

# News analysis: Fake-news laws — what do the first two cases tell us?

**Kenneth Cheng**

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Less than two months after Singapore's fake-news law kicked in, it was invoked twice in four days last week.

The law was crafted after policymakers spent two years studying the threat of fake news, with a parliamentary committee set up to study deliberate online falsehoods and make recommendations on how to fight the scourge.

The committee held public hearings over eight days last year and canvassed written submissions.

In May, the law was passed after a two-day marathon debate in Parliament — one of the longest debates on proposed legislation in recent years.

Given the public interest in the landmark Protection from Online Falsehoods and Manipulation Act (Pofma), which also garnered global attention, TODAY spoke to several experts on what they gleaned from Pofma's application in the first two cases. The experts had given their views at last year's public hearings.

On Nov 25, opposition party member Brad Bowyer became the first person to be served a notice under Pofma, which came into force in early October.

Mr Bowyer, who is with the Progress Singapore Party, was ordered on Finance Minister Heng Swee Keat's instruction to correct a Facebook post.

The Government said that what was written in the post peddled misleading and false statements about state investor Temasek Holdings and sovereign wealth fund GIC. Mr Bowyer later amended it.

Three days later, the States Times Review website came under fire for a Facebook post described as containing false and baseless claims.

Its editor refused to carry a correction notice — which was ordered by Home Affairs Minister K Shanmugam — leading the Government to instruct Facebook to do so. The social media giant complied.

## **'No attempt to curb free speech'**

Law lecturer Eugene Tan of the Singapore Management University (SMU) said that Pofma's application in both cases showed that there was "no attempt to curb dissent".

The correction directive entails the recipient publishing a notice, which includes a web link to the facts, but does not require him to remove the article or edit it, Associate Professor Tan noted.

“As such, the author’s or publisher’s article remains available and the point of view expressed unaffected,” he said. “Any argument that Pofma curbs free speech will be hard-pressed to find support.”

### **Facts vs opinions**

Even so, questions have been raised over whether Mr Bowyer’s post constituted facts or opinions.

Pofma targets only false statements that distort facts. It does not cover opinions, criticism, satire or parody.

Among other things, Mr Bowyer’s post had implied that the Government controlled Temasek and GIC’s commercial decisions, and said erroneously that Temasek had invested in the debt-ridden parent company that owns restaurant chain Salt Bae.

Professor Lim Sun Sun, head of humanities, arts and social sciences at the Singapore University of Technology and Design, said that some people may feel that “the wisdom of investing in particular companies, much like the expert advice we read on financial investments, is a matter of opinion”.

Prof Lim, who is also a Nominated Member of Parliament, said that these early applications of the law and those that follow shortly after would be closely watched in terms of whether they are targeted at statements that contain opinions or facts.

“If there is (a) dispute over opinions that are construed as facts, then concerns may be triggered of Pofma over-reaching, as articulated during the parliamentary debate on the Bill,” she added.

Dr Shashi Jayakumar, head of the Centre of Excellence for National Security at the S Rajaratnam School of International Studies, said that the Government had been very clear that Mr Bowyer made a false statement, which implied that the Government controlled Temasek and GIC’s investment decisions.

But he said it might have been preferable for the authorities to spend more time, perhaps via an extra clarification elsewhere, on this point.

“To many ordinary Singaporeans trying to understand these issues concerning the first use of Pofma better, ‘implication’ — or, for that matter, inference — might not in some circumstances seem that different from an ‘opinion’, and the Government has been clear that Pofma does not cover opinion,” he said.

### **Twelve-day delay**

Dr Jayakumar also noted that there was a delay between Mr Bowyer’s post on Nov 13 and the Government’s correction directive on Nov 25.

“Given that Pofma was fashioned to deal specifically with falsehoods that can go viral quickly, it is unclear to me why the Government waited two weeks before issuing the correction direction,” he said.

“I am not entirely certain, therefore, notwithstanding the fact that the Government was within its rights to invoke Pofma, whether this was the best first use of Pofma.”

Associate Professor Alton Chua of the Nanyang Technological University (NTU) saw Mr Bowyer’s case as one of information asymmetry.

“The inner workings of Temasek Holdings and GIC are not easily accessible to the man-on-the-street,” Assoc Prof Chua, who is with NTU’s Wee Kim Wee School of Communication and Information, said.

When approached by TODAY, the Finance Ministry declined to respond to comments about the 12-day delay, the view among some that Mr Bowyer’s remarks could be interpreted as opinions, as well as Assoc Prof Chua’s point on an information asymmetry.

In an interview with Mediacorp radio station CNA938 this week, Second Finance Minister Indranee Rajah said that the Government’s correction order was necessary, as Mr Bowyer was spreading misconceptions that public funds were being mismanaged.

Ms Indranee said, for instance, that Mr Bowyer’s post carried the implication that the Government controlled Temasek and GIC’s investment decisions. This is untrue because investment teams, which comprise professionals with expertise in the area, make those decisions, she said.

### **Implications for Facebook**

As for the case involving the States Times Review, the analysts agreed that its Facebook post contained clear falsehoods.

The States Times Review post claimed, among other things, that a Facebook page called the NUSSU – NUS Students United had been taken down and that the police were investigating the page owner after the home affairs minister ordered the arrest.

The Government had previously singled out the page for quoting Mr Shanmugam in a misleading manner.

No one had been arrested and Facebook had removed the page of its own accord for violating its authenticity policies, the Government said.

Assoc Prof Tan of SMU said that the Government’s move to order Facebook to publish a correction was justified, since Facebook had been used to spread the falsehood. The company thus bears responsibility, too.

Countries contemplating laws to deal with deliberate online falsehoods would study Pofma closely, he said.

There is a regulatory imperative to hold social media platforms accountable as they play an undeniable role as intermediaries in purveying falsehoods, Assoc Prof Tan added.

“If more countries adopt a regime like the one found in Pofma, this harmonisation, if not convergence, of laws discomforts the social media platforms most,” he said.

Agreeing, Prof Lim said: “This act of compliance will set an interesting precedent for other countries that may demand the same in future.”

However, Assoc Prof Tan said that Facebook’s response in this case does not mean that it would comply with all directives next time.

“Facebook may well find it opportune to challenge the law or its application in an appropriate case,” he added.

### **Avoiding pitfalls**

Ultimately, even as the Singapore Government seeks to protect the public interest by stopping the spread of falsehoods quickly, Dr Carol Soon of the Institute of Policy Studies said that it had to avoid the pitfall of unintentionally cultivating among the people a reliance on the Government to discern facts from falsehoods.

“We should avoid the scenario where people rely on Pofma as a signpost on what to believe in, as it is not feasible for the Government to flag every falsehood,” she said.

“The Government may want to consider using Pofma for egregious matters and emergencies, and retain the use of clarification and debunking for less pernicious ones.”

Assoc Prof Tan said some people would believe that the Government need not have invoked Pofma in these two instances and a clarification would suffice.

But he said the cases demonstrated that the authorities regarded clarifications as inadequate in matters of deep public interest.

“They relate to critical matters of public accountability, abuse of police powers and the rule of law, which speak to the public interest,” he said.