

IN FOCUS: Has POFMA been effective? A look at the fake news law, 1 year since it kicked in

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SINGAPORE: In late January, before COVID-19 was named as such, and before it was declared a global health emergency, Singapore had just confirmed its fourth case.

The Ministry of Health announced on Jan 26 that the patient was a 36-year-old man from Wuhan who arrived with his family in Singapore four days earlier. The man had stayed at Village Hotel Sentosa before he was admitted to hospital.

Public interest and anxiety grew as this new and contagious virus hit Singapore's shores, steadily infecting more people.

Later that evening, a thread on the popular HardwareZone forum popped up with the title: [Breaking] Singapore Reports First Death From New Virus. A 66-year-old man had died after developing severe pneumonia, user Potato_salad claimed.

Naturally, this was alarming news. By that point, the virus had killed at least 17 people, all in China. The first confirmed fatality outside China would only be reported on Feb 2: A 44-year-old Wuhan man who died in the Philippines.

The Singapore authorities moved fast.

On the morning of Jan 27, the Protection from Online Falsehoods and Manipulation Act (POFMA) Office announced that Health Minister Gan Kim Yong had instructed it to issue a general correction direction to SPH Magazines, which runs HardwareZone.

The general correction direction required the forum to communicate, publish, broadcast or transmit a correction notice to its users in Singapore. This was the first time that a POFMA order was issued for a COVID-related falsehood.

As of 11pm on Jan 26, there had been no deaths among confirmed cases of COVID-19 in Singapore, an article on Government fact-checking website Factually clarified.

HardwareZone removed the thread before the order was given, The Straits Times reported, but the forum published the correction anyway.

The Ministry of Law (MinLaw) told CNA on Tuesday (Sep 29) that POFMA was needed during the early days of COVID-19 to tackle such falsehoods.

"Without intervention, these falsehoods could have spread unchecked, caused public panic and reduced public confidence in Singapore's efforts to combat COVID-19," a spokesperson said.

"The use of POFMA clarified the facts quickly and required corrections to be placed alongside the posts at their source, for example, on intermediary platforms like Facebook and HardwareZone."

Dr Michael Raska, an information and cyber warfare expert at the S Rajaratnam School of International Studies (RSIS), said Singapore's society is increasingly affected by disinformation streams through social media.

"Different actors are trying to alter what Singapore's Government and population 'knows' or thinks it knows about itself and the world around it," he said.

Dr Raska said online disinformation amplifies existing tensions or creates new fracture points within different layers of society.

"The consequence is a loss of identity, which weakens societal resilience to xenophobia, extremists ideologies, fake news and complex security challenges," he added.

"In this context, POFMA has been trying to raise awareness to the problem of disinformation, prevent the diffusion of disinformation, and actively counter disinformation."

THE BIRTH OF POFMA

POFMA was passed in Parliament on May 8 last year after a marathon two-day debate. Prior to that, the Government had consulted the public and held eight days of Select Committee hearings, during which a range of opinions was put forward, both for and against taking action.

One of the key concerns raised about POFMA, which came into force on Oct 2 last year, was that it could chill free speech and give too much power to ministers as arbiters of truth. The Workers' Party (WP) had opposed the Bill, arguing that the Executive should not be the first to decide what is false.

While experts told CNA that POFMA has not displayed a chilling effect, they said it has inadvertently brought attention to certain falsehoods that could have been dealt with through non-legislative means.

Some experts also urged for more transparency in the POFMA process, renewing calls for an independent fact-checking body to be the first to review an alleged falsehood. This was one recommendation brought up during the Select Committee hearings.

"We recognise that there are diverse views on POFMA and how it can be refined," the MinLaw spokesperson said.

"We will continue to review and fine-tune legislation and relevant processes, so that POFMA can be more effective in tackling falsehoods."

POFMA DURING COVID-19

Nevertheless, the spokesperson said the legislation must be able to tackle falsehoods regardless of communication medium, and must do so quickly to "break virality".

Since the law kicked in, the POFMA Office has issued 51 correction directions, 11 targeted correction directions, four declared online locations, three disabling orders, one general correction direction and one access blocking order.

Correction directions require recipients to post a correction notice and a link to the facts alongside a false statement. Targeted correction directions require Internet intermediaries to communicate a correction notice to Singapore users who accessed the falsehood. General correction directions work the same way, but the correction notice is sent to all of the intermediary's Singapore users.

Declared online locations must carry a notice saying they have a history of communicating falsehoods. Disabling orders and access blocking orders require recipients to block Singapore users' access to online locations containing the false statement.

Falsehoods targeted include those related to foreign workers, hanging methods, population plans, PMET jobs, and the salary of Temasek CEO Ho Ching. About half of the falsehoods were related to COVID-19, the MinLaw spokesperson said.

Dr Carol Soon, a senior research fellow at the Institute of Policy Studies (IPS), said the expeditious issuing of POFMA orders in the early days of the pandemic was critical given the rapidly developing situation.

When a Facebook post uploaded on Jan 28 claimed that Woodlands MRT station was closed for disinfection from COVID-19, the POFMA Office issued a targeted correction direction to Facebook on the same day.

On Jan 30, an alternative news website published an article claiming that five Singaporeans were infected by COVID-19 even though they had not been to China. The article was shared on two Facebook pages. The next day, the POFMA Office issued correction directions to the parties involved.

"Instances of how POFMA was used during the COVID-19 outbreak demonstrates how it can be used to protect public interest, specifically, safeguarding public health and public safety," said Dr Soon, who was the first to present evidence during the Select Committee hearings.

"We recall high levels of anxiety when the outbreak started in January this year. The waves of misinformation from both foreign and local sources exacerbated the fears and confusion experienced by the public, and concerns over whether the Government's response was adequate."

Associate Professor Alton Chua, who studies information and knowledge management at the Nanyang Technological University (NTU), said POFMA has been used most appropriately when falsehoods exploit racial and religious fault lines to arouse public concern.

He pointed to how POFMA was invoked on Nov 28 last year after a post on the now-defunct States Times Review Facebook page alleged that a whistleblower, who had supposedly exposed a People's Action Party candidate's Christian affiliations, had been arrested.

When Alex Tan, the owner of the Facebook page, did not comply with the correction direction, the POFMA Office issued the same order to Facebook the next day.

"The post, which was plainly refuted by the Ministry of Home Affairs, did not gain any traction thereafter," Assoc Prof Chua added. "Here is a case where POFMA was deftly used to nip a falsehood at its bud."

DOES POFMA CHILL FREE SPEECH?

Assoc Prof Chua said POFMA's legal requirement to post correction notices means "most users now think twice about concocting misinformation deliberately".

"The Government has given verbal assurances that POFMA does not cover opinions, criticisms, satire or parody," he added. "So those who value free speech may continue to express themselves freely so long as they do not misrepresent facts."

Singapore Management University (SMU) law professor Eugene Tan said POFMA has the "salutary effect" of promoting responsible and meaningful public discourse by encouraging people to get their facts right and clarify the basis of their opinions.

"It is important to recognise the workings of POFMA often enable the offending online material to remain in the public domain," he said. "In that sense, the chilling effect is, arguably, overstated."

Assoc Prof Tan believes the POFMA uses thus far have all had an "arguably reasonable basis".

"But the falsehoods could also be dealt with as was done in the pre-POFMA days," he added. "This could be done with the Government issuing a clarification, which is what POFMA also does too."

CHOOSING OTHER MEANS OVER POFMA

Assoc Prof Chua gave one example of when he thought POFMA was used unnecessarily, citing how four correction directions were issued on Apr 19 after a number of social media posts alleged that Mdm Ho Ching earned "S\$99 million a year".

Earlier that day, Temasek had clarified that the allegation was false.

The case has since been brought up in Parliament and is before the courts. The Online Citizen (TOC), which received one of the POFMA orders, sought judicial review over whether the order should be upheld.

"This issue was brought up in the previous Parliament and is now under judicial review as to whether it qualifies as a matter of public interest," Assoc Prof Chua said.

"Perhaps, instead of bringing POFMA into the picture, all that was needed was for the board of Temasek to explain their stand on the non-disclosure of specific remuneration details of anyone.

"The case would have blown over without fanfare."

RSIS' Dr Raska said POFMA could have shone an unintentional spotlight on some of the falsehoods it acted on.

"POFMA's actions created unintended side effects in countering select disinformation or platforms, some of which might have been strategically irrelevant, which raised their profile," he said.

IPS' Dr Soon said POFMA's outcomes "seemed to be different" when it was used against Progress Singapore Party (PSP) member Brad Bowyer and the Singapore Democratic Party (SDP) last year.

In the first use of POFMA since the law kicked in, Mr Bowyer was issued a correction direction on Nov 25 for his Nov 13 Facebook post which implied that the Government controls commercial decisions by Temasek and GIC.

Then on Dec 14, the SDP was issued three correction directions on two Facebook posts and an online article posted on Dec 2, Nov 30 and Jun 8 respectively. The content was related to local PMET employment and retrenchment.

In both cases involving Mr Bowyer and the SDP, the POFMA orders came at least 12 days after the offending material was published.

"That could compromise the ability of POFMA in curbing the spread of the falsehoods," Dr Soon said.

"In those instances, there was also some public backlash and questioning of the Government's intent, which it subsequently had to explain and give assurance for."

For POFMA to achieve its desired impact, Dr Soon said it should be used during exigencies when time is of the essence and corrective information can be released nimbly.

"In other situations, considerations on if the falsehood can be rectified (through other means should be made), particularly through public clarification and sharing of evidence," she added.

HOW POFMA CAN BE IMPROVED

SMU's Assoc Prof Tan also suggested ways of improving POFMA's execution, including giving more clarity on why POFMA needs to be used.

"The challenge for the authorities is to ensure that POFMA is not 'overused' as that could undermine its effectiveness and salience whenever it is invoked," he said.

Dr Raska said the key challenge for POFMA is balancing the need to counter misinformation with "increasing Government transparency".

The MinLaw spokesperson reiterated that POFMA can only be used when two "distinct criteria" are met: There is a false statement of fact; and it affects the public interest.

Public interest includes public health and safety, public finances, and confidence and trust in Government agencies and institutions, the spokesperson said.

"In deciding whether to use POFMA, the relevant ministers have to determine the falsity of the statement in question and judge whether it is in the public interest to act," the spokesperson added.

"The weight of this judgement is placed on ministers in the first instance, as they have the relevant domain knowledge to act quickly as needed, and are also accountable to Parliament and to the electorate.

"However, a minister's direction is open to challenge in court both via an expedited appeal process and via judicial review, which a number of parties have already done."

On Sep 17, the Court of Appeal reserved judgment against two appeals by the SDP and TOC against POFMA correction orders it received in separate cases. The cases relate to PMET jobs and hanging methods, respectively.

Still, NTU's Assoc Prof Chua feels there is room to introduce "checks and balances" in how POFMA is executed.

"For example, before POFMA can be invoked, it needs to be reviewed by an independent body," he said. "The more transparent the review process, the stronger the case for using POFMA becomes."

POFMA CRITICS HOLD FIRM

When WP opposed POFMA in Parliament, it cited the Select Committee's report in maintaining that the courts, an independent body or an ombudsman should decide what is false in the first instance.

The WP declined to comment for this story.

The PSP has held a similar stand, saying in a statement in December last year that having ministers declare a statement to be false "does not measure up to the standards of transparency and accountability".

PSP assistant secretary-general Francis Yuen told CNA that POFMA seems like a "political tool to silence critics and political commentators", pointing to how it has been used against content by opposition parties and members.

"POFMA-ing politicians has a chilling effect on free speech and political discourse in Singapore," he said, adding that it is better to have an "open discussion" on the topics brought up.

POFMA DURING GENERAL ELECTION 2020

In a previous interview with CNA, Law Minister K Shanmugam said the use of POFMA during the recent General Election would not disadvantage the opposition and instead encourage democracy.

In the period between the issuing of the Writ of Election on Jun 23 and Polling Day on Jul 10, the POFMA Office issued 20 orders.

The first three came on Jun 29, when a correction direction each was issued to Alex Tan and State News Singapore, a new Facebook page he was running then. A targeted correction direction was also sent to Facebook.

The false statements in question related to cross-border travel arrangements between Singapore and Malaysia.

The month of July saw 17 POFMA orders issued, the most in a month thus far. The orders were issued on each day from Jul 2 to Jul 5. The falsehoods related to foreign students, migrant workers and population figures.

CNA received one correction direction on Jul 5 for an article that included comments made by SDP chairman Paul Tambyah on the COVID-19 testing of migrant workers.

SMU's Assoc Prof Tan said the use of POFMA during the recent election was perceived by some as being politically motivated and could have led to even more polarisation of views.

"From the authorities' perspective, the temptation is not only present but also greater to use the law during the election," he added.

"It doesn't matter that it wasn't politically motivated, because the use of POFMA, arguably, added fuel to fire and breathed life into falsehood.

"Clarification is the best that can be done. Ultimately, POFMA cannot compel people to believe in what they don't or want to believe in."

"PEOPLE ARE THE JUDGES OF TRUTH"

Mr Yuen said the Government can in general dispel fake claims by publishing the wealth of data and information it has and "demolish the credibility of the author".

"This would be more effective than using POFMA. After all, the people are the judges of truth," he added. "The Government should let media outlets or an independent council self-regulate and manage this space."

Mr Shanmugam had reiterated during a conference in September last year that technology companies cannot be left to self-regulate due to conflicts of interest in their business model.

In Singapore, social media giant Facebook has received 14 POFMA orders so far. This includes directions to post correction notices and disable access to certain pages for users in Singapore.

A Facebook spokesperson told CNA that all government requests, including POFMA orders, are "carefully reviewed to assess their legal basis".

"Facebook continues to take considerable action to fight misinformation, including removing fake accounts and harmful misinformation relating to COVID-19, tackling coordinated inauthentic behaviour, and supporting programmes to build digital literacy and understanding," the spokesperson said.

“While we share the Singapore Government’s commitment to addressing misinformation, we remain concerned about any law that risks stifling expression by empowering a government with the right to decide what is true and what is false.”

In particular, Facebook believes that a government which can decide what is true or false creates the potential for overreach, and alters the balance of political discourse by allowing one party to unilaterally declare and label content as false.

NO SILVER BULLET

With or without POFMA, Assoc Prof Tan said people are not always going to agree with the Government's account or narrative, noting that POFMA is “not the silver bullet to preventing truth decay”.

"Although POFMA is not a game-changer, it is a useful tool in the Government's legislative arsenal to deal with falsehoods that can undoubtedly harm us," he added.

The MinLaw spokesperson said the use of POFMA does not preclude the Government using other modes to clarify falsehoods, including through its public communications channels.

“Domain agencies and ministers may use a variety of modes as they deem appropriate,” the spokesperson said.

Nevertheless, Assoc Prof Tan said it is still the public's responsibility to be digitally literate.

“Regardless of whether there's POFMA or not, the onus is still on each one of us making discerning choices about what we read, especially on matters that affect us,” he added.

Editor's note: An earlier version of this article said that there had been 52 Correction Directions (CDs) issued to date. The POFMA office has since advised that there have been 51, clarifying that while the Ministry of National Development said on Feb 26 that CDs had been issued to The Independent Singapore for an article and a Facebook post, in fact only one CD had been issued to cover both.