

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



Fake news, hoaxes and dissemination of false information on the Internet – Criminal and criminological aspects

Dr. Fotios Spyropoulos et al.

I. Introduction

The distribution of fake news as a concept and practice on the Internet is as old as the Internet¹. Fake news in general has existed as a concept from the time when news began to circulate widely after the printing press was invented in 1439² - and one could hazard a reasonable guess that fake news notion and practice maybe even as old as humanity itself^{3 4}. Thus, “fake news” itself is not a new problem⁵. Throughout the years, people have used multiple sources to access information and any kind of knowledge. It is kind of self-evident that anything that “*devalues and delegitimizes voices of expertise, authoritative institutions, and the concept of objective data -all of which undermines society’s ability to engage in rational discourse based upon shared facts*”⁶ and creates societal chaos- is a matter of great

¹ Retrieved from: <https://www.theguardian.com/commentisfree/2018/feb/11/fake-news-long-history-beware-state-involvement> on 07/22/2018.

² Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018.

³ According to Kroeber & Kluckhohn, using statements intentionally for the purpose of deception, is a ubiquitous phenomenon in all societies throughout history and a human behavior which is penalized too. See Kroeber A. L. & Kluckhohn C., *Culture: A critical review of concepts and definitions*, Peabody Museum, Cambridge, 1952.

⁴ As Tarlach McGonagle puts it: “fake news is by no means a new phenomenon. It is as old as thehills”. For an extensive analysis of fake news’ historical evolution see Tarlach McGonagle, *‘Fake news’: False fears or real concerns?*, Netherlands Quarterly of Human Rights 2017, Vol. 35(4), pp. 205–208.

⁵ We refer to “traditional” fake news on the media before Internet (Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018.)

⁶ The Information Society Project & The Floyd Abrams Institute for Freedom of Expression, “Fighting Fake News, Workshop Report”, 2017, p. 3.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



concern. Apart from this merely abstract way of putting it though, there are many reasons why the phenomenon of fake news is prevalent now more than ever and this makes the need and the importance of researching the topic even more pertinent today

The Internet and its digitized information distribution capacities has enabled a whole new way to publish, share and consume information and news, allegedly making the exchange of information more democratized, which often comes hand in hand with regulatory challenges in terms of enforcing strict and thorough editorial standards to the circulated information. Also, as a result of *the rise of social media and of the large amount of time spent online on a daily basis*, individuals tend to seek out news from the social networking platforms (i.e. Facebook, LinkedIn – in, etc.) rather than the traditional media (newspapers, television)⁷ or the traditional authoritative voices (scientists or academic institutions for example). Therefore, the demand for “fake news” may be a natural byproduct⁸ of faster news cycles and shorter-form content (distinguishing features of social media, in addition to treating news production as a business enterprise than as providing a public service), thus McLuhan’s famous maxim that “the medium is the message”⁹ probably will find itself once again verified.

The above tendencies have led to the proliferation of “fake news”, a phenomenon that -as we already mentioned above- may have extremely negative effects on individuals and society¹⁰, in politics¹¹, health issues, economy, business etc. According to the HLEG Report

⁷ Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018.

⁸ “Here we could refer to the notion, introduced by Jon Elster, of states that are essentially by-products’ - that is, states that could be produced only as non-intended, as the side-effect of our activity: as soon as we aim directly at them, as soon as our activity is directly motivated by them, our procedure becomes self-defeating”. Slavoj Zizek, *The Sublime Object of Ideology*, Verso, 1989, p. 91.

⁹ See Marshall McLuhan, *Understanding Media: The Extensions of Man*, Mit Press, 1994. The first chapter of the book elaborates the author’s theory that the personal and social consequences of any medium -that is, of any extension of ourselves- result from the new scale that is introduced into our affairs by each extension of ourselves, or by any new technology. It is the medium (its rules and structure) that shapes and controls the scale and form of human association and action. On the other hand, its various contents or specific uses are ineffectual.

¹⁰ Hunt Allcott and Matthew Gentzkow, *Social Media and fake news in the 2016 election*. National Bureau of Economics Research, 2017, Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



for the European Commission (2018) “while not necessarily illegal, disinformation can nonetheless be harmful for citizens and society at large. The risk of harm includes threats to democratic political processes, including integrity of elections, and to democratic values that shape public policies in a variety of sectors, such as health, science, finance and more”.¹²

II. Definition and practices

The definition of the term “fake news” is variable¹³ and even contradictory. The most common definition is the one that defines fake news as “a news article that is intentionally and verifiable false”¹⁴. A wider definition of fake news on the Internet is found on a recent Trendlabs research paper: “Fake news is the promotion and propagation of news articles via social media. These articles are promoted in such a way that they appear to be spread by other users, as opposed to being paid-for advertising. The news stories distributed are designed to influence or manipulate users’ opinions on a certain topic towards certain objectives”¹⁵.

¹¹ Alleged foreign interference in domestic elections through fake news: It is claimed that Russian organizations have supported distribution of fake stories that support new populists such as Donald Trump and the Front National in France. The European Union has funded a disinformation review: <https://euvsdisinfo.eu/>. The aim of this review is to monitor and fact-check what appear to be deliberate attempts to spread misinformation. There seem to be relatively few examples of deliberately fake stories propagated with the aim of affecting election results that are published in the language of the target country. D. Tambini, *Fake News: Public Policy Responses*. Media Policy Brief 20. London: Media Policy Project, London School of Economics and Political Science, 2017, p. 3.

¹² HLEG report, p. 5, url: <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, accessed on 07/21/2018.

¹³ For definitions of the term “fake news” see also: Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018 and Zaryan, S., *Truth and Trust: How Audiences are Making Sense of Fake News*, Lund University, 2017, pp. 6 f. & 61, url: <https://lup.lub.lu.se/student-papers/search/publication/8906886> accessed on 08/07/2018.

¹⁴ Hunt Allcott and Matthew Gentzkow, *Social Media and fake news in the 2016 election*. National Bureau of Economics Research, 2017.

¹⁵ Lion Gu, Vladimir Kropotov, Fyodor Yarochkin, *How Propagandists Abuse the Internet and Manipulate the Public*, Forward Looking Threat Research (FTR), retrieved from: https://documents.trendmicro.com/assets/white_papers/wp-fake-news-machine-how-propagandists-abuse-the-internet.pdf on 07/19/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



It is important to note that although the term “fake news” is widely accepted, a significant part of journalists, researchers and scientists prefer the term “disinformation”.

The problem of fake news is so serious that in January 2018 the European Commission assigned to the independent High level Group (HLEG) on conducting a report on fake news and online disinformation. On that report¹⁶, the HLEG describes disinformation as *“false, inaccurate, or misleading information designed, presented or promoted to intentionally cause public harm or for profit”* and states that what differentiates fake news from disinformation is the fact that the latter’s content is not necessarily fake but consists of *“fabricated information blended with facts”*.

In this report, HLEG favored the term “disinformation” as a phenomenon that goes well beyond the term “fake news”. Disinformation as defined in this Report includes all forms of false, inaccurate, or misleading information designed, presented and promoted in order to: a. intentionally cause public harm or b. for profit. Thus, it does not cover issues arising from the creation and dissemination online of illegal content (notably defamation, hate speech, incitement to violence), which are subject to regulatory remedies under EU or national laws, nor other forms of deliberate but not misleading distortions of facts such a satire and parody¹⁷. As it is explained in this report: *“the HLEG deliberately avoid the term ‘fake news’. The HLEG do this for two reasons. Firstly the term is inadequate to capture the complex problem of disinformation, which involves content that is not actually or completely “fake” but fabricated information blended with facts, and practices that go well beyond anything resembling “news” to include some forms of automated accounts used for astroturfing, networks of fake followers, fabricated or manipulated videos, targeted advertising, organized trolling, visual memes, and much more. It can also involve a whole array of digital behavior that is more about circulation of disinformation than about production of disinformation, spanning from posting, commenting, sharing, tweeting and re-tweeting etc.”*. This analysis can be easily combined to Singletary and Lipsky (1977) classification,

¹⁶ The report is available on: <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, accessed on 07/21/2018.

¹⁷ HLEG report, p. 5, url: <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, accessed on 07/21/2018

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



reporting errors as “objective” or “subjective,” where objective reflects the factual characteristics of a story and subjective reflects the interpretive aspects of the report¹⁸.

Also and as a result, it is vital to dissociate disinformation from misinformation. The distinguishing feature between the above concepts lies on the fact that misinformation is "intention neutral": it isn't deliberate, it's just wrong or mistaken. On the other hand, disinformation requires deliberate fabrication.

Furthermore, fake news practices and forms are divided into several categories¹⁹. In the section below we enumerate the most important ones:

1. Clickbait²⁰: is called the method used by websites in order to attract attention by luring headlines that create curiosity and lead readers to click on a certain hyperlink. The purpose of clickbaiting for a website is to gain popularity via higher click-through rates. Most of the times however, the actual content of the website that readers are led to is not nearly as interesting as the headline. A typical and one of the most common examples of clickbaiting is a headline such as: “You will be shocked by this celebrity’s ...”.
2. Propaganda²¹: not objective information designed to manipulate and influence an audience on creating a desired opinion about a certain topic. The extended use of social media has proven to be a strong tool for propaganda and promoting ideas concerning many aspects of our lives (such as politics or even music).

¹⁸ M. W. Singletary & R. Lipsky, *Accuracy in local TV news*. Journalism Quarterly, 54, 1977, pp. 362-368, J. Pollak & C. Kubrin, *Crime in the News: How Crimes, Offenders and Victims Are Portrayed in the Media*, George Washington University, School of Criminal Justice, University at Albany, Journal of Criminal Justice and Popular Culture, 14, 2007, pp. 64-65 (url: <https://www.albany.edu/scj/jcipc/vol14is1/pollak.pdf>, accessed on 08/05/2018).

¹⁹“Fake News: Develop Your Fact-Checking Skills”, retrieved from: <https://researchguides.ben.edu/fake-news> on 07/22/2018.

²⁰ Retrieved from: <https://www.techopedia.com/definition/31287/clickbait> on 07/22/2018.

²¹ Retrieved from: <https://en.oxforddictionaries.com/definition/propaganda> on 07/22/2018

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



3. Satire/parody²²: we can find satire or parody on websites when they publish obviously fake stories only for entertaining purposes.

4. Sloppy journalism: this term was created in order to describe in the most accurate way the phenomenon when an article is based on unreliable information that may mislead the audience²³.

5. Misleading Headings: are described the headings that move readers to read a story whose actual content is different and almost always less dramatic than what the heading describes. This practice is similar to click baiting, as described above. For example, as we read on a “New Yorker” article, a U.K. paper used the title “Air pollution now leading cause of lung cancer” but in the main article it was clarified that air pollution is not the primary cause for cancer but just one factor that may lead to lung disease with smoking remaining the first culprit²⁴.

6. Biased/Slanted News: stories that are based on personal beliefs and attempt to favor a certain part of the audience (i.e. on a religious or a political matter). This kind of fake news may appear as selective omissions, lack of balance, and errors that seem to favor one side.

7. False allegations with a commercial background: Businesses often make allegations, claiming to be “the biggest” producers of a specific product range worldwide. Such allegations may of course be wrong as well. The rules against unfair competition are applicable here too. As long as the requirements are met, competitors may issue warning letters and make, among others, cease and desist claims²⁵.

²² Sean Czarnecki, “A quick guide to “what we talk about when we talk about fake news” retrieved from: <https://www.prweek.com/article/1455046/guide-7-types-fake-news-storyfuls-new-editor> on 07/22/2018

²³ an interesting example of sloppy journalism: Stephen M. Walt, “Sloppy journalism at the New York Times”, retrieved from: <https://foreignpolicy.com/2013/05/01/sloppy-journalism-at-the-new-york-times/>, on 07/21/2018

²⁴ Maria Konnikova, “How headlines change the way we think”, retrieved from: <https://www.newyorker.com/science/maria-konnikova/headlines-change-way-think> on 7/19/2018

²⁵ Retrieved from: <https://www.wbs-law.de/eng/internet-law/fake-news-do-not-exist-in-legal-terms-new-legislation-is-not-necessary-attorney-christian-solmecke-says-71207/> on 29th of July, 2018

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



Finally, it is significant to refer to “fake science” or “pseudo-science” on the Internet, a form of “fake news” regarding the publications of hundreds of thousands of scientists worldwide in self-described scientific platforms, that don’t provide traditional checks for accuracy and quality²⁶. To investigate this phenomenon, more than a dozen media organizations (including the New Yorker, Le Monde, the Indian Express and the Korean outlet Newstapa) created an experiment, where they promoted a fake article about propolis and how is capable of treating colorectal cancer more effectively than chemotherapy. This article was published as an accurate one on an oncology journal although the authors that were affiliated with a research center that doesn’t exist,²⁷ raising serious concerns about the credibility of published scientific articles and studies.

III. Fake news and freedom of speech. Challenges for the criminal law

Depending on the situation, “fake news” may not be illegal, as we have to deal with several different behaviors. So, the fact that freedom of speech can stand in the way of dealing with the dissemination of false information on the Internet in multiple ways, is probably part of the most serious analysis. It is argued that fake news is a twisted form of freedom of speech which is established and legally protected by most of legal orders and Constitutions worldwide²⁸. In Europe, freedom of expression –besides the protection provided by each

²⁶ Scilla Alecci, “*New international investigation tackles ‘fake science’ and its poisonous effects*”, retrieved from: <https://www.icij.org/blog/2018/07/new-international-investigation-tackles-fake-science-and-its-poisonous-effects/> on 07/22/2018

²⁷ Stéphane Foucart and David Larousserie, “*Alerte mondiale à la fausse science*” retrieved from: https://www.lemonde.fr/sciences/article/2018/07/19/alerte-mondiale-a-la-fausse-science_5333374_1650684.html on 07/22/2018

²⁸ in the United States, freedom of speech and expression is protected by the First Amendment to the United States Constitution, retrieved from: https://en.wikipedia.org/wiki/Freedom_of_speech_in_the_United_States on 07/22/2018. In France freedom of speech is protected by Article 11 of the Declaration of the Rights of Man and of the Citizen, retrieved from: <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>. In Denmark freedom of speech is granted by the §77 of the Constitution. <https://archive.is/20120712164946/http://legislationline.org/download/action/download/id/1587/file/c57ee1ef8edd6198a252e187fdf2.htm/preview> accessed on 07/22/2018. In Greece freedom of speech is protected by the art. 14 of the Constitution <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> accessed on 07/22/2018. In Italy freedom of speech is also guaranteed by the art. 21§1

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



country's national law and Constitution- is strongly protected by the European Convention on Human Rights (ECHR)²⁹. Pursuant to the article 10 of the European Convention of Human Rights, everyone has the right to freedom of expression. It includes a right to publish and distribute information without the interference of the authorities. In accordance with Article 10 §2 of the European Convention of Human Rights, the exercise of the freedom of expression may be subject to formalities, conditions, restrictions or penalties which are prescribed by law³⁰ and are compliant with the Charter of Fundamental Rights of the European Union³¹. The Court states at the case of PENTIKÄINEN v. FINLAND (20.10.2015)³²

https://web.archive.org/web/20161127152449/http://www.quirinale.it/qrnw/costituzione/pdf/costituzione_ne_inglese.pdf , accessed on 07/22/2018

²⁹ “Article 10 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

The full context of the ECHR is available at: https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer, accessed on 07/23/2018

³⁰ “Final report of the High Level Expert Group on Fake News and Online Disinformation” retrieved from: <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, on 07/21/2018

³¹ «Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.

2. Rights recognized by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties. 3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection. 4. In so far as this Charter recognizes fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions. 5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



(§37): *three requirements must be taken into account when assessing the restrictions: 1) the restriction must be prescribed by law, 2) it must have an acceptable reason and 3) it must be necessary in a democratic society*³³.

On the other hand, freedom of expression is threatened by the rise of fake news. The problem is based on the difficulty in evaluating whether “fake news” cross legal limits, constituting a law violation. It is also questionable where it is preferable to allow “fake news” to spread -based on the right of freedom of expression- rather than risking unwanted incidents of censorship and prohibition.

acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognizable only in the interpretation of such acts and in the ruling on their legality. 6. Full account shall be taken of national laws and practices as specified in this Charter.7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States”. The full text of the Charter is available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf accessed on 07/23/2018

³² The full judgment is available at: <http://hudoc.echr.coe.int/eng?i=001-158279> accessed on 07/23/2018

³³ According to the Court of Human Rights as it is stated at the case of ANIMAL DEFENDERS INTERNATIONAL v. THE UNITED KINGDOM (§100) the general principles concerning the necessity of an interference with freedom of expression are the following:

“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfillment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a ‘restriction’ is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’.... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts” (the full judgment is available at: <http://hudoc.echr.coe.int/eng?i=001-119244>, accessed on 07/23/2018).

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



As it was mentioned above, national laws in the European Union impose limits to freedom of expression in different ways. According to the European Commission³⁴ “17 EU countries have criminal insult laws which means that journalists can go to prison if found guilty on that basis”. In Germany for instance, since January 2018 a new law was forced in order to fight fake news and hate speech on the Internet^{35 36} by requiring from social media to remove illegal or offensive content within 24 hours. It is encouraging that European countries with the support of the European Union are becoming more and more concerned about the “fake news” phenomenon and show their intentions to impose new legislation, prohibiting the spreading of disinformation on the Internet. It is vital that the existing national criminal laws on disseminating false information should be enhanced so as to penalize incidents of committing the said crime on the Internet. Moreover, with the contribution of the European Union, it should be examined whether a unanimous penal prediction of the crime of distributing “fake news” would bring the desirable results.

On the contrary, it is also supported³⁷ that restrictions on fake news distribution is not the appropriate way of dealing with the problem of disinformation, because by doing so freedom of expression is potentially limited and public debate is in jeopardy. It is preferable to rely on the existing legislation relating on *defamation, legal provisions that protect the right to privacy* rather than promoting legal prohibition of “fake news”.³⁸

³⁴ Retrieved from: <https://www.asktheeu.org/en/request/3724/response/13625/attach/5/Annex%201.pdf> on 07/22/2018.

³⁵ Retrieved from: <https://www.asktheeu.org/en/request/3724/response/13625/attach/5/Annex%201.pdf> on 07/22/2018.

³⁶ Anthony Faiola and Stephanie Kirchner, «How do you stop fake news? In Germany, with a law” retrieved from: https://www.washingtonpost.com/world/europe/how-do-you-stop-fake-news-in-germany-with-a-law/2017/04/05/e6834ad6-1a08-11e7-bcc2-7d1a0973e7b2_story.html?noredirect=on&utm_term=.3dcc2764bf52 on 07/25/2018.

³⁷ “Social Media and “Fake News” from a free speech perspective”, retrieved from: <https://www.article19.org/resources/social-media-and-fake-news-from-a-free-speech-perspective/> on 07/25/2018.

³⁸ Rechtsanwalt Christian Solmecke, “Fake news“ does not exist in legal terms. New legislation is not necessary, attorney Christian Solmecke says”, retrieved from: <https://www.wbs-law.de/eng/internet-law/fake-news-do-not-exist-in-legal-terms-new-legislation-is-not-necessary-attorney-christian-solmecke-says-71207/> on 07/25/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



From all the above we can conclude that when it comes to the “conflict” between “fake news” and the protection of the freedom of expression, it is important to have in mind that each case of dissemination of false information on the Internet should be examined after taking into account the principle of proportionality³⁹ and balancing of rights and interests.

IV. Relevant criminological views

While the phenomenon of the dissemination of false information on the Internet has spread at an enormous rate in the last few years, little has been achieved on developing and applying criminological theories concerning the problem. Thereinafter, an approach will be attempted, in order to examine which criminological theories are applicable, so as to explain the deviant behavior (or the crime) of disseminating false information.

³⁹ The principle of proportionality is laid down in Article 5 of the Treaty on European Union: “1. *The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.*

2. *Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.*

3. *Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. *Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality”. Also, at the article no 1 of the Protocol no 2 of the Treaty on European Union states the following: “Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union”. the full text of the Treaty on European Union is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M/TXT> accessed on 07/23/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



i. To begin with, according to the rational choice theory, individuals are motivated by the wants that express their preferences⁴⁰. The individuals proceed to a cost-benefit analysis, by which they examine the possible effects of their actions and especially the probability of getting caught and punished, taking alongside into account the potential benefits that their acts may have. In the case of disseminating false information and fake news, on a cost-benefit analysis, the benefit lies on the potential profit⁴¹ that the individual may earn by spreading misleading information, while the cost is detected on the likelihood of legal punishment. The prospect theory considers also as gains the social ones, such as the continued acceptance by others in a users' immediate social network⁴².

ii. Another relevant theory is the *routine activity theory*, that was developed by Lawrence Cohen and Marcus Felson⁴³. This theory suggests that crime is a normal situation that requires a proper opportunity⁴⁴. It is also supported that crime requires three criteria to concur in time and space: (1) an offender who was prepared to commit the offense (2) a suitable target and (3) the absence of a guardian (in other words -according to terminology related to "fake news"- the absence of a respected and trusted gatekeeper⁴⁵) capable of preventing the crime. When one of the above prerequisites is absent, the crime is

⁴⁰ Retrieved from:

<https://www.sisd.net/cms/lib/TX01001452/Centricity/Domain/170/Rational%20Choice%20Theory%20Reading.pdf> on 07/23/2018

⁴¹ Profit translates to not just money, but also political influence etc. See for example: http://www.senate.gov.ph/press_release/2018/0414_delima1.asp

⁴² Kai Shu, Amy Sliva, Suhang Wang, Jiliang Tang, Huan Liu, *Fake News Detection on Social Media: A Data Mining Perspective*, retrieved from <https://arxiv.org/pdf/1708.01967.pdf> on 07/19/2018.

⁴³ Retrieved from: <http://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0010.xml> on 07/24/2018

⁴⁴ Fotios Spyropoulos, *Penal and criminological aspects of hacking – preventive policy concerning internet security – Survey on jurists, IT scientists and hackers sample*, Antonis N. Sakkoulas Publishers L.P., Athens, 2016, pg. 127

⁴⁵ The Information Society Project & The Floyd Abrams Institute for Freedom of Expression, "Fighting Fake News, Workshop Report", 2017, p. 4

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



prevented⁴⁶. This theory could be applicable in case of spreading fake news, when the following elements are converged: (1) a person (offender) who initiates the dispersion of a fake story on the Internet, (2) an audience that the offender aims to mislead and (3) the absence of the appropriate mechanisms to prevent the dissemination of false information. Concerning the capable guardians/ gatekeepers of this theory, it is worth to say that HLEG report refers to the digital media (especially US-based platform companies of social networking, messaging and searching) as platform companies that are becoming *“increasingly important as both enablers and gatekeepers of information”*⁴⁷.

iii. Lastly, we can refer to the theory of "moral development", stemmed from Jean Piaget's theory of moral reasoning and proposed by Lawrence Kohlberg, which argues that individuals develop their moral reasoning in a series of successive stages during their maturation and socialization. The view of "right" and "wrong" differs at each stage until early adulthood. Criminal behavior arises when there is a criminal opportunity and there is also a delay in the moral development of the individual⁴⁸. Kohlberg argued that criminals' peculiarity (as opposed to those who don't commit delinquent acts) is due to a fixation that occurs at an earlier stage of moral development⁴⁹. If we accept that we could approach fake news from a moral standpoint⁵⁰, then creating and transmitting fake news is an indication of moral depravity.

⁴⁶ Majid Yar, *The novelty of “Cybercrime” – An Assessment in Light of Routine Theory*, European Journal of Criminology, Vol. 2 (4): 407-427:1477-3708, European Society of Criminology and SAGE Publication, London, Thousand Oaks CA and Delhi 2005.

⁴⁷ HLEG report, p. 11, url: <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, accessed on 07/21/2018.

⁴⁸ Marc Rogers, Psychological Theories of Crime and “Hacking”, url: <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.32.3697>

⁴⁹ Sarah Lowman, “Criminology of Computer Crime”, May 2010, p. 9, url: <https://www.lowmanio.co.uk/share/TheCriminologyofComputerCrime.pdf>, accessed on 08/05/2018.

⁵⁰ By way of illustration, in Kant's ethics, lying intentionally corrupts the moral capacity of human and prevents others to act rationally and freely, i.e. lie undermines the dignity of others. Even if the chosen moral theory doesn't lead straight to refute a lie though (for example John Stuart Mill would tolerate intentional lies when the latter contribute to a larger social utility), there aren't any moral theories at all, as far as we know, that applaud lying for personal interests (and this is directly related to hoaxes and

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



V. Non-legal modalities of regulation

Taking into consideration the theories presented above in order to explain the (deliberate) dissemination of false information, we should also focus in a general way of thinking on what these theories suggest and to implement all these suggestions in a systematic way. Education and training⁵¹ is the basic tool of moral development and self-control. People informed and aware about fake news practices can easily detect that some publications do not deserve their “click”! Thus, the profit of rational disseminators will probably diminish. Furthermore, we should create those “capable guardians” / gatekeepers that make this type of deviant behavior difficult, but in total respect to the right of the freedom of expression, as it was presented above.

Apart from EU legislation mentioned above or each country’s national regulation regarding the dissemination of false information, non-legal modalities of regulation should be introduced in a worldwide level in order to fight the various forms of disinformation.

There are several IT tools that have been developed in order to identify fake news (such as browser extensions etc)⁵² and also initiatives such as “stop clickbait”⁵³ (an Internet

fake news). For more details: <https://www.the-philosophy.com/kant-right-to-lie>, accessed on 08/07/2018.

⁵¹ According to the Flash Eurobarometer 464 Report “Fake news and disinformation online” (survey requested by the European Commission) requested by the European Commission)

⁵² “5 useful tools to help you spot fake news” (<https://www.maketecheasier.com/useful-tools-spot-fake-news/>, accessed on 08/07/2018), Kevin Fryling, Better online tools give you more ways to check ‘fake news’, Indiana University, 05/20/2018, <https://www.futurity.org/online-tools-fake-news-1762082/> accessed on 08/07/2018.

⁵³ <http://stopclickbait.com/>, accessed on 08/07/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



organization that aims to summarize and re-share clickbait articles with intentionally vague, manipulative or attention grabbing headlines⁵⁴ in social media groups⁵⁵.

The collaboration between stakeholders and international institutions also play an important role. On March 2017, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression along with other Organizations⁵⁶ signed a Joint Declaration on “Fake News”, Disinformation and Propaganda⁵⁷. The six major areas of concentration include general principles, enabling environment for freedom of expression, intermediaries, journalists and media outlets and stakeholders cooperation. The Joint Declaration underlines the potential of disinformation and propaganda to mislead and interfere with *“the public’s right to know as well as the right of individuals to seek and receive, as well as to impact, information and ideas of all kinds”*⁵⁸.

Also the High Level Group of the European Commission on its recent report on fake news and disinformation⁵⁹ presented a new framework for facing disinformation, where is recommended *“a multi-dimensional approach that caters for the need to continually examine the phenomenon”*. By declaring the commitment to the freedom of expression as

⁵⁴ For details on “Stop Clickbait”: <https://knowyourmeme.com/memes/sites/stop-clickbait>, accessed on 08/07/2018.

⁵⁵ The official group on Facebook can be accessed here: <https://www.facebook.com/StopClickBaitOfficial/>. We accessed it on 08/07/2018 – at that day it has been followed by 204.387 followers. There are also several groups of stop clickbait in different countries (e.g. you can visit the “Stop clickbait – Hellas” Facebook page here: <https://www.facebook.com/StoplickbaitGR/> - accessed on 08/07/2018).

⁵⁶ The Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

⁵⁷ Organization for Security and Co-operation in Europe, *“Joint declaration on freedom of expression and “fake news”, disinformation and propaganda”* retrieved from: <https://www.osce.org/fom/302796> on 07/24/2018.

⁵⁸ Joint declaration, par. 4 (available at : <https://www.osce.org/fom/302796>).

⁵⁹ <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>, accessed on 07/21/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



well as to the right to receive and impact information and ideas as they are protected by the EU's Charter and Convention, the High Level Group announced the intention to encourage the European Commission to promote specific actions. These actions -called pillars- should be followed by *a wide range of different stakeholders* in order non-regulatory actions against the spread of disinformation on the Internet to be taken⁶⁰. These objectives aim to form conscious EU citizens who would be capable of recognizing various forms of disinformation and achieving continuous monitoring of the problem and evaluation of the stakeholders' responses, while ensuring that these responses are compatible with every new form of disinformation that may appear. The self-regulatory approach that HLEG suggests is focused on a set of short and medium-term actions, followed by coordinated attempts to *strengthen media and information literacy and the diversity and sustainability of the digital information ecosystem*.

Furthermore, on April 2018, the European Commission announced an action plan along with self-regulatory tools to prevent the spread and impact of online disinformation in Europe and by extension to *ensure the protection of European values and democratic systems*⁶¹. Moreover, on July 2018 the European Commission announced that a working group composed of online platforms, leading social networks, advertisers and the advertising industry has delivered a draft Code of Practice to tackle online disinformation⁶². This Code – which will be finalized on September- focuses on the following points:

- *Improving the scrutiny of ad placements to demonetize purveyors of disinformation*

⁶⁰ The five pillars that HLEG proposes are the following: “*a. enhance transparency of the digital information ecosystem, b. promote and sharpen the use of media and information literacy approaches to counter disinformation and help users navigate our digital information environment, c. develop tools for empowering users and journalists and foster a positive engagement with fast-evolving information technologies, d. safeguard the diversity and sustainability of the European news media ecosystem, and e. calibrate the effectiveness of the responses through continuous research on the impact of disinformation in Europe and a engagement process that includes predefined and time-framed steps combined with monitoring and reporting requirements*”, retrieved from <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation> on 07/23/2018.

⁶¹ Retrieved from: <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-online-disinformation-european-approach> on 07/24/2018.

⁶² The draft of the code is available at: http://ec.europa.eu/information_society/newsroom/image/document/2018-29/msf_on_disinformation_17_07_2018_-_proofread_99F78DB7-9133-1655-990805803CDCCB67_53545.pdf accessed on 23/7/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



- *Ensuring transparency of political advertising and issue-based advertising to enable users to identify promoted content*
- *Ensuring the integrity of platforms' services, including the identification and closure of fake accounts as well as the use of appropriate mechanisms which signal bot-driven interactions*
- *Making it easier for users to discover and access different news sources representing alternative viewpoints*
- *Empowering the research community by granting access to platforms' data that are necessary to continuously monitor online disinformation⁶³.*

Furthermore, companies with worldwide power such as Facebook and Google have shown their strong intentions to prevent the spread of fake news on their platforms by enunciated special policies. Mark Zuckerberg announced on December 2016⁶⁴ that Facebook will use algorithms in order to filter fake news and hoaxes and ban them from appearing on the platform's news feed. Additionally, that they will cooperate with third-party fact-checking organizations, which will monitor news feed and examine whether a user's report about an incident of misleading news is accurate. Although almost two years have passed since Zuckeberg announced Facebook's measures on limiting the spread of fake news, it's really questionable if any progress has indeed occurred. Google on the other hand, in August 2017 posted -on its blog- the improvements that were applied on their search engines so as to prevent the spreading of misleading information. As the company's vice president of engineering stated, about 0.25 percent of Google's daily search inquiries *"have been returning offensive or clearly misleading content"*⁶⁵. In 2015, Google helped launch the "First Draft Coalition", dedicated *"to improving practices in the ethical sourcing, verification and*

⁶³ Retrieved from <https://ec.europa.eu/digital-single-market/en/news/draft-code-practice-online-disinformation> on 07/24/2018.

⁶⁴ Alex Heath, *"Facebook is going to use Snopes and other fact-checkers to combat and bury 'fake news'"*, retrieved from: <http://www.businessinsider.com/facebook-will-fact-check-label-fake-news-in-news-feed-2016-12> on 07/21/2018.

⁶⁵ Ben Gomes *"Our latest quality improvements for Search"*, retrieved from: <https://blog.google/products/search/our-latest-quality-improvements-search/> on 07/21/2018

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



*reporting of stories that emerge online*⁶⁶. Ever since, more than 75 news and social media organizations, including Facebook and Twitter, have joined the coalition, which publishes the First Draft News website⁶⁷. Also, in 2016 Google introduced a new “*misrepresentative content*” for its AdSense network, to prevent google advertisements from appearing on pages “*that misrepresent, misstate, or conceal information*”⁶⁸ about the platform’s users.

All the forecast measures show a worldwide multi-party attempt to raise public awareness about disinformation in order to tackle the phenomenon effectively. Undeniably though, it is certainly too soon to evaluate whether the above mechanisms will deliver the desirable results.

VI. Conclusion

The key points of our arguments may now be concisely summarized. The main objective of our presentation was to highlight the fact that whilst the spread of fake news is a long-standing problem, as this practice moves in digital/electronic networks, a sharp increase in fake news incidents is caused, while new ways and methods of committing this act emerge. Thus, due to quantitative and qualitative changes that have occurred in recent years, any scientific research on this topic inevitably encounters many obstacles, particularly when it comes to different or even contradictory definitions (concerning the behaviors that fall under the “fake news” umbrella) as well as to propositions about appropriate preventive measures. Hence, the dilemma between legislative interventions or non-legal regulations that have been proposed and implemented from time to time, together with the prospect of their fertile combination, are important issues that remain open and will require further careful examination and consideration. Moreover, traditional criminological theories (often opposing one another) need to be supplemented and revised in order to correspond to these unprecedented conditions. Overall, the phenomenon of contradictory approaches is

⁶⁶ Retrieved from: <https://firstdraftnews.org/community-of-practice/> on 21/07/2018.

⁶⁷ Retrieved from: <https://firstdraftnews.org/about/#ngo> on 21/07/2018.

⁶⁸ Retrieved from: https://support.google.com/adsense/answer/1348688?hl=en#Misrepresentative_content on 07/21/2018.

This project has received funding from the Hellenic Foundation for Research and Innovation (HFRI) and the General Secretariat for Research and Technology (GSRT), under grant agreement No 80529.



the appearance of the possibility and necessity for change though, an indication of potential progress in the creation of relevant legislation -in terms of defining the criminal act and the necessary criteria constituting the actus reus- and in the development of new scientific theories capable of grasping the complexity of contemporary reality.