

# Assessing the Legitimacy of Penalising Media Organisations for Disseminating 'Fake News'

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## ABSTRACT

The purpose of this study was to explore the complex and evolving issue of penalising media organisations for the dissemination of 'fake news' in the digital age. As false information continues to spread rapidly across various platforms, the tension between safeguarding freedom of the press and protecting the public from misinformation has become a pressing concern. This paper critically examined the ethical, legal, and societal implications of imposing penalties on media outlets, assessing whether such measures align with principles of free expression and democratic accountability. It further reviewed international regulatory approaches to combating fake news, analysing their effectiveness, limitations, and broader impacts on media independence. By drawing on case studies, legal frameworks, and regulatory practices, the study investigated whether current models strike an appropriate balance between curbing misinformation and upholding press freedoms. Additionally, the paper considered the broader consequences of penalising media organisations, including effects on public trust, journalistic integrity, and the resilience of democratic institutions. It hopes to contribute to ongoing debates around media regulation by offering recommendations for fair, transparent, and rights-respecting strategies to address the challenges posed by fake news.

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## INTRODUCTION

The media undeniably holds a crucial position in society and in promoting democracy. As Pienaar highlights, the media not only delivers information to its audience but also functions as a platform for the exchange of ideas. This role is essential in nurturing and maintaining a democratic culture.<sup>1</sup> The researcher believes that the media has a constitutional obligation to act with integrity and responsibility. Moreover, Zondi notes that South Africa has implemented laws and regulations to address the problems of misinformation and interference in elections.<sup>2</sup> The Protection of Personal Information Act (POPIA) governs the collection, handling, and distribution of personal data, contributing to the effort to prevent the spread of misinformation.<sup>3</sup>

Fakane believes that the primary goal of regulating news, especially fake news, in South Africa is to preserve the right to free expression while curbing the dissemination of potentially harmful misinformation.<sup>4</sup> This aligns with Section 16(1) of the South African Constitution,<sup>5</sup> which grants the

<sup>1</sup> C. Pienaar, "The Media: Consequences of False Reporting," *African Journal* 6, no. 4 (2020).

<sup>2</sup> N. Zondi, "Proliferation of Fake News during Elections," *Sunday Tribune*, 2024.

<sup>3</sup> "Protection of Personal Information Act 4 of 2013 (POPIA)," Government Gazette § (2020).

<sup>4</sup> T. Fakane, *Regulating Freedom of Expression Amidst the Covid 19 Responses in South Africa*, 2020.

<sup>5</sup> The Constitution of the Republic of South Africa, 1996.

right to freedom of expression, encompassing the ability to receive and share information or ideas.<sup>6</sup> Furthermore, the South African media is governed by the Independent Communications Authority of South Africa Act.<sup>7</sup> The Independent Communications Authority of South Africa (ICASA) Act also oversees broadcasting by ensuring that services are effectively managed by South Africans while adhering to ICASA's code of conduct.<sup>8</sup> South African or international news is regulated by a certain authority, and the main aim of that is to ensure the legality and accuracy before disseminating news. Consequently, this study aims to investigate the reliability, authenticity, and impact of disseminating fake news as a matter of public interest.

## METHODOLOGY

This study employed a desktop-based research methodology, utilizing publicly accessible information. The researcher collected the information from library resources and online platforms, including legal publications such as journal articles and case law. A doctrinal approach was applied, referencing textbooks and national and international journal articles. Key sources included the Disaster Management Act and the Promotion of Access to Information Act. These sources were analysed to evaluate existing regulations on misinformation dissemination and identify potential legal gaps.

While fake news has been a longstanding issue in South Africa, it gained prominence during the COVID-19 pandemic. To assess regulatory effectiveness, the researcher therefore compared South Africa's approach to managing fake news with that of other nations, such as Germany and the United States. The study examined whether current regulations sufficiently address fake news by investigating news broad-casters qualifications and responsibilities. Additionally, the researcher explored adherence to established news dissemination protocols, drawing on South African and international case law and legislation.

## DISCUSSION

### The Origins of News Dissemination and Early Regulatory Attempts

The concept of news has ancient roots, with early civilizations developing systems to spread information about important events, laws, and societal changes. As Wasserman notes in his comprehensive study of media in Africa, the arrival of the printing press in the Cape Colony in 1784 marked the beginning of a new era in South African media history.<sup>9</sup> This technological advancement facilitated the wider dissemination of information, catalysing social and political changes.

Early attempts at regulation emerged as news dissemination became more widespread. Fourie has highlighted that in South Africa, colonial-era regulations and later apartheid-era censorship laws shaped the media landscape, establishing a precedent for government control over information flow.<sup>10</sup> Katsirea also examined how early libel laws in England, such as the Statute of Westminster of 1275, set legal precedents for addressing misinformation, demonstrating the longstanding tension between free speech and the desire to control potentially harmful information.<sup>11</sup>

### The Rise of Mass Media and the Development of Press Freedom

The 19th and early 20th centuries saw the emergence of mass media, with newspapers becoming increasingly influential in shaping public opinion. Ndlovu is of the view that the press played a crucial role in the political landscape, with newspapers like the Cape Argus and Die Burger shaping public discourse during the apartheid era and the transition to democracy.<sup>12</sup>

Khampepe, in her analysis of media freedom in South Africa, contends that the country's journey towards press freedom was complex, shaped by its colonial history and the apartheid regime's strict

<sup>6</sup> "Constitution of the Republic of South Africa, 1996, Section 2.," n.d.

<sup>7</sup> G. J. Pita, "Independent Communications Authority of South Africa," 2006.

<sup>8</sup> Pita, "Independent Communications Authority of South Africa."

<sup>9</sup> H. Wasserman, "The State of Media in Southern Africa: Challenges and Opportunities," *African Journalism Studies* 41 (2020): 1–17.

<sup>10</sup> Pieter Jacobus Fourie, *Media Studies: Policy, Management and Media Representation* (Juta, 2008).

<sup>11</sup> Irimi Katsirea, "'Fake News': Reconsidering the Value of Untruthful Expression in the Face of Regulatory Uncertainty," *Journal of Media Law* 10, no. 2 (2018): 159–88.

<sup>12</sup> M. Ndlovu, "Coloniality of Knowledge and the Challenge of Creating African Futures," *Ufahamu: A Journal of African Studies* 41 (2019): 61–72.

ensorship laws.<sup>13</sup> The Publications Act, for instance, gave the apartheid government broad powers to censor media content deemed subversive or undesirable.<sup>14</sup> Post-apartheid, the Constitution of South Africa enshrined press freedom in Section 16, marking a significant shift in the legal framework governing media.<sup>15</sup> This case, *Print Media South Africa and Another v Minister of Home Affairs and Another*,<sup>16</sup> challenged the constitutionality of certain provisions of the Films and Publications Act, which were seen as infringing on press freedom. The Constitutional Court ruled in Favor of the media, reinforcing the importance of press freedom in a democratic society.

### **Broadcasting and the Emergence of Electronic Media Regulation**

The advent of radio and television in the 20th century brought new challenges to media regulation. Moyo and Mutsvairo examine how the Broadcasting Act<sup>17</sup> established the South African Broadcasting Corporation (SABC) as a state broadcaster, initially serving as a mouthpiece for the apartheid government.<sup>18</sup> Post-apartheid, the Independent Broadcasting Authority Act<sup>19</sup> aimed to transform the broadcasting landscape, establishing an independent regulator to promote diversity and fairness in broadcasting.

In addition, different models of broadcast regulation emerged. Flew compares various regulatory approaches, noting how the United States established the Federal Communications Commission (FCC) to regulate broadcasting, while many European countries adopted public broadcasting models.<sup>20</sup> South Africa's post-apartheid broadcasting policy drew inspiration from these international models while addressing the unique challenges of the country's transition to democracy.

### **The Digital Revolution and Contemporary Challenges to Media Regulation**

The rise of the internet and digital media has fundamentally transformed the news landscape, challenging traditional regulatory frameworks. The Electronic Communications Act attempted to address some of these challenges, regulating electronic communications networks and services. However, Wasserman and Madrid-Morales argue in their study of disinformation in South Africa that the digital age has brought new challenges in combating 'fake news' and misinformation.<sup>21</sup>

Furthermore, various approaches to digital media regulation have emerged. Flew examines how the European Union's General Data Protection Regulation (GDPR) and the Digital Services Act represent attempts to address these challenges within a legal framework.<sup>22</sup> In contrast, Kosseff discusses how Section 230 of the US Communications Decency Act,<sup>23</sup> provides immunity for online platforms from liability for user-generated content, shaping the development of social media and online news dissemination.<sup>24</sup>

In addition, Milo and Stein analyse the Film and Publications Amendment Act,<sup>25</sup> which aims to address some of these digital-age challenges by extending the mandate of the Film and Publications Board to include certain forms of online content.<sup>26</sup> However, as Ndlovu argues, balancing the need to

<sup>13</sup> S. Khampepe, "The Role of the Media in a Constitutional Democracy: A South African Perspective," *Potchefstroom Electronic Law Journal* 21 (2018): 1–6.

<sup>14</sup> The Publications Act 42 of 1974.

<sup>15</sup> The Constitution (n 6) sec 16.

<sup>16</sup> *Print Media South Africa and Another v Minister of Home Affairs and Another* 2012 (6) SA 443 (CC); 2012 (12) BCLR 1346 (CC).

<sup>17</sup> Films and Publications Act 4 of 1976.

<sup>18</sup> D. Moyo and B. Mutsvairo, "Can the Subaltern Think? The Decolonial Turn in Communication Research in Africa," *Theoretical Approaches to Participatory Communication in Africa* (Palgrave Macmillan, 2018).

<sup>19</sup> Independent Broadcasting Authority Act 153 of 1993.

<sup>20</sup> Terry Flew, Fiona Martin, and Nicolas Suzor, "Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance," *Journal of Digital Media & Policy* 10, no. 1 (2019): 33–50.

<sup>21</sup> Herman Wasserman and Dani Madrid-Morales, "An Exploratory Study of 'Fake News' and Media Trust in Kenya, Nigeria and South Africa," *African Journalism Studies* 40, no. 1 (2019): 107–23.

<sup>22</sup> Flew, Martin, and Suzor, "Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance." 33–40.

<sup>23</sup> Communication Decency Act of 1995 sec 230.

<sup>24</sup> Jeff Kosseff, *The Twenty-Six Words That Created the Internet* (Cornell University Press, 2019).

<sup>25</sup> Film and Publications Amendment Act 11 of 2019.

<sup>26</sup> D. Milo and P. Stein, "A Fear of 'Fake News' and the Resurgence of Censorship in Democratic South Africa," *Journal of Media Law* 12 (2020): 13–34.

combat misinformation with the protection of free speech remains a significant challenge in the South African context.<sup>27</sup>

### **The Emergence and Proliferation of "Fake News"**

The term "fake news" gained prominence in the mid-2010s, though the phenomenon of false information is not new. Wasserman and Madrid-Morales found that exposure to false news is widespread, with political and health-related misinformation being particularly prevalent.<sup>28</sup> Allcott and Gentzkow examined the impact of fake news on the 2016 US presidential election, highlighting the potential consequences for democratic processes.<sup>29</sup> The case of *R v Zuma and Others*<sup>30</sup> in South Africa demonstrated the real-world implications of spreading false information, particularly during times of crisis.

### **Legal Frameworks for Regulating Misinformation**

Developing effective legal mechanisms to combat fake news while protecting freedom of expression is a significant challenge. In South Africa, the Film and Publications Amendment Act<sup>31</sup> aims to regulate online content, including certain forms of disinformation. Furthermore, the European Union's Code of Practice on Disinformation provides a self-regulatory framework for online platforms.<sup>32</sup> The case of *Delfi AS v Estonia* at the European Court of Human Rights addressed the liability of online news portals for user-generated comments, setting a precedent for content moderation responsibilities.<sup>33</sup>

### **Constitutional Considerations in Regulating False Information**

Balancing the need to combat misinformation with the protection of free speech is crucial. Milo and Winks argue that South Africa's constitutional framework provides sufficient flexibility to address harmful speech while safeguarding media freedom.<sup>34</sup> In addition, Kaye emphasizes the importance of adopting a human rights-based approach to content moderation and regulation.<sup>35</sup> The landmark case of *New York Times Co. v Sullivan* in the United States established the "actual malice" standard for defamation cases involving public figures, which continues to influence discussions on fake news regulation.<sup>36</sup> The question here was whether a state rule imposing civil liability upon a judgment apart from actual malice violates the First and 14th Amendment freedoms of speech and press when applied to defamatory utterances published with regard to a public official's conduct regarding a matter of public concern. The Alabama law is unconstitutional because it fails to provide protection for the freedom of speech and freedom of the press under the First and 14th Amendments. Precedent establishes the national commitment to this country that debate concerning public issues should be uninhibited, robust, and wide-open, which may sometimes include vehement, caustic, and sometimes unpleasantly sharp attacks on the government and public officials. If anything, the treatment of African Americans during the Civil Rights movement merited open public debate.

### **Media Literacy, Educational Initiatives**

Legal measures alone are insufficient to address the challenge of fake news. Promoting media literacy is essential. Mhiripiri and Ureke advocate for incorporating critical media literacy into the education system to empower citizens to discern credible information.<sup>37</sup> On the other hand, Vraga and Tully

<sup>27</sup> M. Ndlovu, *Social Media and Fake News in the Post-Truth Era: The Manipulation of Politics in the Election Process* (Palgrave Macmillan, 2021). 87-88.

<sup>28</sup> Wasserman and Madrid-Morales, "An Exploratory Study of 'Fake News' and Media Trust in Kenya, Nigeria and South Africa." 107-112.

<sup>29</sup> Hunt Allcott and Matthew Gentzkow, "Social Media and Fake News in the 2016 Election," *Journal of Economic Perspectives* 31, no. 2 (2017): 211-36.

<sup>30</sup> *R v Zuma and Others* 2021 ZAGPPHC 316.

<sup>31</sup> Film and Publications Amendment Act 11 of 2019.

<sup>32</sup> European Commission. (2022) 'The EU Code of Practice on Disinformation'.

<sup>33</sup> 2015 ECHR 586.

<sup>34</sup> D Milo and B Winks, *Media Law in South Africa: Balancing Rights in the Digital Age* (Cape Town: Juta and Company Ltd., 2022).

<sup>35</sup> David Kaye, "Speech Police: The Global Struggle to Govern the Internet," *Columbia Global Reports*, 2019.

<sup>36</sup> *New York Times Co v Sullivan*, 376 US 254 (1964).

<sup>37</sup> N. A. Mhiripiri and O. Ureke, "Theoretical and Conceptual Issues in Critical Media Literacy in South Africa," *African Journalism Studies* 39 (2018): 1-8.

demonstrate the effectiveness of media literacy interventions in reducing susceptibility to misinformation.<sup>38</sup> In the case of *South African Media Development and Diversity Agency v Democratic Alliance*, the court highlighted the role of independent media in fostering an informed citizenry.<sup>39</sup>

### Defining Fake News in Legal Terms

The legal definition of fake news varies across jurisdictions, presenting significant challenges for consistent regulation and enforcement. Mhiribidi argues for a clearer legislative definition of fake news, noting the current ambiguities in the Film and Publications Amendment Act.<sup>40</sup> Tandoc et al. propose a nuanced typology of fake news definitions, emphasizing the need for clarity in legal contexts to avoid overly broad interpretations that could infringe on legitimate speech.<sup>41</sup> The complexity of regulating false speech was highlighted in the South African case of *Democratic Alliance v African National Congress*, where the Constitutional Court emphasized the importance of protecting political speech, even when it contains inaccuracies.<sup>42</sup> The US case *United States v Alvarez* further underscored the constitutional protections afforded even to false statements in certain contexts.<sup>43</sup>

### Social Media Platform Liability

Many countries, including South Africa, are implementing laws that hold social media platforms accountable for the spread of fake news on their services. Calitz examines the potential application of the Protection of Personal Information Act (POPIA) to combat fake news on social media platforms in South Africa.<sup>44</sup> Internationally, Flew et al. analyse the global trend towards increased platform liability, noting a shift from self-regulation to more stringent government oversight.<sup>45</sup> The South African case of *Tshabalala-Msimang and Another v Makhanya and Others* highlighted the responsibilities of media outlets in verifying information, a principle potentially extendable to social media platforms.<sup>46</sup> The European Court of Human Rights case *Delfi AS v Estonia* set a significant international precedent for platform liability, upholding Estonia's decision to hold a news portal responsible for user-generated comments.<sup>47</sup>

### Content Takedown and Removal Mechanisms

Legal frameworks often include provisions for the swift removal of content identified as fake news. Mnyongani analyses the effectiveness of takedown notices under the Electronic Communications and Transactions Act in addressing online misinformation.<sup>48</sup> Internationally, Marsden and Meyer examine notice-and-takedown procedures in combating disinformation, highlighting the need for transparent and accountable processes.<sup>49</sup> The South African case of *Isparta v Richter* dealt with the removal of defamatory content on social media, providing insights into content takedown mechanisms.<sup>50</sup> On the international front, the European Court of Justice ruling in *Eva Glawischnig-Piesczek v Facebook Ireland Limited* clarified the scope of content removal obligations for platforms under EU law.<sup>51</sup>

<sup>38</sup> E. K. Vraga and M. Tully, "News Literacy, Social Media Behaviors, and Skepticism toward Information on Social Media," *Information, Communication & Society* 24 (2019): 150–55.

<sup>39</sup> *South African Media Development and Diversity Agency v Democratic Alliance* 2019 ZAGPJHC 290.

<sup>40</sup> S. T. Mhiribidi, "Fake News and the Law in South Africa," *South African Journal of Information Management* 23 (2021): 1–8.

<sup>41</sup> E. C. Tandoc, J. Jenkins, and S. Craft, "Defining Fake News: A Typology of Scholarly Definitions," *Digital Journalism* 9 (2021): 185–204.

<sup>42</sup> *South African case of Democratic Alliance v African National Congress* 2015 (2) SA 232 (CC).

<sup>43</sup> *United States v Alvarez*, 567 US 709 (2012).

<sup>44</sup> K. Calitz, "Combating Fake News through Data Protection: The Potential Role of POPIA," *South African Law Journal* 140, no. 2 (2023): 259–89.

<sup>45</sup> Flew, Martin, and Suzor, "Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance." 69-84.

<sup>46</sup> *Tshabalala-Msimang and Another v Makhanya and Others* 2008 (6) SA 102 (W).

<sup>47</sup> *Delfi AS v Estonia* 2015 ECHR 586.

<sup>48</sup> F. Mnyongani, "Takedown Notices and Online Misinformation in South Africa: A Critical Analysis," *Potchefstroom Electronic Law Journal* 25 (2022): 1–25.

<sup>49</sup> Chris Marsden and Trisha Meyer, *Regulating Disinformation with Artificial Intelligence: Effects of Disinformation Initiatives on Freedom of Expression and Media Pluralism* (European Parliament, 2019).

<sup>50</sup> *Isparta v Richter* 2013 (6) SA 529 (GP).

<sup>51</sup> *Eva Glawischnig-Piesczek v Facebook Ireland Limited*, Case C-18/18 (2019).

Online defamation, as described by Sizwe Snail Ka Mntunzi in *Digital Forensic Readiness*, refers to publishing or sharing false information about an individual or organization on digital platforms with the intent to harm their reputation. This differs from traditional defamation because of the immediacy and global reach of digital media, which allows false information to spread widely and persist in online archives.<sup>52</sup> The defamatory material, once posted, can quickly become challenging to control or retract, amplifying its impact on the subject's social and professional reputation.<sup>53</sup>

### The Impact of Online Defamation on Social Media

The effects of online defamation are amplified by the speed and reach of digital platforms, where misinformation can spread before facts are verified. In some cases, courts have addressed the damage inflicted by online defamation. For example, the South African case *H v W* highlighted the courts' approach to defamatory posts on social media, emphasizing the personal responsibility users hold for statements made online.<sup>54</sup> South Africa's Protection of Personal Information Act and the Cybercrimes Act also illustrate the legal framework surrounding defamation in the digital realm.<sup>55</sup> These laws not only impose sanctions on offenders but also aim to protect individuals from reputational damage through privacy protections and cybercrime regulations.<sup>56</sup> The consequences of online defamation include social ostracisation, economic loss, and emotional distress because retractions or corrections often do not reach the same audience as the initial defamatory post, and the harm caused can be lasting.

### Penalties and Sanctions for Non-Compliance

Countries, including South Africa, are implementing varying degrees of fines and sanctions for platforms and individuals who spread fake news or fail to control its dissemination. Ntsabo examines the potential impact of the Cybercrimes Act on fake news dissemination in South Africa, discussing the penalties introduced.<sup>57</sup> The *South African case of National Director of Public Prosecutions v Media 24 Limited and Others* dealt with the publication of false information, providing context for potential sanctions.<sup>58</sup> The international case of *Public Prosecutor v Ong Ye Kung* in Singapore marked the country's first conviction under its fake news law, demonstrating the practical application of penalties.<sup>59</sup>

### Cross-Border Enforcement Challenges

The global nature of social media platforms presents significant challenges for enforcing national fake news laws across borders. Ncube discusses the jurisdictional issues faced by South African authorities in regulating fake news originating from foreign sources.<sup>60</sup> Internationally, Sander explores the jurisdictional issues in regulating fake news on transnational platforms, proposing innovative legal mechanisms to address extraterritorial enforcement.<sup>61</sup> While South Africa has not yet had a landmark case dealing specifically with cross-border fake news enforcement, the principles established in *Richter v. Minister of Home Affairs and Others* regarding the extraterritorial application of the Constitution could be relevant.<sup>62</sup> The European Court of Justice's ruling in *Google LLC v CNIL* addressed the territorial scope of the "right to be forgotten," providing international insights into applying national laws to global platforms.<sup>63</sup>

<sup>52</sup> S. Papadopoulos and S. Snail Ka Mtuze, *The Law of the Internet in South Africa* (Cape Town: Van Schaik Publishers, 2022).

<sup>53</sup> Caroline Joelle Nwabueze, "Social Media, Online Communications and Defamation in the Workplace: A Puzzle for Liabilities?," *South African Intellectual Property Law Journal* 7, no. 1 (2019): 116–42.

<sup>54</sup> *H v W* 2013 ZAGPJHC 1.

<sup>55</sup> Cybercrimes Act 19 of 2020.

<sup>56</sup> Papadopoulos and Snail Ka Mtuze, *The Law of the Internet in South Africa*.

<sup>57</sup> M. Ntsabo, "The Cybercrimes Act and Its Implications for Fake News in South Africa," *South African Journal of Criminal Justice* 36 (2023): 85–105.

<sup>58</sup> *National Director of Public Prosecutions v Media 24 Limited and Others* 2011 (2) SACR 321 (SCA).

<sup>59</sup> *Public Prosecutor v Ong Ye Kung* (2021), Singapore State Courts.

<sup>60</sup> C. B. Ncube, "Cross-Border Regulation of Fake News: Challenges for South African Law Enforcement," *South African Journal of International Affairs* 29 (2022): 559.

<sup>61</sup> B. Sander, "Democratic Disruption in the Digital Age: Social Media, Extremist Speech and the Challenges of Transnational Regulation," *Harvard International Law Journal* 63 (2022): 1–5.

<sup>62</sup> *Richter v. Minister of Home Affairs and Others* 2009 (3) SA 615 (CC).

<sup>63</sup> *Google LLC v CNIL*, Case C-507/17 (2019).

## Balancing Free Speech and Regulation

Legislators and courts continue to grapple with maintaining freedom of expression while combating the spread of harmful misinformation. In South Africa, Milo and Stein argue for a balanced approach to fake news regulation that respects constitutional free speech protections.<sup>64</sup> Internationally, Kaye and Ó Fathaigh advocate for a human rights-based approach to fake news regulation.<sup>65</sup> The South African Constitutional Court case of *Economic Freedom Fighters v Minister of Justice and Correctional Services* emphasized the importance of protecting freedom of expression, even for controversial speech.<sup>66</sup> The Canadian Supreme Court case *R v Zundel*, remains relevant internationally, as it struck down a law prohibiting the wilful publication of false news, emphasising the protection of unpopular speech.<sup>67</sup>

## Discussion Summary

The discussion above has highlighted the importance of implementing the new regulatory frameworks, which will be aligned with the provision of the Constitution to avoid the contradiction. The spread of fake news has been discussed as a big issue nationally and at the international level. The South African government together with the other spheres of government should come up with one way which bring out the resolutions. These resolutions include strengthening digital monitoring, collaborating with social media platforms, enforcing legal consequences, educating the public, and developing policies through bodies like ICASA and the Film & Publication Board.

## RECOMMENDATIONS

Based on the comprehensive analysis conducted throughout the above study, the following recommendations are proposed to address the multifaceted challenges posed by fake news:

- Develop flexible and responsive legal frameworks that can evolve alongside technological advancements and changing patterns of misinformation dissemination. These frameworks should incorporate regular review mechanisms to ensure their continued relevance and effectiveness in the face of emerging challenges.
- Integrate comprehensive digital literacy programs into educational curricula at all levels, focusing on developing critical thinking skills, source evaluation techniques, and responsible digital citizenship. These initiatives should extend beyond formal education to include public awareness campaigns and lifelong learning opportunities.
- Encourage social media platforms and news aggregators to increase transparency regarding their content curation algorithms. Implement oversight mechanisms to ensure these algorithms do not inadvertently amplify misinformation or create echo chambers that reinforce false narratives.
- Create and support independent, cross-sector fact-checking networks that leverage the expertise of journalists, academics, and technology experts. These networks should work in tandem with social media platforms to provide timely verification of viral content and promote the dissemination of accurate information.
- Develop policies and funding mechanisms to support high-quality, investigative journalism. This could include tax incentives for news organizations that adhere to rigorous fact-checking standards, grants for innovative journalism projects, and initiatives to promote local news coverage.

Following these recommendations above, South African governance can amend this existing legislation into a strong legislative framework to foster a more equitable society to avoid the severe occurrence of spreading fake news. They can even learn more from other countries.

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<sup>64</sup> D. Milo and P. Stein, "Fake News and Freedom of Expression in South Africa: Finding the Balance," *South African Law Journal* 141 (2024): 17–43.

<sup>65</sup> D. Kaye and R O. Fathaigh, "Regulating Online Falsehoods: A Human Rights Perspective," *International Journal of Law and Information Technology* 32 (2024): 1–28.

<sup>66</sup> *Economic Freedom Fighters v Minister of Justice and Correctional Services* 2021 (2) SA 1 (CC).

<sup>67</sup> *R v Zundel* 1992 (2) SCR 731.

## CONCLUSION

This paper above has discussed the legal frameworks for addressing fake news are evolving rapidly as governments, including South Africa, seek to balance the need for truthful information with the protection of free speech. While progress has been made in defining fake news and establishing mechanisms for content moderation, significant challenges remain, particularly in cross-border enforcement and platform liability. As technology continues to advance and the landscape of digital communication shifts, legislators and courts must remain vigilant in adapting legal approaches that effectively combat misinformation without unduly restricting legitimate expression. Future developments in this area will likely focus on international cooperation, refining content removal processes, and exploring innovative regulatory models that can keep pace with the dynamic nature of online information dissemination while respecting constitutional protections. This paper has also discussed the historical evolution of news, and its regulation reflects the ongoing tension between the free flow of information and the need to protect society from harmful falsehoods. As digital platforms continue to reshape the media landscape, it is crucial to develop nuanced legal frameworks that can effectively combat misinformation while respecting constitutional rights. Combining legislative measures with media literacy initiatives offers a promising approach to addressing the challenges posed by fake news in the digital age.

## BIBLIOGRAPHY

### Legislation and Case Law

- Constitution of the Republic of South Africa, 1996.  
 Communication Decency Act of 1995.  
 Cybercrimes Act 19 of 2020.  
 Communication Decency Act of 1995.  
 Film and Publications Amendment Act 11 of 2019.  
 Films and Publications Act 4 of 1976.  
 Publications Act 42 of 1974.  
 Protection of Personal Information Act 4 of 2013  
 Independent Broadcasting Authority Act 153 of 1993.  
 Independent Communications Authority of South Africa Act 13 of 2000.  
 Delfi AS v Estonia 2015 ECHR 586.  
*Economic Freedom Fighters v Minister of Justice and Correctional Services 2021 (2) SA 1 (CC).*  
 Eva Glawischnig-Piesczek v Facebook Ireland Limited, Case C-18/18 (2019).  
 Google LLC v CNIL, Case C-507/17 (2019).  
 H v W 2013 ZAGPJHC 1.  
 Isparta v Richter 2013 (6) SA 529 (GP)  
 New York Times Co v Sullivan, 376 US 254 (1964)  
*National Director of Public Prosecutions v Media 24 Limited and Others 2011 (2) SACR 321 (SCA).*  
*Print Media South Africa and Another v Minister of Home Affairs and Another 2012 (6) SA 443 (CC); 2012 (12) BCLR 1346 (CC).*  
 Public Prosecutor v Ong Ye Kung (2021), Singapore State Courts.  
*R v Zuma and Others 2021 ZAGPPHC 316.*  
 R v Zundel 1992 (2) SCR 731.  
*South African case of Democratic Alliance v African National Congress 2015 (2) SA 232 (CC).*  
*South African Media Development and Diversity Agency v Democratic Alliance 2019 ZAGPJHC 290.*  
*Richter v. Minister of Home Affairs and Others 2009 (3) SA 615 (CC).*  
*Tshabalala-Msimang and Another v Makhanya and Others 2008 (6) SA 102 (W).*  
 United States v Alvarez, 567 US 709 (2012).

### Other Publications

- Allcott, Hunt, and Matthew Gentzkow. "Social Media and Fake News in the 2016 Election." *Journal of Economic Perspectives* 31, no. 2 (2017): 211–36.  
 Calitz, K. "Combating Fake News through Data Protection: The Potential Role of POPIA." *South*

- African Law Journal* 140, no. 2 (2023): 259–89.
- Fakane, T. *Regulating Freedom of Expression Amidst the Covid 19 Responses in South Africa*, 2020.
- Flew, Terry, Fiona Martin, and Nicolas Suzor. “Internet Regulation as Media Policy: Rethinking the Question of Digital Communication Platform Governance.” *Journal of Digital Media & Policy* 10, no. 1 (2019): 33–50.
- Fourie, Pieter Jacobus. *Media Studies: Policy, Management and Media Representation*. Juta, 2008.
- Katsirea, Irini. “‘Fake News’: Reconsidering the Value of Untruthful Expression in the Face of Regulatory Uncertainty.” *Journal of Media Law* 10, no. 2 (2018): 159–88.
- Kaye, D., and R O. Fathaigh. “Regulating Online Falsehoods: A Human Rights Perspective.” *International Journal of Law and Information Technology* 32 (2024): 1–28.
- Kaye, David. “Speech Police: The Global Struggle to Govern the Internet.” *Columbia Global Reports*, 2019.
- Khampepe, S. “The Role of the Media in a Constitutional Democracy: A South African Perspective.” *Potchefstroom Electronic Law Journal* 21 (2018): 1–6.
- Kosseff, Jeff. *The Twenty-Six Words That Created the Internet*. Cornell University Press, 2019.
- Marsden, Chris, and Trisha Meyer. *Regulating Disinformation with Artificial Intelligence: Effects of Disinformation Initiatives on Freedom of Expression and Media Pluralism*. European Parliament, 2019.
- Mhiribidi, S. T. “Fake News and the Law in South Africa.” *South African Journal of Information Management* 23 (2021): 1–8.
- Mhiripiri, N. A., and O. Ureke. “Theoretical and Conceptual Issues in Critical Media Literacy in South Africa.” *African Journalism Studies* 39 (2018): 1–8.
- Milo, D., and P. Stein. “A Fear of ‘Fake News’ and the Resurgence of Censorship in Democratic South Africa.” *Journal of Media Law* 12 (2020): 13–34.
- . “Fake News and Freedom of Expression in South Africa: Finding the Balance.” *South African Law Journal* 141 (2024): 17–43.
- Milo, D, and B. Winks. *Media Law in South Africa: Balancing Rights in the Digital Age*. Cape Town: Juta and Company Ltd., 2022.
- Mnyongani, F. “Takedown Notices and Online Misinformation in South Africa: A Critical Analysis.” *Potchefstroom Electronic Law Journal* 25 (2022): 1–25.
- Moyo, D., and B. Mutsvairo. “Can the Subaltern Think? The Decolonial Turn in Communication Research in Africa.” *Theoretical Approaches to Participatory Communication in Africa*. Palgrave Macmillan, 2018.
- Ncube, C. B. “Cross-Border Regulation of Fake News: Challenges for South African Law Enforcement.” *South African Journal of International Affairs* 29 (2022): 559.
- Ndlovu, M. “Coloniality of Knowledge and the Challenge of Creating African Futures.” *Ufahamu: A Journal of African Studies* 41 (2019): 61–72.
- . *Social Media and Fake News in the Post-Truth Era: The Manipulation of Politics in the Election Process*. Palgrave Macmillan, 2021.
- Ntsabo, M. “The Cybercrimes Act and Its Implications for Fake News in South Africa.” *South African Journal of Criminal Justice* 36 (2023): 85–105.
- Nwabueze, Caroline Joelle. “Social Media, Online Communications and Defamation in the Workplace: A Puzzle for Liabilities?” *South African Intellectual Property Law Journal* 7, no. 1 (2019): 116–42.
- Papadopoulos, S, and S. Snail Ka Mtuze. *The Law of the Internet in South Africa*. Cape Town: Van Schaik Publishers, 2022.
- Pienaar, C. “The Media: Consequences of False Reporting.” *African Journal* 6, no. 4 (2020).
- Pita, G J. “Independent Communications Authority of South Africa,” 2006.
- Protection of Personal Information Act 4 of 2013 (POPIA), Government Gazette § (2020).
- Sander, B. “Democratic Disruption in the Digital Age: Social Media, Extremist Speech and the Challenges of Transnational Regulation.” *Harvard International Law Journal* 63 (2022): 1–5.
- Tandoc, E. C., J. Jenkins, and S. Craft. “Defining Fake News: A Typology of Scholarly Definitions.” *Digital Journalism* 9 (2021): 185–204.

- Vraga, E. K., and M. Tully. "News Literacy, Social Media Behaviors, and Skepticism toward Information on Social Media." *Information, Communication & Society* 24 (2019): 150–55.
- Wasserman, H. "The State of Media in Southern Africa: Challenges and Opportunities." *African Journalism Studies* 41 (2020): 1–17.
- Wasserman, Herman, and Dani Madrid-Morales. "An Exploratory Study of 'Fake News' and Media Trust in Kenya, Nigeria and South Africa." *African Journalism Studies* 40, no. 1 (2019): 107–23.
- Zondi, N. "Proliferation of Fake News during Elections." *Sunday Tribune*, 2024.

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