



**AN ASSESSMENT OF THE LEGALITY OF FAKE NEWS
WITHIN THE MAINSTREAM MEDIA – WITH SPECIFIC
REGARD TO ITS INFLUENCE ON THE POLITICAL
CLIMATE**

*Ayesha Faraj Al-Nuaimi*¹

Abstract

This article aims to investigate whether the law and regulation provided by the government is sufficient in tackling the increasing issue of fake news (FN) “a false story that appears to be news, usually created to influence political views”.² An examination on whether increased regulation would restrict the United Kingdom’s tradition of a free, investigative press, will be comparatively analysed to serve a contrast in perspectives to the laxer attitudes of the American media system. With the rapid evolution of technology, the radical influence FN has on the political climate will likely increase. A 2015 poll showed that 41% of Americans still erroneously believed that active weapons of mass destruction had been found in Iraq,³ but it has been proven that none ever existed.⁴ This worrying statistic demonstrates the influence that the media maintains over the public. Examination of regulations, laws and ethical arguments will determine whether there is a practical and reasonable solution to this epidemic, and if the government should be putting more effort in to address it.

¹ Ayesha graduated with a First Class LLB (Hons) degree in Law

² Colin McIntosh, *Cambridge Advanced Learner’s Dictionary*, (4th edn, Cambridge University Press 2013)

³ Dan Cassino, ‘Ignorance, Partisanship Drive False Beliefs about Obama, Iraq’ (PublicMind Poll 7 January 2015) <<http://publicmind.fdu.edu/2015/false/>> accessed 30 October 2019

⁴ Kenneth Roth ‘Was the Iraq War a Humanitarian Intervention?’ (2006) 5 *Journal of Military Ethics* 84

Introduction

It is difficult to envisage that trusted organisations would purposefully mislead their audiences, yet this is not a notion isolated to a radicalised dystopian future. Rather, these fictional dystopias have acted as a precursor to what is being observed within the media and political sphere currently. In George Orwell's book *1984*, it is famously quoted 'the party told you to reject the evidence of your eyes and ears. It was their final, most essential command.'⁵ Although fictitious, this quote has been replicated by the highest authority in the United States of America (USA), Donald Trump, who stated 'What you're seeing and what you're reading is not what's happening.'⁶ This alarming similarity indicates the danger of authoritative manipulation, and when it comes from trusted news sources, the issue particularly intensifies – thus the concept of 'Fake News' (FN) is conceived. With the notoriety of FN and its impact over our perception of conventional media growing exponentially, its standpoint within The United Kingdom's (UK) legal system remains ambiguous.

1 Defining Fake News, The Mainstream News Media and Exploring its Influence

The idiom FN has garnered substantial attention due to its propagation during Donald Trump's campaign and presidency,⁷ creating global uncertainty towards media credibility.⁸ Although believed to be newly created, FN is not a contemporary concept. 'Perhaps the most notorious use of the equivalent term, "Lügenpresse" or "lying press," was evoked by the Nazis in the 1930s'.⁹

⁵ George Orwell, *1984* (Book One, Penguin Publishing Group, 1950) 29-30

⁶ Donald Trump, 'Address' (Veterans of Foreign Wars Convention, Kansas City, 24 July 2018) <<https://www.bbc.co.uk/news/av/world-us-canada-44959340/donald-trump-what-you-re-seeing-and-what-you-re-reading-is-not-what-s-happening>> accessed 5 April 2020

⁷ Amber Jamieson, 'You are fake news': Trump attacks CNN and BuzzFeed at press conference' *The Guardian* (London, 11 January 2017) <<https://www.theguardian.com/us-news/2017/jan/11/trump-attacks-cnn-buzzfeed-at-press-conference>> accessed 10 December 2019

⁸ Michael M Grynbaum, 'Trump Discusses Claims of 'Fake News,' and Their Impact, With New York Times Publisher' *The New York Times* (New York City, 1 February 2019) <<https://www.nytimes.com/2019/02/01/business/media/donald-trump-interview-news-media.html>> accessed 10 December 2019

⁹ Jane E Kirtley, 'Getting to the Truth: Fake News, Libel Laws, and "Enemies of the American People"' (2018) 43 *Human Rights Magazine* 4

Consequently, the events following its advent indicate its influence over susceptible individuals can be used as a mechanism to steer public opinion. FN is defined as ‘a false story that appears to be news, usually created to influence political views’.¹⁰ However, the definition lacks consistency among organisations.¹¹ In Resolution 2212, the Parliamentary Assembly of the Council of Europe (PACE) considered ‘propaganda’ and ‘disinformation’ as different forms of manipulation.¹² Whereas in Resolution 2217, FN is identified as a ‘mass disinformation campaign’.¹³ Nevertheless, there is a consensus around:

‘four dimensions: (i) type of information; (ii) falsity of information; (iii) intention of the author; and (iv) consequences of dissemination of information, including...societal effects (disruption of democratic processes).’¹⁴

This establishes general principles which allow for continuity in understanding the term.

The Extensive Influence of the News

Since the first British newspaper in 1655,¹⁵ the media has played a crucial role in providing audiences ‘with the information they need to make the best possible decisions about their lives...and their governments’.¹⁶ Due its importance, all media should be impartial to allow audiences to formulate opinions without external influence. It has been established that audiences not possessing knowledge on a subject ‘become particularly reliant upon the

¹⁰ Colin McIntosh, *Cambridge Advanced Learner's Dictionary*, (4th edn, Cambridge University Press 2013)

¹¹ Judit Bayer and others, ‘Disinformation and propaganda – impact on the functioning of the rule of law in the EU and its Member States’ (Requested by the LIBE committee, European Parliament, 2019) 23

¹² Parliamentary Assembly of the Council of Europe, *Protection of editorial integrity* (Resolution 2212, 2018) para 8.7 and 9.5

¹³ Parliamentary Assembly of the Council of Europe, *Legal challenges related to hybrid war and human rights obligations* (Resolution 2217, 2018) para 3

¹⁴ Bertin Martens and others, ‘The digital transformation of news media and the rise of disinformation and fake news’ (JRC Digital Economy Working Paper, European Commission, 2018) 5

¹⁵ Joad Raymond, ‘NEWSPAPERS: A NATIONAL OR INTERNATIONAL PHENOMENON?’ (2012) 18 *Media History* 249

¹⁶ Walter Dean, ‘What is the purpose of journalism?’ (American Press Institute) <<https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/purpose-journalism/>> accessed January 25 2020

media to inform them'¹⁷ which allows for manipulation.

Politically, this reliance can benefit campaigns which require public support, as 'the way the media frame news stories has important implications for shifts in public opinion'.¹⁸ The media's power is utilised by the government in 'the easing through of policy action by repetition and reinforcement of media messages, and the absence of proposed alternatives'.¹⁹ The media have dominance in what it wants the public to believe;²⁰ by altering views 'of political objects and events by framing a situation in one way rather than another'.²¹ Therefore, it is critical mass media is continually analysed to avoid systemic corruption. However, mainstream media has evolved to become 'a contested space in which the most powerful groups can establish the dominance of specific messages'²² thus, having the power to change the political scope.

Defining News Within the UK and USA

Defined as 'information or reports about recent events',²³ news is the dominant force in educating the public; with 75% of British individuals in 2019 accessing the news via television, and 38% through newspapers.²⁴ From the founding of the mass press in 1896²⁵ to the first news broadcast in 1938,²⁶ as news communication 'controls access to a variety of information, people become dependent on the media if they want to obtain information'.²⁷

¹⁷ Catherine Happer, Greg Philo, 'The Role of the Media in the Construction of Public Belief and Social Change' (2017) 1 *Journal of Social and Political Psychology* 321

¹⁸ Mark Fischle, Karen Stenner-Day, 'How media influence public opinion: a schematic approach' (1992) 1 *Australian Studies in Journalism* 159

¹⁹ Happer, Philo (n 18) 333

²⁰ Richard R. Lau, Richard A. Smith, Susan T. Fiske, 'Political Beliefs, Policy Interpretations, and Political Persuasion' (1991) 53 *The Journal of Politics* 644

²¹ Fischle, Stenner-Day (n 19) 163

²² Happer, Philo (n 18) 333

²³ McIntosh (n 11)

²⁴ Jigsaw Research, 'News consumption in the UK: 2019' (Overview of research findings, Ofcom, 2019)

²⁵ Bernt Stubbe Ostergaard, *The Media in Western Europe: The Euromedia Handbook* (2nd edn, SAGE Publications, 1997) 244

²⁶ Stuart Allen, *News Culture* (2nd edn, Open University Press, 2004) 34

²⁷ Joey Ka-Ching Chan, Louis Leung, 'Lifestyles, reliance on traditional news media and online news adoption' (2005) 7 *New Media & Society* 357

News broadcasting is dominated by the British Broadcasting Company (BBC), with a 58% viewership,²⁸ followed by Independent Television (ITV) with 40%.²⁹ Regardless of ownership ‘the notions of accuracy and impartiality are enshrined—by both tradition and statute—in UK broadcast journalism’.³⁰ However, even the BBC has perpetuated prejudice,³¹ as ‘political arguments which appear on the BBC’ are ‘shaped by its own definition of democracy’.³²

Defined by The Newspaper Libel and Registration Act 1881 section (S) 1, the term newspaper ‘shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations’.³³ The press’ lack of an impartiality clause allows for papers’ objectives to be presented evidently, such as the right-wing *The Sun* and *The Daily Mail* or the left-wing *The Daily Mirror* and *The Guardian*.³⁴ However, this preferentialism is due to newspapers being ‘commercial businesses’ which ‘have to connect with audiences in order to generate sales’³⁵ and thus justified in their biased practices.

This liberty reflects the American media system which relies on independence from government through ‘Freedom of the Press’ and ‘Freedom of Speech’ in the First Amendment to the United States Constitution.³⁶ These clauses have ‘been the beacon and the shield for the American press for over two centuries’³⁷ providing autonomy for journalists. Known as the ‘big three’, the most popular US news channels consist of the republican Fox News, followed by the liberal MSNBC and Cable News Network (CNN).³⁸ The most popular newspapers consist of *USA Today*, *The Wall Street Journal* and *The New York*

²⁸ Jigsaw Research (n 25) 2

²⁹ *ibid*

³⁰ Justin Lewis, Stephen Cushion, ‘Think Tanks, Television News and Impartiality: The ideological balance of sources in BBC programming’ (2017) 20 *Journalism Studies* 480

³¹ *ibid* 481

³² Happer, Philo (n 18) 325

³³ The Newspaper Libel and Registration Act 1881

³⁴ *ibid*

³⁵ *ibid*

³⁶ First Amendment to the United States Constitution 1791

³⁷ Hedley Burrell, *An unfettered press* (United States Information Agency, 1994) 1

³⁸ Amy Watson, ‘Leading cable networks in the United States in October 2019, by number of total day viewers’ (Statista, 4 November 2019)

<<https://www.statista.com/statistics/347040/cable-networks-viewers-usa/>> accessed 11 February 2020

Times, all of different political views.³⁹ The disregard by American media outlets for impartiality allows for easier FN dissemination, causing the 44th president of the United States Barak Obama to state that Fox News is 'ultimately destructive for the long-term growth of a country'.⁴⁰

2 An Examination of the Regulation of the Media Within the Law of the UK and USA

There are two general realities regarding news media: 'it is not transparent, not unbiased, not the "window on the world" it often sets out to be'⁴¹ and 'its constructed version of events usually serve dominant interests'.⁴² Conversely, it has been observed 'the British media are, by Western standards...remarkably regulated'.⁴³ Whether they prevent FN is another matter.

British Broadcasting Law

Broadcasting regulation began in 1984, with the Telecommunications Act⁴⁴ (TA) policing the media. The Broadcasting Act (BA) followed in 1996⁴⁵ which made regulators accountable to parliament rather than self-regulatory. Although sophisticated for its time, the antecedent regulation system was 'unwieldy and far from efficient'.⁴⁶ Significant advancements in both technology and attitudes incited the Communications Act 2003⁴⁷ (CA), which consolidated the TA's conceptions and established a legislative framework for regulating telecommunications. However, the CA's most significant feature

³⁹ Amy Watson, 'Leading daily newspapers in the United States in September 2017 and January 2019, by circulation' (Statista, 19 January 2019) <<https://www.statista.com/statistics/184682/us-daily-newspapers-by-circulation/>> accessed 11 February 2020

⁴⁰ Jann S Wenner, Interview with Barak Obama, 44th President of The United States of America, *Rolling Stone* (Washington DC, 14 October 2010)

⁴¹ Gill Branston, Roy Stafford, *The Media Student's Book* (3rd edn, Routledge, 2003) 134

⁴² *ibid*

⁴³ Jane Stokes, Anna Reading, *The Media in Britain: Current Debates and Developments* (Macmillan Education UK, 1999)

⁴⁴ Telecommunications Act 1984

⁴⁵ Broadcasting Act 1996 (BA 1996)

⁴⁶ *ibid*

⁴⁷ Communications Act 2003 (CA 2003)

was the creation of the Ofcom, which heralded an ‘institutional shift in the focus of UK television regulation’.⁴⁸

S.52(4) of the CA instructs ‘public communications providers’ to establish a Code of Practice setting guidelines...of standard objectives for the content of programmes’.⁴⁹ s.319(1) details the content of Ofcom’s code, and specifies their objectives when reviewing programme content. s.319(2)(c) and (d) state ‘news included in television...is presented with due impartiality’ and is ‘reported with due accuracy’. s.320(1)(a) requires ‘the exclusion...of the views or opinions of the person providing the service’, on several matters. Nevertheless, Article 10 of the European Convention of Human Rights (ECHR) states ‘Everyone has the right to freedom of expression’.⁵⁰ Elucidated as the right to ‘hold opinions and to receive and impart information and ideas without interference by public authority’.⁵¹ The CA’s provisions could breach this directive as it limits the broadcasting of certain opinions. However, it is contended the framework of s.320 was conceived to ‘maintain a democratic society, in the interests of national security...for the protection of the reputation or rights of others’.⁵² Ofcom’s principles being enshrined in statute demonstrates its authority to broadcasters.

Ofcom’s Broadcasting Code

Ofcom’s Broadcast Code⁵³ provides further clarification of the CA’s provisions, which are binding for all UK news channels. s.5.1 states ‘News, in whatever form, must be reported with due accuracy and presented with due impartiality’, with s.5.2 asserting mistakes must be ‘acknowledged and corrected on air

⁴⁸ Paul Smith, ‘The Politics of UK television Policy: The making of OFCOM’ (2006) 28 *Media, Culture & Society* 929

⁴⁹ Ofcom, ‘Broadcasting Code Review: Preparing for Ofcom’s new responsibilities for regulating the BBC’ (Ofcom, 29 March 2017) <https://www.Ofcom.org.uk/__data/assets/pdf_file/0032/99518/BroadcastingCodeReview.pdf> accessed 2 March 2020

⁵⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10

⁵¹ *ibid*

⁵² *ibid*

⁵³ Ofcom, ‘THE OFCOM BROADCASTING CODE (with the Cross-promotion Code and the On Demand Programme Service Rules)’ (Ofcom, April 2017)

quickly'. s.5.4 orders broadcasters to exclude the views and opinions of the person 'providing the service on matters of political...controversy and...public policy'. Lastly, s.5.7 'Views and facts must not be misrepresented.'

The interpretation of the term 'due' is detailed throughout Ofcom's guidance notes,⁵⁴ stating "Due' means adequate or appropriate to the subject and nature of the programme'.⁵⁵ This implies 'the approach to due impartiality may vary according to the nature of the subject...and the extent to which the content and approach is signalled to the audience.'⁵⁶ Therefore having a fair balance without providing equal time to all views, put quite simply as 'context is all-important'.⁵⁷ Ofcom further asserted "due impartiality' does not mean an equal division of time has to be given to every view.'⁵⁸ However, the BBC's Chief of Television News stated 'the days of middle-of-the-road, balancing Left and Right, impartiality are dead'.⁵⁹ He elaborated how broadcasters should adopt 'radical impartiality' – airing the widest range of views to gain credibility with audiences'.⁶⁰ Lastly he proclaimed 'this is the price to pay to maintain a national forum where all can feel they are represented and respected.'⁶¹

This controversial opinion was criticised, as giving a platform to groups such as the Taliban or British Nationalist Party was foolish and equating the weight of their views to those of credible politicians.⁶² The dispute was best resolved when debated during the passage of the BA:

'There is no obligation to be neutral, for example, between truth and untruth...On those issues, of course broadcasting cannot, and would not be expected to, remain neutral.'⁶³

⁵⁴ Ofcom, 'Guidance Notes Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions' (Issue 6, Ofcom, 22 March 2017)

⁵⁵ *ibid* 2

⁵⁶ *ibid*

⁵⁷ Geoffrey Robertson, Andrew Nicol, *Media law* (5th edn, Penguin Books, 2008) 909

⁵⁸ Ofcom (n 69) 2

⁵⁹ Peter Horrocks, 'The Future of News?' (BBC, 30 November 2006)

<https://www.bbc.co.uk/blogs/theeditors/2006/11/the_future_of_news.html> accessed 3 March 2020

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² Karen Fowler-Watt, Stuart Allan, *Journalism: New Challenges* (Centre for Journalism & Communication Research Bournemouth University, 2013) 69

⁶³ HL Deb 11 October 1990, vol 522, cols 423-424

The contention surrounding impartiality, demonstrates the unlikelihood of a solution satisfying all.

Section 1.7 of Ofcom's guidance affirms 'accuracy entails getting the facts right' and when reporting with 'due accuracy' should look at the definition of 'due' explained for impartiality.⁶⁴ It is detailed 'where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher.'⁶⁵ Since there is clear distinction between false and correct, accuracy is uncontroversial.

An example of Ofcom exercising their duty was in their case against Bangla TV, concerning the then mayor of Town Hamlets London, Lutfur Rahman. A correspondent stated: "the people have recognised he has kept his promise...he has reached to the pinnacle of his success through his unparalleled contribution and determination."⁶⁶ Ofcom arbitrated a complaint claiming the broadcast was an advertorial ploy, which breached s.5.1 on impartiality. Remarking the broadcast did not include an alternative viewpoint to the positive information, Bangla TV was found in breach.⁶⁷ Incidentally, a high court electoral commissioner found Lutfur guilty of illegal electoral practices and was removed from office.⁶⁸ This case demonstrates the effective use of Ofcom's statutory powers. Applied to FN, it is encouraging that Ofcom investigate complaints and breaches astutely, regardless of political affiliation. Whilst all broadcasters have been subject to Ofcom's rulings, the BBC remained self-governed until 2017.

⁶⁴ Ofcom (n 69) s 1.7

⁶⁵ *ibid*

⁶⁶ Ofcom, 'Ofcom Broadcast Bulletin' (Issue number 249, Ofcom, 3 March 2014) 13 <https://www.Ofcom.org.uk/__data/assets/pdf_file/0027/47475/obb249.pdf> accessed 4 March 2020

⁶⁷ Mark Hanna, Mike Dodd, *Essential Law For Journalists* (23rd edn, Oxford University Press, 2016) 30

⁶⁸ *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB)

The BBC's Regulation

Established under Royal Charter in 1927⁶⁹ the BBC enjoyed independence from Ofcom.⁷⁰ Although appearing to regulate impartially, even 'Winston Churchill complained about political bias at the BBC as long ago as 1953'.⁷¹ Prior to 2003, the BBC faced trivial consequences for infringement as 'penalties for breach were weak, requiring only publication of an adverse adjudication'.⁷² With the implementation of the CA, the BBC became subject to most of Ofcom's Broadcasting Code⁷³ including financial penalties.⁷⁴

Absent from BBC's subsection to the Broadcasting Code was broadcasting impartiality. The governing bodies continued to 'retain responsibility for the BBC's compliance with the accuracy and impartiality requirements for its output'.⁷⁵ Although the BBC stated these measures were 'entirely appropriate',⁷⁶ it was unfair for them to be governed by the Broadcasting Code in some areas 'yet leave the issues of due accuracy and impartiality in the hands of the BBC Governors'.⁷⁷ Ofcom interpreted this as due to the BBC's reputation as 'gold standard'.⁷⁸ However, 'there seems to be no logical reason why the BBC should be treated as different from all other broadcasters just because of its different history',⁷⁹ and creates 'a recipe for the very confusion and double-jeopardy Ofcom was set up to avoid'.⁸⁰ Thus, it was deemed the BBC be treated equally. The newest 2017 Charter agreement⁸¹ overhauled

⁶⁹ Leighton Andrews, 'A UK Case: Lobbying for a new BBC Charter' in Phil Harris Fleisher and Craig S Fleisher (eds) *The handbook of public affairs* (SAGE Publications LTD, 2005) 247

⁷⁰ Richard Collins, James Purnell, 'The Future of the BBC' (1996) 3 *Javnost – The Public* 71

⁷¹ Crone (n 48) 258

⁷² Mike Feintuck, Mike Varney, *Media Regulation, Public Interest and the Law* (2nd edn, Edinburgh University Press, 2006) 51

⁷³ Ofcom Broadcasting Code (n 64)

⁷⁴ *Ibid* 104

⁷⁵ Feintuck, Varney (n 91) 52

⁷⁶ Michael Grade, 'Building public value: Renewing the BBC for a Digital World' (BBC, 2004) <<https://downloads.bbc.co.uk/aboutthebbc/policies/pdf/bpv.pdf>> accessed 10 March 2020

⁷⁷ Feintuck, Varney (n 91) 52

⁷⁸ Ofcom, 'Review of the BBC's Royal Charter: Ofcom response to the Green Paper' (Ofcom, 8 June 2005)

<https://www.Ofcom.org.uk/__data/assets/pdf_file/0019/40258/Ofcomresponse.pdf> accessed 17 March 2020

⁷⁹ Feintuck, Varney (n 91) 52

⁸⁰ Robertson, Nicol (n 72) 909

⁸¹ Department for Culture, Media and Sport, *BROADCASTING: Copy of Royal Charter for the continuance of the British Broadcasting Corporation* (Royal Charter, Cm 9365, 2016)

the BBC's regulatory system, granting Ofcom the authority to 'hold the BBC's performance and editorial standards to account'.⁸² Thus, regulation of the BBC now sits with Ofcom,⁸³ who stressed the 'BBC has a special status, but we won't give it special treatment'.⁸⁴

The complex course of broadcasting regulation has led to the amalgamation of one effective and experienced regulatory body, preventing uncertainty and allowing equal treatment among all broadcasters regarding FN.

British Press Law

The Press is entirely self-regulatory. It is considered 'broadcasting undertakes a certain responsibility in respect of moral and cultural considerations which the press does not fully recognise'.⁸⁵ Whilst the press precedes all other modern journalistic mediums, their regulatory system remains stagnant and in need of statutory regulation.⁸⁶ However, this is juxtaposed by:

'the alternative of state intervention is abhorrent in a free society...It would mean the state controlling the regulation of those who are there to scrutinise them on behalf of the public'⁸⁷

Their first self-regulatory body was established in 1953 by the First Royal Commission on the Press in 1949.⁸⁸ Due to the body disregarding papers which failed 'to observe the basic ethics of journalism'⁸⁹ they lost the confidence of both press and Parliament. This instigated the Calcutt Report

⁸² Ofcom, 'Ofcom becomes the first independent, external regulator of the BBC today' (Ofcom, 3 April 2017) <<https://www.Ofcom.org.uk/about-Ofcom/latest/media/media-releases/2017/Ofcom-becomes-the-first-independent,-external-regulator-of-the-bbc-today>> accessed 19 March 2020

⁸³ Ofcom, 'Ofcom sets out preparations for regulating the BBC' (Ofcom, 8 December 2016) <<https://www.Ofcom.org.uk/about-Ofcom/latest/media/media-releases/2016/Ofcom-sets-out-preparations-for-regulating-the-bbc>> accessed 19 March 2020

⁸⁴ *ibid*

⁸⁵ Thomas Gibbons, *Regulating the media* (2nd edn, Sweet & Maxwell 1998) 64

⁸⁶ *ibid*

⁸⁷ Guy Black, 'Viewpoints: Should the press be regulated?' (BBC, 28 November 2012) <<https://www.bbc.co.uk/news/20466955>> accessed 20 March 2020

⁸⁸ HC Deb 28 July 1949, vol 467, cols 2683-2794

⁸⁹ Ursula Smart, *Media and Entertainment Law* (3rd edn, Routledge 2017) 191

on 'Privacy and Related Matters'⁹⁰ in response to a proposal of a statutory press council wielding enforceable legal sanctions as an appropriate solution, which ultimately created The Press Complaints Commission (PCC). Realistically, the PCC 'existed solely to adjudicate complaints that editors of newspapers had infringed the published code of conduct'.⁹¹ The ineffectiveness of the PCC initiated another negative review by Sir David Calcutt. It found they were not:

'an effective regulator of the press...not operating a code of conduct, which enables it to command not only press but public confidence...it is not truly the independent body it should be'.⁹²

The 2011 News of the World phone hacking scandal 'sounded the death knell for the PCC, which had failed to understand or probe the extent of that criminality',⁹³ instigating 'The Leveson Inquiry'. Lord Leveson began the hearings by stating 'The press provides an essential check on all aspects of public life. That is why any failure within the media affects all of us...therefore...who guards the guardians?'.⁹⁴ The Leveson Report⁹⁵ contains elements applicable to FN, primarily how newspapers pursued and prioritised sensational stories, 'irrespective of the harm the stories may cause and the rights of those who would be affected'.⁹⁶ There were proposals of reform to create a libel resolution unit for legal claims against subscribers and regulators, and sanctions with fines of 1% turnover with the maximum of £1 million if in breach.⁹⁷ Most importantly, was the creation of 'a new form of press regulation, with the principle of self-regulation at its heart',⁹⁸ overseen by a

⁹⁰ Home Office, *Report of the Committee on Privacy and Related Matters* (Cmd 1102, 1990)

⁹¹ Robertson, Nicol (n 72) 762

⁹² Department of National Heritage, *Review of Press Self-Regulation* (Cmd 2135, 1993) para 5.26

⁹³ Hanna, Dodd (n 85) 12

⁹⁴ Owen Bowcott, 'Lord Justice Leveson: profile of phone-hacking inquiry chairman' *The Guardian* (London, 13 July 2011) <<https://www.theguardian.com/media/2011/jul/13/lord-justice-leveson-profile-hacking>> accessed 25 March 2020

⁹⁵ Lord Justice Leveson, *An Inquiry Into the Culture, Practices and Ethics of the Press Report* (HL 2012-2013, 780-I)

⁹⁶ Smart (n 109) 201

⁹⁷ Lord Justice Leveson, *An Inquiry Into the Culture, Practices and Ethics of the Press Report* (HL 2012-2013, 780-IV) para 5.23

⁹⁸ Smart (n 109) 201

body established by Royal Charter⁹⁹ and ‘free from any influence from industry and government’.¹⁰⁰ This resulted in the creation of IPSO, which regulate more than 1,500 print titles.

The IPSO’s Editors Code

Unlike Ofcom, newspapers are not obliged to join IPSO, but those it does oversee regulate under IPSO’s Editor’s Code,¹⁰¹ establishing guidelines which subscribed papers are obliged to follow. s.1(1) states ‘the press must take care not to publish inaccurate, misleading or distorted information’, with s.2 declaring any ‘significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and—where appropriate—an apology published’. Whilst appearing to prevent FN, the IPSO never ‘pro-actively policed this article of the code’ and by only responding to complaints, IPSO never adjudicated accuracy itself.¹⁰²

Nevertheless, *Muslim Engagement and Development v The Sun*¹⁰³ adjudication illustrates IPSO’s action against FN. IPSO investigated whether *The Sun* had breached article 1 of the Editors Code, by publishing an article headlined ‘1 in 5 Brit Muslims’ sympathy for jihadis’.¹⁰⁴ Stemming from a self-conducted poll, the information procured was manipulated to present false ideologies. IPSO held ‘the newspaper had failed to take appropriate care in its presentation of the poll results, and as a result the coverage was significantly misleading, in breach of clause 1’,¹⁰⁵ ordering *The Sun* to issue an immediate adjudication. Whilst the measures taken successfully stopped FN, the article was only investigated owing to three thousand complaints. Due to the amount of papers supervised, FN stories go overlooked oblivious to IPSO.

⁹⁹ Press Recognition Panel, ‘The Royal Charter’ (Press Recognition Panel, 3 November 2014) <<https://pressrecognitionpanel.org.uk/the-royal-charter/>> accessed 25 March 2020

¹⁰⁰ Lord Justice Leveson (n 117)

¹⁰¹ Editors’ Code Committee, ‘Editors’ Code of Practice’ (IPSO, 1 July 2019) <<https://www.ipso.co.uk/editors-code-of-practice/>> accessed 26 March 2020

¹⁰² Damian Tambini, ‘Fake News: Public Policy Responses’ (2017) 20 Media Policy Brief 1

¹⁰³ IPSO, ‘09324-15 Muslim Engagement and Development (MEND) v The Sun’ (IPSO, 17 February 2016) <<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09324-15>> accessed 28 March 2020

¹⁰⁴ *ibid* s 1

¹⁰⁵ *ibid* s 21

British Defamation and Libel Laws

Another avenue for preventing FN is through the tort of defamation, found within the Defamation Act 2013 (DA).¹⁰⁶ The UK's defamation laws have attracted claimants unable to sue in other jurisdictions, such as the USA who 'afford better protection for media defendants'.¹⁰⁷ The tradition of tilting 'the balance against freedom of speech'¹⁰⁸ remains a contentious issue, leading to Lady Hale to remark 'we need more such serious journalism in this country and our defamation laws should encourage rather than discourage it'.¹⁰⁹ Lord Atkin in *Sim v Stretch*¹¹⁰ defined defamation as 'a publication of an untrue statement about a person that tends to lower his reputation in the opinion of 'right-thinking members of the community'¹¹¹ thus applicable to FN.

Defamation is regarded as the broad term for the two torts slander and libel; Slander encompassing verbal defamation, and Libel being defamation in writing or another permanent form such as broadcasting.¹¹² Since FN strives for a degree of permanence, libel is most applicable. For a claimant to prove libel, the following must be satisfied: It is a defamatory statement which refers to him/her, has been published and is likely to or will cause serious harm. False statements are not necessarily libellous, and libel 'will not correct all, or even most, false statements'.¹¹³ Regardless of the amount of inaccuracies published, 'there must be a "sting" in the falsehood that reflects discredit in the eyes of society'.¹¹⁴ Arguably, all FN is published to discredit its intended reputation. Yet, inaccuracies reported subtly over extended periods would go unnoticed, but gradually influence opinions. If news organisations performed tactically, they could face minor repudiations for consequential actions.

¹⁰⁶ DA 2013

¹⁰⁷ Robertson, Nicol (n 72) 93

¹⁰⁸ *ibid*

¹⁰⁹ *Jameel (Mohammed) v Wall Street Journal Europe Sprl* [2006] UKHL 44, 150 (Hale LJ)

¹¹⁰ *Sim v Stretch* [1936] 2 All ER 1237

¹¹¹ *Sim v Stretch* [1936] 2 All ER 1237, 1240 (Atkin LJ)

¹¹² Smart (n 109) 262

¹¹³ Robertson, Nicol (n 72) 105

¹¹⁴ *ibid*

This principle, was demonstrated in *Malik v Trump*.¹¹⁵ The claimant sued Donald Trump over fake claims he perpetuated in his presidential campaign, such as there being ‘places in London and other places that are so radicalised the police are afraid for their own lives’,¹¹⁶ constructing a false narrative to justify his Muslim ban. If his derogatory rhetoric were to be believed, it could cause violence, and serious harm to his targets. However, the High Court dismissed the claim mainly due to their being a lack of a claimant as Malik was not referred to. It is a reasonable assertion a subset of people should not be able to claim as they have not specifically suffered, and would overwhelm the legal system. Yet, false statements may negatively affect groups with no possibility for reparations, which is often where the targets of FN lie. Therefore, whilst defamation can be exceptionally valuable when applicable, it is not effective towards many topics FN is centred around such as war and elections, as there is no specific target.

2 American Media Regulation

Conceived in 1791, the First Amendment to the United States Constitution determined ‘Congress shall make no law...abridging the freedom of speech, or of the press’,¹¹⁷ establishing their legal framework regarding media regulation. This prohibition on governmental curtailing of the press has allowed for print media to run unfettered, and are only subject to self-regulation, slander and libel.¹¹⁸ However, ‘American broadcasters suffered from diminished First Amendment status in comparison with their brethren in the print media’¹¹⁹ and are subject to a form of regulation. It is no secret some American news broadcasters are biased and publicise FN.¹²⁰ This has led to

¹¹⁵ *Malik v Trump* [2016] EWHC 2011 (QB)

¹¹⁶ Donald Trump, ‘Interview’ (MSNBC, New York City, 8 December 2015) <<https://www.theguardian.com/us-news/2015/dec/08/the-met-blasts-donald-trump-for-london-police-in-fear-muslims-claim>> March 30 2020

¹¹⁷ First Amendment to the United States Constitution 1791

¹¹⁸ Shirley Biagi, *Media Impact: An Introduction to Mass Media* (10th edn, Cengage Learning 1980) 319

¹¹⁹ Adrian Cronauer, ‘The Fairness Doctrine: A Solution in Search of a Problem’ (1994) 47 *Federal Communications Law Journal* 51

¹²⁰ ‘Sean Hannity’ (Politifact, 2020) <<https://www.politifact.com/personalities/sean-hannity/>> accessed 1 April 2020

several prominent figures criticising their practices,¹²¹ such as former chairman of the Democratic National Committee who named the channel 'Fox news' as a 'right-wing propaganda machine'.¹²² The lack of appropriate regulation allows for easier manipulation of consumers to advance rhetoric, yet the alternative of stricter regulation threatens journalists' constitutional rights.

American Broadcasting Law

Broadcasting is subject to federal regulations as organisations are obliged to acquire 'a government (federal) license to operate, because the space-limited airwaves are regarded as public property'.¹²³ The FCC was established under the Communications Act 1934¹²⁴ to govern television and radio broadcasts, being amended by the Telecommunications Act 1996.¹²⁵ Within these provisions, two clauses are relevant to FN. Firstly, 'The broadcast by a station of false information concerning a crime or catastrophe violates the FCC's rules', and furthermore if the station knew the information was false yet still broadcasted it, directly causing foreseeable public harm.¹²⁶ Therefore so long as no harm is caused, FN is not considered a breach of the FCC's regulations. Whilst the FCC believes 'rigging or slanting the news is a most heinous act against the public interest',¹²⁷ its provisions are not adequate enough to prevent the issue they vehemently condemn.

American Press Regulation

The USA's press system was established in 1704,¹²⁸ and its lack of regulation stems from the issue 'there is no law, no government agency, and...no

¹²¹ Lorne Manly, 'In Taking On Fox, Democrats See Reward in the Risk' *The New York Times* (New York City, 1 October 2006)

<<https://www.nytimes.com/2006/10/01/weekinreview/01manley.html>> 1 April 2020

¹²² *ibid*

¹²³ *ibid*

¹²⁴ Communications Act 1934 (USA)

¹²⁵ Telecommunications Act 1996 (USA)

¹²⁶ FCC 'The Public and Broadcasting' (FCC, August 2, 2019)

<<https://www.fcc.gov/media/radio/public-and-broadcasting#ACT>> accessed 1 April 2020

¹²⁷ *ibid*

¹²⁸ Alfred McClung Lee, *The Daily Newspaper in America*, vol 1 (Macmillan 1947) 15

licensing requirement for newspapers to operate and no enforceable definition of what constitutes a legitimate news publication'.¹²⁹ With no clear distinction between legitimate press and any publication, there is difficulty in regulating output due to the volume of periodicals. Furthermore, 'the press does not require minimum standards for membership, does not issue or revoke licenses, and does not regulate professional standards'.¹³⁰ Offering no regulation on basic principles contributes to uncertainty regarding what is acceptable.

However, 'each news organisation and journalist association adheres to its own codes and standards'.¹³¹ Whilst this provides for some means of management, regulating through independently created codes does not prevent said codes from being manipulated by its authors, and besides libel laws, there would be no legal form of prevention. It is important to note although similar in principle, unlike UK libel law, American laws state the claimant needs to prove what the defendant wrote was false. When observed in the context of FN, the limited regulation offered easily allows FN to be distributed without consequence. The government's reluctance to intervene on press policies, allows for the public to be misled on matters crucial to national development.

3 Media and Fake News Coverage During Major Political Events

It is difficult to examine the efficacy of the addressed laws without evidence of their application. Therefore, it is essential to analyse these procedural measures practically, with FN infringements during periods of great political divide. The British and American involvement in the invasion of Iraq is a contested matter wherein media devices aided in justification of the invasion to the public.¹³² However, due to misleading reports provided by both governments, the media may not be at fault for reporting on information

¹²⁹ Burrell (n 38) 1

¹³⁰ *ibid*

¹³¹ *ibid*

¹³² Danny Hayes, Matt Guardino, 'Whose Views Made the News? Media Coverage and the March to War in Iraq' (2010) 27 *Political Communication* 57

provided by trusted sources.¹³³

British Broadcasting Infringements Regarding the Invasion of Iraq

A breach investigated by Ofcom occurred during an ITV News Bulletin, where ITV were accused of distorting Prime Minister Tony Blair's interview comments.¹³⁴ The interviewer reported the Prime Minister had stated 'his belief in God played an important part in deciding to go to war in Iraq; and he prayed over the decision and before embarking on military action'.¹³⁵ The account was stated as fact, reinforced with specialist interviews, and likened to comments made by President George Bush who 'was said to have claimed he decided to invade Iraq because he was on a mission from God'.¹³⁶ Altogether, the narrative implied these beliefs were substantiated, and justification for the invasion. Ofcom examined the interpretation of the answer to the question "So...you would...pray...to God whenever you make a decision like that?" to which Tony Blair replied amidst interruptions "yeah" and "of course".¹³⁷

Ofcom stated there 'can be no certainty' his replies 'referred directly to the questions posed'.¹³⁸ Further adding they may be 'merely punctuations in Mr Blair's thought process' and found ITV in breach of s.5.1 'due accuracy'.¹³⁹ However, Ofcom held, if ITV had noted the ambiguity and stated this was one possible interpretation, they would not have breached. The 'importance attached to freedom of expression and the broadcaster's right to be able to interpret news events' was emphasised and deemed particularly important with political reporting which is often 'dependent on nuances and

¹³³ Michael Savage, 'Documents Reveal U.S. Officials Misled Public on War in Afghanistan' *The Guardian* (London, 5 November 2017)

<<https://www.theguardian.com/world/2017/nov/05/iraq-weapons-mass-destruction-america-misled-britain-gordon-brown>> accessed 2 April 2020

¹³⁴ Ofcom, 'Ofcom Broadcast Bulletin' (Issue Number 79, Ofcom, 26 February 2007)

<https://www.Ofcom.org.uk/__data/assets/pdf_file/0032/45797/issue79.pdf> accessed 2 April 2020

¹³⁵ *ibid* 4

¹³⁶ *ibid* 5

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ *ibid*

interpretations of ambiguous statements'.¹⁴⁰ Arguably, this decision restricts journalistic freedom, regardless of Ofcom's proclamations of its importance. Due to the importance of the subject, more care is needed for accurate portrayal. Ofcom stated 'the war in Iraq has been particularly controversial...Against such a background it is important news organisations take particular care to report matters with due accuracy'.¹⁴¹ When considered within the period of intense public divide, is adequate justification for Ofcom's actions, so the public remained accurately informed. If audiences thought belief in God affected decision-making on such important issues as war, they may have fervently disagreed and affected the course of political proceedings.

Although accuracy breaches were scarce, this was not replicated for impartiality. The BBC, who provide 'content to the highest editorial standards',¹⁴² were found to be extremely partial and faced no consequences under the Board of Governors.¹⁴³ The BBC's Director General condemned America's broadcasting of Iraq stating:

"For any news organisation to act as a cheerleader for government is to undermine your credibility...They should be...balancing their coverage, not banging the drum for one side or the other".¹⁴⁴

The irony is it was found the BBC 'displayed the most pro-war agenda of any broadcaster'¹⁴⁵ who 'gave just 2 per cent of its coverage to opposition views - views that represented those of the majority of the British people'.¹⁴⁶ This is further validated by founder of the BBC Lord Reith, who stated 'they can trust

¹⁴⁰ *ibid* 8

¹⁴¹ 'Ofcom Broadcast Bulletin' (n 182) 6

¹⁴² Ian Sparham and others, 'Ofcom: BBC News and Current Affairs Review' (PWC Research, October 2019) <https://www.Ofcom.org.uk/__data/assets/pdf_file/0024/174066/bbc-news-review-pwc-full-report.pdf> accessed 3 April 2020

¹⁴³ John Pilger, 'The BBC and Iraq: Myth and reality' *New Statesman* (London, 4 December 2003) <<http://www.coldtype.net/Assets/Pilger/JP.31.%20Dec%204.pdf>> accessed 5 April 2020

¹⁴⁴ *ibid*

¹⁴⁵ Matt Wells, 'Study deals a blow to claims of anti-war bias in BBC news' *The Guardian* (London, 4 July 2003)

<<https://www.theguardian.com/media/2003/jul/04/Iraqandthemedial.politicsandthemedial>> accessed 3 April 2020

¹⁴⁶ Pilger (n 191)

us not to be really impartial.’¹⁴⁷ This questioned the BBC’s credibility, as broadcasts were deliberately biased to influence the country when opinion was divided. Conversely, media organisations should not give time to opposing forces or vocalise terrorists.¹⁴⁸ Strictly enforcing impartiality rules undermines governmental purpose by providing platforms to promote anti-British views.¹⁴⁹ Whilst each view has benefits, neither is individually perfect. Thus, a practical balance must be struck between keeping audiences informed, whilst maintaining appropriate values.

British Press Infringements Regarding the Invasion of Iraq

The PCC failed to regulate breaches of accuracy within the press. Whilst newspapers distributed FN from information provided to them by government,¹⁵⁰ examples have revealed that fabricated information was published to further an agenda.¹⁵¹ This can be seen in a *Daily Mail* report falsely claiming a chemical weapons plant had been discovered in Iraq. This declaration was not replicated across the British press who ‘treated the discovery with some caution’, due its source being connected to ‘Richard Perle, the Bush defence adviser and most vocal backer of the invasion of Iraq’.¹⁵²

The Daily Mail disregarded this information and published the article headlined ‘Allied troops storm massive chemical weapons factory’,¹⁵³ which was entirely

¹⁴⁷ David Edwards, David Cromwell, ‘BBC’s Iraq coverage - biased or balanced?’ (Newsnight, 19 March 2007)

<https://www.bbc.co.uk/blogs/newsnight/2007/03/bbcs_iraq_coverage_biased_or_balanced.html> accessed 3 April 2020

¹⁴⁸ Fowler-Watt, Allan (n 77) 69

¹⁴⁹ Ibid

¹⁵⁰ Marc Owen Jones, ‘Propaganda, Fake News, and Fake Trends: The Weaponization of Twitter Bots in the Gulf Crisis’ (2019) 13 International Journal of Communication 1389, 1391

¹⁵¹ Vicky Frost, ‘The press toe the line on the Iraq war’ *The Guardian* (London, 13 November 2006) <<https://www.theguardian.com/media/2006/nov/13/mondaymediasection.iraq>> accessed 3 April 2020

¹⁵² Stuart Millar, Michael White, ‘Facts, some fiction and the reporting of war’ *The Guardian* (London, 29 March 2003)

<<https://www.theguardian.com/media/2003/mar/29/iraqandthedia.iraq1>> accessed 3 April 2020

¹⁵³ ibid

fallacious. The claim was dismissed by former weapons inspectors¹⁵⁴ and it has been proven no chemical weapons ever existed.¹⁵⁵ Conspicuously absent is any evidence of investigation by the PCC. This lack of accuracy regulation reinforces the Calcutt report's conclusion of its ineptitude, making the IPSO a needed change.

Application of the Defamation Act Against Fake News

In *George Galloway MP v Telegraph Group Ltd*¹⁵⁶ a false story was publicised where using 'reports' the Telegraph obtained, accused former Labour MP George Galloway of secretly receiving annual payments of £375,000 from Saddam Hussein. The Telegraph attempted to pursue the Reynolds Defence,¹⁵⁷ that the publication was justified on a matter of public interest. However, George Galloway's Barrister stated, to qualify for the defence 'there is a proviso they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism'.¹⁵⁸ Mr Galloway was awarded £150,000 compensation for the 'seriously defamatory' statements to restore his reputation. The High Court concluded 'here the Defendants were not neutral. They did not merely adopt the allegations. They embraced them with relish and fervour. They then went on to embellish them'.¹⁵⁹ This application of the DA demonstrates an effective legal response to FN. A false accusation of such gravity possesses dangerous effects, and asks why this protection is not extended towards FN targeting an unprotected subset of people or country. Whilst the press should be free to investigate all matters, when it comes at the expense of innocent parties affected by fabrications, the argument loses credibility.

Fake News Within American Broadcasting Regarding the Invasion of Iraq
President George Bush resorted to propaganda to validate his invasion of Iraq,

¹⁵⁴ *ibid*

¹⁵⁵ Kenneth Roth, 'Was the Iraq War a Humanitarian Intervention?' (2006) 5 *Journal of Military Ethics* 84

¹⁵⁶ *George Galloway MP v Telegraph Group Ltd* [2004] EWHC 2786 (QB)

¹⁵⁷ *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127

¹⁵⁸ *George Galloway MP v Telegraph Group Ltd* [2004] EWHC 2786 (QB), 139

¹⁵⁹ *ibid* 159

and 'news media simply presented as fact information they should have carefully scrutinized',¹⁶⁰ with several fabricated reports presented to the American public.¹⁶¹ The most notorious falsehood asserted by the media was the threat of Weapons of Mass Destruction (WMD's), which was used to justify the invasion. Whilst it is understandable the media were to report the government's explanations at first, it is also logical when more information was uncovered it would be scrutinised by journalists. Without this foundation of journalism, the media 'become a means of transmission for an administration, rather than serve as a critical filter for information'.¹⁶² Those who distributed the WMD claim did not challenge it, despite 'fundamental misrepresentations of the sources cited by the government'.¹⁶³ Moreover, some broadcasters deliberately distorted testimonies to substantiate the war.

Five Fox News reports touted a false assertion by two American senators that WMD's had been found in Iraq, despite accounts discrediting the claim.¹⁶⁴ If aware of the fallacy, the only reason for the manipulation was to mislead audiences. This is reinforced by findings that across major networks 'pro-war views were overwhelmingly more frequent'.¹⁶⁵ These violations were ignored by the FCC due to absence of accuracy and impartiality regulations. The contrast to British regulations demonstrates that whilst not perfect, the UK's regulations are preventing FN more successfully than the US. The American media system allows for expressionistic freedom. However, if these liberties come at the expense of FN distribution, it is more rational to enforce regulation to maintain democratic ideology.

¹⁶⁰ Deepa Kumar, 'Media, War, and Propaganda: Strategies of Information Management During the 2003 Iraq War' (2006) 3 *Communication and Critical/Cultural Studies* 48

¹⁶¹ David Miller, *Tell Me Lies: Propaganda and Media Distortion in the Attack on Iraq* (Pluto Press 2004) 2

¹⁶² Steven Kull, 'The Press and Public Misperceptions About the Iraq War' (2004) 58 *Nieman Reports* 64, 65

¹⁶³ Miller (n 210) 3

¹⁶⁴ Julie Millican, 'Fox News hosts and guests touted discredited report that WMDs were found in Iraq' (Media Matters for America, 23 June 2006)

<<https://www.mediamatters.org/sean-hannity/fox-news-hosts-and-guests-touted-discredited-report-wmds-were-found-iraq>> accessed 5 April 2020

¹⁶⁵ Kull (n 211) 65

Fake News Within American Press Regarding the Invasion of Iraq

Some papers adopted self-criticism measures to correct their published inaccuracies and earn credibility within the public.¹⁶⁶ This was observed by *The New York Times*, who issued a *mea culpa* over its Iraq coverage. The editors stated they found 'a number of instances of coverage that was not as rigorous as it should have been'.¹⁶⁷ They apologised for their journalistic standards, how ambiguous information was left unchallenged and their wish to have 'been more aggressive in re-examining the claims as new evidence emerged - or failed to emerge'.¹⁶⁸ The public disclosure was admirable due to the majority views held by the media and government. The strategy adopted by *The New York Times* should be implemented nationwide, whereby law, the press must publish their admission over an inaccurate statement, alike the British media. Moreover, this would not unduly affect freedom of expression, as the press would be free to publish whatever it wishes; but acknowledge any false information therein.

3 News Coverage of the 2016 Brexit Referendum

The Brexit referendum 'displayed substandard levels of factual accuracy'¹⁶⁹ and therefore, FN dissemination. Although concentrated on social media,¹⁷⁰ inaccurate and impartial news was identified during British media coverage of Brexit. When examining both mediums, FN reports predominated in the press as Ofcom did not receive a complaint of accuracy and did not uphold any impartiality complaints.¹⁷¹

¹⁶⁶ Eric Boehlert, 'How the Iraq war still haunts the NYT' (Media Matters for America, 7 January 2014) <<https://www.mediamatters.org/new-york-times/how-iraq-war-still-haunts-new-york-times>> accessed 6 April 2020

¹⁶⁷ 'FROM THE EDITORS; The Times and Iraq' *The New York Times* (New York City, 26 May 2004) <<https://www.nytimes.com/2004/05/26/world/from-the-editors-the-times-and-iraq.html>> accessed 6 April 2020

¹⁶⁸ *ibid*

¹⁶⁹ Jonathan Rose, 'Brexit, Trump, and Post-Truth Politics' (2017) 19 *Public Integrity* 555, 556

¹⁷⁰ Max Hänska, Stefan Bauchowitz, 'Tweeting for Brexit: how social media influenced the referendum' in John Mair, Tor Clark and Neil Fowler (eds), *Brexit, Trump and the Media Paperback* (Abamis 2017)

¹⁷¹ Ofcom, 'All Closed Cases' (Ofcom, 5 December 2019) <<https://www.Ofcom.org.uk/about-Ofcom/latest/bulletins/competition-bulletins/all-closed-cases>> accessed 13 April 2020

Broadcasting Investigations and Infringements

The majority of broadcasters correctly investigated claims; as observed with the Leave Campaigns fabrication: the UK would be able to save £350 million pounds a week by leaving the EU.¹⁷² For example, ITV broadcast a segment scrutinising the claim and finding it false, demonstrating an effective FN response.¹⁷³

However, the BBC were the key communicators of Boris Johnsons original £350 million lie, and faced no formal investigation for the failure in investigative journalism.¹⁷⁴ Media analysts concluded only 7% of the BBC's coverage of the EU was positive and 45% negative,¹⁷⁵ with several instances of letting Leave Campaigners lie without pushback. For example, a falsehood by Boris Johnson 'went unchallenged when he falsely told the Today programme any extension to the Brexit deadline would be at a cost of £1 billion a month'.¹⁷⁶ Although the BBC are not themselves disseminating the FN, leaving assertions unchallenged allows for guests to lie without consequence. The BBC abused their influence by allowing FN to be broadcasted through guests, thus skirting the accuracy requirement by not reporting it themselves. Whether the BBC's intention or not, 'the duty of journalists...is to separate lies from facts'.¹⁷⁷ Despite its flaws, British broadcasting is highly regulated in comparison to the press. Increased restrictions would be regarded as a foray into governmental media control.¹⁷⁸

¹⁷² John Henley, 'Why Vote Leave's £350m weekly EU cost claim is wrong' *The Guardian* (London, 10 June 2016) <<https://www.theguardian.com/politics/realitycheck/2016/may/23/does-the-eu-really-cost-the-uk-350m-a-week>> accessed 8 April 2020

¹⁷³ ITV News, 'UK does get back some of £350m it sends to EU, Boris Johnson admits' (ITV, 11 May 2016) <<https://www.itv.com/news/2016-05-11/uk-does-get-back-some-of-350m-it-sends-to-eu-boris-johnson-admits/>> accessed 8 April 2020

¹⁷⁴ Hugo Dixon, 'Punch and Judy debates do not make BBC neutral' *The Times* (London, 15 August 2018) <<https://www.thetimes.co.uk/article/punch-and-judy-debates-do-not-make-bbc-neutral-r0sl3g23n>> accessed 8 April 2020

¹⁷⁵ Gareth Harding, 'MEDIA LIES AND BREXIT: A Double Hammer-Blow to Europe and Ethical Journalism' in Aidan White (ed), *Ethics in the News EJA Report on Challenges for Journalism in the Post-truth Era* (Ethical Journalism Network 2017) 12

¹⁷⁶ Sam Ashworth-Hayes, 'BBC's catalogue of Brexit errors' (InFacts, 6 December 2019) <<https://infacts.org/bbcs-catalogue-of-brexit-errors/>> accessed 8 April 2020

¹⁷⁷ Harding (n 226) 13

¹⁷⁸ Björnstjern Baade, 'Fake News and International Law' (2017) 29 *The European Journal of International Law* 1357, 1374

Infringements and Issues Within Press Regulation

Regarding press coverage of the EU, Lord Levenson found 'there is certainly clear evidence of misreporting'.¹⁷⁹ Unlike the Invasion of Iraq where the PCC were deemed ineffective, IPSO have investigated several Brexit complaints.¹⁸⁰ For example, in *Buckingham Palace v The Sun*¹⁸¹ a complaint was made by Buckingham Palace that *The Sun's* article headlined 'Queen Backs Brexit' was 'was misleading' and 'distorted'.¹⁸² The Sun claimed readers would know from elements of the article the headline was just a claim. IPSO's investigation found The Sun in breach of s.1(i) of their code by publishing inaccurate information,¹⁸³ clarifying 'It was a factual assertion the Queen had expressed a position in the referendum debate' and they gave no indication it was a claim. Thus, IPSO issued the publication of an adjudication.¹⁸⁴

This was not a singular incident. There were twenty-five cases subject to IPSO complaints for breaching s.5.1 of the code for false Brexit reporting, yet, regardless of severity none were subject to penalties. The eight articles considered seriously misleading possessed the titles such as: 'Europe's leaders have no plan to cut immigration' or '4 in 5 British jobs went to foreign nationals'.¹⁸⁵ Although instructed by IPSO to publish corrections or remove the articles, these chastisements are not effective. Of the eight FN articles published, all but one were repeat offences. Stated in the Leveson Inquiry, 'the factual errors...are, in certain respects, trivial. But the cumulative impact can

¹⁷⁹ Lord Justice Leveson, An Inquiry Into the Culture, Practices and Ethics of the Press Report (HL 2012-2013, 780-II) para 9.54

¹⁸⁰ IPSO, 'Rulings' (IPSO, 2019) <<https://www.ipso.co.uk/rulings-and-resolution-statements/?expression=Brexit&page=1&perPage=20&clauses=&publications=&outcomes=&startDate=2019%2F7%2F01&endDate=2020%2F7%2F31>> accessed 16 June 2020

¹⁸¹ IPSO, 'Decision of the Complaints Committee 01584-16 Buckingham Palace v The Sun' (Ruling, IPSO, 20 April 2016) <<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01584-16>> accessed 9 April 2020

¹⁸² *ibid*

¹⁸³ *ibid*

¹⁸⁴ *ibid*

¹⁸⁵ Dominic Ponsford, 'The Express was a repeat offender when it came to misleading press coverage ahead of UK 's vote to leave the European Union' *Press Gazette* (London, 17 November 2017) <<https://www.pressgazette.co.uk/fake-news-was-not-in-evidence-during-run-up-to-brexit-vote-but-misleading-news-published-by-biased-national-newspapers-was/>> accessed 9 April 2020

have serious consequences'.¹⁸⁶ The actions of IPSO are not severe enough in preventing FN as papers are not even apprehensive of the repercussions, and reoffend with no consequence.

IPSO possess power to enforce fines of up to £1 million for breaches of their code, however their incapacity to impose it on newspapers exploiting their system is allowing for the dissemination of FN. It is stated:

'Given the impact the EU referendum has had on all our lives, and the repeated nature of the misleading coverage at the Express, it is difficult to understand why IPSO does not have serious concerns about this issue.'¹⁸⁷

The investigations conducted were instigated by complaints and not adequately charged, allowing for unnoticed FN articles to remain published without retribution, giving newspapers the confidence to re-offend.

Whilst publishing adjudications forces papers to publicly admit their mistake, embarrassing the organisation and losing their credibility, 'by then the false stories had become ingrained in the collective consciousness of readers'¹⁸⁸ and are ineffective in retracting their statement. IPSO could enforce harsher fines or suspend journalists temporarily to deter FN publication. Furthermore, as observed within broadcasting, the tendency for FN coverage is remarkably less due to impartiality obligations. Therefore, although economically damaging to the press, imposing impartiality could drastically suppress FN.

3 News Coverage Of The Election And Presidency Of Donald Trump

The election of 45th President of the United States, Donald Trump, was fraught with controversy and divide.¹⁸⁹ Studies have found FN played a significant role

¹⁸⁶ Lord Justice Leveson, *An Inquiry Into the Culture, Practices and Ethics of the Press Report* (HL 2012-2013, 780-II) para 9.55

¹⁸⁷ Ponsford (n 237)

¹⁸⁸ *ibid*

¹⁸⁹ BBC News, 'Donald Trump: 24 things the next president believes' (BBC, 9 November 2016) <<https://www.bbc.co.uk/news/world-us-canada-34903577>> accessed 10 April 2020

in suppressing opposition support.¹⁹⁰ This is due to media freedom, and lack of effective statutory principles.

Broadcasting Fake News in the USA Without Consequence

Throughout the election, the top four networks broadcasted false statements, with the highest rate at 60% by Fox News, and lowest at 20% by CNN.¹⁹¹ An example of this is where a Fox News host asserted Hillary Clinton 'paid female staffers a lot less than men.'¹⁹² This fabrication was discredited the Clinton Campaign, and fact checking operation, Politifact.¹⁹³ The exploitation of the US's most watched news channel to damage opposition candidates with false accusations is undemocratic. The use of such tactics allowed Donald Trump to state "I've spent zero on advertising because you and Fox and all of the others...I mean they cover me a lot, to put it mildly."¹⁹⁴ Fox News' actions did not violate the FCC's regulations, and no action was taken against them for proliferating FN.¹⁹⁵ The refusal to impose statute to inhibit FN, allows networks to continue spreading falsehoods for commercial and political gain. It is observed:

'We pay attention to what we want to be true and avoid inconvenient truths...In the USA, there is a strong tendency for people to pick the media whose news coverage fits their political convictions'.¹⁹⁶

¹⁹⁰ Richard Gunther, Paul A. Beck, Erik C. Nisbet, 'Fake News May Have Contributed to Trump's 2016 Victory' (Ohio State University, 8 March 2018) <<https://assets.documentcloud.org/documents/4429952/Fake-News-May-Have-Contributed-to-Trump-s-2016.pdf>> accessed 10 April 2020

¹⁹¹ Aaron Sharockman, 'MSNBC, Fox, CNN move the needle on our Truth-O-Meter scorecards' (Politifact, 27 January 2015) <<https://www.politifact.com/article/2015/jan/27/msnbc-fox-cnn-move-needle-our-truth-o-meter-scorec/>> 10 April 2020

¹⁹² Katie Sanders, 'Sean Hannity: As senator, Hillary Clinton 'paid female staffers a lot less than men'' (Politifact, 21 May 2015) <<https://www.politifact.com/factchecks/2015/may/21/sean-hannity/sean-hannity-senator-hillary-clinton-paid-female-s/>> 10 April 2020

¹⁹³ *ibid*

¹⁹⁴ 'Donald Trump: I've Spent Nothing On Ads Because Of Fox News' And Other Networks' Constant Coverage' (Media Matters for America, 13 October 2015) <<https://www.mediamatters.org/donald-trump/donald-trump-ive-spent-nothing-ads-because-fox-news-and-other-networks-constant>> accessed 10 April 2020

¹⁹⁵ FCC, 'Proceedings & Actions' (FCC) <<https://www.fcc.gov/proceedings-actions>> accessed 10 April 2020

¹⁹⁶ Vincent F. Hendricks, Mads Vestergaard, *Reality Lost - Markets of Attention, Misinformation and Manipulation* (1st edn, Springer 2019) 80

Thus, creating a vicious cycle of FN propagation to retain viewership and support their political inclination.

Resembling the BBC, American broadcast news allowed politicians to lie without rebuttal. Notably, Fox News has become an avenue for republicans to campaign without receiving criticism.¹⁹⁷ This was demonstrated in an interview during Donald Trump's campaign where he listed numerous pledges, most famously the border wall between America and Mexico, who 'will be paying for the wall'.¹⁹⁸ The host failed to evaluate any claim and endorsed him, while criticising the opposition. The use of media as a campaign strategy completely undermines the purpose of investigative journalism, allowing them to present anything as fact.

Liberties of the USA's Press to Publish Fake News

The unrestricted press also reported FN stories with little repercussion. An example is of *Breitbart News*, who published a FN story created by Donald Trump about 'American Muslims celebrating the September 11 terrorist attacks'.¹⁹⁹ If investigated, they would have found the claim false.²⁰⁰ Discredited by New Jersey's previous Attorney General who 'found the reports to be bogus' and said it 'never happened',²⁰¹ *Breitbart News* did not face formal action. However, journalists 'see a dangerous conflation of stories that turn out to be wrong because of a legitimate misunderstanding with those

¹⁹⁷ Sean Illing, 'How Fox News evolved into a propaganda operation' (Vox, 22 March 2019) <<https://www.vox.com/2019/3/22/18275835/fox-news-trump-propaganda-tom-rosenstiel>> accessed 17 June 2020

¹⁹⁸ Donald Trump, Sean Hannity, 'DONALD TRUMP SEAN HANNITY FULL INTERVIEW 8 9 16 Trump explains 2nd amendment comments on Hillary' (15 December 2016) <<https://www.youtube.com/watch?v=Zbp1DZuMCfM&t=55s>> accessed 17 June 2020

¹⁹⁹ Julie Alderman, 'Conservative Media Defend Donald Trump's Debunked 9/11 Claim' (Media Matters For America, 2 December 2015) <<https://www.mediamatters.org/laura-ingraham/conservative-media-defend-donald-trumps-debunked-911-claim>> accessed 11 April 2020

²⁰⁰ *ibid*

²⁰¹ Jim Dwyer, 'A Definitive Debunking of Donald Trump's 9/11 Claims' *The New York Times* (New York City, 24 November 2015) <<https://www.nytimes.com/2015/11/25/nyregion/a-definitive-debunking-of-donald-trumps-9-11-claims.html>> 11 April 2020

whose clear intention is to deceive'.²⁰² Yet, when claims are easily disproven, it is the responsibility of reporters to chronicle the truth, rather than communicate the same lie, which renders their work as journalists redundant. The US Supreme Court argues media freedom is imperative to the 'heart of our democracy and its preservation is essential to the survival of liberty'.²⁰³ Whilst true in some respects, the observed consequences of FN influencing political proceedings is becoming greater than the need for independence.²⁰⁴ Although the constitution is argued as foundational for democracy, it is becoming clear:

'fake news undermines the informing function of the press by eroding the legitimacy and credibility of traditional, reliable news outlets, creating an uninformed public unable to participate effectively in our democracy'.²⁰⁵

Therefore, to prevent the undermining of democracy, the core legal principles defining America must be evaluated.

4 Proposed Measures and Recommendations to Reduce the Distribution of Fake News in the UK and USA

When creating FN regulation, authorities need to balance 'the public interest in the free flow of news',²⁰⁶ with the 'public interest in protecting news institutions as a form of independent verification'.²⁰⁷ Whilst the amount of public policy response varies across jurisdiction, the UK have initiated measures to attempt to diminish FN distribution, unlike the USA.²⁰⁸

²⁰² Alex Ward, *Fake News: Read All About It* (1st edn, The Rosen Publishing Group 2018) 154

²⁰³ Craig v. Harney, 331 U.S. 367, 383 (1947)

²⁰⁴ Terry Lee, 'The global rise of "fake news" and the threat to democratic elections in the USA' (2019) 22 *Public Administration and Policy: An Asia-Pacific Journal* 15, 18

²⁰⁵ Andrea Butler, 'Protecting the Democratic Role of the Press: A Legal Solution to Fake News' (2018) 96 *Washington University Law Review* 419, 421

²⁰⁶ Tambini (n 125) 5

²⁰⁷ *ibid*

²⁰⁸ BBC Monitoring, 'Fake news: What measures are governments taking?' (BBC, 1 February 2019) <<https://monitoring.bbc.co.uk/product/c200l8pq>> accessed 5 May 2020

4 The UK's Response to Fake News

Parliament's Digital, Culture, Media & Sport Committee completed their Disinformation and 'Fake News'²⁰⁹ inquiry, warning the UK faced a 'democratic crisis' as electorates could be pursued with 'pernicious views' and manipulated information.²¹⁰ It focused on prospective social media regulation and overlooked other FN infringements. When proposing a social media Code of Ethics, they advised it 'should be similar to the Broadcasting Code issued by Ofcom'.²¹¹ Therefore, the government perceives the established mainstream media policies to be effective and an appropriate standard for new social media regulation. Likewise, the Cairncross Review²¹² investigated 'the sustainability of the production and distribution of high-quality journalism'.²¹³ It was determined investigative journalism is an area 'most worthy and most under threat', but again focused on social media.²¹⁴ Furthermore, the recommendations proposed for online content reflected the current codes found within mainstream media.

These proposals reinforce the notion the regulatory system of mainstream media is succeeding, thus an acceptable standard to follow when establishing new FN policies. However, although the fundamental principles of the proposals remain similar, new recommendations have been suggested, such as: developing a media literacy strategy, tax relief encouraging payment for online news and an institution for the improvement of public-interest news.²¹⁵ Whilst the amount of FN online is larger, it is also crucial to consider the outreach of traditional media is wider and viewed as trustworthy. A violation of FN across prevalent sources have greater impacts due to their reliable nature.

²⁰⁹ Digital, Culture, Media and Sport Committee, *Disinformation and 'fake news': Final Report* (HC 2017-19, 1791)

²¹⁰ BBC News, 'Fake news a democratic crisis for UK, MPs warn' (BBC, 28 July 2018) <<https://www.bbc.co.uk/news/technology-44967650>> accessed 5 May 2020

²¹¹ 'Disinformation and 'fake news': Final Report' (n 261) para 38

²¹² Francis Cairncross, 'The Cairncross Review: a sustainable future for journalism' (Policy Paper, Department for Digital, Culture, Media and Sport 12 February 2019) <<https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>> accessed 6 May 2020

²¹³ *ibid*

²¹⁴ *ibid* 22

²¹⁵ *ibid* 90

Political concern also led to the creation of The Rapid Response Unit to tackle FN in 2018,²¹⁶ to monitor ‘news and information being shared and engaged with online, including misinformation and disinformation’.²¹⁷ A spokesperson for Prime Minister Theresa May stated the unit “will be tasked with combating disinformation by state actors and others”.²¹⁸ Whilst the assertion of holding ‘state actors and others’ sounded promising, the outcome did not deliver on its claims,²¹⁹ and has had minimal societal impact for FN prevention. It is reasoned there is limited space for any more media regulation, as the ‘UK was among the worst in western Europe for press freedom’.²²⁰ Furthermore, ‘we must examine the longer-term trend of worrying moves to restrict press, and hold the government to account’²²¹ meaning any moves to introduce stricter FN laws could border on governmental control.

Media organisations began their own initiatives to demonstrate their objectivity regarding FN. The BBC and Channel 4 created fact-checking teams to identify FN, and promoted healthy competition.²²² However, there is doubt onto the authenticity of these measures regarding the BBC.

The BBC’s Governmental Partiality

Due to trends observed over the BBC’s lifetime, the organisation has ‘failed to challenge disinformation at the heart of our political system.’²²³ Research has

²¹⁶ Christine Goodair, ‘Fake or False News? How Can You Spot it?’ (2018) 5 Substance Abuse Library and Information 13, 15

²¹⁷ Chloe Smith, ‘Disinformation: Written question – 157646’ (Cabinet Office, Parliament.uk, 26 June 2018) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-26/157646/>> 9 May 2020

²¹⁸ BBC News, ‘Government announces anti-fake news unit’ (BBC, 23 January 2018) <<https://www.bbc.co.uk/news/uk-politics-42791218>> accessed 9 May 2020

²¹⁹ Tom Peck, ‘If Downing Street’s new fake news unit is any good, it will start by shutting itself down’ *The Independent* (London, 9 March 2020) <<https://www.independent.co.uk/voices/coronavirus-unit-fake-news-casualties-boris-johnson-dcms-a9388916.html>> accessed 9 May 2020

²²⁰ Jim Waterson, ‘UK among the worst in western Europe for press freedom’ *The Guardian* (London, 25 April 2018) <<https://www.theguardian.com/media/2018/apr/25/uk-among-the-worst-in-western-europe-for-press-freedom>> accessed 9 May 2020

²²¹ *ibid*

²²² Richard Sambrook, ‘What can media outlets do to tackle fake news?’ (Royal Television Society, February 2017) <<https://rts.org.uk/article/what-can-media-outlets-do-tackle-fake-news>> accessed 15 May 2020

²²³ Tom Mills, ‘BBC’s fabled impartiality was only ever an elite consensus’ *The Guardian* (London, 24 November 2019)

shown the BBC is strongly influenced by its current government,²²⁴ and described as a 'quasi-governmental organization that has had to speak in ways acceptable, ultimately, to the political establishment'.²²⁵ This makes the BBC 'close to being an arm of government, perpetually kept in a grey area somewhere between genuine independence and direct political control'.²²⁶

Additionally, a Senior BBC executive expressed the organisation think 'it's wrong to expose lies told by a British prime minister because it undermines trust in British politics'.²²⁷ This sets a dangerous precedent in giving the Prime Minister 'free rein to make any false claim he wants' whenever featured on the BBC.²²⁸ This authorised dissemination of FN creates a 'symbiotic relationship' between the media and politics, which 'converts the news media from an institution committed to holding government accountable to an instrument to be used by the government in the effort to manage public opinion'.²²⁹ The BBC have proven to not criticise administrative claims to maintain public order, not only rendering their fact checking program redundant, but deliberately deceiving the public to preserve governmental credibility.

4 The USA's Scarce Response To Fake News

The initiatives proposed by the USA focus on FN regulation of social media. Firstly, Congress announced the Honest Ads Act²³⁰ which would require social media companies to retain a public copy of political advertisements and their

<<https://www.theguardian.com/commentisfree/2019/nov/24/bbc-impartiality-elite-consensus-crisis-legitimacy>> accessed 15 May 2020

²²⁴ Stephen Cushion, Justin Lewis, 'Impartiality, statistical tit-for-tats and the construction of balance: UK television news reporting of the 2016 EU referendum campaign' (2017) 32 *European Journal of Communication* 208

²²⁵ Tom Mills, 'The last days of the BBC?' *Jacobin* (New York City, 8 December 2019) <<https://www.jacobinmag.com/2019/12/bbc-media-bias-boris-johnson-uk>> accessed 20 May 2020

²²⁶ *ibid*

²²⁷ Peter Osborne, 'It's not just Boris Johnson's lying. It's that the media let him get away with it' *The Guardian* (London, 18 November 2019)

<<https://www.theguardian.com/commentisfree/2019/nov/18/boris-johnson-lying-media>> accessed 20 May 2020

²²⁸ *ibid*

²²⁹ Geoffrey Baym, 'Real News/Fake News: Beyond the News/Entertainment Divide' in Stuart Allen (ed) *The Routledge Companion To News And Journalism* (Routledge, 2012) 378

²³⁰ Congress, 'S.1989 - Honest Ads Act' (Congress.gov, 19 October 2017) <<https://www.congress.gov/bill/115th-congress/senate-bill/1989>> accessed 18 June 2020

funding. However, the bill remains dormant. Whilst a good step in beginning the discussion on FN prevention, it has had minor impact.

Certain states have initiated bills to curb FN through media literacy. The California State Government approved a law strengthening media literacy in public schools to ensure 'young adults are prepared with media literacy skills necessary to safely, responsibly, and critically consume and use social media and other forms of media.'²³¹ Therefore, although not directly confronting the issue, giving students resources to discern FN is a positive shift in recognising the problem facing the USA's media.

Independent fact checking organisations such as 'Snopes, PolitiFact or the Associated Press'²³² have emerged to refute FN. PolitiFact states 'the reason we publish is to give citizens the information they need to govern themselves in a democracy'²³³ which proves the American government and media system is failing. This may contribute to the reason only 32% of Americans indicated they had a fair amount of trust in the media.²³⁴ However, sites such as PolitiFact are unable to prevent FN's influence as 'it can take days before fact-checkers can declare a story is false. That gives plenty of time for a false story to spread'.²³⁵ Whilst the efforts of these organisations is necessary, the issue stems from the lack of administrative effort preventing FN distribution from even occurring.

The USA's lackadaisical response is disconcerting when equated to the UK's direct approach towards FN. It would be valuable for the USA to adopt the

²³¹ California Legislature, 'Senate Bill No. 830' (California Legislative Information, 17 September 2018)

<https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB830> accessed 20 June 2018 s 1)7b

²³² Steven Seidenberg, 'Lies and Libel: Fake news is just false, but its cure may not be so simple' *ABA Journal* (Chicago, July 2017)

²³³ Angie Drobnic Holan, 'The Principles of the Truth-O-Meter: PolitiFact's methodology for independent fact-checking' (Politifact, 12 February 2018)

<<https://www.politifact.com/article/2018/feb/12/principles-truth-o-meter-politifacts-methodology-i/>> 12 April 2020

²³⁴ Art Swift, 'Americans' Trust in Mass Media Sinks to New Low' (Gallup, 14 September 2016) <<https://news.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx>> accessed 23 June 2020

²³⁵ Seidenberg (n 290)

approaches seen in the UK. If considered incompatible, another approach could involve providing tax relief or funding news organisations to encourage faithful reporting, rather than publishing misleading articles to entice readers for commercial gain.

Conclusion

Defamation law is a key mechanism in discouraging FN publishers whilst obtaining retribution for its victim. Cases such as *George Galloway MP v Telegraph Group Ltd*,²³⁶ demonstrate the illegality of FN so long as the published statement refers to an individual and is likely or will cause serious harm. Since FN is primarily defamatory, defamation is occasionally legally able to prevent FN. Its effectiveness is demonstrated in cases with clear individuals; however, FN often holds no individual target. Therefore it cannot be asserted FN is illegal in the perspective of defamation, as targeted groups cannot succeed in a claim as exhibited in *Malik v Trump*.²³⁷ The alternative of allowing anyone effected by FN to sue is also unrealistic for the legal system. To overcome this, it is more logical to tackle FN through broadcasting and press regulations to prevent it from the source.

Broadcasting regulations' stance on FN is enshrined by statute and enforced through Ofcom. s.391 of the CA and s.5 of Ofcom's broadcasting code state due impartiality and due accuracy are requirements in news reporting, therefore making FN illegal. The implemented regulations are evidenced to work effectively, through the lack of breaches observed; most evidently by Ofcom receiving no accuracy complaints and upholding no impartiality complaints during the Brexit referendum – one of the most politically charged periods of this generation. This level of governance is not reflected in the USA where the limited regulation provided by the FCC allows FN to be disseminated with impunity. The examples of FN examined on American news networks demonstrate the danger of FN when left unfettered. Comparatively analysing both regulatory systems simultaneously demonstrates effective

²³⁶ *George Galloway MP v Telegraph Group Ltd* [2004] EWHC 2786 (QB)

²³⁷ *Malik v Trump* [2016] EWHC 2011 (QB)

regulation is achievable without restricting journalistic freedom. When possessing a responsibility to educate the public on matters pertinent to democracy, it is essential news sources are not manipulated for political gain. Ofcom's steadfast and resolute regulation achieve this to a satisfactory degree.

Ofcom's powers need to be more strictly applied to the BBC's broadcasting. Their disregard to adhere to Ofcom's code reinforces the special treatment they receive. From displaying the 'most pro-war agenda'²³⁸ of any broadcaster to leaving false claims unchallenged as it 'undermines trust in British politics',²³⁹ the lack of formal repercussions is due to the direct influence the government maintains towards the BBC. In the perspective of preserving democracy, Ofcom need to ensure the BBC cease the impartiality. Nevertheless, Ofcom's model of governance has been suggested as a standard for new social media FN regulation, corroborating its status as an effective regulator and preventor of FN.

Unlike broadcasting, IPSO membership is not mandatory and adopts a laxer attitude regarding FN. The only requirement for publishers concerning FN is accuracy under s.1 of their code, with no impartiality requirements and no active role in supervising. Due to IPSO not being universally applicable, FN is not illegal within the press industry. Nevertheless, irrespective of its flaws, the body remains active in examining FN complaints, and requiring papers to publish adjudications, as proven in *Muslim Engagement and Development v The Sun*;²⁴⁰ demonstrating IPSO are implementing FN prevention. When analysed against the lack of press regulation in the USA, whilst defective in areas, IPSO are providing an option for legal prevention of FN. The repeat offences by papers indicate IPSO's powers are not being utilised to prevent FN. Although adjudications are imposed regularly, for recurring offenders to understand their transgressions and dissuade them from repeating, the heavier sanctions available should be imposed. IPSO should adopt an

²³⁸ Wells (n 193)

²³⁹ Osborne (n 279)

²⁴⁰ '09324-15 Muslim Engagement and Development (MEND) v The Sun' (n 126)

impartiality clause to discourage the numerous press FN violations. The Rapid Response Unit should expand their focus from social media to include mainstream media, targeting press violations publicly.

The depth of research conducted illustrates the legality of FN throughout the mainstream media remains a contentious topic. It is evident the UK's media industry is remarkably regulated, and somewhat successfully preventing an influx of FN reports. However, this does not indicate the implemented systems are entirely effective. The flaws which remain pose a dangerous threat of a cycle of influential politically centred FN. With the advancement of technology and FN strategies, it is crucial the UK strive to reach the forefront of effective FN prevention. This is achievable by enforcing existing laws, and extensively enacting the Disinformation and 'Fake News' inquiries' reforms, to guarantee the UK never reach a degree where democracy is threatened.