

Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts



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Special Rapporteur for
Freedom of Expression

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Introduction

On June 5, 2018, the General Assembly of the Organization of American States asked the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IA-CHR), the Department of International Law (DIL) and the Department of Electoral Cooperation and Observation (DECO) of the Organization of American States to develop a "Practical guide of recommendations to guarantee freedom of expression and access to information from various sources on the Internet in electoral contexts, without undue interference".¹

With a view of conducting this process through stakeholder participation and collaboration, the Office of the Special Rapporteur and DECO issued a call for proposals at the end of 2018 seeking contributions and reflections regarding the concern expressed by the States due to the dissemination of deliberately false information and disinformation campaigns on social networks, as well as for the improper use of personal data during electoral periods. The community was invited to "submit general comments or ongoing work" involving empirical studies on the mass dissemination of false information, especially in electoral contexts, principles or standards applicable to the problem, possible actions, and stakeholders involved. 19 contributions were re-

¹ GENERAL ASSEMBLY OF THE OAS, PROMOTION AND PROTECTION OF HUMAN RIGHTS. AG/RES. 2928 (XLVIII-O/18), (2018), 166.

ceived from 24 organizations or individuals.² Likewise, on January 31, 2019, the Special Rapporteur, Edison Lanza, participated in a session of the Committee on Juridical and Political Affairs of the OAS General Assembly where the work plan to address the mandate to develop a guide

² The following contributions were received:

ID	ORGANIZATION/ INDIVIDUAL	COUNTRY	DATE
1	Linterna Verde	Colombia	17-12-2018
2	Misión de Observación Electoral MOE Colombia	Colombia	10-01-2019
3	Juan Ortiz Freuler	EEUU	30-01-2019
4	EFF	EEUU	31-01-2019
5	Asociación por los Derechos Civiles (ADC)	Argentina	31-01-2019
6	Coding Rights	Brasil	31-01-2019
7	Fundación Karisma	Colombia	31-01-2019
8	Hiperderecho	Perú	31-01-2019
9	IPANDETEC	Panamá	31-01-2019
10	R3D	Mexico	31-01-2019
11	TEDIC	Paraguay	31-01-2019
12	Intervozes	Brasil	31-01-2019
13	Centro de Estudos Sobre Justiça de Transição	Brasil	31-01-2019
14	Derechos Digitales	Chile	31-01-2019
15	Defensoría del Público	Argentina	31-01-2019
16	Centro Universitário Antônio Eufrásio de Toledo	Brasil	31-01-2019
17	Colombia Diversa	Colombia	01-02-2019
18	Access Now	EEUU	04-02-2019
19	Funciple	Colombia	07-02-2019
20	Dercom-UBA	Argentina	11-02-2019
21	Eulália Camurça	Brasil	18-02-2019
22	Privacy International	Reino Unido	29-03-2019
23	UNESCO	Regional	22-04-2019
24	Observacon	Uruguay	07-08-2019

on freedom of expression and the phenomenon of deliberate misinformation in electoral contexts was presented; During that session, contributions were received from numerous States present.

In late April 2019 the Office of the Special Rapporteur and the Department of Electoral Cooperation and Observation (DECO) of the OAS, with support from the National Electoral Institute of Mexico, organized a meeting with 28 experts from the region who discussed the issue of disinformation and possible State responses to it over the course of two days. The Office of the Special Rapporteur and the OAS SSD thank the experts for their invaluable contributions to this process, as well as the subsequent exchange to arrive at the document presented here.³

The panel of experts was formed in keeping with the "multiple stakeholders" model, which has been used to address similar challenges.⁴ This model seeks to create a space for deliberation in which differ-

3 The members of the panel of experts are: Alba Mora Roca (Verificado Mexico), Ailidh Callander (Privacy International), Andrew Pudhepatt (Global Partners & Associates Ltd, UK), Brenda Santamaria (OAS Department of Electoral Cooperation and Observation—DECO), Caio Machado (Oxford Internet Institute), Carlos Cortes (Linterna Verde, Colombia), Cristina Tardaguila (Agencia Lupa, Brazil), Diogo Rais (Mackenzie Presbyterian University, Brazil), Edison Lanza (OAS/IACHR Office of the Special Rapporteur for Freedom of Expression), Eleonora Rabinovich (Google), Francisco Guerrero (OAS Secretariat for Strengthening Democracy), Gerardo de Icaza (OAS Department of Electoral Cooperation and Observation—DECO), Guilherme Canela (UNESCO), Gustavo Gomez (OBSERVACOM), Hugo Rodriguez (Twitter Latin America), Iñigo Fernandez (Facebook), Juan Ortiz Freuler (Berkman Klein Center for Internet and Society, Affiliate), Lorenzo Cordova (National Electoral Institute of Mexico), Danya Centeno García (R3D Mexico), Marcos Tourinho (Facebook), Maria Andrea Valles (Google), Martin Becerra (Universidad de Quilmes, Cultural Industries Research Program), Michael Camilleri (Inter-American Dialogue, USA), Monica Cruz (Verificado, Mexico), Ramiro Alvarez Ugarte (Specialist in Constitutional Law and Human Rights, UP/UBA, Argentina), Roberta Braga (Atlantic Council), Roberto Rock (Inter American Press Association), Veridiana Alimonti (Electronic Frontier Foundation).

4 See, e.g., the recommendations of the European Commission's High Level Expert Group. Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION. REPORT OF THE INDEPENDENT HIGH LEVEL GROUP ON FAKE NEWS AND ONLINE DISINFORMATION*. DIRECTORATE-GENERAL FOR COMMUNICATION NETWORKS, CONTENT; TECHNOLOGY OF THE EUROPEAN COMMISSION. 2018

ent actors interested in the topic are represented. Reasonable gender and geographical representation were also sought. The panel was thus composed of civil society organizations, electoral authorities, experts, independent experts and academics, Internet service providers, among them the main information exchange platforms (Google, Facebook, and Twitter), fact-checking agencies present in the region, and research centers throughout the hemisphere.

Within the framework of the meeting of experts, case studies on misinformation in electoral processes that took place in three countries of the hemisphere were presented: the case of the 2016 United States election, conducted by the Inter-American Dialogue; the case of the 2018 election of Brazil, by MacKenzie University; and the case of the elections in Mexico also in 2018, by the National Electoral Institute and UNAM. The UNESCO Office for South America also presented for this panel the document *Social Media and Elections* which includes a conceptual framework to address the challenges of misinformation, developed by expert Andrew Puddephatt. For its part, DECO brought to the discussion contributions about the challenges related to misinformation that have been documented in the electoral processes of the region.

Below is the Guide that summarizes the main findings of the process that was carried out, it establishes a conceptual framework to address the phenomenon of the dissemination of deliberate misinformation and includes recommendations addressed to States and other actors that can positively impact the combat of misinformation.

The Guide is divided into three sections: I) Description of the phenomenon of misinformation in electoral contexts. II) Systematization of inter-American human rights standards that should guide state responses in the matter. III) Presentation of the recommendations that were requested by the OAS General Assembly.

1

Disinformation, democracy, and electoral processes

10 - 19

Disinformation consists of the mass dissemination of false information (a) with the intent to deceive the public and (b) with the knowledge of its falsehood⁵. The phenomenon is of particular concern in electoral contexts since—if effective—it could affect the legitimacy of a process that is critical to the functioning and very existence of a democratic society.

Although disinformation has always been among us, in recent times it seems to have taken on new characteristics thanks to the emergence of the Internet. Disinformation operates within the framework of a decentralized network that has expanded people's ability to express themselves in the public sphere, with access to minimal technological resources.

⁵ This definition should be taken as provisional and for the purposes of this document. In the process of consultation with experts, states and civil society, it was pointed out that the phenomenon of misinformation is inserted into a complex network of practices that seek to shape the public debate, sometimes with the intention of impoverishing it. These types of practices present considerable challenges that are likely to be addressed in the future. On the other hand, it is necessary to emphasize that the concept of "false information" refers exclusively to facts that can be verified as true or false, or at least subjected to a contrast test. It does not refer to opinions or approximations of editorial tone, which can be shocking or misleading or that, because they are opinions, are not susceptible to a judgment of finding or truthfulness. Certain practices of malicious editing of true content could enter, in this sense, within this definition if that definition seeks to deceive the general public and falsifies the original content. This is the case, for example, of videos in which a person's speech slows down to make them appear intoxicated, a practice that has been seen in the United States and Argentina.

This communication ecosystem presents tremendous opportunities for expanding and strengthening the public discourse and for the circulation of information of public interest.

The inter-American human rights system has concluded that freedom of expression is characterized as a right with two dimensions: an individual one, which concerns the expression of one's thoughts, ideas, and information; and a collective or social dimension, consisting of the right of society to procure and receive information, to know the thoughts, ideas, and information of others and to be well informed. The Internet is one of the technologies that has most enhanced the exercise of freedom of expression, given that it turned millions of people who were passive recipients of information into active participants in the public debate.⁶

However, this paradigm shift brought new dilemmas. For example, the challenges of the speed with which information is currently produced and distributed, the volume of information that is generated thanks to the exponential multiplication of sources, and the ability of information to expand horizontally in a "viral"

⁶ Cf. IACHR, *Standards for a Free, Open and Inclusive Internet*. Washington D.C., Office of the Special Rapporteur for Freedom of Expression of the IACHR. 2016, para. 81.

way in this decentralized network, along with the ability to direct messages to very specific demographic segments. In this new technological reality, challenges such as "disinformation" require applying and reaffirming the principles that guide, normatively, the inter-American system in order to establish how to protect the public debate without affecting the exercise of fundamental freedoms.

The Panel of Experts concluded that disinformation flourishes in a particularly vigorous way in this ecosystem and there are several elements or factors that seem to explain, enhance or feed the phenomenon. Although the evidence in this regard is still scarce, insufficient, and often contradictory, some of these factors to be taken into account, when analyzing the phenomenon of misinformation, are developed below:

Polarization. Several studies link the phenomenon of disinformation to political polarization. Some argue that disinformation is the cause of polarization, as it appeals to people's emotions and seeks to affect their behavior, including voting behavior (such as so-called "voter suppression," i.e., practices or strategies used to discourage certain sectors of the population

from participating in the electoral process).⁷ Others argue that disinformation is actually the effect of political polarization, as people lock themselves into narrow information silos in which they only access information through the prism of their own ideologies or political positions (spaces called "echo chambers"), which prevents them from accessing divergent points of view.⁸ Other studies reject the notion that there is a significant link between political polarization and disinformation. They maintain, for instance, that polarization is the fault of political actors who encourage it, or the media, some of which have embraced this polarizing logic for some time.⁹

7 H. ALLCOTT; M. GENTZKOW, *SOCIAL MEDIA AND FAKE NEWS IN THE 2016 ELECTION*, JOURNAL OF ECONOMIC PERSPECTIVES, VOL. 31, 2, 2017, 211-236, RETRIEVED ON: OCTOBER 15, 2018, FROM [HTTP://PUBS.AEAWEB.ORG/DOI/10.1257/JEP.31.2.211](http://pubs.aeaweb.org/doi/10.1257/jep.31.2.211); V. BAKIR; A. McSTAY, *FAKE NEWS AND THE ECONOMY OF EMOTIONS: PROBLEMS, CAUSES, SOLUTIONS*, DIGITAL JOURNALISM, VOL. 6, 2, 2018, 154-175, RETRIEVED ON: MARCH 6, 2019, FROM [HTTPS://WWW.TANDFONLINE.COM/DOI/FULL/10.1080/21670811.2017.1345645](https://www.tandfonline.com/doi/full/10.1080/21670811.2017.1345645); A. GUESS; B. LYONS, *FAKE NEWS, FACEBOOK ADS, AND MISPERCEPTIONS*, 2018, WORKING PAPER; Cf. G. PENNYCOOK; D. G. RAND, *WHO FALLS FOR FAKE NEWS? THE ROLES OF ANALYTIC THINKING, MOTIVATED REASONING, POLITICAL IDEOLOGY, AND BULLSHIT RECEPTIVITY*, SSRN ELECTRONIC JOURNAL, 2017, RETRIEVED ON: OCTOBER 15, 2018, FROM [HTTPS://WWW.SSRN.COM/ABSTRACT=3023545](https://www.ssrn.com/abstract=3023545), 20182019.

8 Cf. C. R. SUNSTEIN, *#REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA*, PRINCETON UNIVERSITY PRESS, PRINCETON; OXFORD, 2017, pp. 14-15.

9 Cf. Y. BENKLER; R. FARIS; H. ROBERTS, *NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS*, OXFORD UNIVERSITY PRESS, NEW YORK, NY, 2018, p. 14; L. BOXELL; M. GENTZKOW; J. M. SHAPIRO, *GREATER INTERNET USE IS NOT ASSOCIATED WITH FASTER GROWTH IN POLITICAL POLARIZATION AMONG US DEMOGRAPHIC GROUPS*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, VOL. 114, 40, 2017, 10612-10617, RETRIEVED ON: NOVEMBER 15, 2018, FROM [HTTP://WWW.PNAS.ORG/CONTENT/114/40/10612](http://www.pnas.org/content/114/40/10612); S. FLAXMAN; S. GOEL; J. M. RAO, *FILTER BUBBLES, ECHO CHAMBERS, AND ONLINE NEWS CONSUMPTION*, PUBLIC OPINION QUARTERLY, VOL. 80, S1, 2016, 298-320, RETRIEVED ON: MARCH 18, 2019, FROM [HTTPS://ACADEMIC.OUP.COM/POQ/ARTICLE-LOOKUP/DOI/10.1093/POQ/NFW006](https://academic.oup.com/poq/article-lookup/doi/10.1093/poq/nfw006); A. MARWICK; R. LEWIS, *MEDIA MANIPULATION AND DISINFORMATION ONLINE*. DATA & SOCIETY RESEARCH INSTITUTE. 2017, p. 20;

Effects. Assuming that the phenomenon of disinformation is expanding, it is vitally important to determine its effects. On this point, the data are also inconclusive: while some studies suggest that some people are more likely than others to believe false information,¹⁰ others find that a significant percentage of citizens retain the ability to distinguish true from false information on their own.¹¹ Moreover, the effects may not be epistemic (leading a person to consider what is false to be true) but rather may be linked to an emotional aspect of mobilizing political identities to support or reject a particular political party or candidate.¹² In the electoral context, existing research suggests that disinformation campaigns do not have significant

effects,¹³ others have found that disinformation has an effect on the determination of the information agenda, with the existence of disinformation being amplified in the media, and may even be connected with the erosion of trust in democratic institutions¹⁴.

Other incentives for disinformation practices. Many studies have sought to unravel what drives the phenomenon, even involuntarily. Thus, it has been argued that the online advertising market, based on the mining of personal data and the ability to target messages accurately and effectively, encourages disinformation as it is spread through the same tools and techniques used by the advertising market.¹⁵ In this regard, the use of personal data for advertising purposes—largely permitted by outdated or limited data protection laws—appears to create conditions

F. ZUIDERVEEN BORGESIUŠ ET AL., *SHOULD WE WORRY ABOUT FILTER BUBBLES?* ROCHESTER, NY.. SOCIAL SCIENCE RESEARCH NETWORK. 2016.

10 Cf. G. PENNYCOOK; D. G. RAND, "WHO FALLS FOR FAKE NEWS?", CIT. SEE ALSO G. PENNYCOOK; D. G. RAND, "LAZY, NOT BIASED", CIT.

11 S. FLAXMAN ET AL., "FILTER BUBBLES, ECHO CHAMBERS, AND ONLINE NEWS CONSUMPTION", CIT., VOL. 80; Cf. J. L. NELSON; H. TANEJA, *THE SMALL, DISLOYAL FAKE NEWS AUDIENCE: THE ROLE OF AUDIENCE AVAILABILITY IN FAKE NEWS CONSUMPTION*, *NEW MEDIA & SOCIETY*, VOL. 20, 10, 2018, 3720-3737, RETRIEVED ON: MARCH 18, 2019, FROM [HTTPS://DOI.ORG/10.1177/1461444818758715](https://doi.org/10.1177/1461444818758715).

12 M. BALMAS, *WHEN FAKE NEWS BECOMES REAL: COMBINED EXPOSURE TO MULTIPLE NEWS SOURCES AND POLITICAL ATTITUDES OF INEFFICACY, ALIENATION, AND CYNICISM*, *COMMUNICATION RESEARCH*, VOL. XX, X, 2012, 1-25 (ON THE CORRELATION BETWEEN EXPOSURE TO FAKE NEWS AND FEELINGS OF CYNICISM AND DISCOURAGEMENT); Cf. FORUM, *COMPARATIVE RESPONSES TO THE GLOBAL DISINFORMATION CHALLENGES*. INTERNATIONAL FORUM FOR DEMOCRATIC STUDIES. 2018; S. VOSOUGHI; D. ROY; S. ARAL, *THE SPREAD OF TRUE AND FALSE NEWS ONLINE*, *SCIENCE*, VOL. 359, 6380, 2018, 1146-1151, RETRIEVED ON: MARCH 2, 2019, FROM [HTTP://SCIENCE.SCIENCEMAG.ORG/CONTENT/359/6380/1146](http://science.sciencemag.org/content/359/6380/1146).

13 Cf. H. ALLCOTT; M. GENTZKOW, "SOCIAL MEDIA AND FAKE NEWS IN THE 2016 ELECTION," CIT., VOL. 31; A. GUESS; B. LYONS, "FAKE NEWS, FACEBOOK ADS, AND MISPERCEPTIONS," CIT.

14 See L. Bandeira, D. Barojan, R. Braga, JL Penarredonda, M.F. Perez Arguello, "Disinformation in Democracies: Strengthening Digital Resilience in Latin America," published on March 28, 2019 (where it is argued that polarization and misinformation mutually reinforce each other, that misinformation produced an "agenda determination" effect on news coverage and that there were amplifying effects of disinformation in the coverage of the phenomenon itself).

15 D. GHOSH; B. SCOTT, *DIGITAL DECEIT: THE TECHNOLOGIES BEHIND PRECISION PROPAGANDA ON THE INTERNET*. WASHINGTON D.C., NEW AMERICA. 2018, P. 3; A. MARWICK; R. LEWIS, *MEDIA MANIPULATION AND DISINFORMATION ONLINE*, CIT., P. 42.

that favor the phenomenon or make it more effective. It should be noted here that many of these norms in the region could be outdated in relation to these new phenomena or their application could be limited.¹⁶

A relevant conclusion of the Panel is related to the need to include not only the platforms but also the actors who promote advertising messages, including political parties, so that they act in an ethical manner when producing and promoting truthful content and strictly abiding to the protection of personal data in accordance with the regulations in the matter. In any case, for all actors, it is necessary to underline the duty to respect the principles of quality, legality, purpose, and proportionality in the collection, transfer and use of personal data.

It is necessary to draw attention to the need to differentiate between advertising for commercial purposes and electoral advertising: while the former is linked to the operation of a market for goods and services, the latter relates to an essential process for democracy. The elec-

toral process is fundamental for democracy and there may be a legitimate interest of the state in establishing restrictions proportional to certain types of electoral publicity within the framework of those processes. In this sense, certain types of advertising that may be acceptable when it has purely commercial purposes may be problematic in the context of electoral processes.¹⁷ Many of the States in the region already have more restricted electoral advertising standards than the rules that regulate commercial advertising. However, advertising messages are also protected by the right to freedom of expression and any restriction in this regard must be established through a law in a formal and material sense, and must respect the conditions of necessity and proportionality that all state regulations intended to protect a legitimate interest must comply with.

Internet virality. It should be noted that the phenomenon of *Internet virality* is not in itself problematic: on the contrary, by taking advantage of the decentralized nature of the network, the cir-

¹⁶ ACCESS NOW, *INPUT FROM ACCESS NOW ON DISINFORMATION IN ELECTORAL CONTEXTS*. ACCESS NOW, 2019, p. 4; THIS POINT WAS MADE BY SEVERAL CONTRIBUTORS TO THE PROCESS. SEE ADC ET AL., *REGIONAL INPUT FROM CIVIL SOCIETY ORGANIZATIONS WORKING IN THE AREA OF HUMAN RIGHTS IN THE DIGITAL ENVIRONMENT*. ASOCIACIÓN POR LOS DERECHOS CIVILES (ADC), CODING RIGHTS, FUNDACIÓN KARISMA, HIPERDERECHO, IPANDETE, RED EN DEFENSA DE LOS DERECHOS DIGITALES (R3D) & TEDIC. 2019, pp. 10-12; P. INTERNATIONAL, *PUBLIC CONSULTATION: DISINFORMATION IN ELECTORAL CONTEXTS*. PRIVACY INTERNATIONAL'S RESPONSE. PRIVACY INTERNATIONAL. 2019, p. 3.

¹⁷ It is necessary to point out that many data sources used by political campaigns for profiling are sources created for commercial purposes, through the so-called data brokers and other actors. The variety of data they can access ranges from social media data to the use of credit cards and TV consumption patterns. On this point, see, Chester, J., & Montgomery, K. C. (2017). The role of digital marketing in political campaigns. *Internet Policy Review*, 6(4). Retrieved from <https://policyreview.info/articles/analysis/role-digital-marketing-political-campaigns>.

ulation of information can bypass controls or points of blockage or censorship, something especially valuable in the contexts of authoritarian countries. However, when it comes to misinformation, it can be a factor that complicates the approach to the phenomenon. There are studies that suggest that fake news circulates faster than the real news, because they appeal to emotions and are - consequently - more attractive.¹⁸ It has also been argued that social networks offer a form of information exchange that is "epistemically valuable": a publication on a social network is equivalent to a "testimony" given by another person, usually someone we know or appreciate for some reason (that is why we "follow" or are his "friends", etc.). As human beings tend to accept what others transmit to us in the form of testimony, it is possible to postulate that disinformation flourishes in social networks because it takes advantage of an epistemologically valid procedure for most cases and uses.¹⁹

Motivation. Finally, a core issue for understanding the phenomenon of disinformation con-

cerns the actors behind it. Existing research on the matter suggests that these actors are diverse, ranging from foreign States seeking to influence elections in other countries to private actors motivated by economic reasons (who are hired to deploy disinformation campaigns) or political reasons (who carry out such campaigns to influence elections). In addition, these interested parties that voluntarily promote disinformation campaigns take advantage of the actions of other actors who unwittingly promote the phenomenon, such as the highly segmented digital advertising system, media that unwittingly disseminate false information, political parties, or candidates that repeat false information in negative campaigns, and so on.

Despite the lack of conclusive elements on its effects, it seems clear that the deliberate spread of false information impoverishes the public debate and makes it harder for citizens to exercise their right to receive information from various sources, and in the end it is an obstacle to participating in Democratic decisions. This document recognizes the legitimate concern of the states, civil society, and private actors involved, as well as the importance of adopting proportionate measures aimed at combating misinformation, in line with international obligations regarding the protection of human rights, fundamental freedoms, and the functioning of the democratic system.

18 Cf. S. Vosoughi y otros, "THE SPREAD OF TRUE AND FALSE NEWS ONLINE", CIT., VOL. 359.

19 R. Rini, *FAKE NEWS AND PARTISAN EPISTEMOLOGY*, KENNEDY INSTITUTE OF ETHICS JOURNAL, VOL. 27, 2, 2017, P. 5, RETRIEVED ON: MARCH 2, 2019, FROM [HTTPS://MUSE.JHU.EDU/ARTICLE/670860](https://muse.jhu.edu/article/670860).

2

Disinformation and the Standards of the Inter-American Human Rights System

The paradigm shift in the information flow of democratic societies was accompanied by the emergence of new actors. That is the case of *intermediaries* and *platforms* operating on the Internet seem to play central roles in the new information ecosystem. These actors have had a positive impact on their development, by facilitating access to information that we do not know (in the case of search engines), offering the necessary infrastructure to participate in the public debate (such as Internet service providers) or offer platforms where it is possible to share information, ideas, and access content produced by third parties (as is the case with media consumption platforms or social networks). These services, managed by the private sector, have become important actors, partly as a result of the concentration - in market terms - prevalent in these services.²⁰

Through their role as intermediaries in the flow of information on the Internet, these actors operate as traffic "control nodes." Their decisions have a significant impact on the public debate, and so a number of governments—especially authoritarian ones—have tried to pressure them to help shape the flow of information according to their interests. It has also been noted that the companies themselves, by moderating the content circulating on their platforms according to their own terms of service and "community" rules, make decisions to suppress or reduce the flow of content that affects and shapes the public debate. Currently, and as a result of challenges such as intentional disinformation and hate speech, many of these companies are going through processes to review the criteria they use to moderate content, the internal procedures they use for this purpose, and the selection of information generated and presented to users, based on the use of algorithms. This dynamic of public pressures and private actions is exacerbated by concentration: the more powerful the actor that operates as an intermediary, the more attractive it becomes to those who wish to pressure it and the more impact its decisions have.

20 See S. HUBBARD, *FAKE NEWS IS A REAL ANTITRUST PROBLEM*. CIP ANTITRUST CHRONICLE. 2017, 2 ("TWO CORPORATIONS HAVE AN OUTSIZED CONTROL ON THE FLOW OF INFORMATION WORLDWIDE. GOOGLE ACCOUNTS FOR ROUGHLY 80 PERCENT OF GLOBAL INTERNET SEARCHES, AND ITS SEARCH MARKET SHARE EXCEEDS 90 PERCENT IN MOST EUROPEAN COUNTRIES. 4 FACEBOOK DWARFS ALL OTHER SOCIAL NETWORKS, WITH TWO BILLION ACTIVE MONTHLY USERS"). SEE ALSO OBSERVACOM, *OTT REGULATION. KEY POINTS FOR THE DEMOCRATIC REGULATION OF "OVER-THE-TOP" SERVICES SO AS TO ENSURE A FREE AND OPEN INTERNET AND THE FULL EXERCISE OF DIGITAL RIGHTS AND FREEDOM OF EXPRESSION*. OBSERVACOM. 2017, 3:

IN A SCENARIO CENTRALIZED BY THE TRADITIONAL MEDIA, IT WAS CLEAR THAT THE MARKET ON ITS OWN DID NOT GUARANTEE THE FUNDAMENTAL DIVERSITY, PLURALISM AND FREEDOM OF EXPRESSION NEEDED BY DEMOCRACY. WITH THE EMERGENCE OF THE INTERNET, IT SEEMED THAT PART OF THE RATIONALITY THAT GAVE MEANING AND FOUNDATION TO DEMOCRATIC REGULATION MIGHT HAVE BEEN LOST. IN FACT, SOME IMPORTANT PLAYERS IN THE DIGITAL ECOSYSTEM CLAIM THAT REGULATION OF THE INTERNET IS NOT ONLY DANGEROUS BUT SHOULD NOT EXIST, AS IT IS NO LONGER NECESSARY OR POSSIBLE. HOWEVER, AFTER THE INITIAL PHASE OF MORE DECENTRALIZED AND OPEN NETWORK OPERATION, NEW BOTTLENECKS FORMED AND THE INTERNET EMBARKED ON A GROWING CENTRALIZATION AMONG JUST A FEW ACTORS OF THE DIGITAL ECOSYSTEM THAT HAS AFFECTED ITS POTENTIAL TO SERVE ALL OF HUMANITY: THIS WAS UNDERLINED BY THE CREATOR OF THE WORLD WIDE WEB, TIM BERNERS LEE. THE TREND TOWARDS CONCENTRATION AND THREATS TO FREEDOM OF EXPRESSION ON THE INTERNET SHOW

THAT DIVERSITY AND PLURALISM---AND EVEN THE NOTION OF AN OPEN AND FREE INTERNET---NEED REGULATORY GUARANTEES SO THAT THEY CAN BE MAINTAINED AS VALUES AND PARADIGMS OF MODERN DIGITAL COMMUNICATIONS.

Given the fundamental role of these actors as intermediaries, modern democratic States have sought to exempt them from the liability that might arise from content created by third parties and distributed on their platforms. Thus, the 2017 Joint Declaration of the Rapporteurs for Freedom of Expression of the OAS, OSCE, and UN noted that intermediaries "should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that".²¹

On the other hand, Article 13.2 of the American Convention admits the possibility of establishing responsibilities beyond freedom of expression to protect the reputation and rights of others, public order, morals, and public health. In that sense, the dissemination of deliberate misinformation could damage the reputation of a candidate or public person or possibly other more diffuse interests such as the democratic process or the public's trust in democratic institutions.

It is here that the State's responses must be analyzed in detail, because in different places it is proposed to apply the regime of subsequent liabilities to punish those who disseminate misinformation. In that sense, both the Commission and the Inter-American Court have established that the application of criminal norms for the protection of reputation, honor, or the private life of public officials or persons aspiring to hold public office - in cases in which the public interest is involved - constitutes a disproportionate response, within the framework of a democratic society.

This guide recommends that the States of the region, in line with the standards of the inter-American human rights system, should not establish new criminal types to sanction the dissemination of misinformation or false news. Introducing criminal types, which due to the nature of the phenomenon would be vague or ambiguous, could lead the region back to a logic of criminalizing expressions about officials or people involved in matters of public interest and establishing a tool with a strong chilling effect on the dissemination of ideas, criticism, and information for fear of being subjected to a criminal process, which would be particularly restrictive in the context of the electoral contest.

21 OAS, OSCE, UN & ACHPR, "JOINT DECLARATION ON FREEDOM OF EXPRESSION AND 'FAKE NEWS,' DISINFORMATION AND PROPAGANDA," (2017), 1.D.

Although the dissemination of misinformation deliberately seems to fit the so-called "actual malice" standard, which refers to the possibility of applying civil sanctions to those who distribute false or aggravating information knowing that it is false or with absolute negligence regarding the truth, which causes a damage to the aforementioned person, it should be noted that the offenses appear to be different.²²

In cases of defamation, which are the cases for which the standard of actual malice was developed, the remedy and the liability regime proposed by the inter-American system implies the exercise of the right to rectification or response as a less damaging measure of freedom of expression or, if the damage was serious, the attribution of civil responsibilities.²³ Even in these cases, it should be remembered that this rule of attribution of responsibility was established to respond to cases where there is a known issuer, usually a journalist or a relevant political or social actor, and they acted with malice or manifest negligence, to damage the reputation of an official or a public person.

22 Cf. IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. 2010, para. 109.

23 Cf. *Ibid.*, para. 79.

This traditional response may be insufficient to deal with the problem of deliberate misinformation, for various reasons. First, there are reasons of scale that make it difficult to project this liability regime to the phenomenon of misinformation, as well as the possible anonymous nature of the diffuser (anonymity that - by the way - is also protected by human rights standards²⁴).

Secondly, in the case of the dissemination of misinformation, it does not always seek to damage the reputation of one of the participants of public life or an election, but to affect a more diffuse interest such as democratic public order, involved in the integrity of the electoral process. In these cases, it is clear that the civil responsibilities provided would not be suitable for safeguarding that interest and electoral law could develop specific responses to this kind of phenomena. This is what happens, at the moment, when the internal legal regimes establish specific regulations on their

24 It is relevant to highlight that, although anonymity can present challenges, it cannot justify actions that tend to affect it. Indeed, anonymous speech is a vital part of the democratic public debate. It allows to access, generate, and share opinions and information in a safe way, away from social pressures or official controls, as well as from possible state or private reprisals. The value of anonymous discourse is broad in democratic societies, but especially relevant and valuable in the framework of authoritarian societies. This has been previously noted by the IACHR. See IACHR, *Freedom of Expression and Internet*. Washington D.C. Office of the Special Rapporteur for Freedom of Expression of the IACHR. 2013, para. 134

electoral processes and prohibit certain types of conduct such as, for example, those that seek to "suppress" voting. When disinformation campaigns seek to promote such practices, those who promote them incur in prohibited actions that receive a response within the framework of the general electoral regime that each country implements.

On the other hand, disinformation can also have a global scale but the jurisdictions of the countries are limited and the actions of the platforms restricted to their own services. When spreading in a decentralized network, it can sometimes be very difficult if not impossible to identify the people behind a disinformation campaign. In case of doing so, it is possible that these persons operate outside the territory of the affected country. But even when states can reliably discover who is behind a disinformation campaign and can submit them to their jurisdiction, it is possible that the judicial processes necessary to determine their civil liability are too slow to provide an effective response, especially to protect the integrity of the electoral process.

These difficulties are what have pushed many countries to transfer on to intermediaries obligations to control and suppress the "fake news"

of their platforms²⁵. However, these responses are not in line with international standards that seek to limit the responsibility of intermediaries to avoid generating incentives for greater "private censorship." The rules that impose on intermediaries obligations to control and cancel certain contents, generate incentives for them to censor a greater amount of content, to avoid economic sanctions, for example.²⁶

Partly as a response to the new challenges posed by the Internet, inter-American human rights standards have been developed taking into account the particularities of the network. Thus, for example, inter-American standards protect all open expressions *ab inito* also on the

²⁵ Countries that have opted for this type of model include Germany and France, as well as China, Bangladesh, Cambodia, Egypt, Kenya, Malaysia, Vietnam, Myanmar, and Thailand.

²⁶ On this point, see EFF's input: "EFF has pointed out that problems with censorship by direct hosts of speech are tremendously magnified when core infrastructure providers are pushed to block or filter content. The risk of powerful voices silencing marginalized ones is greater, as are the risks of collateral damage. Takedowns by infrastructural intermediaries—such as certificate authorities, DNS, or content delivery networks—are far more likely to cause collateral censorship. For that reason, EFF has called these parts of the Internet free speech's weakest links and believes that the most consistent defense these links can take is to decline attempts to use them as a control point. Conduits such as ISPs should also not be treated as publishers. Their legitimate scope to limit content is critically restricted by network neutrality principles that require them not to discriminate online content". See EFF, Written Submission for the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR/RFOE), the OAS Department of Electoral Cooperation and Observation (DECO) and the Department of International Law (DIL), Electronic Frontiers Foundation. 2019, 14.

Internet and only allow burdensome responses such as blocking or filtering actions on the Internet in exceptional cases. Thus, the Office of the Special Rapporteur has affirmed that in the face of "openly illicit contents or discourses not protected by the right to freedom of expression (such as war propaganda and advocacy of hatred that constitutes incitement to violence, direct and public incitement to genocide, and child pornography) it is permissible to adopt mandatory measures to block and filter specific content", provided that the illegality of the content has been determined by an independent judicial authority.²⁷

In these cases, the measure must undergo a "strict proportionality judgment and be carefully designed and clearly limited in such a way that it does not reach legitimate discourses that deserve protection".²⁸ These types of measures "must have safeguards that prevent abuse, such as transparency regarding the contents whose removal has been ordered, as well as detailed information on their need and justification".²⁹ These measures should be ad-

opted "only when it is the only measure available to achieve an imperative purpose".³⁰

The Rapporteurs for Freedom of Expression recently recalled that the "blocking of entire websites, IP addresses, ports, or network protocols provided by the State is an extreme measure that can only be justified when stipulated by law and is necessary to protect a human right or other legitimate public interest, which includes that it is proportionate, there are no less invasive alternative measures that could preserve that interest and respect minimum guarantees of due process".³¹

The adoption of measures to combat disinformation could, however, be disproportionate. Moreover, disinformation does not fall squarely within the category of "clearly illegal content or speech that is not covered by the right to freedom of expression" that justifies such measures.³² Information on matters of public interest enjoys a certain presumption of legitimacy, as it is

²⁷ IACHR, *Standards for a Free, Open and Inclusive Internet*, cit., para. 88.

²⁸ *Ibid.*, para. 88.

²⁹ *Ibid.*, para. 89.

³⁰ *Ibid.*, para. 89.

³¹ OAS, OSCE, UN, and ACHPR, "Joint Declaration on Freedom of Expression. "Fake News", "Disinformation and Propaganda", cit., para. 1.f.

³² IACHR, *Standards for a Free, Open and Inclusive Internet*, cit., para. 88.

a kind of specially protected speech.³³ When it is difficult to determine the truthfulness or falsity of the information, that presumption is maintained. The presumption can only be overcome when "contradicted by a competent authority that provides sufficient guarantees of independence, autonomy and impartiality,³⁴ typically, a court that takes action after receiving a specific complaint. In this regard, "General prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'fake news' or 'non-objective information,' are incompatible with international standards for restrictions on freedom of expression [...] and should be abolished".³⁵

On the other hand, the factual determination of the content deemed illegal is especially difficult in the case of false information: sometimes, distinguishing what is true and what is not, requires a trial that demands to study the case in question, contrast it with available evidence and make a decision. The judgment itself --- of truth or falsehood --- may depend

on possible readings of ambiguous materials.³⁶ When private Internet companies are required to take charge of this trial under penalty of sanction, as in the laws recently approved by countries such as Germany and France to deal with the phenomenon of misinformation, the main incentive for intermediary companies is not to be sanctioned, and that incentive controls their actions: experience in other less controversial issues indicates that they can take actions aimed at detecting, in general automatically, the allegedly unlawful content so as not to incur responsibility.³⁷ This produces the aforementioned phenomenon of "private censorship", according to which the business response to legal claims is broader and more comprehensive than the mandate they receive and ends up silencing much more content than is really necessary to comply with legal obligations. The existence of this dynamic in Germa-

33 Cf. *Ibid.*, para. 92.

34 *Ibid.*, para. 92.

35 OAS, OSCE, UN, and ACHPR, "Joint Declaration on Freedom of Expression". "Fake News", "Disinformation and Propaganda", cit., para. 2.a.

36 Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION. REPORT OF THE INDEPENDENT HIGH LEVEL GROUP ON FAKE NEWS AND ONLINE DISINFORMATION. DIRECTORATE-GENERAL FOR COMMUNICATION NETWORKS, CONTENT; TECHNOLOGY OF THE EUROPEAN COMMISSION. 2018, p. 19 ("THESE GENERAL OBJECTIVES SHOULD BE PURSUED BASED ON THE RECOGNITION THAT INFORMATION CAN RARELY BE NEATLY CATEGORIZED AS SIMPLY TRUE OR FALSE, THE CONVICTION THAT NO AUTHORITY HAS A MONOPOLY ON KNOWLEDGE, AND THE BELIEF THAT FREE SOCIETIES BENEFIT FROM -- AND ARE DEFINED BY THE ACCEPTANCE OF -- FREE CONFRONTATION OF DIVERSE AND SOMETIMES UNCOMFORTABLE IDEAS AND INFORMATION").

37 Due to the volume of information circulating on the Internet, intermediary companies have stressed that actions should be able to be automated, i.e. built using technological tools that make it possible to detect unlawful content automatically, without human intervention. On this point, see GOOGLE INC., How Google Fights Disinformation. Palo Alto, California. Google Inc. 2019, p. 3.

ny was denounced after the approval at the end of 2017 of a law that orders the platforms to remove the "manifestly illegal" content, once they have "news" of this content by any means, even without the intervention of a public authority.³⁸

Likewise, it must be borne in mind that state's responses to the phenomenon of misinformation must be concerned about not affecting the integrity of the computer systems on which the Internet works and the communications that are channeled through the network. Thus, for instance, the fact that it has been documented that at least part of the disinformation campaigns use encrypted messaging systems could never lead to questioning the end-to-end encryption of communications, which are essential to protect privacy --and consequently, freedom-- of citizens' communications.

As a consequence of the challenges presented by the phenomenon of misinformation and the special protection that the inter-American system grants to the circulation of information of public interest or that encourages public debate, particularly in electoral periods, most

of the responses that this document recommends to deal with the phenomenon of misinformation are non-regulatory in nature³⁹. They seek to strengthen the capacities of citizens to distinguish false information from true information. They have the advantage of not generating a risk for freedom of expression, since they operate within the ideal promoted by the inter-American system to safeguard an open and uninhibited public debate.

In that sense, it's fundamental the principle that there is no better response to an opinion formed on the wrong basis or false information than an opposing or correct opinion or true information.⁴⁰ Therefore, State actions must be aimed

38 EFJ, *Germany: Repeal NetzDG bill, deletion is not the answer*. European federation of journalists, 2018, retrieved on: March 4, 2019, from <https://europeanjournalists.org/blog/2018/01/09/germany-repeal-netzdg-bill-deletion-is-not-the-answer/>; Cf. HUMAN RIGHTS WATCH, *GERMANY. FLAWED SOCIAL MEDIA LAW*, 2018, RETRIEVED ON: JANUARY 16, 2019, FROM [HTTPS://WWW.HRW.ORG/NEWS/2018/02/14/GERMANY-FLAWED-SOCIAL-MEDIA-LAW](https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law).

39 Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A MULTI-DIMENSIONAL APPROACH TO DISINFORMATION. REPORT OF THE INDEPENDENT HIGH LEVEL GROUP ON FAKE NEWS AND ONLINE DISINFORMATION.*, CIT., P. 19.

40 Cf. IACHR, *Inter-American Legal Framework regarding the Right to Freedom of Expression*, cit, par. 146. See also EFF, *Written Submission for the Office of the Special Rapporteur*, cit, 6 ("Moreover, even assuming that it is possible to determine the truth about everything, the debate and exchange of ideas clearly is the best method to uncover this truth and to strengthen democratic systems based on plurality of ideas, opinions and information"). This approach is inspired by the concurring opinion of Justice Brandeis in *Whitney v. California*, decided by the U.S. Supreme Court in 1927. Brandeis maintained the following in a paragraph that has since been part of the canon of freedom of expression worldwide:

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary. They valued liberty both as an end, and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dis-

at raising public awareness about the existence of the phenomenon, awakening a critical spirit in them when consuming and replicating that information, and developing the necessary resources to verify information of doubtful origin.

The Panel of Experts highlighted this type of action taken in recent months in countries with important traditions of defense of freedom of expression, such as Norway and Sweden.⁴¹ There have also been similar actions in the United States (at a state level) and in countries in the region such as Argentina, Brazil, Canada, Colombia, Costa Rica, Mexico and Uruguay.

A good example of this are the actions of the National Electoral Institute of Mexico or of the Superior Electoral Tribunal of Brazil during their

2018 presidential elections.⁴² In these cases, the electoral authorities set up efficient communication channels with the main platforms, media, and fact-checking agencies. Through this, they were able to respond to false information, especially that which sought to affect the integrity of the electoral process, with accurate information. This type of action consists, among other things, of (a) making citizens aware of the phenomenon of disinformation; (b) drawing attention to it in order to encourage citizens not to repeat false information; (c) offering tools and resources to verify information; and (d) contrasting specific false information with accurate information. Many of these recommendations were especially supported by the European Commission's High-Level Expert Group, which suggests that most reactions to disinformation should be "of a non-regulatory character and involve a wide range of different stakeholders".⁴³

semination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed". See *Whitney v. California*, 274 U.S. 357 (1927), 375-376 (J. Brandeis, concurring).

41 Cf. POYNTER, A GUIDE TO ANTI-MISINFORMATION ACTIONS AROUND THE WORLD. POYNTER, 2019, RETRIEVED ON: MARCH 6, 2019, FROM [HTTPS://WWW.POYNTER.ORG/IFCN/ANTI-MISINFORMATION-ACTIONS/](https://www.poynter.org/ifcn/anti-misinformation-actions/).

42 L. CASADO, TSE FALHA NO COMBATE A FAKE NEWS NA CAMPANHA DE PRIMEIRO TURNO, FOLHA DE S. PAULO, 2018, RETRIEVED ON: OCTOBER 17, 2018, FROM [HTTPS://WWW1.FOLHA.UOL.COM.BR/PODER/2018/10/TSE-FALHA-NO-COMBATE-A-FAKE-NEWS-NA-CAMPANHA-DE-PRIMEIRO-TURNO.SHTML](https://www1.folha.uol.com.br/poder/2018/10/tse-falha-no-combate-a-fake-news-na-campanha-de-primeiro-turno.shtml); I. FERRAZ, TSE ADIA REUNIÃO DE COMBATE A FAKE NEWS A PEDIDO DE BOLSONARO. METRÓPOLES, 2018, RETRIEVED ON: OCTOBER 17, 2018, FROM [HTTPS://WWW.METROPOLES.COM/BRAZIL/ELEICOES-2018/TSE-ADIA-REUNIAO-DE-COMBATE-A-FAKE-NEWS-A-PEDIDO-DE-BOLSONARO](https://www.metropoles.com/Brazil/eleicoes-2018/tse-adia-reuniao-de-combate-a-fake-news-a-pedido-de-bolsonaro); Cf. INE, NUEVOS RETOS PARA LA DEMOCRACIA ELECCIONES EN TIEMPOS DE DESINFORMACIÓN. ESTRATEGIA Y ACCIONES IMPLEMENTADAS PARA ENFRENTAR LA DESINFORMACIÓN DELIBERADA EN LAS ELECCIONES MEXICANAS DE 2018 [“NEW CHALLENGES TO DEMOCRACY: ELECTIONS IN TIMES OF DISINFORMATION. STRATEGY AND ACTIONS IMPLEMENTED TO CONFRONT DELIBERATE DISINFORMATION IN THE 2018 MEXICAN ELECTIONS”]. NATIONAL ELECTORAL INSTITUTE, 2019; R. MORAES MOURA; A. PUPO, TSE DÁ 48 HORAS PARA FACEBOOK REMOVER “FAKE NEWS” CONTRA MARINA SILVA, ESTADÃO, 2018, RETRIEVED ON: OCTOBER 25, 2018, FROM [HTTPS://POLITICA.ESTADAO.COM.BR/BLOGS/FAUSTO-MACEDO/TSE-DA-48-HORAS-PARA-FACEBOOK-REMOVER-FAKE-NEWS-CONTRA-MARINA-SILVA/](https://politica.estadao.com.br/blogs/fausto-macedo/tse-da-48-horas-para-facebook-remover-fake-news-contra-marina-silva/).

43 EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, A MULTIDIMENSIONAL APPROACH TO DISINFORMATION. REPORT OF THE INDEPENDENT HIGH LEVEL GROUP ON FAKE NEWS AND ONLINE DISINFORMATION., CIT., P. 8.

It should be noted that private actors with more capacity for action on this phenomenon - platforms, social networks and intermediary companies - are also called to adopt various actions aimed at combating disinformation campaigns in their spaces. In different documents, the Special Rapporteurs for Freedom of Expression have insisted that Internet companies should mitigate the effects of their business models and adopt and implement measures taking as reference the UN Guiding Principles on Business and Human Rights and solutions in international human rights law, especially the instruments and mandates referring to the right to freedom of expression.

Thus, companies such as Facebook, Google, and Twitter have reacted to the international call with greater transparency in relation to their content moderation policies, have increased levels of transparency regarding the decision-making process and have supported initiatives that tend to counteract the phenomenon during electoral periods, such as quality journalism and the work of fact-checking agencies⁴⁴.

⁴⁴ In the consultation process it was pointed out that, many times, the measures adopted were not implemented in a transparent manner; It is sometimes difficult to know what measures are being applied and where, how false or misleading contents are affected and to what extent these solutions can be projected in the long term. Cf. Communication from CELE to the Office of the Special Rapporteur, dated June 18, 2019. In this regard, it is pertinent to reiterate that this type of measures must be developed for the citizens and transparently.

It is important to remember that these actions are framed in *self-regulation* processes of these companies, but they can have an impact on the exercise of the right to freedom of expression, due to the central role they play in the flow of information on the Internet. Therefore, it is necessary to insist on the need for their content moderation practices to respect fundamental guarantees of due process, independent authority, transparency, so that they are able to strengthen, enrich, and expand the public debate.

Finally, according to the international standards on the governance of the global network represented by the Internet, it is recommended that countries wishing to take action to combat disinformation should convene all interested parties to address phenomena that may affect its operation. This is not only a good generic practice in relation to public policy development processes, but it is especially necessary in this case: we are facing a complex problem, involving multiple variables and actors, and presenting --- accordingly --- great challenges. Therefore, it is essential to develop open processes involving public authorities, private companies, academics and researchers, political parties and electoral bodies, as well as civil society organizations, fact-checking agencies, the media, and journalists.

3

Recomendations

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TAKING INTO ACCOUNT THE ARGUMENTS AND BACKGROUND MENTIONED, THE RECOMMENDATIONS OF THE PANEL OF EXPERTS OF MULTIPLE STAKEHOLDERS CONVENED ESPECIALLY FOR THIS PURPOSE, AND THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS, IN RESPONSE TO THE REQUEST MADE BY THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES, NEXT ARE A SERIES OF RECOMMENDATIONS AND GOOD PRACTICES DEVELOPED TO DEAL WITH THE PHENOMENON OF MISINFORMATION IN ELECTORAL CONTEXTS, AS A STARTING POINT, WHICH SHOULD BE PERIODICALLY REVIEWED BY THE ORGANIZATION, SUMMONING AGAIN ALL THE STAKEHOLDERS.



1. TO THE OAS MEMBER STATES

1.1

TO THE LEGISLATIVE BRANCH

- *Avoid establishing regulatory frameworks that hold intermediaries responsible for content produced by third parties.* Taking into account the background on the matter and the undesirable effects of regulatory standards that seek to address the problem of misinformation through the establishment of fines and sanctions directed at intermediaries, it is recommended that the legislative branches of the region refrain from adopting punitive approaches on the matter. These approaches create incentives for private actors with a central role in the circulation of information contrary to freedom of expression and the free debate of ideas, since they will be inclined to censor more content to avoid being sanctioned, and thus affect protected speeches. Likewise, these regulatory approaches are difficult to administer even when they are developed taking into account the principles of proportionality and respect for due process.

Avoid using criminal law tools, such as the creation of new broad and ambiguous criminal offenses to typify the phenomenon of misinformation. Along the same lines, it is necessary to remember that those who reproduce information of pub-

lic interest that turns out to be false but do so without intent to infringe a damage or inadvertently cannot be sanctioned in any way⁴⁵. In any case, the States that are part of the Inter-American system may only establish restrictions on the right to freedom of expression in accordance with the test provided for in Article 13.2 of the American Convention and in other international treaties on freedom of expression for such restrictions, which requires that they be stipulated by law, intended for protect one of the legitimate interests recognized by international law, and are necessary and proportionate to protect that interest, within the framework of the functioning of the democratic system.

- *Strengthen the legal frameworks for personal data protection.* The use of personal data for advertising purposes by the various actors of the digital ecosystem is allowed by the different legal systems and is used by In-

⁴⁵ In this regard, the Inter-American Commission has considered that the use of criminal law as a response to abuses committed in the exercise of freedom of expression is an essentially disproportionate response (Cf.) and the Inter-American Court has so maintained this in cases that it was resolved (Cf. IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*, cit., para. 72). On the "actual malice" standard, see IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*, cit., Para. 109.

ternet companies in their business model, as well as to facilitate access to diverse content, provided that the general principles of international standards regarding data protection are complied with. In that sense, there should not be general exceptions for the use of personal data for political purposes, but a strengthening of the regulatory frameworks and the authority to control this data.

Legislative branches must strengthen local personal data protection frameworks, since the exploitation of the data for advertising purposes by platforms and other actors in the digital ecosystem is also one of the elements that, used improperly, indirectly promotes the phenomenon of misinformation. Proper protection of personal data should ensure that citizens have final control over how their data is used to offer them services.

Likewise, these frameworks should have efficient reporting and control mechanisms, in order to prevent abusive use of personal data. These mechanisms should - in addition - contain exceptions and guarantees that protect fundamental activities in a democracy - such as journalism and the circulation of information of public interest - and that allow the robust functioning of legal regimes for access to public infor-

mation, an essential dimension of the right to freedom of thought and expression. It is essential that the data protection authorities have the resources, powers, and independence to be able to intervene and effectively monitor compliance with the law.

- *Strengthen the judicial processes of a civil nature through which subsequent liabilities in the area of freedom of expression are channeled.* The civil liabilities provided for possible abuses in the exercise of freedom of expression are legitimate in cases where the reputation or private life of a public official or a public person is at stake. In these cases, States must establish that the communicator in the dissemination of information was intended to inflict damage or conducted themselves with manifest negligence in the search for the truth or falsity of the news, respecting the principles of necessity and proportionality in the establishment of the compensation, if applicable. An efficient and timely judicial process, without giving up the guarantees of due process, can become an effective tool to combat phenomena such as deliberate misinformation that affects officials or candidates for public office. Likewise, it should be noted that citizens who participate in the public debate usually do not have the same

means as professional journalists to verify the truth or falsity of information they access and may reproduce, comment, or share a false story. In these cases, this circumstance should be evaluated to inhibit the responsibility for "manifest negligence" that the standard of actual malice implies.

- *Strengthen the legal frameworks regarding transparency in electoral advertising.* One of the essential conditions to combat the phenomenon of misinformation implies transparency and publicity of the entire electoral process. Most electoral regimes in the region already include transparency obligations, especially at the head of political parties. Likewise, many also include special obligations, such as pointing out that certain messages or notices are issued within the framework of electoral campaigns, hired by a certain political party, electoral alliance, or third parties, and so on.

These obligations must include that political parties transparent and report on the expenditure that is invested in sites and platforms that operate online, entities involved in digital campaigns, data sources (such as data brokers), advertising agencies, and providers of digital tools. This can be established through obligations to refer to the origin of the notice, the contract-

ing entity or political party, the amounts invested, the criteria used to address the messages, and so on. These measures should not affect citizen's right to express themselves anonymously, especially when that expression is channeled through the investment of small sums of money by individual persons in social networks.

- *Review the legal frameworks that regulate electoral processes.* Each country in the region organizes its elections in a different way: some under national norms, in others, state regulations coexist with others of federal order, and so on. Also, some countries regulate their processes more or less strictly: the range of restrictions or prohibitions is very wide in some countries and is almost non-existent in others. The expansion of electoral campaigns on the Internet and the appearance of the misinformation phenomenon constitute good opportunities to review and strengthen these legal frameworks. In that sense, if there are regulations that imply a limitation to freedom of expression, these regulations, in order to be legitimate, must satisfy the demanding requirements set forth in the tripartite test that the inter-American system has developed.

These legal frameworks should be reviewed so as not to unduly restrict the right to free-

dom of expression in the traditional media and consider the changes that are being registered in electoral campaigns, the Internet ecosystem, and the new advertising paradigm based on personal information. In that context, the regulation of electoral advertising could address this advertising practice in a specific way: what may be legitimate to sell marketable goods may not be legitimate to persuade voters. Third, legal frameworks regarding electoral advertising could consider certain practices usually prohibited -such as, for example, attempts to deceive the electorate to "suppress" their right to vote or interfere with the development of the electoral process- when they are carried out through disinformation actions, in which case the same remedies or sanctions that the electoral legislation provides for this type of behavior could be applied in these cases.

1.2 TO THE JUDICIARY

- *Consider the systemic impact of their decisions on the operation of the Internet.* The judiciary must take human rights standards into consideration when resolving cases in which the speech under scrutiny can be

classified as "misinformation", according to the definition offered in the preceding paragraphs. In this sense, it is essential that the judges of the region understand that decisions that imply blocking or filtering access to certain online content are only legitimate if they are established by means of a clear and precise law, responds to an urgent need, and it can only be achieved through this type of actions and not others that harm the freedom of expression to a lesser extent. Blocking or taking down content on the Internet can have an effect similar to censorship.

Likewise, it is essential that within the framework of these processes the damage caused by the speech under scrutiny is identified and adequate guarantees of due process are offered, in particular for the producers or issuers of the speech under scrutiny. Judicial remedies, on the other hand, should be limited and should not affect more speech than is strictly necessary. It is important that the judges of the region understand the decentralized nature of the network and the unexpected or undesirable consequences that may arise from generic and disproportionate court orders, which do not account for how the Internet works.

1.3

TO THE EXECUTIVE BRANCH AND SENIOR PUBLIC OFFICIALS

- *Remember the special responsibilities that they have in the exercise of their own freedom of expression.* The executive branches of the region have special responsibilities regarding freedom of expression and the fight against misinformation. In addition to legal and regulatory obligations, the executive as well as elected authorities and officials, are also often central actors in the political debate in each of the countries. Sometimes, they are also central actors in the election campaigns.

As the Office of the Special Rapporteur pointed out, when high-ranking public officials exercise their freedom of expression "they are subject to certain limitations as to reasonably, although not necessarily exhaustively, present the facts on which they base their opinions, and should do so with an even greater diligence than that employed by individuals, in view of the high degree of credibility they enjoy and in order to prevent citizens from receiving a manipulated version of the facts".⁴⁶ These respon-

sibilities apply especially to disinformation campaigns: it has been verified that the intervention of relevant public actors, without adherence to these principles, promotes the dissemination of false information.

Likewise, public officials must be careful to ensure that their comments are accurate and avoid stigmatization and discredit of the media using labels that refer to so-called fake news or other qualifications that discredit them, they must also not threaten journalists or undermine respect for the independence of the media.

- *Carry out positive education, training, and awareness actions on the phenomenon of misinformation.* In general, the executive branches of the region control dimensions of the state that are essential for the development of these types of campaigns. For example, from the management of the education system or cultural promotion avenues. In these cases, it is essential that the authorities in charge of these departments address the problem of misinformation through awareness, education, and training campaigns. They should be focused on offering citizens tools to distinguish true from false information, become aware of their own participation in the processes of replication of informa-

⁴⁶ IACHR, Inter-American Legal Framework Regarding the Right to Freedom of Expression, cit., para. 202.

tion, and warn about the impoverishment of the public debate that misinformation generates. While this recommendation is addressed to the executive branch, it would be desirable for all actors involved in the phenomenon to develop education and awareness campaigns.

- *Promote universal Internet access.* One of the basic conditions to fight against misinformation is to be able to access various sources of information to compare and check if the information received by people is credible. That requires citizens to have access to all the possibilities offered by the Internet network. In this regard, the Inter-American Commission has stressed that the principle of "universal access" must guide state obligations in the matter, and this results in duties such as "the duty to progressively promote universal access not only to the Internet infrastructure, but to the technology necessary for its use and to the greatest possible amount of information available on the network; the duty to eliminate arbitrary barriers to access to infrastructure, technology, and information online; and the duty to adopt positive differentiation measures to allow the effective enjoyment of this right to persons or communities that so require due to

their circumstances of marginalization or discrimination".⁴⁷

- *Protect the principle of net neutrality.* It is essential to insist that States have the obligation to guarantee the principle of net neutrality, in relation to the intermediaries that allow the operation of the Internet -both those who manage the network, as well as platforms-. In this regard, States must respect and establish rules that require intermediaries not to discriminate Internet flows based on the content, origin, recipient, or device used; This principle has been identified as "a necessary condition for exercising freedom of expression on the Internet under the terms of Article 13 of the American Convention".⁴⁸
- *Protect journalists and social communicators from violence.* One of the main restrictions on the right to freedom of expression in Latin America is the phenomenon of violence against journalists⁴⁹. Journalists and the

47 Cf. IACHR, *Standards for a Free, Open, and Inclusive Internet*, cit., P. 14.

48 IACHR, *Standards for a Free, Open, and Inclusive Internet*, cit., P. 14.

49 Cf. IACHR. *Violence against Journalists and Media Workers*. Washington, DC: Inter-American Commission on Human Rights.

media may be subject to disinformation campaigns, a situation that would increase the risk they themselves suffer in the exercise of their profession. In that context, it is relevant to remember the special obligations of protection, prevention, and investigation that weigh on the state authorities in the fight against violence against journalists and social communicators⁵⁰.

1.4

TO THE ELECTORAL AUTHORITIES

- *Strengthen the capacities of citizens to dismantle disinformation campaigns in electoral contexts.* Electoral authorities play a central role for modern democracy. Their role and responsibilities vary according to the institutional design of each country. In some cases, they have administrative regulatory functions, in others of investigation (e.g., specialized prosecutors) and in other cases of prosecution. Therefore, the field of action to address the issue of misinformation is different in each case.

- *Avoid holding intermediaries responsible for the fact that deliberate misinformation circulates on their platforms, which can trigger the dynamics of "private censorship."* Likewise, it is recommended that the control they exercise meets the general requirements of the inter-American standards of human rights regarding freedom of expression. That is, that the restrictions on this right are minimal, especially in the context of the electoral debate, and only be applied as the result of provisions established through laws in a formal and material sense, that are precise enough and in compliance with compelling objectives through which this means can only be achieved, and not by less restrictive ways of the law in question.⁵¹

In this sense, the electoral authorities already have numerous contraventions or electoral crimes that they can use to combat the phenomenon of misinformation; it would be desirable for existing legal frameworks to be used instead of promoting innovations that threaten freedom of expression.

- *Strengthen training on electoral processes.* One of the patterns identified in disinformation

2013.

50 Cf. IACHR. *Violence against Journalists and Media Workers*. Washington, DC: Inter-American Commission on Human Rights. 2013, para. 259.

51 Cf. IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*, cit., Para. 67.

campaigns deployed in Latin America is the dissemination of false information about the electoral process. It is especially worrying when the misinformation is relative to the places and date where you can vote, the form and procedures to vote, or the results of the election itself. This requires the electoral authorities to act preventively, strengthening, and actively providing information actively to citizens about the elections, so that they have adequate information to exercise their rights and thus not be vulnerable to disinformation campaigns.

- *Collaborate with public authorities regarding data protection.* As the misinformation is based, at least in part, on the use of personal data for advertising purposes, it is important that the electoral authorities collaborate with the data protection authorities to strengthen the guarantees of the right to privacy in the face of electoral processes.
- *Train public officials about the phenomenon of misinformation.* It is essential that the electoral authorities ensure that all relevant public officials in the context of an electoral process know the problem, know in advance what are the actions planned before the distribution of false information that seeks to deceive the electorate about the electoral

process, and that know the planned procedures to be placed in action. In this sense, it is relevant that people who participate in electoral observation processes, both internal and external, are also trained.

- *Generate instances of dialogue and cooperation of multiple stakeholders.* Public electoral authorities are in the best position to advance a "multi-stakeholder" model in preparation for an electoral process. They play a role both limited and vital in the democratic process, they are nonpartisan and can legitimately lead these processes. They must be intended to (a) convene stakeholders in the phenomenon of misinformation; (b) work to produce more information and a better understanding of the issue; (c) develop concrete and staggered proposals for efficient and proportionate actions to counteract the negative effects of disinformation campaigns.
- *Explore the possibility of developing cooperation agreements with Internet platforms and intermediary companies.* One of the positive practices detected in the region is the development of agreements established between electoral authorities and companies that provide services on the Internet to act against the phenomenon of misinforma-

tion. These agreements allow authorities to better understand how the Internet works and how the main companies deploy their content moderation policies. They also allow the establishment of efficient communication channels that allow actions to be taken quickly and effectively.

The experiences of the National Electoral Institute of Mexico and the Superior Electoral Court of Brazil, which have been the first to explore this practice in the region, suggest that such agreements may be positive in the development of proportionate responses and privileged communication channels with the platforms. Within the framework of this consultation process, information was also received on the use of these types of agreements in other jurisdictions such as in Argentina and Colombia.

These agreements must be transparent and must not establish regulations of any kind that imply suppression of content related to information of public interest and debate in the electoral context; if they do, they would be contrary to the American Convention because they lack the requirements established in Article 13.2 and adequate mechanisms for questioning or accountability. The restrictions on the type of response that states may display and that arise from the inter-American human rights standards must meet the strict requirements developed in this document, as well as the obligations that weigh on the authorities in guaranteeing the exercise of freedom of expression during the elections and the rights of the users of the platforms.



2. A LAS EMPRESAS INTERMEDIARIAS

- *Make transparent the criteria used to moderate, detect and prioritize content on platforms.* Intermediary companies play a fundamental role in the way we collectively address the phenomenon of misinformation. The limitation of liability in legal terms for the contents that circulate on their platforms does not mean that they do not have special responsibilities for the place they occupy in the free flow of information on the Internet. In this sense, it is desirable that companies that moderate content continue their efforts to transparent technological solutions that make possible the curation and algorithmic moderation of content, including data that inform artificial intelligence. Also, clarify and inform users of the criteria they use in their internal decision-making processes regarding content that they unsubscribe in application of their community policies.
Currently, many online platforms are offering information to users about the reasons why they see certain political campaign notices in the framework of electoral processes: these practices should be consolidated and even expanded, since they are especially relevant to combat campaigns misinformation in electoral contexts⁵².
- *Ensure due process in content moderation.* Both content moderation actions based on the internal policies themselves and those based on legal requirements must be applied respecting elementary guarantees of due process, including the possibility of questioning moderation decisions before an independent body, the right to receive reasons of the decisions that exclude certain contents from the public debate, and the right to have the contents restored if it is determined that the moderation decision was wrong⁵³.
In this sense, some practices developed in recent months by some intermediaries are positive, such as creating institutional spaces between the platforms and the claims or appeals of the users, such as supervisory or appeal advice for those cases in which users have been affected

principle and provided the following information: "In Twitter we're committed to providing meaningful context around all political entities who use our advertising products. That means enforcing strict political advertising policies and ensuring ad disclosures on Twitter are transparent and informative. And we're expanding our political ads policy and transparency approach to global markets as well. Our teams will continue to build the operational and tooling support to expand our political advertising policies to other key markets through 2019 and beyond, according to the applicable laws in each jurisdiction and protecting freedom of speech fundamental principles. We strongly believe that meaningful transparency is the best path forward for all advertising products we offer, particularly those used in a political context".

53 In this regard, Google noted that transparency, regarding their internal process, "cannot be total, as that could make it easier for malicious actors to discover how to manipulate enforcement policies."

by unsubscribed content or suspended accounts, etc. In the design of these spaces it is important to provide them with public designation mechanisms, guarantees of independence of their members regarding corporate interests, and have the power to influence the policies that the platforms deploy to moderate content.

When these spaces function as true instances of appeal to decision-making processes on content moderation, they should have as reference the international human rights framework and have due process guarantees. In this way, they can function as proportionate and suitable responses to guarantee the right to freedom of expression on their platforms and establish the corresponding remedies when disengagements protected by this right are written off. However, it is relevant to highlight the advisory function of these councils, and that they should not aspire to fulfill legal or quasi-legal functions.

- *Deepen transparency actions on political advertising, especially during election periods.* It is essential that intermediary companies operate with transparency regarding the phenomenon of disinformation, taking actions aimed at making visible a phenomenon that is more effective the more it is hidden. Thus,

for example, actions aimed at making political propaganda visible, its origin and financing would allow - for example - to quickly identify those responsible for the disinformation campaigns that are channeled in this way. In the same way, it is recommended to platforms to adapt their electoral advertising offers to the legal frameworks in force in each jurisdiction in the matter⁵⁴.

- *Collaborate with independent researchers.* Because disinformation is a complex phenomenon, companies that provide services must collaborate with independent researchers, providing information to better understand the phenomenon of disinformation. In this sense, there are varying degrees of access to platform services -from broad access through an API (Application Programming Interface) to restricted access, based on the periodic production of information that turns to transparency reports-. It is important that companies deepen these practices, as long as this access occurs guaranteeing the privacy of users.⁵⁵

⁵⁴ Various civil society entities in the region have questioned the main actors in the world of platforms and intermediaries in this regard. See ADC et. al., A call to Facebook, Google, and Twitter to deepen the transparency of online political advertising, available at: <https://adc.org.ar/2019/09/02/un-llamado-a-facebook-google-y-twitter-para-profundizar-la-transparencia-de-la-publicidad-politica-online/>

⁵⁵ Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, A

- *Collaborate with electoral authorities.* Within the good practices identified so far, the collaboration of companies that provide Internet services with the electoral authorities allows efficient channels of dialogue to be established that facilitate the legitimate action of the authorities in the face of misinformation. Therefore, it is necessary for companies to continue their efforts to work with the electoral authorities in all jurisdictions in which they operate and provide the service, provided they are legitimate authorities that coordinate democratic electoral processes and are not questioned by the international community.
- *Support quality journalism.* Among the self-regulation actions already undertaken by global companies, those that support independent and quality journalism stand out for strengthening the regulatory ideal of an open and robust public debate. In this regard, it would be desirable for these efforts to continue and expand in the region.
- *Review the content recommendation algorithms.* In general, companies that offer Internet services want their users to access relevant information. At least in part, they seek to achieve that goal through algorithms that - based on different information about what users are interested in - recommend similar content, under the premise that this information is "relevant" to them. It is important that companies do not base these criteria, which are used to build those algorithms, on purely commercial reasons such as, for example, those that seek to expand the scope of the content or the "permanence" of the users on the platforms.
- *Adopt positive actions aimed at counteracting misinformation campaigns.* Platforms should take positive actions to counteract misinformation, such as - for example - promoting content from fact-checking agencies. These types of actions are less risky than those that involve removing content and that may be more effective in combating the worrying phenomena. Since algorithms are largely responsible for the information that people "see" or "access" on platforms, it is advisable to increase transparency on the criteria that companies use for the construction and implementation of these mechanisms.
- *Review policies on bots and automated publishing tools.* Automated publishing tools and

bots - as accounts not controlled by humans, but controlled by automated tools - have been identified as factors that help the expansion of false information.⁵⁶ While bots are not problematic in themselves, when they operate as part of disinformation campaigns they could be moderated by platforms. In this regard, platforms are recommended to continue working on the identification of problematic uses of this type of technological tools.

- *Develop good practices at the level of self-regulation.* Many of the recommendations indicated in the previous paragraphs seek that the platforms exert the power that they actually have in the flow of information on the Internet in a virtuous way from the point of view of the values of freedom of expression that should guide the democratic debate. In this sense, if the platforms, for example, offer a channel for citizens to express

themselves, it is important that if the latter break internal content moderation policies they can understand the policies, defend their behavior and their contents in a process that protects elementary principles of due process.

The recommendations contained here and - in general - business practices that seek to align the responses to the phenomenon of misinformation with the values of free democratic debate constitute, together, a series of good practices that the industry should develop in that level; that is, as good practices that the industry recognizes as regulatory ideals for itself. This type of development could have a positive long-term impact and influence, positively, new companies and Internet services that would surely continue to emerge in the years to come.

- *Respect and proactively comply with the protection of personal data.* Platforms feed on personal data to profile their users and personalize content. It is essential that platforms proactively respect high data protection standards for all their users.

56 Cf. C. SHAO ET. AL, *THE SPREAD OF LOW-CREDIBILITY CONTENT BY SOCIAL BOTS*, NATURE COMMUNICATIONS, VOL. 9, 1, 2018, 4787.



3. TO THE POLITICAL PARTIES

- *Avoid campaigns that use false information.* Political parties are essential institutions of the democratic system. They act as intermediaries between citizens and their representatives, and there is no time where this intermediation is clearer and more efficient than during election campaigns. It is essential that political parties refrain from promoting disinformation campaigns by themselves or by third parties, which includes the duty not only to not promote them voluntarily, but to verify that this is not done involuntarily, that the main actors do not contribute to the dissemination of false information and that militants and activists reject such practices.
- *Make the electoral campaign transparent.* It is important that the political parties clarify their electoral campaigns in the sense of informing the communication channels, the contents of the campaigns and the main messages. This will allow citizens to properly distinguish nonpartisan campaigns from those that are.
- *Respect and proactively comply with the protection of personal data.* Political parties must also comply with the regulations on the protection of personal data and make transparent the sources of data used, the elaboration of profiles, and the criteria to disseminate personalized messages.



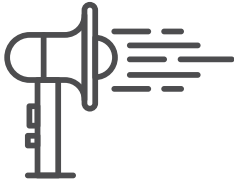
4. TO TELECOMMUNICATIONS COMPANIES

- *Review zero rating agreements to combat misinformation.* Telecommunications companies are intermediary actors that only have an indirect relationship with the phenomenon. In Latin America, in recent years, zero rating agreements have been expanded, these are contracts whereby certain social networks, platforms, or messaging systems agree with telecommunications companies that their services do not count for the computation of the "data" that their users consume in their mobile phone services. This allows users with the most economical data plans to use almost exclusively those services, which do not exceed the amount of data they have contracted. While these agreements may affect the principle of net neutrality, this occurs under the premise that they allow Internet access to expand, although at a very limited version of it. This has been problematic

in the face of disinformation campaigns: those who - for example - receive false information through social networks or almost exclusive private messaging services and cannot verify that information because they do not have access to the Internet in its entirety.

Without going into the analysis of these private commercial agreements with regards to the right to freedom of expression, it is recommended that telecommunications companies expand their zero rating agreements in a way that allows users to access only some of the services or platforms verify information with media and organizations specialized in verification.⁵⁷

⁵⁷ In this regard, we ratify what was indicated by the IA-CHR in 2016 in the sense that the compatibility of these agreements "with human rights must be measured in the light of the legality, necessity, and proportionality test" and taking into account, especially, the impact they have on access to broad and diverse sources of information.

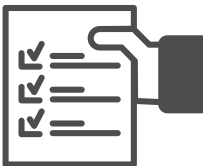


5. TO THE MEDIA AND JOURNALISTS

- *Strengthen quality journalism against disinformation.* It has been proven that the media are relevant actors in the phenomenon of misinformation. Occasionally, their interventions have caused disinformation to expand faster, in other cases, they have been effective in promoting checked information in response to false information. In any case, political polarization affects them and - according to studies conducted in the United States - the polarization of the me-

dia itself fuels the phenomenon of disinformation campaigns.⁵⁸

It is important that the media and journalists remember their role in a democratic society of privileged channels of public debate. This imposes a series of good practices that have proven to be significant contributions to the democratic system, such as investigative journalism, editorial independence, and certain objectivity as an *ex officio* regulatory ideal.



6. TO FACT-CHECKERS

- *Unify definitions of misinformation and strengthen regional networks.* The fact-checking agencies that have grown exponentially in our region in recent years play an important role in the fight against misinformation. By verifying public discourse, they offer a service that can help citizens navigate a complex public debate and - occasionally - contaminated with false information.

It is important that fact-checking agencies use precise definitions about their work and the qualifications they use. In this sense, it is important to limit the phenomenon of misinformation based on the definition offered above and not apply qualifying adjectives related to the *falsity* of content that does not strictly deserve it, such as when some campaigns or infor-

mation are labeled as "deceptive." Vague or ambiguous definitions could produce unwanted effects, such as involuntarily increasing the dissemination of false information or contributing to the discredit of professional media, possibilities especially present in contexts of high political polarization. In this sense, it is necessary

that the definition of misinformation be limited to the false information distributed knowing its falsity, in the aforementioned terms. This excludes from this category partial or incomplete information, misleading information (since this criterion is excessively subjective), inaccurate information, and so on.



7. TO COMPANIES THAT TRADE DATA FOR ADVERTISING PURPOSES

- *Respect existing legal frameworks and participate in the conversation about misinformation.* As noted above, the transformation of the Internet-driven advertising market is one of the elements that can have a broader effect of misinformation in societies. Thanks to the use of personal data that users share with various services they use, the industry has managed to develop tools to reach recipients with highly addressed messages, based on precise profiles of preferences, age groups, income, and so on.

Therefore, it is important that companies that engage in digital advertising and design advertising campaigns --- commercial and political --- participate in the discussion about misinformation in the countries in which they operate. Although it seems obvious, it is important to insist on the need for these companies to abide by the existing legal frameworks regarding data protection and, for example, to not use personal databases outside of the cases in which it is allowed by law.



8. TO UNIVERSITIES AND RESEARCH CENTERS

- *Expand empirical research on disinformation.* We still know very little about the extent of misinformation, its scope, causes and effects. In this sense, it is essential that the academic world deepens its research on disinformation, a particularly pressing need in Latin America, where research is scarce.

These investigations should have a solid empirical basis, should focus on specific events in the region and should --- as far as possible --- be carried out in a comparative manner. For this, it is essential to expand the collaboration networks between universities and research centers in the countries of the region.

