

Intention is key in distinguishing fake news from honest opinion, says TOC co-founder Andrew Loh

Tang See Kit

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When deciding if one should be guilty of spreading falsehoods online, the intention behind the content should be one of the basic guiding principles so as not to stifle free speech.

This is a point made by Mr Andrew Loh, co-founder of socio-political website The Online Citizen (TOC), in his written representation to the parliamentary committee looking at the issue of deliberate online falsehoods.

Mr Loh, who stressed that he was speaking in his personal capacity, called for a “patient and tolerant approach” to allow for robust debates. He also suggested an independent body be set up to oversee alleged fake news cases – points that he reiterated at the Select Committee hearing on Wednesday (Mar 28).

Intent as main guiding principle

Mr Loh, who held the roles of editor and reporter at the TOC for about nine years, said determining intent is “important” to safeguard Singaporeans’ constitutional right to free speech.

“The two are not mutually exclusive and must be given equal weight or importance,” he wrote. “There is a need to be watchful that the authorities do not overreach in what could be, at times, a thin line which separates the two.”

He said that in cyberspace, people often express themselves “in ways which, on hindsight, they may feel do not in fact represent what they feel or how they should have expressed their feelings or thoughts in a particular moment”.

People should be given the benefit of the doubt that the comments were made after being “caught up in emotions or passion for an issue at that particular point in time”, he said.

Hence, in such cases, it “would not be fair or right to assign the guilt or charge of propagating deliberate online falsehoods to the person, without ascertaining the intent behind such publication or expression of such a view”.

If such a person is judged to be spreading deliberate online falsehoods, it would be “disconcerting” and setting “an extremely low bar”. It would also have a “serious negative effect” on free speech, said Mr Loh.

“Expressing honest opinions, including political views which are often partisan and emotionally-charged, and opinions which may seem to have veered into falsehoods, should not necessarily and automatically be considered intentionally malicious if the views and thoughts expressed contain certain inaccuracies of facts.

“This is especially so on occasions where accurate information is scarce or is hard to obtain ... including information which can only be accessed through official government channels, if they were available, such as through a Freedom of Information Act (FOIA), for example,”

said Mr Loh, referring to a suggestion raised by non-mainstream journalists during the previous hearing.

The journalists, comprising former or current editors of the TOC, had on Tuesday advocated a Freedom of Information Act. Ms Kirsten Han, for one, wrote in her written representation that such an Act would allow Singaporeans to put in requests for data from the Government to “do their own fact-checking; conduct their own analysis and come to their own conclusions”.

During his oral submission on Wednesday, Mr Loh also echoed Ms Han’s point about how alternative media journalists tend to face a “roadblock”. “There’s a wall that is put up and when we are unable to get the facts and go ahead with the story, we are then accused of propagating falsehood.

“That is a real problem for us and I hope the Government will understand that we are no troublemakers.”

Committee member and Member of Parliament (MP) Edwin Tong questioned Mr Loh on the need to determine one’s intention, noting that “harm can be caused intentionally or unintentionally”. He reasoned that “the difference between intentional and unintentional cannot affect” how the harm is dealt with, and that steps still need to be taken.

Mr Loh replied that would have to depend on the situation and Mr Tong raised the need to have “a variegated response” in place – one that takes into account various long-term and short-term remedies, such as legislation or media literacy education, instead of being a “one-size fits all” approach.

To that, Mr Loh agreed.

Also on the point of intention, committee member and Nominated Member of Parliament Chia Yong Yong asked Mr Loh about the scenario of someone making a comment that “was racially inflammatory without any malicious intent”.

“It’s a question of threshold,” said Mr Loh, who added that that may differ for individuals and the Government.

When asked by Ms Chia who gets to decide that threshold, Mr Loh said it would have to be “the elected officials who are in Parliament”.

“I think nobody can argue with that but the question is, how big a threshold should Parliament have on these sorts of things,” he said.

Citing Institute of Policy Studies’ (IPS) deputy director for research Gillian Koh and Singapore Management University law professor Eugene Tan, Mr Loh added that public debates should be allowed for such sensitive issues if there is no clear and present danger.

Set up independent body instead of further legislation

In his written representation, Mr Loh also raised the idea of forming an independent body to oversee cases relating to online falsehoods.

He reasoned that it would be “time-consuming and an unnecessary drain on public resources” if every alleged fake news case is dealt with in the courts. Only the “most egregious cases”, such as those concerning national security and terrorism, should be brought to the courts, he added.

An independent body would, hence, be better positioned to handle such cases and even then, stressed Mr Loh.

Mr Loh also made his case by highlighting that existing laws, such as the Public Order Act and the Protection from Harassment Act, already serve as an “arsenal of legal remedies” for the Government to deal with online content it deems problematic.

“There does not seem to be any need for further legislations to deal with deliberate online falsehoods,” he wrote. “Any new legislation will add to the already-present perception that the Government is killing a fly with a hammer, that is, overreaching and overreacting.”

Mr Loh went on further to say that the existing “myriad of legislations” governing both the mainstream and the online alternative media has led to his view that “the Government has stifled the free flow of information, encouraged (whether intentionally or not) self-censorship, and raised suspicions of the mainstream media, in particular, of its intent especially in matters political”.

A harder stance against the alternative media in recent years, through the introduction of new laws and the enhancements of various others, also meant that a “mere expression of a view can result in serious consequences”.

This “unrelenting war ... by the authorities against the slightest infringements made by online users should be stopped”, he added, while urging for authorities to take on a “more patient and tolerant approach” to allow for robust debates.

Mr Loh raised the example of Mr Li Shengwu, the nephew of Prime Minister Lee Hsien Loong, who is being sued by the Government for criticising Singapore’s “pliant court system” and the country’s “very litigious” Government in a Facebook post on Jul 15, 2017.

He reckoned that “it would have been much better if the authorities, in this case the Attorney General’s Chambers (AGC), had issued a strong and empathic rebuttal to Li’s remarks”. The AGC’s decision to “take the purely legal route is unfortunate” as “it slams the door shut on any hope of what would have been a beneficial public debate on an important topic”, he added.

This silence “cannot be good for Singapore”, wrote Mr Loh. “(For) such silence borne out of fear or legal threat festers conspiracy theories, half-truths, untruths, or plain lies, the very things which we hope to eradicate in this campaign against falsehoods.

“When people start to speak in hushed tones behind walls, it does not provide opportunities for clarification, or rebuttal. And when these things carry on over prolonged periods of time, what you end up with is a more difficult problem to deal with.”

As such, authorities should “refrain from reaching for the closest knife at hand whenever an infringement is perceived” and instead, opt for dialogue if the actions are not of immediate threat to national security or the community.

“Reasoned and rational debate will bear more fruits than the hard edge of a knife wielded without mercy or on impulse,” said Mr Loh.

Engaging alternative media, citizen journalists

Elaborating on his point about the need for the Government to engage, Mr Loh added in his oral submission that “everyone” needs to be on board in the effort to combat deliberate online falsehoods.

“In order to shield ourselves and build this resilience, we need everyone and that everyone must include the alternative media,” he said.

Urging more engagement with citizen journalists, Mr Loh said the Government could consider setting up a fund to help online writers and bloggers improve their writing or journalism skills. Those with relevant knowledge in journalism and law could also offer their expertise by conducting lessons or workshops.

Such a move "would signal to the public that the Government's position is not one of simply meting out punishment and penalties and threats, but also one of going upstream" by helping to equip information disseminators with better skills.

Such initiatives "could also help change the tone of the current 'us-vs-them' situation", he said in his written submission.

Mr Tong commented that the idea was “interesting” and that the committee would consider it.

Mr Loh added that the media, be it mainstream or alternative, traditional or digital, should be given space to raise issues, including those that may be uncomfortable for the Government.

“A freed media will lead to trust in them by Singaporeans, which could then turn to the media for reliable information, an important development in the fight against online falsehoods,” according to Mr Loh's written submission.

“If there is distrust of the media all around, the fight against deliberate online falsehoods will be more difficult.”