House of Commons Select Committee on Culture, Media and Sport

Inquiry into Fake News

Submission by IMPRESS: The Independent Monitor for the Press
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Executive Summary

1. We define fake news as the knowing and consistent publication of predominantly false information in the guise of news.

2. There are three ways in which digital intermediaries have enabled the growth of fake news and unethical journalism:
   a. New forms of digital intermediary such as search engines and social media platforms now direct users towards an extremely wide range of news stories and enable users to share these stories with each other without distinguishing between authentic and fake news. This increases the potential reach of fake news.
   b. The collapse in traditional business models for news media has encouraged a ‘race to the bottom’, in which fake news represents an opportunity for unscrupulous publishers to attract advertising revenue without the cost of authentic journalism. This increases the incidence of fake news and unethical journalism.
   c. The global nature of digital news publishing has left policymakers struggling to address the challenges posed by digital intermediaries. This increases the impunity with which unscrupulous publishers disseminate fake news and unethical journalism.

3. The weaponisation of the term ‘fake news’ to justify political attacks on journalism may pose a greater danger than the phenomenon of fake news itself. It masks an attack on press freedom and leaves audiences uncertain whether to trust any news provider, no matter how ethical they may be.

4. We do not need to reinvent journalism ethics in response to the challenge of fake news. Ethical codes from around the world are clear that, whilst journalists are capable of making mistakes in the course of their work, they are guided by a duty to strive towards accuracy and to correct inaccuracies where they appear.
5. The emergence of fake news has not led to a collapse of trust in the news media but has been enabled by a pre-existing decline in trust. This has exacerbated the reach of fake news and the weaponisation of the term ‘fake news’ as a term of abuse by political figures against authentic news.

6. There are several routes which UK public policy might take in relation to fake news. Each of these has strengths and weaknesses.

   a. Statutory regulation of digital intermediaries would represent the most direct response to the challenge. However, without a clear and shared understanding of the extent to which intermediaries are responsible for publishing news, there is a danger that a patchwork of regulatory initiatives in different countries will simply lead to forum shopping.

   b. Self-regulation by digital intermediaries alone creates the risk that authentic journalism would be removed from the public sphere.

   c. Statutory regulation of news providers is already in place, to varying degrees, in many democratic jurisdictions. It might be possible to extend the reach and/or powers of statutory regulators and/or accompanying legal restraints such as defamation law. However, any such moves would pose a considerable threat to press freedom and should only be considered as a last resort.

   d. State monitoring and rebuttal of fake news stories would pose a considerable threat to press freedom.

7. We believe that the principles underlying UK media policy remain highly relevant to the challenge of fake news:


   b. To ensure that agreed standards of journalism are upheld.
c. To protect the public from the harm that may be caused by certain forms of news publication and newsgathering.

d. To encourage a plurality of news provision, that adequately represents the diversity of voices within society.

8. With these principles in mind, we make the following recommendations to the UK Government:

   a. Work through multilateral bodies to confirm the UK’s commitment to upholding international human rights standards in relation to free expression and press freedom.

   b. Complete the implementation of the post-Leveson framework for press regulation.

   c. Explore a co-regulatory approach to the challenge of regulating the responsibilities of digital intermediaries in relation to news.

9. In this new regime, intermediaries might become liable for certain forms of unethical news content to the extent that they do not respect the judgement of properly constituted regulators.

About IMPRESS

10. IMPRESS is the first truly independent press regulator in the United Kingdom. On 25 October 2016, the Press Recognition Panel (PRP) confirmed that IMPRESS meets the criteria for independent and effective regulation set out in the Royal Charter on Self-Regulation of the Press (‘the Charter’). These criteria were derived from the Report of the Leveson Inquiry on Self-Regulation of the Press (‘the Leveson Report’), which was published in November 2012 following seventeen months of public hearings and deliberation.

11. The post-Leveson framework for press regulation consists of the Charter and related provisions in the Crime and Courts Act 2013 and the Enterprise and Regulatory Reform Act 2013. This framework is designed to encourage
publishers of news-related material to submit to regulation by a self-regulatory body which is recognised under the Charter. The system is voluntary but incentivised.

12. More than 50 news publications have so far applied to be regulated by IMPRESS. These publications operate both in print and online and reach an estimated audience of more than two million people every month. Several IMPRESS members have won awards for the quality of their journalism.

13. By subscribing to IMPRESS, these publications confirm that they are committed to high standards of journalism and that they are prepared to be held accountable for any failings. In return, these publications carry the IMPRESS ‘Trust in Journalism’ kitemark.

14. By virtue of sections 34-39 of the Crime and Courts Act 2013, members of IMPRESS are protected against the risk of exemplary damages in legal actions for libel, invasion of privacy or harassment. Members of IMPRESS should also be protected against the risk of costs-shifting, by virtue of section 40 of the Crime and Courts Act. However, the Government has yet to commence this provision.

About this consultation

15. The Culture, Media and Sport Committee is looking at ways to respond to the phenomenon of fake news, focusing in particular on the following questions:

- What is ‘fake news’? Where does biased but legitimate commentary shade into propaganda and lies?
- What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?
- Is there any difference in the way people of different ages, social backgrounds, genders etc. use and respond to fake news?
• Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?

• What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out ‘fake news’ from genuine reporting?

• How can we educate people in how to assess and use different sources of news?

• Are there differences between the UK and other countries in the degree to which people accept ‘fake news’, given our tradition of public service broadcasting and newspaper readership?

• How have other governments responded to fake news?

16. The Committee’s inquiry is not the only political activity in this area. The Digital and Culture Minister, Matt Hancock MP, has said that the Government is ‘considering the implications of the dissemination of fake news on social media sites.’ The Labour Party has also launched an inquiry into the phenomenon of fake news, chaired by the former Shadow Culture Secretary, Michael Dugher MP.

17. This submission is directed towards the Select Committee’s inquiry, but we hope that it will also inform the work of the Government, the Labour Party and other stakeholders.

18. We have kept the Committee’s questions in mind throughout this submission, in which we set out the nature of the fake news challenge and its implications for UK policymakers. We conclude by making a number of recommendations to the Committee.

19. We would be delighted to provide further evidence on this issue.
Fake news: the problem

20. In this part of our submission, we address the questions posed by the Select Committee. We do not set out to answer every question or to provide a comprehensive survey of this topic. Instead, we highlight some key factors which we believe should guide the Committee’s thinking in this area.

What is ‘fake news’?

21. The term ‘fake news’ has gained wide currency in recent months. Some commentators have used it to refer to a vast range of news providers and the journalism they disseminate, whether in print, online or in the form of broadcast news. At the other end of the spectrum, some commentators have argued that there is no such thing as fake news.

22. We do not take either view. We believe that fake news is a distinct phenomenon, which constitutes a small but significant proportion of the news ecosystem. At the same time, we recognise that the term ‘fake news’ is open to abuse by politicians who wish to use it to attack authentic journalism. Therefore, the term must be used with precision.

23. There are four elements to fake news. It is the:

   a. knowing and  
   b. consistent publication of  
   c. predominantly false information  
   d. in the guise of news.

24. In the absence of any one of these four conditions, the term ‘fake news’ is likely to be inappropriate. It is only when all four conditions are met that the term becomes appropriate.

25. For instance, information which is predominantly false but is inadvertently included in a news publication is simply a form of journalism. All journalists and
Editors are capable of making mistakes. They may be misled by a source or seduced by following the herd into publishing allegations which are subsequently revealed to be false. Either way, the inadvertent publication of false information cannot be described as 'fake news' without confusing the difference between fake news and journalism.

26. False information which is knowingly but only occasionally published in the guise of news may be an example of bad journalism but it is not fake news. There are many news publications which knowingly publish false information from time to time or which practise other forms of unethical journalism. It would be wrong to describe any such publication as 'fake news'. To use the term so broadly might please some critics of the press, but it does not help us to identify and solve the particular problem at hand.

27. *Accurate* information which is knowingly published in the guise of journalism is likely to constitute good journalism, unless it constitutes an invasion of privacy, contempt of court or another legal or ethical breach.

28. Predominantly false information which is published *not in the guise of news* but in another context, such as a political speech, religious sermon or company report, or simply in the form of a personal comment, is deceitful and may be a breach of one or more civil or criminal codes but it is clearly not fake news. The same is true of satirical publications which do not purport or expect to be treated as news. Information only becomes fake news when it is published in such a way as to persuade the viewer or reader that it has been produced through some form of journalistic process. In this respect, fake news intends to deceive its audience.

29. *So we define fake news as the (a) knowing and (b) consistent publication of (c) predominantly false information (d) in the guise of news.*

The role of digital intermediaries

30. Fake news has always been with us. In fact, the earliest printed news publications of the sixteenth century had more in common with fake news than with the standards of journalism which developed in later centuries.
'Reports interpreted unusual events as omens or miracles and appeared under titles such as “Strange and Miraculous News from Exeter.” Comets seen in London in 1580 and 1583 inspired a torrent of books and ballads that interpreted them as signs that the end of the world was near or that strange events would follow. Illustrated pamphlets reported on Sussex dragons, humans with the head of a bird, or the birth of deformed children, which they blamed on “incestuous copulation.”'\(^1\)

31. However, digital publication – and in particular the recent growth in the role of intermediaries such as social media platforms and search engines – has massively increased the opportunity and reward for this form of publication.

32. The widespread availability of website design software and expertise, combined with access to audiences via social media platforms, have given huge numbers of people the opportunity to publish news, both fake and authentic. As a result, there is an extraordinarily low cost of entry into the digital news publishing business. Whilst legacy news providers are grappling with the high fixed costs of broadcasting and print publication, new players are able to enter the news market at low cost or even no cost.

33. This explosion in digital news publishing creates very real opportunities and threats for journalism and society. On the positive side, digital publishing allows independent news publishers with a commitment to high standards of journalism to create new online publications. This has the potential to enhance the diversity of voices represented in the news ecosystem and the plurality of ownership models.

34. A number of such publications have already chosen to subscribe to IMPRESS.\(^2\) These include publications which are run on a commercial basis and others which are run on a non-profit basis. Some have introduced innovative business models, such as micro-payments and cooperative ownership. The emergence of

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digital publishing has given such publishers the opportunity to bring new energy into the news publishing industry in the UK, just as their counterparts have done in other countries.

35. On the negative side, digital publishing creates the risk of a rapid and catastrophic race to the bottom, where both established and start-up news brands publish unethical content in the interest of attracting a larger share of the market for digital advertising. This is not limited to the publication of inaccurate information but may also include other examples of profoundly unethical and/or illegal journalism such as hate speech, plagiarism and the invasion of privacy.

36. Research shows that a majority of digital users now regularly access news via social media platforms. Facebook is the dominant social platform. 44% of all online users access news via Facebook. Other significant platforms include YouTube (owned by Google), Twitter, Instagram and WhatsApp.

37. Social platforms do not create news content. They merely provide a means for publishers to reach audiences. In this respect, they are more analogous to newsagents than newspapers. However, unlike newsagents, social platforms are not solely responsible for selecting which publications they make available to their audiences. The users of platforms are able to share links and content on a peer-to-peer basis. In addition, news publishers are able to publish directly onto some social platforms. Moreover, platforms are able to personalise the information they provide to each user, so that no two users receive exactly the same content. In this way, intermediaries provide a slightly different ‘newsagent’ experience for each user.

38. As a result, platforms such as Facebook have become clearing houses for a vast amount of information, some of it produced according to stringent journalistic standards and some of it produced according to no standards at all. Much of the false information on such platforms is not published in the guise of news. It is clearly presented as personal opinion or satire. However, some predominantly

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false information on such platforms is knowingly and consistently published in the guise of news. As a result, it has the potential to mislead audiences.

39. There is little commercial incentive for social platforms to discriminate between authentic and fake news. Their business models rely on revenue from advertisers who pay for the attention of consumers, and consumers’ attention may be attracted just as much by fake news as by authentic journalism.

40. Whilst there are almost no limits on the potential number of digital news publications, the global economy can only sustain a certain number of advertisers with a certain amount of cash. The digital advertising market has grown in recent years, but the bulk of this growth has not gone towards the publishers who are responsible for creating original news content, but to the intermediaries – chiefly Facebook and Google – which are responsible for bringing advertisers together with consumers. In the United States alone, $59.6bn was spent on digital advertising in 2015, 65% of which went to five companies: Google, Facebook, Yahoo, Microsoft and Twitter.4

41. As a result, many news providers – including digital natives as well as legacy publishers and broadcasters – are trapped in a vicious cycle. They depend on social platforms to reach audiences. These audiences are not inclined to pay for news, because so much of it (whether authentic or fake) is available for free. So publishers depend more heavily on advertising revenue. However, the advertising revenue generated by online audiences flows principally into the pockets of the intermediaries.

42. This market creates a powerful incentive for news providers to operate at ever-greater scale, in order to attract an ever-growing share of the market, because each consumer represents such a tiny amount of revenue.

43. The result of this vicious cycle is that the commercial benefits of operating at scale increasingly outweigh the civic benefits of public interest journalism. This does not necessarily mean that all news publishers will suddenly become fake

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news publishers. Ethical standards of journalism are deeply ingrained in most newsrooms and journalists take great pride in their craft. However, the nature of digital publishing does increase the likelihood that journalism which is unethical and/or lacking in any value to the public will be published and disseminated.

44. Legacy broadcasters across Europe and many other parts of the world have traditionally been subject to some form of statutory regulation. In return for providing access to the broadcasting spectrum, statutory regulators have required broadcasters to abide by certain standards of news provision. In the UK, these standards have included a requirement of due impartiality.

45. Print publishers in democratic jurisdictions have rarely been subject to statutory regulation. For the most part, they have been subject to some form of self-regulation or co-regulation. In the UK, the Editors' Code of Practice, upheld originally by the Press Complaints Commission (PCC) and now by IPSO and IMPRESS, includes a requirement of accuracy.

46. In some jurisdictions, digital news providers have been brought under the auspices of one of these traditional forms of news content regulation. In many other jurisdictions, however, they have fallen outside these frameworks. As a result, digital news providers are not clearly bound by either an impartiality or an accuracy requirement under the existing regulatory regimes.

47. Furthermore, digital news providers can cross jurisdictional boundaries much more easily than legacy print or broadcast news, so that it is not always clear how to apply existing laws to content which is published and/or shared via social platforms or search engines.

48. As a result, policymakers at a national level are struggling to apply existing laws and regulations in relation to digital news provision.

49. In summary, there are three ways in which digital intermediaries have enabled the growth of fake news and unethical journalism:

   a. New forms of digital intermediary such as search engines and social media platforms now direct users towards an extremely wide range
of news stories and enable users to share these stories with each other without distinguishing between authentic and fake news. This increases the potential reach of fake news.

b. The collapse in traditional business models for news media has encouraged a ‘race to the bottom’, in which fake news represents an opportunity for unscrupulous publishers to attract advertising revenue without the cost of authentic journalism. This increases the incidence of fake news and unethical journalism.

c. The global nature of digital news publishing has left policymakers struggling to address the challenges posed by digital intermediaries. This increases the impunity with which unscrupulous publishers disseminate fake news and unethical journalism.

The weaponisation of fake news

50. By using the term ‘fake news’ with precision, as set out above, we can ensure that our approach to this issue is appropriately targeted.

51. However, the term has not been used with such precision. In fact, it has been used with wilful imprecision by politicians seeking to demonise particular journalists or news providers and the profession of journalism in general. Some of these attacks have contributed to a more generalised onslaught on the underlying principles of press freedom.

52. In the United States, President Trump has accused outlets from CNN to the New York Times of spreading ‘fake news’ whenever they publish or broadcast news that displeases him. The Trump administration has made it very clear that these accusations are designed to put pressure on news providers to give the President favourable coverage. An assistant to the President has stated that the White
House ‘will continue using the term “fake news” until the media understands that their “monumental desire” to attack the President is wrong.’

53. The Russian Foreign Ministry has vowed to take on responsibility for combating so-called ‘fake news’ about Russia published in foreign news outlets. It seems that the so-called ‘fake news’ in question consists of critical reports about the Kremlin, regardless of whether these reports are based on accurate information or not.

54. In the United Kingdom, Jeremy Corbyn accused the BBC of promoting ‘fake news’ when a presenter asked him about rumours that he was planning to step down as Leader of the Labour Party.

55. This weaponisation of the term ‘fake news’ is a highly disturbing trend. It suggests that journalism becomes ‘fake’ only if and when it seeks to challenge an elected politician. This notion is fundamentally at odds with the idea that journalism should be free to criticise or challenge elected politicians. This principle lies behind the First Amendment to the United States Constitution and is reflected in the jurisprudence of the European Court of Human Rights, which tends to privilege political speech above other forms of expression.

56. This misuse of the term ‘fake news’ is particularly troubling for independent online news publications which lack the brand recognition of established outlets and are vulnerable to such attacks. Several such publications were included in a recent list of ‘fake news’ sites. It is likely that, if digital intermediaries are asked to sift

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8 Melissa Zimdars, ‘False, Misleading, Clickbaity, and/or Satirical ‘News’ Sources’, available at https://docs.google.com/document/d/10eA5-mCZLSS4MQY5QGb5ewC3VAL6pLkT53V_81ZytM/preview.
‘fake news’ from authentic journalism, they may inadvertently sweep away some such independent news publications, particularly if they are associated with political viewpoints outside the mainstream, and regardless of whether their journalism is produced according to ethical standards.

57. In fact, there is a further threat that, in attempting to rid the world of ‘fake news’, governments and/or digital intermediaries may simply pursue their political preferences at the expense of alternative viewpoints.

58. The Media Consortium – a body which represents independent news publications – has described this threat as ‘a new McCarthyism’ which ‘must be stopped’. ⁹

59. The weaponisation of the term ‘fake news’ to justify political attacks on journalism may pose a greater danger than the phenomenon of fake news itself. It masks an attack on press freedom and leaves audiences uncertain whether to trust any news provider, no matter how ethical they may be.

Journalism ethics

60. There has always been a spectrum of quality in the news publishing business. At one end of the spectrum are news providers who are dedicated to serving the public with ethical journalism of high civic value. At the other end are news providers who are dedicated to pursuing their own commercial or political agendas, for whom journalism is simply a means to an end. This is true in different ways of commercially funded news, publicly funded news and non-profit news.

61. Throughout the twentieth century, newspaper publishers found a way to reconcile the competing demands of the public and the proprietor into a sustainable business model, based on a blend of income from advertising, subscription and newsstand sales. Broadcasting business models were based on the licence fee

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⁹ ‘There is no fake news; there are only false stories’, the Media Consortium, 30 November 2016, available at https://www.themediaconsortium.org/2016/11/30/there-is-no-fake-news-there-are-only-false-stories/.
(for the BBC), advertising revenue (for other terrestrial broadcasters) or subscription revenue (for satellite broadcasters).

62. Coupled with these market forces, lawmakers and regulators exercised a further check on news providers. At times in the twentieth century, these checks may have been excessive. The *Sunday Times* faced enormous legal challenges when seeking to expose the Thalidomide scandal and many news providers were deterred from exposing celebrity abusers such as Jimmy Savile because of the chilling effect of libel threats.

63. At the same time, these legal restraints serve a social purpose. Contempt of court laws exist to protect the right to a fair trial. Defamation laws exist to protect people’s reputation from unjustified harm. The challenge is not to remove all legal or regulatory restraints on journalism, but to ensure that any such restraints properly balance the rights and interests at stake and that disputes may be straightforwardly resolved.

64. Disruption to the twentieth-century business models for news has shaken not only the news business but also the regulatory frameworks within which it has operated.

65. However, the fundamental ethics of journalism remain valid, despite this economic and regulatory disruption.

66. What distinguishes journalism from other activities is a set of ethical considerations that govern the way in which journalists receive and impart information and ideas. These ethics have been developed over many years and are set out in numerous codes. They help to distinguish journalism from other forms of expression.

67. Aidan White, Director of the Ethical Journalism Network, has explained how journalism is defined by this ethical framework:

‘Journalism, let’s remember, is not simply free expression. It is a form of expression [...] constrained by a framework of values and ethics where stories
and opinions flow from a fact-based culture of communications based upon respect for accuracy, independence, impartiality, humanity and accountability.

This is what distinguishes the work of journalists from most people using social networks and online bloggers. On the web people may say what they want. They can be in turn deceptive, offensive, unrepentant, and even abusive, as much as the law will allow. Thanks to technology and the web today everyone can have their say and tell their story, but it’s only journalism if it’s ethical.¹⁰

68. When we consider how to address the fake news phenomenon, we should keep this distinction between journalism and other forms of expression in mind. Journalism enjoys a privileged legal position because it sets out to inform the public and to hold the powerful to account through the publication of accurate information which has been produced in accordance with certain ethical principles.

69. In the Leveson Report, Sir Brian Leveson recommended a handful of core principles that should be reflected in the standards code of any self-regulatory body for print and online news publishers. This recommendation was subsequently incorporated in the Royal Charter on Self-Regulation of the Press (‘the Charter’), in the following terms:

‘The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:

a) conduct, especially in relation to the treatment of other people in the process of obtaining material;

b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and

c) accuracy, and the need to avoid misrepresentation.’ (Schedule 3.8)

70. These criteria have not been questioned at any stage of the public and political debate over the Leveson Report or the framework which has subsequently been developed for independent self-regulation of the press (‘the post-Leveson framework’).

71. Although some commentators have attacked Sir Brian Leveson for not addressing the challenge of digital publication, no-one has shown that these criteria are inappropriate for news providers in a digital era.

72. Furthermore, Sir Brian Leveson recommended that a future regulator ‘should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards expected of editors and journalists’. Leveson considered that this would ‘command the confidence of both the public and the industry’. In this way, he ensured that a standards code, whilst meeting his minimum criteria, would also address any specific concerns which arise in relation to digital publication.

73. With Leveson’s recommendation in mind, and in order to determine whether digital publication fundamentally changes the underlying ethical considerations which govern journalism, IMPRESS ran a consultation on the standards code for the publications which choose to subscribe to IMPRESS.

74. In the course of this consultation, the IMPRESS Code Committee oversaw comparative research of over fifty press codes from around the world. This research identified several core principles, including the importance of accuracy, privacy, the protection of children and the distinction between fact and comment, which are common to a significant majority of press codes.

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11 Leveson Report, Part K, Chapter 7, 4.22.
75. The Committee engaged the independent research agency Britain Thinks to facilitate public workshops in London and Glasgow where participants were asked to spontaneously identify the ethical standards they believed should guide the development of a new standards code. The most common principles they identified were privacy, non-discrimination, accuracy, balance and the protection of children.

76. Britain Thinks also conducted an online survey of 2,104 members of the public. The survey results confirmed the importance of the same ethical standards that the earlier workshops had identified.

77. The Committee and IMPRESS staff then conducted a series of expert roundtables with IMPRESS publishers and members of civil society including special interest groups. Additionally, the Committee consulted academics, journalists, other regulators, civil society organisations, journalism students, other countries’ press councils and other stakeholders on specific issues.

78. Finally, the Committee opened a public consultation on a draft standards code. As a result of this open consultation, the IMPRESS Code Committee has finalised a new standards code which meets the minimum criteria set out by Leveson and which aims to reflect best practice from around the world.

79. Whilst this code includes a number of features which are designed to address specific challenges in relation to digital publication, there is nothing in it which fundamentally changes the core ethical principles of journalism.

80. The IMPRESS code recognises that it is in the nature of journalism, as an immediate response to fast-moving events, to make mistakes. However, the IMPRESS standards code – in line with similar codes from around the world – asks those responsible for publishing journalism to take all reasonable steps to ensure accuracy; to correct any significant inaccuracy with due prominence; to distinguish between statements of fact, conjecture and opinion; and not to misrepresent or distort the facts.

81. Any news providers which are prepared to subscribe to regulation upholding these requirements cannot be guilty of publishing fake news.
82. We do not need to reinvent journalism ethics in response to the challenge of fake news. Ethical codes from around the world are clear that, whilst journalists are capable of making mistakes in the course of their work, they are guided by a duty to strive towards accuracy and to correct inaccuracies where they appear.

Trust in the news media

83. It has been suggested that the fake news phenomenon may have damaged public trust in the media. However, the evidence suggests that cause and effect have flown in the opposite direction, and that the public decline in trust predated the recent growth of ‘fake news’.

84. In 1980, the twelve bestselling national daily papers in Britain had a combined circulation of 15.6m. By 2013 that figure had fallen to 8.5m.

85. The British Social Attitudes survey shows that trust in newspapers has fallen at a similarly dramatic rate. In 1983, 53% of people in Britain thought that the press was well run. By 2013, only 27% of people had that confidence.

86. The decline in newspaper circulation accelerated after 2009, when revelations of phone hacking by the News of the World gained huge public attention. Circulation fell by 214,000 copies on average in each of the 33 years between 1980 and 2013. After 2009, this rate of decline almost tripled, as 620,000 fewer copies circulated each year – the equivalent of a national newspaper closing every year.

87. People are still reading newspapers, in print and online, but they are also turning to an array of other sources of information and opinion. Harvard’s Nieman Lab has published research on the value of trust in this hyper-competitive market which concludes that, trust, not information, is the scarce resource in today’s world: ‘Trust is something that is hard to earn and easy to lose. And it is a core element of journalism; few other professions are so dependent on trust.’

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13 See http://www.bsa.natcen.ac.uk/.
88. When YouGov researched trust in the press in May 2006, they found that 37% of the public trusted journalists at national newspapers to tell the truth. Trust in national newspaper journalism has halved since then, and now stands at an all-time low of 18% – slightly below the level of 19% which was reached in July 2011, when the outcry over phone hacking was at its height.

89. A recent YouGov poll for IMPRESS confirmed that only 11% of people in the UK trust journalists at mid-market newspapers such as the Daily Mail and the Daily Express to tell the truth, whilst fewer than one in ten trust journalists at tabloids such as the Sun and the Mirror. Journalists at broadsheets and local newspapers do not fare much better, with just 36% of the public trusting them to tell the truth.

90. When asked how they would describe the British press, the most common responses included words such as ‘liars’, ‘untrustworthy’ and ‘unreliable’. Other common answers included the words ‘exaggerated’, ‘sensationalist’ and ‘fake’.

91. According to a separate poll by Ipsos MORI, only 25% of the UK public trust journalists to tell the truth. Bankers, lawyers and pollsters are more trusted than journalists, who can only dream of the trust enjoyed by doctors, teachers and judges, with trust ratings of 80% or above.

92. According to the 2016 Reuters Digital News Report, trust is lower than average among the young, which suggests that the trust crisis may be growing worse.

93. The trust problem exists in other European countries, but not to the same extent as in the UK. Research by the European Broadcasting Union shows that, across the EU, 43% of people tend to trust the press but 50% of people tend not to trust it. So the press has an average net trust rating of minus seven.

94. Trust in the press is above average in countries such as Finland and the Netherlands and well below average in countries such as Macedonia, Greece and Serbia – countries which are facing huge political and economic challenges.

95. But the country with the lowest trust rating of all is the United Kingdom, where net trust in the press is at a staggering minus 51. Only 22% of the British public say they tend to trust the press, the lowest rating in Europe. 73% say they tend not to
trust the press, the worst trust rating by a long way – behind Greece, on 65%, and Serbia, on 63%.

96. It seems reasonable to conclude that this extremely low level of trust is a result of particular conditions in the UK. We can see that trust is consistently lower across Europe in relation to legacy print publishers (‘the press’), which tend to be subject to self-regulation, than to broadcasters, which tend to be subject to statutory regulation. The well-charted failures of self-regulation in the UK may have contributed to the particularly low level of trust in the press in this country.

97. The climate of profound mistrust in the news media can only give politicians more opportunity to attack authentic news stories which hold them to account. Politicians would not dare to accuse highly-trusted professionals such as doctors or teachers of behaving unethically simply for doing their jobs.

98. **The emergence of fake news has not led to a collapse of trust in the news media but has been enabled by a pre-existing decline in trust. This has exacerbated the reach of fake news and the weaponisation of the term ‘fake news’ as a term of abuse by political figures against authentic news.**

Fake news: the way forward

99. As we have shown, the fake news phenomenon is multi-faceted and combines old and new challenges for media policymakers. In this part of our submission, we suggest possible routes that policymakers might follow in this area.

Policy options

100. We commend to the Committee the work of the LSE Media Policy Project, which has recently analysed the approaches taken by other European governments to the issue of fake news. This research illustrates the range of approaches that are being considered across comparable jurisdictions.

101. **There are several routes which UK public policy might take in relation to fake news. Each of these has strengths and weaknesses.**
Statutory regulation of digital intermediaries

102. Under this approach, policymakers propose to treat intermediaries as news publishers for the purposes of enforcing existing legislation or regulation in relation to news publishing. Intermediaries will be held directly liable for the publication of fake news or hate speech – presumably, even where such intermediaries have played no active part in the commissioning or presentation of such content.

103. This approach may bring clarity but it also brings a range of challenges, and may lead to perverse consequences. Any approach which places the traditional responsibilities of a publisher on a digital intermediary may simply encourage that intermediary to mitigate any risk of litigation, prosecution or regulatory sanction by removing content. And as we have seen, intermediaries are not equipped to discriminate intelligently between different forms of content. As a result, they may err on the side of caution and take down authentic journalism as well as fake news.

104. Digital intermediaries now hold a dominant position in the global public sphere. If they are asked to act as gatekeepers to that public sphere, in the absence of sufficient checks and balances, there is a real risk that the public sphere will contract.

105. News providers may be required by law or regulation to follow certain standards in their newsgathering and reporting techniques. These standards should not prevent them reporting on stories that are in the public interest. Intermediaries, by contrast, have no investment in journalism. They are not involved in the decision-making process that lies behind public interest journalism. They may tend to filter out journalism which triggers their concerns, rather than taking a stand to defend it.

106. Statutory regulation of digital intermediaries would represent the most direct response to the challenge. However, without a clear and shared understanding of the extent to which intermediaries are responsible for publishing news, there is a danger that a patchwork of regulatory initiatives in different countries will simply lead to forum shopping.
Statutory regulation of news providers

107. News content providers are subject to a wide range of legal and regulatory restraints in all democratic jurisdictions. In those states which are party to a national or regional human rights mechanism (such as the European Court of Human Rights), any such restraints must be justified in relation to free expression norms. A restraint must be necessary in a democratic society, proportionate to the harm caused by the expression in question, and legally certain.

108. Threats to ‘criminalise’ fake news publications go way beyond international free expression norms. A fake news publication, as defined above, is simply a site which knowingly and consistently publishes predominantly false information in the guise of news. International human rights standards do not permit for the criminalisation of false information, except in relation to certain forms of commercial speech. Even civil law tends to steer clear of penalising false information, except where this is defamatory and criminal codes against defamation have been condemned by international human rights bodies.

109. Statutory regulation of news providers is already in place, to varying degrees, in many democratic jurisdictions. It might be possible to extend the reach and/or powers of statutory regulators and/or accompanying legal restraints such as defamation law. However, any such moves would pose a considerable threat to press freedom and should only be considered as a last resort.

State monitoring and rebuttal of fake news

110. This approach may seem superficially attractive but it contains hidden dangers. Some states may be so enlightened that they are able to exercise perfect objectivity in their identification and rebuttal of ‘fake news’. Others may not. To place such responsibility in the hands of governments creates dangers which may exceed the dangers of asking intermediaries themselves to regulate.

111. State monitoring and rebuttal of fake news stories would pose a considerable threat to press freedom.
Self-regulation by digital intermediaries

112. Digital intermediaries carry a significantly new form of responsibility for news publication. However, expecting intermediaries to take sole responsibility for filtering out ‘fake’ news is problematic for a number of reasons.

   a. Intermediaries operate across multiple legal jurisdictions. Legal standards in relation to freedom of expression vary wildly between jurisdictions. Whilst there are internationally-recognised norms in relation to freedom of expression, these are routinely breached in a large number of jurisdictions. Simply asking intermediaries to observe the relevant laws or regulations in each jurisdiction may not be compatible with human rights standards.

   b. Furthermore, there is a lack of clarity about the extent to which intermediaries exercise the responsibility of a publisher. To treat intermediaries in exactly the same way as news publishers, may introduce further risks in relation to free speech. Intermediaries are not usually responsible for commissioning or editing the content for which they provide a platform. If their legal responsibility for this material grows, they may tend towards self-censorship in order to mitigate risk and maximise profit.

113. There is a further problem in relation to self-regulation of digital intermediaries. Unlike traditional newspapers or broadcasters, intermediaries do not depend on human beings for their editorial decision-making. Instead, they rely heavily on algorithms: long sequences of automated decisions made by computers in response to data and metadata found on particular web pages.

114. With this in mind, certain digital intermediaries have begun to explore the capacity for algorithms to make decisions in relation to news content.

115. The Trust Project, funded by Google and led by independent researchers at Santa Clara University, has conducted research into what makes people trust some news sources more than others. The research suggests that algorithms alone will struggle to root out fake news.
When researchers asked the audiences of online news what made them trust a particular news provider, they said they were looking for sites that were, among other things:

- Objective and unbiased and which disclose any conflicts of interest.
- Independent of business or government pressure.
- Consistent and reliable.

An algorithm cannot form a judgement on whether a particular news site is objective, independent or reliable. So the Trust Project has attempted to find indicators of trust – elements which can be quantified and which can help the algorithm to identify more trustworthy news sources.

Proposed indicators include such things as:

- Information about a company’s ownership and finances.
- A mission statement.
- Editorial guidelines.
- An ethics policy.
- A corrections policy.
- And an ombudsperson.

The presence or absence of such indicators is quantifiable and therefore amenable to an algorithm.

However, it would be simple for any news publication to game an algorithm that simply looked for content with the heading ‘ethics policy’.

An algorithm is not a regulator. It cannot determine whether an ethics policy sets appropriate standards and it certainly cannot judge the quality of any complaints-handling function. These attributes of a trustworthy news publication require human beings, able to exercise judgement, and able to sit at some
distance from the news publication itself. An algorithm may be able to determine whether these elements are in place, if it is able to recognise a kitemark or other means through which the news site pledges its commitment to external and independent accountability.

122. It may be viable, therefore, for algorithms to help users distinguish between different sources of news. However, it is not viable to expect algorithms alone to distinguish fake news from genuine reporting. Algorithms consist of a vastly long string of binary decisions. Whilst an algorithm might be written that could identify a number of common indicators of fake news, it could not reach a judgement about the governance of a particular news publication.

123. As described above, fake news is not synonymous with false information or inaccurate news. Good journalism may sometimes result in inaccurate news. An algorithm, even if it were able to detect such inaccuracies, would be unable to determine whether the inaccuracies were the result of honest endeavour, recklessness or wilful disregard for the truth. It could not judge intention, in other words.

124. Self-regulation by digital intermediaries alone creates the risk that authentic journalism would be removed from the public sphere.

Principles

125. The fake news phenomenon demands serious attention, but it does not alter the underlying objectives of UK public policy in relation to news publishing.

126. We believe that the principles underlying UK media policy remain highly relevant to the challenge of fake news:


128. The European Convention on Human Rights (ECHR) represents a clear and comprehensive statement of the values which have developed over many
centuries of political and philosophical debate in many countries and cultures. The ECHR embeds press freedom – as a function of freedom of expression – within this framework.

129. However, the ECHR also sets out a range of other rights and interests which may qualify freedom of expression.

130. Thus the human rights framework provides a structure within which states may make good decisions about the need and scope for any prospective interference with the expression rights of individuals or corporations.

131. To ensure that agreed standards of journalism are upheld.

132. The international human rights framework does not preclude governments from regulating news providers. In fact, the Convention explicitly permits states to license broadcasters. In practice, this principle has been extended by some states to other sectors of the news industry. In certain European jurisdictions, governments play an active part in content regulation. In others, content regulation is left in the hands of news providers.

133. The Leveson Report correctly identified some of the challenges which pertain to state regulation of news content and recommended an alternative approach, whereby content regulation is undertaken by self-regulatory bodies, overseen by a statutory body in a manner that is comparable to the regulation of the legal sector in the UK.

134. The post-Leveson framework has developed a system of oversight and incentives to ensure that regulation is conducted in the public interest and that news providers are encouraged to subscribe to a suitably independent and effective regulator.

135. To protect the public from the harm that may be caused by certain forms of news publication and newsgathering.

136. English and UK law has plentiful examples of laws which bite on the expression rights of individuals and corporations. Defamation law, privacy law, broadcasting law, intellectual property law, data protection law, charity law,
election law and regulations in relation to advertising and trade descriptions – all these place limits on what may legally be said or otherwise communicated in a wide range of settings.

137. The aim of such laws is to mitigate the harm that may be caused to individuals or society as a whole by certain forms of expression. Whilst Parliament is always free to pass such laws, they must be reconciled with the human rights standards outlined above – so long as the UK remains a party to the European Convention on Human Rights and a signatory to the International Covenant on Civil and Political Rights and/or the Human Rights Act 1998 remains in force.

138. Therefore, the aim of protecting the public from harm must always be balanced against the risk of giving the state excessive powers over the expression rights of individuals and organisations. The post-Leveson framework respects this balance.

139. To encourage a plurality of news provision, that adequately represents the diversity of voices within society.

140. The encouragement of plurality and diversity in news content has been a policy objective for many years in the UK and across comparable jurisdictions, including the United States, where competition law has been found to be compatible with the First Amendment of the Constitution.

141. One response to so-called ‘fake news’ would be to create new barriers for entry into the news publishing market. We do not believe that such barriers would be appropriate. The news market in the UK is already heavily concentrated. The range of interests represented by the dominant news publishers is narrow. As a result, the range of voices represented in dominant news publications, at a national, regional and local level, is similarly narrow.

142. Therefore, the government should not be inclined to limit the scope for this market to diversify. In fact, the government should look actively for ways in which to increase pluralism and diversity.
Recommendations

143. The correct approach to fake news must balance the right to freedom of expression with other rights and interests. It must understand that fake news is not a startling new phenomenon, but a symptom of structural trends in news publishing. Any regulatory intervention must be necessary in a democratic society, proportionate and clear. It must protect the public from harm and must be compatible with the growth of plurality and diversity in the news media.

144. With these principles in mind, we make the following recommendations to the UK Government.

145. Work through multilateral bodies to confirm the UK’s commitment to upholding international human rights standards in relation to free expression and press freedom.

146. The UK has a leadership role to play. It must ensure that its own approach to balancing the rights and interests at stake here is proportionate and clear and that any statutory interventions are necessary in the interests of a democratic society. The UK must also speak out in relation to other governments’ approaches to the fake news issue, and must not allow politicians to use the term ‘fake news’ to justify politically-motivated attacks on journalists or press freedom.

147. Complete the implementation of the post-Leveson framework for press regulation.


149. This framework does not compel news providers to submit to independent regulation. However, it provides incentives for them to do so. In this way, it provides a model for content regulation that is highly relevant to the challenge of fake news.

150. It allows a regulated publication to display a kitemark of trustworthiness. Such a kitemark could easily be taken into account by digital intermediaries when
determining whether to include certain news publications in their news feed or search results. This would ensure that intermediaries are not solely responsible for judging the reliability of news providers; but it would enable them to take responsibility for filtering out fake news from authentic journalism.

151. **Explore a co-regulatory approach to the challenge of regulating the responsibilities of digital intermediaries in relation to news.**

152. The post-Leveson framework represents a solution to particular media policy challenges in the UK. This solution may not be appropriate in other jurisdictions. However, the UK should play an active part in the international debate about media regulation and should be prepared to learn from other jurisdictions.

153. The fake news phenomenon is merely one example of the new challenges which digital publication poses to twentieth-century media policy. The UK Government should complete its commitment to implementing the post-Leveson framework, but it should not be complacent that this will address every issue. The post-Leveson framework is an essential stepping stone towards a regulatory regime that is entirely fit for purpose in this new era. Such a regime will need to address the challenge of media convergence, and the move by broadcasters away from the use of the broadcasting spectrum towards digital means of dissemination.

154. It would be foolhardy to make recommendations at this stage as to the precise details of such an approach. But the time to ‘wait and see’ how digital intermediaries operate is over. It is time now for the Government to set out a clear and principled approach.

155. Search and social intermediaries should not be expected to take sole responsibility for distinguishing between ‘fake’ and ‘authentic’ news publications or news stories. To the extent that their algorithms do sift one from the other, they should do so transparently.

156. In essence, we are looking towards a co-regulatory approach. Regulators of news content should take responsibility for judging whether news providers have followed agreed ethical standards of newsgathering and news publication. Digital
intermediaries should take responsibility for respecting the judgement of properly constituted regulators in relation to certain forms of content.

157. *In this new regime, intermediaries might become liable for certain forms of unethical news content to the extent that they do not respect the judgement of properly constituted regulators.*

**Conclusion**

158. We define fake news as the knowing and consistent publication of predominantly false information in the guise of news.

159. There are three ways in which digital intermediaries have enabled the growth of fake news and unethical journalism:

   a. New forms of digital intermediary such as search engines and social media platforms now direct users towards an extremely wide range of news stories and enable users to share these stories with each other without distinguishing between authentic and fake news. This increases the potential *reach* of fake news.

   b. The collapse in traditional business models for news media has encouraged a ‘race to the bottom’, in which fake news represents an opportunity for unscrupulous publishers to attract advertising revenue without the cost of authentic journalism. This increases the *incidence* of fake news and unethical journalism.

   c. The global nature of digital news publishing has left policymakers struggling to address the challenges posed by digital intermediaries. This increases the *impunity* with which unscrupulous publishers disseminate fake news and unethical journalism.

160. The weaponisation of the term ‘fake news’ to justify political attacks on journalism may pose a greater danger than the phenomenon of fake news itself. It masks an attack on press freedom and leaves audiences uncertain whether to trust any news provider, no matter how ethical they may be.
161. We do not need to reinvent journalism ethics in response to the challenge of fake news. Ethical codes from around the world are clear that, whilst journalists are capable of making mistakes in the course of their work, they are guided by a duty to strive towards accuracy and to correct inaccuracies where they appear.

162. The emergence of fake news has not led to a collapse of trust in the news media but has been enabled by a pre-existing decline in trust. This has exacerbated the reach of fake news and the weaponisation of the term ‘fake news’ as a term of abuse by political figures against authentic news.

163. There are several routes which UK public policy might take in relation to fake news. Each of these has strengths and weaknesses.

   a. Statutory regulation of digital intermediaries would represent the most direct response to the challenge. However, without a clear and shared understanding of the extent to which intermediaries are responsible for publishing news, there is a danger that a patchwork of regulatory initiatives in different countries will simply lead to forum shopping.

   b. Self-regulation by digital intermediaries alone creates the risk that authentic journalism would be removed from the public sphere.

   c. Statutory regulation of news providers is already in place, to varying degrees, in many democratic jurisdictions. It might be possible to extend the reach and/or powers of statutory regulators and/or accompanying legal restraints such as defamation law. However, any such moves would pose a considerable threat to press freedom and should only be considered as a last resort.

   d. State monitoring and rebuttal of fake news stories would pose a considerable threat to press freedom.

164. We believe that the principles underlying UK media policy remain highly relevant to the challenge of fake news:

b. To ensure that agreed standards of journalism are upheld.

c. To protect the public from the harm that may be caused by certain forms of news publication and newsgathering.

d. To encourage a plurality of news provision, that adequately represents the diversity of voices within society.

165. With these principles in mind, we make the following recommendations to the UK Government:

a. Work through multilateral bodies to confirm the UK’s commitment to upholding international human rights standards in relation to free expression and press freedom.

b. Complete the implementation of the post-Leveson framework for press regulation.

c. Explore a co-regulatory approach to the challenge of regulating the responsibilities of digital intermediaries in relation to news.

166. In this new regime, intermediaries might become liable for certain forms of unethical news content to the extent that they do not respect the judgement of properly constituted regulators.