to Minister for Communications and Information S. Iswaran. The letter argued that the POFMA represented a “draconian law” that was “too broad and too vaguely worded” and could “encourage self-censorship and undermine press freedom, which is already in peril in Singapore”.¹⁶ The journalists further alleged that the law “makes any minister an arbiter of truth” and placed too onerous a burden on journalists who, in reporting on emerging stories, might make genuine mistakes that were not of malicious intent.¹⁷

Aside from journalists, criticisms of the POFMA were also made by academics. On 11 April 2019, a letter signed by 97 academics from across the world was sent to Minister for Education Ong Ye Kung. The letter argued that the POFMA could pose “unintended detrimental consequences” for researchers, arguing that much of academic work involved disputing established facts and re-establishing conditions of facticity as new data and analyses became available.¹⁸ The academics also raised concerns over the legislation’s overly broad definition of the public interest as well as the severity of penalties for violations.¹⁹

The impacts of the POFMA were not necessarily limited to activists, journalists and academics. For instance, industry actors such as Google also argued that the law would likely stunt innovation, hampering Singapore’s ambitions to become a regional hub for digital innovation.²⁰ Further criticisms of the POFMA also focused on the bill’s potential to infringe upon individuals’

¹² Bhavan Jaipragas, “Singapore’s Fake News Law: A Lesson to Asia in Stifling Dissent?,” *South China Morning Post*, May 9, 2019, <https://www.scmp.com/week-asia/politics/article/3009597/singapores-fake-news-law-lesson-asia-stifling-dissent>.

¹³ Jaipragas.

¹⁴ Jaipragas.

¹⁵ Bhavan Jaipragas, “Singapore’s Fake News Bill a ‘Damocles Sword’ for Public: Opposition,” *South China Morning Post*, May 7, 2019, <https://www.scmp.com/week-asia/politics/article/3009263/singapores-opposition-calls-fake-news-bill-damocles-sword>.

¹⁶ John Berthelsen, “Journalists Say Singapore Fake News Bill Stifles Press Freedom,” *Asia Sentinel* (blog), April 26, 2019, <https://www.asiasentinel.com/politics/journalists-singapore-fake-news-bill-press-freedom/>.

¹⁷ Berthelsen.

¹⁸ Johannes Tjendro, “Academics Raise Concerns on Proposed Online Falsehoods Laws; MOE Assures Research Unaffected,” *CNA*, April 15, 2019, <https://www.channelnewsasia.com/news/singapore/academics-raise-concerns-on-proposed-online-falsehoods-laws-moe-11446818>.

¹⁹ Tjendro.

²⁰ Today Online, “Google Says Singapore’s Fake News Laws May Hurt Innovation,” *TODAYonline*, May 9, 2019, <https://www.todayonline.com/singapore/google-says-singapores-fake-news-laws-may-hurt-innovation>.

privacy, with the government now able to mandate that internet service providers track the viewing habits of their users.²¹

A further bone of contention was the appeals process, which was described by Workers Party Member of Parliament Sylvia Lim as “onerous”, since the appellant would first need to first comply with the takedown or correction order, apply to the minister who had issued the order, before proceeding to file an appeal in court.²² These sentiments were echoed by Nominated Member of Parliament Walter Theseira, who argued for an expeditious and low-cost process for appeals.²³ Other Nominated Members of Parliament also urged that an expeditious appeal process should be provided for in the primary legislation, rather than subsidiary legislation, given that the former was a “higher barrier to clear” as any amendment had to be tabled in Parliament.²⁴

Government’s Responses

The Government issued several responses to these criticisms. In response to criticisms that the POFMA placed too much authority in the hands of ministers, the Ministry of Law argued that the POFMA ‘narrowed’, rather than widened the Government’s powers, especially in light of existing laws that allowed the Government to block access to sites, such as the Broadcasting Act.²⁵ Unlike these existing legislations, the POFMA allowed appeals to be made to the court against a minister’s decision on the facticity of a statement.²⁶

More specific responses were also issued. In a parliamentary speech, Minister for Law and Home Affairs K. Shanmugam argued that the POFMA would not inhibit free speech and reiterated that the POFMA narrowed the Government’s powers, since it required the perpetrator to have known that the information was false and that spreading it would likely prejudice public interest. Such conditions did not exist in existing laws that also targeted falsehoods, such as the Telecoms Act.²⁷

In the same speech, Shanmugam also detailed the procedures that would be put in place to allow individuals to appeal against a minister’s direction. The appeals process is described in Annex 1. In addition to this “expedited” appeals process, Shanmugam also noted that standardised forms would be used for filing the application to the minister as well as filing the appeal in court, while

²¹ Jennifer Daskal, “Opinion | This ‘Fake News’ Law Threatens Free Speech. But It Doesn’t Stop There.,” *The New York Times*, May 30, 2019, sec. Opinion, <https://www.nytimes.com/2019/05/30/opinion/hate-speech-law-singapore.html>.

²² Aqil Hazid Mahmud and See Kit Tang, “‘Very Onerous’ Process to Challenge Order on Content Deemed as Online Falsehood: Sylvia Lim,” CNA, May 8, 2019, accessed August 12, 2019, <https://www.channelnewsasia.com/news/singapore/online-falsehoods-bill-workers-party-onerous-appeal-process-11515136>.

²³ Adrian Lim, “NMPs Suggest 4 Amendments to Fake News Bill, Including Having Independent Council to Review Govt Decisions,” Text, *The Straits Times*, April 30, 2019, <https://www.straitstimes.com/politics/nmps-suggest-four-amendments-to-draft-fake-news-law-including-having-independent-council-to>.

²⁴ Singapore Parliamentary Debates, “Protection from Online Falsehoods and Manipulation Bill”, Vol. 94 (Anthea Ong, Nominated Member of Parliament), May 8, 2019, <https://sprs.parl.gov.sg/search/sprs3topic?reportid=bill-366>

²⁵ CNA, “Online Falsehoods Bill Narrows, Not Widens, Government’s Powers: Law Ministry,” CNA, May 2, 2019, <https://www.channelnewsasia.com/news/singapore/online-falsehoods-bill-pofma-fake-news-narrows-government-powers-11496172>.

²⁶ CNA.

²⁷ Adrian Lim, “Parliament: Shanmugam Addresses 5 Concerns over Proposed Fake News Law,” Text, *The Straits Times*, May 7, 2019, <https://www.straitstimes.com/politics/parliament-law-minister-shanmugam-addresses-five-concerns-over-proposed-fake-news-law>.

legal costs would be kept low, with no court fees for three days of hearing and courts possessing the power to waive fees.²⁸

In response to the academics' letter, the Ministry of Education sought to assure academics and researchers that the bill would not restrict opinion and researching findings, since it only covered "verifiably false statements of fact which affect public interest"²⁹. In response to concerns that the POFMA would affect Singapore's viability as a technology hub, the Communications Minister Iswaran reiterated the importance of technology firms to Singapore's business ecosystem and committed to greater government engagement and cooperation with technology firms.³⁰

Digital Governance: Inherent Trade-offs?

As the discussion has shown thus far, three themes could be identified within the POFMA debates – the social costs of online falsehoods; surveillance and censorship; and the role of government actors.

The introduction of POFMA reflected the Singapore government's desire to minimise or manage the potential social costs of fake news and misinformation. For instance, Shanmugam argued that the POFMA would help prevent the erosion of trust in public institutions and rise of populism that had occurred in countries such as the United States and Britain.³¹ In other words, the POFMA was seen as a key means through which trust in public institutions, and hence public order, could be maintained. At an individual level, Deputy Prime Minister Heng Swee Keat and Manpower Minister Josephine Teo both highlighted instances of fake news reports and fraudulent websites using their names to obtain personal financial information from members of the public.³²

On the other hand, criticisms of the POFMA centred on two main issues. First, criticisms of the bill initially focused on how it placed too much power and authority in the hands of the executive, particularly government ministers. This suggested a rejection of centralised and top-down approaches to digital governance among some quarters. During a roundtable organised by the Workers' Party, journalists from major media outlets such as The Straits Times, Today, Yahoo News Singapore and Lianhe Zhaobao as well as alternative media outlets such as The Online Citizen and Rice Media favoured the formation of a fact-checking coalition that could serve to debunk falsehoods and as a check on the government.³³

²⁸ Yuen-C Tham, "Parliament: Expedited Appeal for Fake News Law, with Courts to Hear Case as Early as 9 Days after Challenge, Says Shanmugam," Text, The Straits Times, May 7, 2019, <https://www.straitstimes.com/politics/expedited-appeal-for-fake-news-law-with-courts-to-hear-case-as-early-as-nine-days-after>.

²⁹ Tjendro, "Academics Raise Concerns on Proposed Online Falsehoods Laws; MOE Assures Research Unaffected."

³⁰ Chong, "Ministers Issuing Directives, with Scope for Judicial Oversight, Strikes Best Balance in Combating Fake News: Iswaran - CNA."

³¹ Yuen-C Tham, "Fake News Law Needed to Retain Trust in Key Institutions: Shanmugam," Text, The Straits Times, May 8, 2019, <https://www.straitstimes.com/politics/fake-news-law-needed-to-retain-trust-in-key-institutions-minister>.

³² Today Online, "Manpower Minister Warns of Fraudulent Website Asking Public to Give Bank Details," TODAYonline, May 15, 2019, <https://www.todayonline.com/singapore/manpower-minister-warns-fraudulent-website-asking-public-give-bank-details>; Today Online, "Heng Swee Keat Says Report of Him Investing in Company Is Fake News," TODAYonline, May 17, 2019, <https://www.todayonline.com/singapore/report-him-investing-company-fake-news-says-heng-swee-keat>.

³³ Nicholas Yong, "Fake News Bill: Media Professionals Favour Fact-Checking Body, Divided on Its Role," April 7, 2019, <https://sg.news.yahoo.com/fake-news-bill-media-professionals-favour-fact-checking-body-divided-role-045339001.html>.

An editorial piece on the Financial Times also noted that:

*The rise of social media has increased exponentially the speed and impact with which untruths can be disseminated. Yet plans like those unveiled by Singapore to impose direct penalties on purveyors of fake news are disturbing. Top-down approaches risk being abused and turning into censorship. The best way to tackle fake news is to teach consumers to identify and reject it.*³⁴

In placing the initial decision-making power on false statements of fact in the hands of government ministers, the POFMA raised concerns over the centralisation of power that this entailed, as well as a perceived lack of checks and balances against ministers' decisions. These objections reflected existing concerns, particularly among academics and opposition politicians, over an over-consolidation of power and authority in the executive and ruling party.³⁵ A possible alternative arrangement was raised by Nominated Member of Parliament Kok Heng Leun, who suggested the formation of an independent body of legal experts, artistic personnel and other stakeholders who could investigate complaints and facilitate dialogues, particularly in the arts sector.³⁶

Second and more importantly, critiques from the academic and media sectors argued that the POFMA inhibited freedom of speech by introducing a 'chilling effect' on public discourse. In line with existing concerns over censorship and self-censorship in Singapore,³⁷ this 'chilling effect' reflected public concerns over the role of the POFMA as a means for government surveillance over public and media discourse. A New York Times article had argued that the POFMA

³⁴ Financial Times, "Legislation against Fake News Is Open to Abuses," Financial Times, April 7, 2019, <https://www.ft.com/content/b1d78fc2-57b4-11e9-a3db-1fe89bedc16e>.

³⁵ Kenneth Paul Tan, "The Ideology of Pragmatism: Neo-Liberal Globalisation and Political Authoritarianism in Singapore," *Journal of Contemporary Asia* 42, no. 1 (2012): 67–92; Kenneth Paul Tan, "The Singapore Parliament: Representation, Effectiveness, and Control," in *Parliaments in Asia: Institutional Building and Political Development*, ed. Yongnian Zheng, Liang Fook Lye, and Wilhelm Hofmeister (Oxford, U.K.: Routledge, 2013), 27–46, https://www.academia.edu/5057723/Tan_Kenneth_Paul_The_Singapore_parliament_representation_effectiveness_and_control_.In_Parliaments_in_Asia_Institutional_Building_and_Political_Development_ed_Zheng_Yongnian_Lye_Liang_Fook_and_Wilhelm_Hofmeister._Oxford_Routledge_2013; Garry Rodan, "Embracing Electronic Media but Suppressing Civil Society: Authoritarian Consolidation in Singapore," *The Pacific Review* 16, no. 4 (December 1, 2003): 503–24, <https://doi.org/10.1080/0951274032000132236>; Gordon Paul Means, "Soft Authoritarianism in Malaysia and Singapore," *Journal of Democracy* 7, no. 4 (October 1, 1996): 103–17, <https://doi.org/10.1353/jod.1996.0065>; Stephan Ortmann, "Singapore: Authoritarian but Newly Competitive," *Journal of Democracy* 22, no. 4 (October 14, 2011): 153–64, <https://doi.org/10.1353/jod.2011.0066>.

³⁶ Yuen Sin, "Parliament: Set up Independent Body to Look into Disputes over Art in Public Spaces, Says Arts NMP," Text, The Straits Times, September 11, 2018, <https://www.straitstimes.com/politics/set-up-independent-body-to-look-into-disputes-over-art-in-public-spaces-arts-nmp>.

³⁷ Terence Lee, "Internet Control and Auto-Regulation in Singapore," *Surveillance & Society* 3, no. 1 (September 2005): 74–95; Lee, *The Media, Cultural Control and Government in Singapore*; Terence Lee and David Birch, "Internet Regulation in Singapore: A Policy/ing Discourse," *Media International Australia Incorporating Culture and Policy* 95, no. 1 (May 1, 2000): 147–69, <https://doi.org/10.1177/1329878X0009500114>; Cherian George, "Consolidating Authoritarian Rule: Calibrated Coercion in Singapore," *The Pacific Review* 20, no. 2 (May 25, 2007): 127–45; Garry Rodan, "The Internet and Political Control in Singapore," *Political Science Quarterly* 113, no. 1 (March 1, 1998): 63–89, <https://doi.org/10.2307/2657651>; Rodan, "Embracing Electronic Media but Suppressing Civil Society."

represented a “chilling new level of surveillance online”.³⁸ Indeed, studies had established correlations between internet regulation or surveillance and ‘chilling effects’ among the public.³⁹

To some critics, the first instances of the Government’s use of POFMA reinforced their fears.⁴⁰ Less than two months after the Act came into effect, the Government acted against two Facebook posts in November 2019 – one by an opposition party member and the other by an editor of Australian-based site. When the latter refused to publish a correction notice, Facebook was directed to do so instead. Barely a month later, POFMA was again invoked against Facebook posts on the employment of local PMETs and spending by the Education Ministry on local and foreign students.

While it was aimed at regulating and preventing the proliferation of fake news and other false statements of fact, the POFMA also stimulated much debate and criticisms. These criticisms centred on the bill’s potential to inhibit freedom of speech, consolidate power in the hands of the executive, and introduce a strong element of surveillance and self-censorship to public discourse in Singapore.

More importantly, these debates and criticisms alluded to inherent trade-offs that existed in the POFMA, particularly the trade-off between security and surveillance. While the POFMA was introduced to ensure greater social stability by minimising the deleterious impacts of fake news, it was primed to do so through some level of surveillance and censorship.

Discussion Questions

1. What are the social, economic and political implications of fake news?
2. What are the trade-offs between managing fake news on the one hand, and minimising surveillance and censorship on the other? Will POFMA result in a greater extent of surveillance or a ‘chilling’ effect on public discourse?
3. Assess the effectiveness of POFMA as a legislation for managing fake news. What are the pros and cons of POFMA? What are the inherent trade-offs that may arise from POFMA?
4. What are the possible alternative policy solutions that policymakers could design to manage fake news?

³⁸ Daskal, “Opinion | This ‘Fake News’ Law Threatens Free Speech. But It Doesn’t Stop There.”

³⁹ Jonathon W. Penney, “Internet Surveillance, Regulation, and Chilling Effects Online: A Comparative Case Study,” *Internet Policy Review* 6, no. 2 (May 26, 2017), <https://policyreview.info/articles/analysis/internet-surveillance-regulation-and-chilling-effects-online-comparative-case>.

⁴⁰ James Griffiths, “Singapore just used its fake news law. Critics say it’s just what they feared,” *Business* (CNN), November 30, 2019, <https://edition.cnn.com/2019/11/29/media/singapore-fake-news-facebook-intl-hnk/index.html>.

Annex 1:

POFMA Appeals Process

1. Minister orders an individual to remove content that is deemed false or publish a correction alongside the content.
2. The individual complies with the order, before applying to minister to dispute the minister's direction.
3. Minister has 2 days within receiving the application to make a decision.
4. If application to minister is unsuccessful, the individual has up to 14 days to file an appeal in court.
5. Court documents must be served no later than the next day on the minister.
6. Minister has up to 3 days to file his/her reply in court.
7. The hearing must be held no later than 6 days from the day the court receives the appeal application.
8. Court has discretion to extend timelines, if needed.

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