



The Freedom to Write

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October 31, 2017

The Honorable Richard Burr, Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Mark Warner, Vice Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Bldg.
Washington, DC 20510

Dear Chairman Burr and Vice Chairman Warner:

On behalf of PEN America, a non-partisan organization dedicated to protecting open expression in the United States and worldwide, we write to urge the committee to ask witnesses at the forthcoming hearing on the effect of online media platforms on the 2016 election certain questions, which may elicit information that will help to protect news consumers against fraudulent reporting while protecting free speech.

Recognizing fraudulent news as a threat to free expression should not be employed as a justification for broad new government or corporate restrictions on speech, measures whose effects would be far more harmful to free speech. Given the First Amendment concerns at stake as tech companies continue to develop policies for regulating content on their platforms, and given the distinct and different roles Google, Facebook, and Twitter play in the spread of misinformation across their networks, we urge the committee to ask questions touching on these three areas of concern:

- How has the platform sought to empower consumers to distinguish between real and fraudulent news (which we define as objectively false information disseminated with the clear intent to deceive the reader)?
- Has the platform adopted a clear and transparent policy on when and how it will seek to remove fraudulent content from its services?
- Has the platform tailored its rules and policies to reflect the different roles it plays? For instance, when Facebook serves to aggregate news stories for a user, it may play a role more akin to a publisher, while Google as a search engine should err on the side of giving users the ability to identify falsehoods rather than wholesale takedowns.

We offer more specific thoughts and possible lines of inquiry below.

1. Focus on User Empowerment

Platforms should prioritize empowering the consumer with tools of discernment over removing content entirely. Platforms must strike a careful balance between removing false information and preserving freedom of speech.

- Platforms should be questioned about their plans to support, through funding and partnerships, efforts like news literacy initiatives and fact-checking projects. These measures are not only compatible with strong protections for free expression, but also bolster it further by equipping internet users with better skills and tools to help them process the torrents of information they see online.
- Platforms should be questioned about their plans to highlight the work of fact-checkers and feature news literacy information in a way that is visible to users of their products.
- Platforms should be questioned about their plans to develop additional methods for offering users content that may differ from their own beliefs or views, in ways that are transparent to users and sustain users' control over what they see.
- Platforms should be questioned about their plans to support and conduct research to better understand the drivers of media distrust, the strategies that can foster an appetite for a broad range of news sources, and the skills to evaluate those sources among news consumers.
- Platforms should be questioned about efforts to appoint independent ombudspersons to respond to concerns raised by users, the public, and policy makers, and empower them to explain publicly (and, when necessary, critique) the platform's response to issues of public importance.

2. Focus on Clarity and Transparency

Platforms must enact clear and transparent policies when it comes to blocking websites from ad services or de-emphasizing them in algorithms. Platforms should strictly limit their efforts to specifically target purveyors of demonstrably false, intentionally deceptive information and should err on the side of inclusion when deciding which content to remove and which sites to de-emphasize in order to protect robust political discourse.

- Platforms should be questioned about their plans to clearly and narrowly identify and define purveyors of fraudulent news as purveyors of demonstrably false information that is being presented as fact in an effort to deceive the public.
- Platforms should be questioned about the steps they are taking to ensure that these purveyors are not able to sustain themselves and profit from access to advertising services.

- Platforms should be questioned about plans to establish an appeals mechanism for owners of web pages or sites that are blocked from ad services or who suspect that their site has been de-emphasized in a platform's algorithms, so that the grounds on which the page was blocked or deprioritized can be reviewed and, if appropriate, reversed.
- Platforms should be questioned about their plans to engage an industry-wide approach to prevent fraudulent-news purveyors from jumping from one online advertising engine to another. (Google, as the industry's leader, is best poised to play a coordinating role in ensuring that the industry acts in a concerted and ethical manner in these efforts.)

3. Adopt Policies that Reflect the Roles Platforms Play

There must be different rules for the different roles platforms play in spreading misinformation. Not all platforms are created equal, and not all platforms play an equal role in the proliferation of fraudulent news. Platforms that publish or aggregate content for consumers through news feeds (Facebook and Google), favorites, or recommended answers to questions (Google) assume a role more analogous to that of a publisher exercising judgment on whether information can be trusted or is worth knowing, and therefore must also assume corresponding levels of responsibility. While platforms like Twitter may not assume a role akin to that of publisher, they should face pressure and assume responsibility for additional distinct roles, such as allowing automated bot accounts to push out information far more quickly than human users.

- Facebook: When it curates a News Feed or a Trending News section, Facebook assumes a role more similar to that of a publisher than when it simply allows account holders to post at will. Facebook should be questioned about plans to improve the quality of the news articles that appear in its News Feed and Trending sections.
- Google: Google should also be questioned about the ways in which it acts beyond its role as a search engine by assuming a role more comparable to that of a publisher. For example, Google's "best answer" feature carries with it the unmistakable implication that it is true, meaning Google has a responsibility to ensure that this is the case. Google similarly uses its brand to declare whether or not something qualifies as news in Google News, a space for people seeking to be factually informed about world events. Google has a duty to ensure that the information presented in that section is not false.
- Twitter: Twitter should be questioned about its plans to develop tools for flagging suspected bots, in a way that is visible to all users on the platform. Such methods should be created to help genuine Twitter users understand when they are looking at possible bot activity and to evaluate the information they are seeing accordingly.

We stand ready to consult with the committee on these various lines of inquiry, and offer a "News Consumers Bill of Rights and Responsibilities" formulated by PEN America, and a summary and link to our recent study on fraudulent news, as additional reading for committee members, staff, and other interested parties. Please do not hesitate to contact PEN America's

Washington director, Gabe Rottman, with any questions or concerns. He can be reached at grottman@pen.org and 202-808-3514.

Sincerely,



Suzanne Nossel
Executive Director
PEN America



Gabe Rottman
Washington Director
PEN America

CC: Members of the House Permanent Select Committee on Intelligence
Members of the Senate Select Committee on Intelligence

Encls.

FAKING NEWS

Fraudulent News and the Fight for Truth



The Freedom
to Write



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FAKING NEWS

Fraudulent News and the Fight for Truth

October 12, 2017

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PEN America stands at the intersection of literature and human rights to protect open expression in the United States and worldwide. We champion the freedom to write, recognizing the power of the word to transform the world. Our mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible.

Founded in 1922, PEN America is the largest of more than 100 centers of PEN International. Our strength is in our membership—a nationwide community of more than 5,000 novelists, journalists, poets, essayists, playwrights, editors, publishers, translators, agents, and other writing professionals. For more information, visit pen.org.

Cover photograph: Dru Menaker



NEWS CONSUMERS' BILL OF RIGHTS AND RESPONSIBILITIES

RIGHTS WITH RESPECT TO NEWS MEDIA OUTLETS

News consumers have a right to expect that professional journalists' first obligation will be to seek the truth;

News consumers have a right to expect that responsible media outlets will develop ethical guidelines for their journalists, will make these guidelines publicly available and take steps to foster and monitor adherence to the guidelines;

News consumers have a right to expect that news outlets will have transparent, easy-to-find procedures in place to quickly and prominently correct mistakes in reporting;

News consumers have a right to expect that reports will be properly sourced, and quotes will be verbatim or paraphrased with fealty to the original;

News consumers have a right to expect that sources will be identified to the maximum extent possible, and if not, news organizations will explain why not, such as national security or criminal justice reporting;

News consumers have the right to expect that when an outlet publishes a story, that story has been independently verified by the outlet unless otherwise stated, that the source of the story has been given proper attribution, and that nothing has been published based purely on rumor;

News consumers have a right to be notified of potential conflicts of interest, and a right to expect these journalists and media outlets avoid financial or personal conflicts;

News consumers have the right to expect that news reports, analyses, opinion, and editorial commentary—written or verbal—will be prominently and clearly labeled as such;

News consumers have the right to expect that photographs, video, and audio will not be doctored and will be verified for authenticity prior to publication;

News consumers have the right to expect that news divisions will enjoy editorial independence from their ownership's business interests, and that the ownership of news organizations will be fully, truthfully, and publicly disclosed;

News consumers have the right to expect that media outlets will include and accurately reflect diverse viewpoints in coverage, and that individuals or organizations who are criticized by the outlet will have an opportunity for comment or rebuttal;

News consumers must have the right to access easy-to-use channels to raise concerns and complaints about coverage and to receive a reply. In cases of major or widespread complaints about coverage, answers should be made public;



RIGHTS WITH RESPECT TO MEDIA PLATFORMS, INCLUDING SOCIAL MEDIA AND SEARCH ENGINES

News consumers have the right to expect that an online media platform will carry out due diligence and know their customers, clients, and business partners, and will ensure they do not do business with those seeking to exploit or manipulate consumers;

News consumers have the right to expect that media platforms will devote adequate resources to track, prevent, and remedy any misuse of their platforms by those who intend to deceive users through the spread of fraudulent news and information;

News consumers have the right to expect that media platforms will empower consumers with easy-to-use tools that they can use to gauge the credibility of information disseminated through the platform;

News consumers have the right to expect that platforms will disclose incidents of misuse and manipulation in ways that affect consumers, including direct notifications to consumers who were served deceptive content or advertising (consistent with privacy policies);

News consumers have the right to expect that platforms will clearly and publicly disclose policies governing when, why, and how the platform will take down content that violates its policies, such as threats, harassment, and unlawful or deceptive content;

News consumers have the right to accessible, easy-to-use, and quick channels to report misinformation published by or on a platform;

News consumers have the right to expect that media platforms that do take down content will have a clear and robust appeals process;

News consumers have the right to expect that known purveyors of content aimed to deceive consumers will not be able to profit through advertising or other revenue opportunities made available by media platforms.

RESPONSIBILITIES

News consumers also bear responsibilities:

News consumers should avoid spreading false information, including reposting or sharing information without first reading it through, and by investigating the credibility, provenance, and accuracy of the information;

News consumers should support news outlets that embrace guidelines embodied in the Bill of Rights above, such as explicit corrections and ethics policies, rules on source attribution, and a policy to preserve the accuracy and integrity of primary source material, including quotations, photographs, or video;

News consumers should endeavor to consume news from a variety of viewpoints, and to engage with media that challenges their preconceptions or biases;

News consumers should report instances of misinformation to platforms and outlets that publish them to facilitate more effective efforts to avoid the promulgation of false information;

News consumers should understand that a key role of journalism is to challenge the powerful, and that a free press is an essential safeguard of American liberty.



EXECUTIVE SUMMARY

Faking News: *Fraudulent News and the Fight for Truth* examines the rise of fraudulent news, defined here as demonstrably false information that is being presented as a factual news report with the intention to deceive the public, and the related erosion of public faith in traditional journalism. The report identifies proposed solutions at the intersection of technology, journalism, and civil society to empower news consumers with better skills and tools to help them process the torrents of information they see online.

The proliferation of false information and rising distrust in the established news media, due in part to a deliberate

At a time of domestic political upheaval, sharp policy divisions, and intensifying international conflicts, the spread of disinformation and the related—yet distinct—problem of distrust of the media pose a fundamental threat to the quality of our public discourse and to our political system, sound policy outcomes, and national cohesion.

campaign of denigration, pose a looming crisis for American democracy and civic life. A series of factors—soaring levels of mistrust of journalism and the media, an explosion of new online news outlets, rapid changes in patterns of information consumption, sharp ideological divides that dictate which media outlets are trusted

by whom, daily attacks on the press by the president of the United States and his allies, and stumbles by the media itself in an era of cutthroat competition and instantaneous transmission of information—combine to call into question existing methods for disseminating and validating the news for and by an information-hungry but skeptical public. At a time of domestic political upheaval, sharp policy divisions, and intensifying international conflicts, the spread of disinformation and the related—yet distinct—problem of distrust of the media pose a fundamental threat to the quality of our public discourse and to our political system, sound policy outcomes, and national cohesion.

If left unchecked, the continued spread of fraudulent news and the erosion of public trust in the news media

pose a significant and multidimensional risk to American civic discourse and democracy, building gradually over time. These developments have already conspired to create a trust deficit in which many Americans credit few, if any, sources of news. This diminished trust could have far-reaching implications for American governance and society, undermining the news media’s role as the fourth estate and an important check against infringements of civil liberties. The experience of societies around the world that have grappled with these challenges in varying contexts suggests that even those implications that now seem farfetched should not be excluded from consideration. Such challenges include: the increasing apathy of a poorly informed citizenry; unending political polarization and gridlock; the undermining of the news media as a force for government accountability; a long-term risk to the viability of serious news; an inability to devise and implement fact and evidence-driven policies; the vulnerability of public discourse to manipulation by private and foreign interests; an increased risk of panic and irrational behavior among citizens and leaders; and government overreach, unfettered by a discredited news media and detached citizenry.

Faking News looks at how the spread of fraudulent news has been facilitated by Facebook, Google, and Twitter, and the ways each company is responding to the problem. The report also discusses how traditional journalism has in part contributed to the breakdown of public trust in the media—through partisan reporting, the blurring of fact and opinion, a lack of transparency around policies and procedures, and even honest mistakes, among other reasons—and what newsrooms are doing to rebuild that trust and improve the accuracy and transparency of their reporting processes. Civil-society-led initiatives, including professional fact-checkers and news literacy education programs round out PEN America’s examination of proposed solutions to the fraudulent news crisis. The report also explores the implications of these approaches for freedom of expression, recognizing that in some areas difficult trade-offs exist between allowing the unhampered transmission of

ideas and information, and preventing public discourse from being mired in falsehoods.

The report's key findings include:

- The recognition of fraudulent news as a threat to free expression should not be employed as a justification for broad new government or corporate restrictions on speech, measures whose effects would be far more harmful to free speech.
- Technology and social media platforms have a significant role to play in curbing the spread of fraudulent news, but approaches like cutting off advertising revenue or adjusting algorithms to target fraudulent news must be strictly limited to purveyors of demonstrably false, intentionally deceptive information and should establish an appeals mechanism for those who believe that their websites should not have been targeted in these efforts. Platforms should also instruct personnel involved in identifying purveyors of fraudulent news to err on the side of inclusion when deciding which sites to de-emphasize in algorithms or block from ad services, in order to protect robust political discourse and users' access to information.
- For all of the major technology and social media companies, one of the best defenses against the

Faking News sets forth a News Consumers' Bill of Rights and Responsibilities to reflect and push forward PEN America's view that empowered citizens are the ultimate solution to resolving the crisis of trust. PEN America views the rights contained in this draft "bill" as rooted in the free expression rights contained in U.S. and international law, which include not just the right to speak freely but also the right to impart and receive information.

spread of fraudulent news on their platforms is to help equip users with tools and skills to evaluate the information they see and consume. They should explore ways to feature news literacy information on their platforms, and should support, through funding and partnerships, news literacy initiatives and independent fact-checking projects.

- Technology and social media companies must be more transparent and work harder to maximize the amount of information they share (while respecting users' privacy), so that researchers can investigate how well their approaches to curbing fraudulent news are working, fact-checkers can identify ways to improve their work and its impact, and the public

can understand more about how information is presented to them on the platforms.

- News organizations can signal accountability and help assuage distrust around reporting practices and editorial decisions by ensuring that their websites provide easily accessible information outlining their standards, practices, and policies—including how they address errors, provide adequate fact-checking, and make use of a public editor or ombudsperson.
- News organizations should improve the labeling of content and graphics, especially online, to ensure that news items are visually discernible from opinion, analysis, sponsored content, and paid advertisements. Newsrooms should also establish or clarify their headline-writing standards to ensure that headlines are not misleading or overly sensational. Headlines that fail to deliver on the content they promise risk alienating readers and sowing greater distrust and suspicion of media biases.
- News literacy programs are among the most promising approaches to addressing the long-term harms posed by fraudulent news, because they hold the potential to reshape Americans' attitude toward, and evaluation of, the news media. There will always be efforts to spread false news online as long as there is financial or political gain to be had from doing so. But if there is a concerted, widespread, systematic effort to educate people, especially younger generations, about how to be savvy and responsible news consumers, the toxic effects of fraudulent news may be substantially lessened. Public officials, educators, librarians, and the public should press for the adoption of news literacy courses as a core part of school curricula, and should make the case for their value as a benefit to the entire country and the health of our democracy.

Faking News sets forth a News Consumers' Bill of Rights and Responsibilities to reflect and push forward PEN America's view that empowered citizens are the ultimate solution to resolving the crisis of trust. PEN America views the rights contained in this draft "bill" as rooted in the free expression rights contained in U.S. and international law, which include not just the right to speak freely but also the right to impart and receive information. Changes in the media landscape require the elaboration of these rights so that citizens have the information and tools they need to receive information conscientiously with the will



and ability to weigh its credibility. These rights also relate to how news audiences digest the content conveyed by media outlets and online platforms.

The power of fraudulent news lies ultimately in the minds of news consumers. Accordingly, measures to address the crisis of truth should first and foremost center on enabling and equipping people to derive, discern, and digest information in ways that guard against the influence of fraudulent news. Based on our examination of the range of approaches to fraudulent news that have been employed by governments, social media outlets and technology companies, news organizations, research institutes, and nonprofit groups, PEN America has identified six prongs of response that are critical to stemming the current crisis and averting the most dangerous harms:

For Policymakers, Educators, Educational Institutions, and Education Leaders

Educate the public and future generations by mounting a massive effort to create informed consumers of news across all platforms and mediums:

- Adopt news literacy education as a core part of school curricula.
- Conduct research on the most effective forms of news-related public education and empowerment.
- Engage teacher training programs and graduate education schools to equip teachers to teach news literacy.
- Leverage print, digital, television, and other media platforms with the reach to inform youth and citizens at large on news literacy.

For Technology and Social Media Platforms and Other News Intermediaries

EQUIP the public to distinguish fact from falsehood and to assess the credibility of information:

- Identify purveyors of fraudulent news—clearly and narrowly defined as the purveyors of demonstrably false information that is being presented as fact in an effort to deceive the public—and take steps to ensure that they are not able to sustain themselves and profit from access to advertising services on your platforms.
- Establish an appeal mechanism for owners of web pages or sites that are blocked from ad services or

who suspect that their site has been de-emphasized in a platform's algorithms, so that the grounds on which the page was blocked or deprioritized can be reviewed and, if appropriate, reversed.

- Develop additional strategies to ensure that fraudulent news is not presented to users in sections of platforms classified as “news” or that otherwise suggest that the information is credible (like Google’s “best answer” feature).
- Invest further in technologies to more quickly and comprehensively identify efforts to artificially boost content through the use of bots or other means, and flag these efforts in a manner that’s visible to users.
- Strengthen and expand partnerships with independent fact-checking organizations to feature their work, make it easily accessible to users, and collaborate to reduce duplication of effort in fact-checking particular items.
- Support news literacy initiatives through funding and partnerships.
- Develop additional ways to offer users content that may differ from their own beliefs or views, in ways that are transparent to users and sustain their control over what they see.
- Appoint independent ombudspersons to respond to concerns raised by users, the public, and policy makers, and empower them to explain publicly (and, when necessary, critique) the platform’s response to issues of public importance.
- Work in collaboration with academic researchers and civil liberties advocates to identify ways to share more information with researchers about the spread of fraudulent news on specific platforms and the efficacy of efforts to address it, consistent with appropriate privacy protections for users, and free expression rights for news media outlets.
- Allow employees to speak more openly with journalists about the challenges faced in combatting the spread of fraudulent news.

For News Outlets

EXEMPLIFY the values and tenets of credible news gathering and dissemination:

- Continue to emphasize transparency of operations as a high priority, including finding new ways to be more open with readers about the journalistic and editing processes and the handling of errors.
- Clearly label different types of content as reporting, commentary, opinion, analysis, etc.
- Establish, reinstate, and augment ombudsperson functions to underscore transparency, commitment to professionalism, and accountability to readers.
- Prioritize reporting on the harms posed by the spread of fraudulent news and the ways individuals can help.
- Engage proactively in civic and education initiatives to improve media literacy, including outlet audiences and communities.

For News Outlets, Social Media Platforms, Educators, Research Institutes, and Civil Society

ENGAGE directly with diverse groups of citizens to better understand the drivers that influence their interest and trust in the news media:

- Support and conduct research to better understand the drivers of media distrust, the strategies that can foster an appetite for a broad range of news sources, and the skills to evaluate those sources among news consumers.
- Consider diverse readerships when covering polarizing topics or mounting campaigns to combat fraudulent news.
- Involve authoritative voices from across the political spectrum in efforts to defend press freedom and the role of truth.
- When offering fact-checking, emphasize transparency and objectivity of operations, including

explanations of what is chosen to be fact-checked, the verification process, and the reasoning behind sometimes evolving conclusions.

For News Organizations and Civil Society

EXPOSE those who deliberately purvey fraudulent information or baselessly foment distrust of what is true:

- Prioritize reporting on the purveyors of fraudulent news, the methods they use to manufacture and spread it, and the approaches under way to curb its spread.

For Policymakers, News Outlets, Social Media Platforms, and Civil Society

EMPOWER individuals with a set of recognized rights that can help counter practices that interfere with informed news consumption:

- Publicly reject all efforts to denigrate the news media or undercut the legitimacy of their work and reaffirm commitment to freedom of the press.
- Explore ways to better protect journalists from being compelled to disclose sources, especially with respect to sensitive national security and criminal justice stories.
- Support efforts by diverse groups of news consumers to mobilize in defense of their own rights to receive and impart information.
- Educate news consumers to enforce their rights and fulfill their responsibilities.
- Publicly express support for press freedom and respect for journalists.
- Oppose government efforts that would impinge on free expression by penalizing online platforms for failing to remove fraudulent news from their platforms, or by otherwise requiring platforms to act as arbiters of fact.