



TILBURG LAW SCHOOL

Tilburg Institute for Law, Technology, and Society

How to Regulate Fake News

Master Thesis

LLM Law & Technology

2022/2023

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Date: January 2023

Acknowledgements

First, I would like to thank God for giving me health and wisdom to pursue my dreams and for this opportunity to study abroad at a renewed University, an achievement I could never have imagined.

I would also like to thank my family, my ancestors who made this possible and especially my mother Maria Jose, and my sister Leticia, for all their patience, help, encouragement and love. Their support was essential to keep me on track.

This was an intense year and one of the biggest challenges of my life, but with the help of family and friends, I was able to overcome and improve my personal and professional skills.

I want to express my gratitude to all the professors with whom I had contact, for enlightening me on the most difficult topics, sharing knowledge and opening my eyes to new areas I could not possibly dream of before. My classmate and friend Isabela, with whom I shared the most challenging moments of this Master's Degree, and my supervisors Dr. Siddharth Peter de Souza and mr. Abigaïl de Rijp LL.M, for all the feedbacks, insights and guidance for the elaboration and completion of this thesis.

Abstract

The aim of this thesis is to discuss the initiatives that are emerging to tackle the spread of fake news in the digital environment. For this purpose, this thesis focuses on the main issues that arise when it comes to addressing this phenomenon, namely its definition, the reasons why fake news are created and spread, the actors involved, the social impacts and the different opinions on how to regulate it - always keeping in mind the right to freedom of expression and non-censorship. In doing so, it is discussed whether it is feasible to legislate fake news, what are the most appropriate regulatory approaches, and the different initiatives that have been taken to address it. Although keeping the focus on the Brazilian framework, this thesis also makes some references to the European Union's main initiatives in this area in order to demonstrate the progress and results achieved so far by the latter. A faint but promising comparison, other than contributing to societal discussion and knowledge acquisition, aims to provide a broader perspective on how these initiatives can be used to ensure freedom of expression in the digital environment in a democratic society.

Keywords: fake news, disinformation, misinformation, false content, manipulation, regulate, censorship, democratic society, freedom of expression.

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Chapter 1. Introduction

1.1 Background

The right to freedom of expression is one of the fundamental pillars for many other human rights, such as the right to life, right to work and right to freedom of movement.¹ The concept is well established in many legal cultures and, according to Article 19 of the Universal Declaration of Human Rights, includes the right ‘to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.² Article 10 of the European Convention on Human Rights³ and Article 11 of the Charter of Fundamental Rights of the European Union⁴ adopted similar definition, emphasising that this right is not absolute and may be subject to constraints and conditions. In Brazil, the Law n° 5.250/1967,⁵ and the Constitution of the Federative Republic,⁶ guarantee the freedom of thought, which is related to the search, reception, and dissemination of information or ideas, without censorship, being responsible, under the law, for any abuse committed.⁷ According to Article 19 of the Law n° 12.965/2014,⁸ known as the Brazilian Marco Civil of the Internet, if the Internet provider fails to render the content unavailable after receiving a specific court order, it may be held liable for any damages. Therefore, it can be said that the right to freedom of expression is not absolute and must be exercised in harmony with other fundamental interests and values, in order to protect a democratic society and avoid abuse or censorship.⁹

The world is getting increasingly connected, and the Internet enables people to share communication in real time. As a result, the publication and circulation of false statements or inaccurate stories through social platforms has also followed the same trend that ultimately impacts life in society by promoting riots, violence and extremism, threatening democracies, citizens, and polarizing public opinion, to say the least. An example of this was the genocide

¹ United Nations, ‘Universal Declaration of Human Rights’ (*United Nations*) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 13 May 2022.

² *ibid.*

³ ‘European Convention on Human Rights - Official Texts, Convention and Protocols’ <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>> accessed 18 May 2022.

⁴ Charter of Fundamental Rights of the European Union 2012 (OJ C).

⁵ ‘L5250’ <http://www.planalto.gov.br/ccivil_03/leis/l5250.htm> accessed 18 May 2022.

⁶ ‘Constituição Federal - Senado Federal’ <<https://www25.senado.leg.br/web/atividade/legislacao/constituicao-federal>> accessed 18 May 2022.

⁷ All translations are mine, unless otherwise indicated.

⁸ ‘L12965’ <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm> accessed 23 January 2023.

⁹ ‘Protecting the Right to Freedom of Expression under the European Convention on Human Rights - A Handbook for Legal Practitioners’ (*Council of Europe Publishing*) <<https://edoc.coe.int/en/fundamental-freedoms/7425-protecting-the-right-to-freedom-of-expression-under-the-european-convention-on-human-rights-a-handbook-for-legal-practitioners.html>> accessed 13 May 2022.

against the Rohingya minority,¹⁰ when members of the Myanmar army used Facebook to conduct a false campaign based on ethical and religious reasons and to incite violence.¹¹ Another example happened in 2016, when the US presidential candidate Hillary Clinton was falsely accused of coordinating human trafficking and paedophilia ring at a pizzeria in Washington, DC, which resulted in violent protests and even arrests.¹² More recently, conspiracy theories about the origin of the COVID-19 virus,¹³ as well as about the efficiency of the vaccines,¹⁴ have been widely spread, endangering public health.¹⁵ In Brazil, former president Jair Bolsonaro has divided the country with hate speech and fake news, further inflaming the animosity of the population with fake stories related to alleged ballot box fraud in the 2022 presidential elections, which has resulted in an attack on democracy, attempted coup, and destruction of the National Congress buildings,¹⁶ as will be shown below.

The spreading of false statements is popularly known as fake news, but other definitions have been used to define the same problem, overlapping one other, as there are different opinions of its causes, aims and consequences. Hence, Chapter 2 analyses some definitions of the terms used, such as misinformation, disinformation and deepfake, as well as fake news too. Nonetheless, this thesis adopts the definition given by Klein & Wueller, which state that fake news is ‘the online publication of intentionally or knowingly false statements of fact’.¹⁷

Its dissemination – which has flourished in recent years – is usually driven by malicious bots (shorthand for software robots, artificial intelligence-based algorithms that perform online tasks repetitively and autonomously, imitating human behaviour and engaging with other

¹⁰ ‘Genocide Threat for Myanmar’s Rohingya Greater than Ever, Investigators Warn Human Rights Council’ (UN News, 16 September 2019) <<https://news.un.org/en/story/2019/09/1046442>> accessed 11 June 2022.

¹¹ ‘An Independent Assessment of the Human Rights Impact of Facebook in Myanmar’ (Meta, 6 November 2018) <<https://about.fb.com/news/2018/11/myanmar-hria/>> accessed 11 June 2022.

¹² ‘The Saga of “Pizzagate”: The Fake Story That Shows How Conspiracy Theories Spread’ *BBC News* (2 December 2016) <<https://www.bbc.com/news/blogs-trending-38156985>> accessed 23 July 2022.

¹³ Mohamad S Hakim, ‘SARS-CoV-2, Covid-19, and the Debunking of Conspiracy Theories’ (2021) 31 *Reviews in Medical Virology* e2222.

¹⁴ Lorna Christie, ‘COVID-19 Vaccine Misinformation’ <<https://post.parliament.uk/covid-19-vaccine-misinformation/>> accessed 29 June 2022.

¹⁵ Salman Bin Naeem, Rubina Bhatti and Aqsa Khan, ‘An Exploration of How Fake News Is Taking over Social Media and Putting Public Health at Risk’ [2020] *Health Information and Libraries Journal* 10.1111/hir.12320.

¹⁶ Elizabeth Dwoskin, ‘Come to the “War Cry Party”: How Social Media Helped Drive Mayhem in Brazil’ *Washington Post* (10 January 2023) <<https://www.washingtonpost.com/technology/2023/01/08/brazil-bolsonaro-twitter-facebook/>> accessed 23 January 2023.

¹⁷ David Klein and Joshua Wueller, ‘Fake News: A Legal Perspective’ (8 March 2017) <<https://papers.ssrn.com/abstract=2958790>> accessed 23 July 2022.

users),¹⁸ inauthentic or semi-automated profiles¹⁹ and has different motivations. For instance, it can be used as a malicious strategy to attract attention and trick the readers into clicking on content that sounds exaggerated, in order to increase traffic flow – the so-called clickbait.²⁰ It can be related to the financial aspect too, as it potentially involves large sums of money,²¹ turning into a lucrative business.²² It can also be associated with the political aspect, largely driven by political elites,²³ aiming to destabilize opponents, change the course of the elections or create doubt in the population.²⁴

Although fake news is not illegal *per se*, its negative impacts on society are undeniable, such as the examples mentioned above. For this reason, discussions on how to address and regulate the problem, while ensuring the right to freedom of expression and avoiding censorship, are of utmost importance.²⁵ Given the pacing problem²⁶ with its notion that laws and regulations cannot keep pace with technological innovation, and the Collingridge dilemma²⁷ related to the difficulty of change when technology has become entrenched, this thesis analyses how two jurisdictions – Brazil and the European Union – are dealing with the problem and compare their actions.

The comparison does not aim to simply import rules from one place and incorporate them into the other without detailed analysis. Nevertheless, one cannot ignore the fact that what happens in Europe sets an important precedent for the entire world. Therefore, in addition to demonstrating the progress and results achieved so far by the Union, which has been dealing

¹⁸ Nick Hajli and others, 'Social Bots and the Spread of Disinformation in Social Media: The Challenges of Artificial Intelligence' (2022) 33 *British Journal of Management* 1238.

¹⁹ Naveen Arora, 'Misinformation, Fake News and Rumor Detection' in Anupam Biswas, Ripon Patgiri and Bhaskar Biswas (eds), *Principles of Social Networking: The New Horizon and Emerging Challenges* (Springer 2022) <https://doi.org/10.1007/978-981-16-3398-0_14> accessed 10 July 2022.

²⁰ Abhijnan Chakraborty and others, 'Stop Clickbait: Detecting and Preventing Clickbaits in Online News Media'.

²¹ 'How Macedonian Teens Earn — and Spend — Thousands from Fake News' (*NBC News*) <<https://www.nbcnews.com/news/world/fake-news-how-partying-macedonian-teen-earns-thousands-publishing-lies-n692451>> accessed 7 July 2022.

²² 'The Business of Misinformation - Final Report: How Misinformation Became a Profitable Business in Eastern Europe | CMDS' <<https://cmds.ceu.edu/business-misinformation-final-report-how-misinformation-became-profitable-business-eastern-europe>> accessed 25 July 2022.

²³ 'Mail-In Voter Fraud: Anatomy of a Disinformation Campaign | Berkman Klein Center' (21 October 2020) <<https://cyber.harvard.edu/publication/2020/Mail-in-Voter-Fraud-Disinformation-2020>> accessed 25 July 2022.

²⁴ Max Bader, 'Disinformation in Elections' (2018) 29 *Security and Human Rights* 24.

²⁵ 'The Fight against Disinformation and the Right to Freedom of Expression | Think Tank | European Parliament' <[https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)695445](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)695445)> accessed 9 June 2022.

²⁶ Gary E Marchant, 'Addressing the Pacing Problem' in Gary E Marchant, Braden R Allenby and Joseph R Herkert (eds), *The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight: The Pacing Problem* (Springer Netherlands 2011) <https://doi.org/10.1007/978-94-007-1356-7_13> accessed 15 May 2022.

²⁷ Audley Genus and Andy Stirling, 'Collingridge and the Dilemma of Control: Towards Responsible and Accountable Innovation' (2018) 47 *Research Policy* 61.

with the problem since 2015, this thesis will also draw reflections of which European approaches could be adopted in the Brazilian jurisdiction, while considering the peculiarities of the latter. To this end, this thesis will also analyse the ongoing Brazilian efforts, adopted mainly in political discourse during the presidential elections, which are in fact very much alike of those taken by the EU.

The comparison between these two jurisdictions helps to gain knowledge of the social problems of each culture, the time in which the discussion occurs, and the common regulatory obstacles faced in curbing this phenomenon. Moreover, in addition to contributing to the debate, the comparison can outline solutions that work in different contexts, in order to guarantee freedom of expression in the digital environment and democratic society.

Brazil, so often ranked as one of the countries with the largest number of Internet users in the world,²⁸ is facing profound challenges in the communication sector. The country that not long ago was considered an example of democracy is now dealing with anti-democratic activities by right-wing extremists.²⁹ Thereby, the political background regarding the mass distribution of fake news and the use of social media platforms to boost it will be discussed, such as the use of bots³⁰ and fake profiles³¹, the so-called ‘office of hate’,³² the attack on journalists,³³ and the threat to the democratic regime.³⁴

From the regulatory perspective, it intends to give a brief overview of the efforts made by the European Union, focusing on the Code of Practice on Disinformation, versions 2018³⁵ and 2022,³⁶ and to compare them with the Brazilian efforts. In Brazil there are more than 30

²⁸ ‘Most Internet Users by Country’ (*Statista*) <<https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/>> accessed 14 May 2022.

²⁹ ‘Authoritarian Populism and Constitutional Resilience in Brazil’ (*Georgetown Journal of International Affairs*, 10 July 2021) <<https://gjia.georgetown.edu/2021/07/10/authoritarian-populism-and-constitutional-resilience-in-brazil/>> accessed 14 May 2022.

³⁰ ‘Bot or Not: Who Are the Followers of Our Candidates for President?’ (*InternetLab*, 3 July 2018) <<https://internetlab.org.br/en/news/bot-or-not-who-are-the-followers-of-our-candidates-for-president/>> accessed 13 May 2022.

³¹ ‘Exclusivo: investigação revela exército de perfis falsos usados para influenciar eleições no Brasil’ *BBC News Brasil* <<https://www.bbc.com/portuguese/brasil-42172146>> accessed 15 September 2022.

³² Patrícia Campos Mello, ‘Opinion | Brazil’s Troll Army Moves Into the Streets’ *The New York Times* (4 August 2020) <<http://www.nytimes.com/2020/08/04/opinion/bolsonaro-office-of-hate-brazil.html>> accessed 13 May 2022.

³³ ‘Attacks on Journalists Explode in Brazil in 2020 and Most of Them Come from President Bolsonaro’ (*LatAm Journalism Review by the Knight Center*, 27 January 2021) <<https://latamjournalismreview.org/articles/attacks-journalists-brazil-2020-bolsonaro/>> accessed 13 May 2022.

³⁴ ‘Brazil: Bolsonaro Threatens Democratic Rule’ (*Human Rights Watch*, 15 September 2021) <<https://www.hrw.org/news/2021/09/15/brazil-bolsonaro-threatens-democratic-rule>> accessed 13 May 2022.

³⁵ ‘Code of Practice on Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/news/code-practice-disinformation>> accessed 18 May 2022.

³⁶ ‘The 2022 Code of Practice on Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>> accessed 16 June 2022.

political parties³⁷ and the National Congress is the legislative body of the Federal Government, a bicameral system composed by the Chamber of Deputies (the lower house, representing the people),³⁸ and the Federal Senate (the upper house, representing the 26 States).³⁹ In the Chamber of Deputies, for instance, more than 50 bills about fake news have already been discussed.⁴⁰ This is because there are disputes over which political parties want their proposal to pass, as well as disagreement over which legislation would be changed or created to accommodate the new rule. Nevertheless, the bill PL n° 2630/2020 of ‘Freedom, Responsibility and Transparency on the Internet’⁴¹ is the only one in an advanced stage, having already been approved in the Federal Senate and in negotiation in the Chamber of Deputies.

Brazilian judicial bodies, especially the Federal Supreme Court (‘STF’)⁴² and Superior Electoral Court (‘TSE’),⁴³ are establishing partnerships with companies and social media platforms, in order to prevent the proliferation of fake news during the election periods.⁴⁴

From a private perspective, it aims to bring examples of initiatives designed to combat fake news, such as online moderation conducted by independent bodies, fact-checking agencies, and the use of good bot.

1.2 Literature review

The lack of a clear definition of what constitutes fake news results on a diverse literature that varies on its roots, causes, effects, channels used, outcomes, and so forth. Still, judging from the merits of this research *vis-à-vis* the literature, there is a common understanding among

³⁷ ‘Partidos políticos registrados no TSE’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/partidos/partidos-registrados-no-tse>> accessed 26 July 2022.

³⁸ ‘The Chamber of Deputies’ (*Portal da Câmara dos Deputados*) <https://www2.camara.leg.br/english/copy_of_index_html> accessed 28 July 2022.

³⁹ ‘Senado Federal’ <<https://www12.senado.leg.br/hpsenado>> accessed 28 July 2022.

⁴⁰ ‘Combate a fake news é tema de 50 propostas na Câmara dos Deputados - Notícias’ (*Portal da Câmara dos Deputados*) <<https://www.camara.leg.br/noticias/666062-combate-a-fake-news-e-tema-de-50-propostas-na-camara-dos-deputados/>> accessed 18 May 2022.

⁴¹ ‘PL 2630/2020’ (*Portal da Câmara dos Deputados*) <<https://www.camara.leg.br/propostas-legislativas/2256735>> accessed 13 May 2022.

⁴² ‘Portal STF Internacional’ <https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfSobreCorte_en_us&idConteudo=120283> accessed 22 November 2022.

⁴³ ‘Superior Electoral Court’ <<https://english.tse.jus.br/interna.html>> accessed 17 May 2022.

⁴⁴ ‘TSE e plataformas digitais assinam acordo nesta terça-feira (15)’ <<https://www.tse.jus.br/imprensa/noticias-tse/2022/Fevereiro/tse-e-plataformas-digitais-assinam-acordo-nesta-terca-feira-15>> accessed 17 May 2022.

different stakeholders, such as the European Parliament,⁴⁵ scientists,⁴⁶ private companies,⁴⁷ and scholars,⁴⁸ about the need to implement measures to curb it. However, as there is no single definition, the literature is also marked by controversial debate about which measures can tackle the problem, as there are several different approaches.

Some argue that, to avoid its spread, a criminal framework is an effective regulatory response. According to Helm and Nasu, if any harm is caused, information correction should be used since it is ‘the least intrusive form of regulation against fake news and does not infringe individual freedom of expression or access to information’.⁴⁹ Nevertheless, when information correction is ineffective, ‘a more intrusive form of regulation needs to be explored’.⁵⁰

Meanwhile, others advocate moderation of online content through fact-checkers, which ‘determine the veracity of the content, the intent of the author, and/or whether content is likely to mislead an audience’,⁵¹ a task that has risks, as it may reflect fact checkers' biases, values, and judgments. To mitigate this risk, there should be a diverse group to validate labelling decisions and platform transparency.⁵²

There are some who defend empowering users through the use of a reliability rating mechanism for social media platforms, in order to ‘measure the frequency and percentage of fake news spread on a social media platform over a certain time frame’.⁵³ Then, according to the result, the service can be seen as ‘statistically reliable or otherwise by those using it’.⁵⁴

Moreover, part of the legal literature also argues that regulation of disinformation should be proportionate to the damage caused, capable of evolving with technological change, and that provisions should be as independent as possible from political and corporate

⁴⁵ ‘How to Fight Disinformation | News | European Parliament’ (5 December 2019) <<https://www.europarl.europa.eu/news/en/headlines/priorities/disinformation>> accessed 16 June 2022.

⁴⁶ ‘Scientists Can Lead the Fight against Fake News’ (*World Economic Forum*) <<https://www.weforum.org/agenda/2018/09/scientists-can-lead-the-fight-against-fake-news/>> accessed 16 June 2022.

⁴⁷ ‘Working to Stop Misinformation and False News’ (*Working to Stop Misinformation and False News | Meta for Media*) <<https://www.facebook.com/formedia/blog/working-to-stop-misinformation-and-false-news>> accessed 16 June 2022.

⁴⁸ Alberto Alemanno, ‘How to Counter Fake News? A Taxonomy of Anti-Fake News Approaches’ (2018) 9 *European Journal of Risk Regulation* 1.

⁴⁹ Rebecca K Helm and Hitoshi Nasu, ‘Regulatory Responses to “Fake News” and Freedom of Expression: Normative and Empirical Evaluation’ (2021) 21 *Human Rights Law Review* 302.

⁵⁰ *ibid.*

⁵¹ Elizabeth Stewart, ‘Detecting Fake News: Two Problems for Content Moderation’ (2021) 34 *Philosophy & Technology* 923.

⁵² *ibid.*

⁵³ Donato Vese, ‘Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency’ [2021] *European Journal of Risk Regulation* 1.

⁵⁴ ‘Fake.Pdf’ (n 52).

leadership.⁵⁵ In addition, some works defend the implementation of an effective mechanism to investigate and punish those who secretly finance fake news – follow the money approach – rather the content itself.⁵⁶

More recently, there are also those who advocate fighting fake news by using advanced technologies. This includes Artificial Intelligence,⁵⁷ such as the project called GoodNews, which uses deep learning algorithms to learn fake news spread patterns,⁵⁸ and also Blockchains, which can establish authenticity by ‘tracking the provenance of content over time, blacklisting imposters, spotting deepfakes, and tying digital content to the physical world’.⁵⁹

Another important aspect that should be considered in the literature review is the inevitable friction between global technologies and local regulations. Thus, what is characterized as freedom of expression in one country may be characterized as illegal and prohibited in another. Therefore, the literature also reflects local culture when it comes to regulate fake news. While there are many opinions, there is still room to discuss these initiatives within the main research question and sub-questions.

1.3 Main research question

Whilst it will briefly discuss different positions on how to regulate fake news, this thesis will also make some references to the European Union's efforts and then compare them with the Brazilians. Thus, it aims to answer the following question:

Considering the Brazilian jurisdiction, what are the most appropriate approaches that could be used to regulate fake news in the digital environment, without censorship and respecting freedom of expression?

⁵⁵ Ben Epstein, ‘Why It Is So Difficult to Regulate Disinformation Online’ in Steven Livingston and W Lance Bennett (eds), *The Disinformation Age* (Cambridge University Press 2020) <<https://www.cambridge.org/core/books/disinformation-age/why-it-is-so-difficult-to-regulate-disinformation-online/A7613D7394F18AAE8F241894E8DA064A>> accessed 8 January 2023.

⁵⁶ ‘Única forma de combater a desinformação sem afetar a liberdade de ...’ (*Migalhas*, 22 June 2020) <<https://www.migalhas.com.br/quentes/329425/unica-forma-de-combater-a-desinformacao-sem-afetar-a-liberdade-de-expressao-e-ir-atras-do-dinheiro---alerta-ronaldo-lemos>> accessed 22 November 2022.

⁵⁷ Noah Giansiracusa, *How Algorithms Create and Prevent Fake News: Exploring the Impacts of Social Media, Deepfakes, GPT-3, and More* (Apress 2021) <<https://link.springer.com/10.1007/978-1-4842-7155-1>> accessed 8 January 2023.

⁵⁸ ‘Fake News Detection in Social Networks Using Geometric Deep Learning | GoodNews Project | Fact Sheet | H2020’ (*CORDIS | European Commission*) <<https://cordis.europa.eu/project/id/812672>> accessed 16 January 2023.

⁵⁹ Mary C Lacity, ‘Fake News, Technology and Ethics: Can AI and Blockchains Restore Integrity?’ (2022) 12 *Journal of Information Technology Teaching Cases* 121.

1.4 Research sub-questions

In order to answer the main question properly, it is necessary to discuss the following sub-questions:

1. Besides the definition of the phenomenon, what are the other aspects of fake news that need to be taken into account when trying to regulate it?
2. What lessons from the European Union's initiatives on how to craft policies to respond to fake news can be applicable in Brazil?
3. Can the bill PL n° 2630/2020, which intends to institute the Brazilian 'Fake News Law', be considered one of the appropriate measures to regulate and solve the problem of fake news in the country?

1.5 Methodology and Limitations

This thesis applies academic doctrinal legal research and law-in-context method, in order to analyse the different opinions and initiatives on how to regulate fake news.

Although the spread of fake news happens in traditional media too, this research aims to focus in the digital environment, where it can take unprecedented proportion. What makes fake news particularly concerning is not simply that it is false, but rather that 'people often fail to discern truth from fiction because they fail to stop and reflect about the accuracy of what they see on social media'.⁶⁰

1.6 Chapter structure

This thesis is mainly composed of three chapters. To begin with, it provides in Chapter 2 the definition of the most common terms used to describe the phenomenon, such as disinformation, misinformation, and fake news, as well as presents some social impacts and theories on how to regulate the phenomenon, and ends with the answer of the first sub-question. Secondly, Chapter 3 makes a brief historical analysis of the regulatory framework and actions already taken by the European Union, presents some initiatives that have inspired the Brazilian market, and ends answering the second sub-question. Then, the next Chapter 4 discusses the Brazilian scenario, focusing on the political framework, regulatory initiatives, and actions taken by the Judiciary – STF and TSE – providing the answer to the third sub-question, as well as critical remarks on the ongoing legislative proposal in the country. Finally, the thesis

⁶⁰ Gordon Pennycook and David G Rand, 'The Psychology of Fake News' (2021) 25 Trends in Cognitive Sciences 388.

concludes by answering the main research question and proposing ways to tackle fake news, always keeping in mind the guarantee of freedom of expression and the maintenance of democracy.

Chapter 2. Definition, Impacts and Approaches

Because of the lack of a single definition of what fake news is, fighting its dissemination becomes an even more difficult task. Therefore, in addition to the difficulties of safeguarding the right to freedom of expression and moderating online content, it is also necessary to establish what kind of content should be considered fake news and, from there, discuss the need to regulate the issue.

There is a plethora of conceptual definitions and consequently disagreements as will be seen below. The disagreements go through, for example, whether intentionality should be taken into account (deceiving, persuading, polarizing, entertaining, making money), the type of content (illegal, political, satirical), the format of content (images, memes, video, newspaper, gossip, speeches), or the agents involved in the information chain, for instance.

This Chapter attempts to highlight some of the key definitions, as well as to identify possible causes, social impacts, and different approaches on how to tackle fake news.

2.1 Definition

Although the phenomenon of fake news became in vogue with the 2016 presidential election campaign in the United States, the propagation of untrue or misleading news is not a new phenomenon or a straightforward tactic. Back in mid-1890s the term ‘yellow journalism’ was coined to describe the practice to publish content with no evidence placing profits over principle and sensationalism over facts.⁶¹ In the 1920-30s, manipulating images to cut enemies out of official photos was a technique often used by Stalin.⁶² Therefore, there is nothing new about the circulation of manipulated and fake content, once it has always existed. The ways in which digital technologies can accelerate its spread is something new, since the press and journalists cannot control what is published anymore and thus, fake news along with other forms of harmful content, such as racism and hate speech, are gaining tremendous proportion online.

⁶¹ ‘Milestones: 1866–1898 - Office of the Historian’ <<https://history.state.gov/milestones/1866-1898/yellow-journalism>> accessed 8 May 2022.

⁶² Erin Blakemore, ‘How Photos Became a Weapon in Stalin’s Great Purge’ (*HISTORY*) <<https://www.history.com/news/josef-stalin-great-purge-photo-retouching>> accessed 24 November 2022.

In 2016, Hillary Clinton, then running for President of the US, was the first person to use the term fake news as it is used today,⁶³ when describing the process by which people made up stories that went viral on social media and alerting that this process could have real world consequences, not just in politics or partisanship.⁶⁴ In that time, the American people were exposed to a flood of misleading stories, created as a political vehicle to manipulate and distort reality, most of it originating from Veles, a small Eastern European town in Macedonia.⁶⁵ Young people from Veles, with no fluency in English or interest in American politics, but understanding how social media algorithms work and engaged by easy money from advertising, wrote completely false stories that ended up benefiting the other candidate, Donald Trump.⁶⁶ During a press conference, President-elect Donald Trump picked up on the phrase when he refused to answer a question, calling the story and press itself as fake news.⁶⁷ Nevertheless, while in office, at the same time he took credit from inventing the term,⁶⁸ Trump also made 30,573 false or misleading statements.⁶⁹

There is no single definition of the term fake news and often other terms are used interchangeably to describe the same phenomenon, overlapping one another. In 2016, post-truth was elected the word of the year as ‘relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief’.⁷⁰ In 2017 it was the turn of the term fake news to be elected the word of the year, since its usage raised 365%,⁷¹ and it was defined as ‘false, often sensational, information disseminated under the guise of news reporting’.⁷²

⁶³ ‘Analysis | How Hillary Clinton Might Have Inspired Trump’s “Fake News” Attacks’ *Washington Post* <<https://www.washingtonpost.com/news/the-fix/wp/2018/01/03/how-hillary-clinton-might-have-inspired-trumps-fake-news-attacks/>> accessed 11 June 2022.

⁶⁴ ‘Hillary Clinton Warns of “Fake News Epidemic”’ *BBC News* (9 December 2016) <<https://www.bbc.com/news/world-us-canada-38258967>> accessed 11 June 2022.

⁶⁵ Heather C Hughes and Israel Waismel-Manor, ‘The Macedonian Fake News Industry and the 2016 US Election’ (2021) 54 *PS: Political Science & Politics* 19.

⁶⁶ ‘The (Almost) Complete History of “Fake News”’ *BBC News* (22 January 2018) <<https://www.bbc.com/news/blogs-trending-42724320>> accessed 11 June 2022.

⁶⁷ Amber Jamieson, “‘You Are Fake News’: Trump Attacks CNN and BuzzFeed at Press Conference’ *The Guardian* (11 January 2017) <<https://www.theguardian.com/us-news/2017/jan/11/trump-attacks-cnn-buzzfeed-at-press-conference>> accessed 11 June 2022.

⁶⁸ Analysis by Chris Cillizza Editor-at-large CNN, ‘Donald Trump Just Claimed He Invented “Fake News”’ (CNN) <<https://www.cnn.com/2017/10/08/politics/trump-huckabee-fake/index.html>> accessed 12 June 2022.

⁶⁹ ‘Analysis | Tracking All of President Trump’s False or Misleading Claims’ (*Washington Post*) <<https://www.washingtonpost.com/graphics/politics/trump-claims-database/>> accessed 11 June 2022.

⁷⁰ ‘Oxford Word of the Year 2016 | Oxford Languages’ <<https://languages.oup.com/word-of-the-year/2016/>> accessed 11 June 2022.

⁷¹ ‘What Is 2017’s Word of the Year?’ *BBC News* (2 November 2017) <<https://www.bbc.com/news/uk-41838386>> accessed 16 June 2022.

⁷² susanwright, ‘Collins 2017 Word of the Year Shortlist’ (*Collins Dictionary Language Blog*, 2 November 2017) <<https://blog.collinsdictionary.com/language-lovers/collins-2017-word-of-the-year-shortlist/>> accessed 24 January 2023.

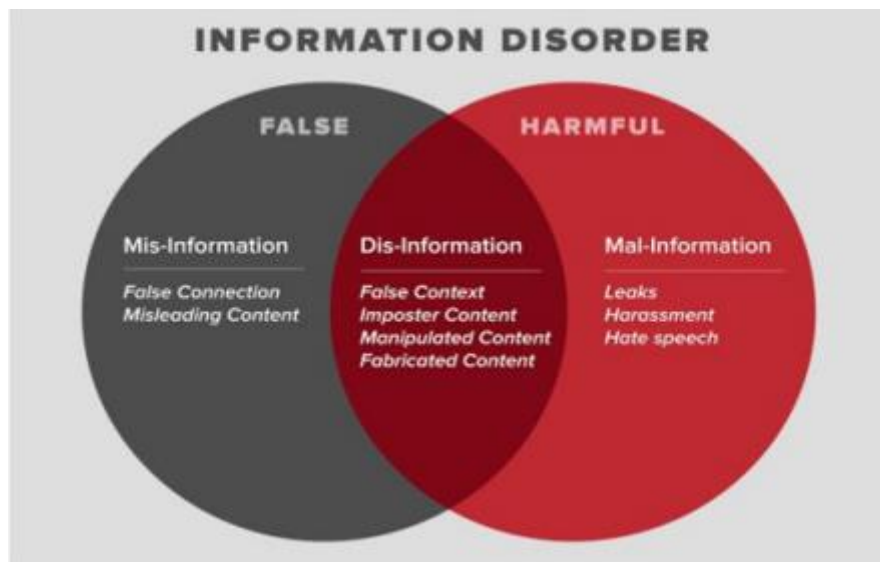


Figure 2: Council of Europe, Report on Information Disorder, 2017 (By Claire Wardle, PhD and Hossein Derakhshan)

In the United Kingdom, the Report on Disinformation and fake news (2019)⁷⁹ disregarded the term fake news and recommended the use of the term disinformation, as ‘the deliberate creation and sharing of false and/or manipulated information that is intended to deceive and mislead audiences, either for the purposes of causing harm, or for political, personal or financial gain’.⁸⁰

As defined by the European Commission's Communication on the European Democracy Action Plan (2020),⁸¹ reinforced by the Code of Practice on Disinformation (2022),⁸² the definitions are:

- ‘Misinformation is false or misleading content shared without harmful intent though the effects can still be harmful’.⁸³
- ‘Disinformation is false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm’.⁸⁴

In Brazil, the bill PL n° 2630/2020,⁸⁵ under discussion in the National Congress, does not attempt to define the phenomenon, making it difficult to typify what will or will not be

⁷⁹ ‘Disinformation and “Fake News”’: Final Report - Digital, Culture, Media and Sport Committee - House of Commons’ <<https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/179102.htm>> accessed 17 June 2022.

⁸⁰ *ibid*, p. 7.

⁸¹ ‘EUR-Lex HTML (EN)’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790>> accessed 22 November 2022.

⁸² ‘Code of Practice on Disinformation | Shaping Europe’s Digital Future’ (n 35).

⁸³ ‘EUR-Lex HTML (EN)’ (n 82).

⁸⁴ *ibid*.

⁸⁵ ‘PL 2630/2020’ (n 41).

allowed on social networks. Meanwhile, Article 19 of the Marco Civil of the Internet⁸⁶ addresses the civil liability of Internet provider if it fails to render the content unavailable after receiving a specific court order.

In addition to fake news, disinformation and misinformation, there are also ‘deepfakes’,⁸⁷ defined by the European Parliament as ‘manipulated or synthetic audio or visual media that seem authentic, and which feature people that appear to say or do something they have never said or done, produced using artificial intelligence techniques, including machine learning and deep learning’.⁸⁸

Albeit this thesis adopts the definition given by Klein & Wueller,⁸⁹ it also agrees that the term fake news is controversial and mostly employed with a political connotation, thus it should be used with caution, especially when attempting to legislate the issue.

2.2 Social Impacts

Since there is no consensus on the definition of fake news, its creation and dissemination can have different motivations too, such as financial, political, or clickbait, often driven by bots, inauthentic or semi-automated profiles. As a result, the lack of a definition of the phenomenon not only makes it difficult to combat effectively, but can also lead to different social consequences, from catastrophic situations like war and genocide, to milder (but still harmful) ones like memes, satires and parodies, which have the potential to go viral due to their funny appeal.

The information available on the Internet can come from different sources and represent different points of view. However, the more a person is exposed to opinions or perspectives that reflect his/her own beliefs, the more information related to the same perspective will be repeatedly presented to him/her in a closed space called echo chambers.⁹⁰ Collins Dictionary defines it as ‘an environment, esp on a social media site, in which any statement of opinion is likely to be greeted with approval because it will only be read or heard by people

⁸⁶ ‘L12965’ (n 8).

⁸⁷ ‘Tackling Deepfakes in European Policy | Think Tank | European Parliament’ <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2021\)690039](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)690039)> accessed 13 June 2022.

⁸⁸ ‘European Parliament. Directorate General for Parliamentary Research Services. - 2021 - Tackling Deepfakes in European Policy..Pdf’

<[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690039/EPRS_STU\(2021\)690039_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690039/EPRS_STU(2021)690039_EN.pdf)> accessed 24 January 2023.

⁸⁹ Klein and Wueller (n 17).

⁹⁰ ‘Echo Chambers, Filter Bubbles, and Polarisation: A Literature Review’ (*Reuters Institute for the Study of Journalism*) <<https://reutersinstitute.politics.ox.ac.uk/echo-chambers-filter-bubbles-and-polarisation-literature-review>> accessed 29 July 2022.

who hold similar views’.⁹¹ Hence, while echo chambers can contribute to the spread of fake news, it can also be considered as one of the social impacts, since it keeps a person away from opposing viewpoints, undermining human judgment.⁹²

Echo chambers are also fuelled by confirmation bias, in other words, the tendency to unquestioningly accept and interpret information that reinforces predisposed beliefs, even when presented with contradictory evidence.⁹³ As stated by Daniel Kahneman, Psychologist and Nobel Prize winner,⁹⁴ ‘a reliable way to make people believe in falsehoods is frequent repetition, because familiarity is not easily distinguished from truth’.⁹⁵

Another concept that has a similar denotation is filter bubble, coined by Eli Pariser,⁹⁶ who wrote a book on this subject explaining that social media algorithms work behind the scenes, customizing the information delivered according to user behaviour, distancing and isolating the delivery of new ideas and polarizing opinions.⁹⁷

Echo chambers and filter bubbles can also lead to micro-targeting through dark ads made to be seen only by a certain audience, in order to promote sensitive topics, being another element of the fake news conundrum, as demonstrated with the Cambridge Analytica and Facebook scandal.⁹⁸

Social media platforms, often driven by advertising revenue, monetize users' attention by encouraging them to stay connected for as long as possible. Thus, while these companies say they are concerned and taking steps to combat the proliferation of fake news, changing their algorithms would mean not delivering what users like, leading them to spend less time online. Social media platforms and instant messaging applications have become the main

⁹¹ ‘Echo chamber definição e significado | Dicionário Inglês Collins’

<<https://www.collinsdictionary.com/pt/dictionary/english/echo-chamber>> accessed 2 August 2022.

⁹² Samuel C Rhodes, ‘Filter Bubbles, Echo Chambers, and Fake News: How Social Media Conditions Individuals to Be Less Critical of Political Misinformation’ (2022) 39 Political Communication 1.

⁹³ ‘Defining Confirmation Bias’ (*Facing History and Ourselves*) <<https://www.facinghistory.org/resource-library/video/defining-confirmation-bias>> accessed 3 August 2022.

⁹⁴ ‘Daniel Kahneman’, *Wikipedia* (2022)

<https://en.wikipedia.org/w/index.php?title=Daniel_Kahneman&oldid=1122714826> accessed 22 November 2022.

⁹⁵ Farnam Street, ‘Daniel Kahneman on Human Gullibility’ (*Farnam Street*, 14 September 2016)

<<https://fs.blog/human-gullibility/>> accessed 3 August 2022.

⁹⁶ Eli Pariser, *The Filter Bubble: What the Internet Is Hiding from You* (Penguin UK 2012).

⁹⁷ Axel Bruns, ‘Filter Bubble’ (2019) 8 Internet Policy Review <<https://policyreview.info/concepts/filter-bubble>> accessed 4 August 2022.

⁹⁸ ‘Facebook–Cambridge Analytica Data Scandal’, *Wikipedia* (2022)

<https://en.wikipedia.org/w/index.php?title=Facebook%E2%80%93Cambridge_Analytica_data_scandal&oldid=1100480541> accessed 13 August 2022.

source of news for some people, surpassing print newspapers,⁹⁹ so now more than ever, echo chambers, filter bubble, dark ads, and confirmation bias are more dangerous. One study shows how Facebook's algorithm amplifies scepticism about climate change, as it provides users with content aligned with their personal opinions.¹⁰⁰ As Aviv Ovadya would say, reality distortion processes can lead contemporary societies to an 'Infocalypse', where the effect would be apathy, because, 'when you only believe what you want, there is no way to have democracy'.¹⁰¹

Another problem that follows fake news is the use of malicious bots that, due to artificial intelligence algorithms, can learn patterns and engage with certain situations. A study on the use of bots on Twitter right after the US withdrawal from the Paris Agreement¹⁰² found that the 25% of tweets about climate change and 38% about fake science were likely generated by bots.¹⁰³ According to a research conducted by *DAPP/ FGV*,¹⁰⁴ in Brazil, up to 20% of the electoral debate during the 2018 elections was led by bots.¹⁰⁵ The cybersecurity company Radware noted a 27% increase in the use of bots with the Coronavirus pandemic.¹⁰⁶ Hence, the use of bots creates a buzz around controversial issues and generate a false sense of popularity, boosting a point of view or an agenda.

Last but not least, another example of the social impact of fake news is the chilling effect on the right to freedom of expression. The difficulty in regulating fake news is, at the same time, to guarantee the right to freedom of expression, without censoring information, while moderating content considered false and that may cause negative impacts on society as a whole. Important to note that the right to freedom of expression also protects content that

⁹⁹ Elisa Shearer, 'Social Media Outpaces Print Newspapers in the U.S. as a News Source' (*Pew Research Center*) <<https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>> accessed 4 August 2022.

¹⁰⁰ 'How Facebook's Algorithm Amplifies Climate Disinformation' (*Global Witness*) <<https://en/campaigns/digital-threats/climate-divide-how-facebooks-algorithm-amplifies-climate-disinformation/>> accessed 4 August 2022.

¹⁰¹ Natalia Viana/ Carolina Zanatta (Agência Pública), "'Quando você só acredita no que quer, não há como ter democracia'" (*El País Brasil*, 18 October 2018)

<https://brasil.elpais.com/brasil/2018/10/17/politica/1539729903_777514.html> accessed 29 July 2022.

¹⁰² 'Climate Change: US Formally Withdraws from Paris Agreement - BBC News'

<<https://www.bbc.com/news/science-environment-54797743>> accessed 22 November 2022.

¹⁰³ Thomas Marlow, Sean Miller and J Timmons Roberts, 'Bots and Online Climate Discourses: Twitter Discourse on President Trump's Announcement of U.S. Withdrawal from the Paris Agreement' (2021) 21 *Climate Policy* 765.

¹⁰⁴ 'DAPP' (*Portal FGV*, 22 March 2017) <<https://portal.fgv.br/en/dapp>> accessed 22 November 2022.

¹⁰⁵ DAPP, 'Robôs, Redes Sociais e Política No Brasil: Estudo Sobre Interferências Ilegítimas No Debate Público Na Web' (*FGV DAPP*, 24 August 2017) <<http://dapp.fgv.br/robos-redes-sociais-e-politica-estudo-da-fgvdapp-aponta-interferencias-ilegitimas-no-debate-publico-na-web/>> accessed 29 July 2022.

¹⁰⁶ Manwendra Mishra, 'Here's How Bots Are Exploiting Coronavirus Fears' (*Radware Blog*, 1 April 2020) <<https://blog.radware.com/security/2020/04/heres-how-bots-are-exploiting-coronavirus-fears/>> accessed 4 August 2022.

may ‘shock, offend and disturb’.¹⁰⁷ Thus, regulating fake news also implies some degree of restriction on freedom of expression and reaching a balance may ‘vary in different legal, political and cultural contexts, with divergence in normative constraint regarding the requirements of legality, necessity, and proportionality in different jurisdictions’.¹⁰⁸

To summarize, in addition to the examples already mentioned in Chapter 1 related to the different motivations in publishing fake news and the different outcomes, it is also necessary to pay attention to echo chambers, filter bubbles, dark ads, confirmation bias, and the content disseminated by bots. The exposure and spread of fake news benefits from the pace at which information travels in the media ecosystem and can affect life in society by resulting in violence, raising questions about science, changing the course of elections, impacting public policy related to health and the environment, and so forth.

2.3 Different approaches on how to regulate fake news

As seen, besides the difficulty of defining fake news, the problem also has several roots and consequences, and it is naive to think that a single regulatory institute will be able to solve it. Lawrence Lessig,¹⁰⁹ in his book *Code, and Other Laws of Cyberspace*,¹¹⁰ discusses the regulation of speech and the protection of speech in cyberspace, and proposes four distinct but interdependent regulatory modalities: law, architecture (code), social norms, and market.

This thesis focuses on the analysis of different views on how to regulate fake news, considering the EU and the Brazilian jurisdiction and, in this section, uses Lessing's four modalities to identify which, if any, of the existing proposals are effective in dealing with the phenomenon.

2.3.1 Law

The law, issued by a sovereign government and backed by the threat of a sanction or penalty, is usually the first response when faced with a social challenge. However, it is only one way to get people to change their behaviour, and it is not a perfect mechanism. One of the problems is the difficulty of enforcing the law when people are out of jurisdiction, such as the

¹⁰⁷ ‘Freedom of Expression Monitors Issue Joint Declaration on “Fake News”, Disinformation and Propaganda’ (OHCHR) <<https://www.ohchr.org/en/press-releases/2017/03/freedom-expression-monitors-issue-joint-declaration-fake-news-disinformation>> accessed 17 January 2023.

¹⁰⁸ Helm and Nasu (n 49).

¹⁰⁹ ‘Lawrence Lessig’ <<https://lessig.org/>> accessed 22 November 2022.

¹¹⁰ Code - Lessig <<https://lessig.org/product/code>> accessed 25 August 2022.

case with those who are spreading fake news online. This section shows some attempts to regulate fake news through law.

- **Germany:** In September 2017, the country published the *Netzwerkdurchsetzungsgesetz* – Network Enforcement Act ('NetzDG')¹¹¹ to improve the procedure for removing clearly illegal content, within 24 hours, and illegal content, as defined in the Criminal Code, within 7 days. The NetzDG establishes more transparent rules for social media platforms regarding the receipt of complaints, deadlines for removing or blocking content deemed illegal, transparent reporting when dealing with these removals, among others, under penalty of a fine of up to five million Euros if companies fail to comply with these obligations.

The Act, apart from not defining fake news, does not have specific mechanisms to combat it, being more focused on removing hate speech. Furthermore, the Act was strongly criticized for restricting freedom of expression, since many posts were deleted after being flagged by users.¹¹² This is because the threat of heavy fines led platforms to remove more content than necessary.¹¹³

- **France:** In December 2018, the country published two laws, one ordinary¹¹⁴ and one organic,¹¹⁵ regarding the fight, during the three months before elections, against the spread of 'deliberate, artificial, automated and massive'¹¹⁶ online dissemination of inaccurate or misleading facts that can influence the integrity of the ballot. The judge, upon request, may take 'all proportionate and necessary measures to stop this dissemination'.¹¹⁷ In addition, online platform operators have a duty to cooperate by implementing measures to combat its spread, such as transparency of their algorithms, tackling accounts that massively disseminate this type of content, and media literacy. It also requires transparent information about the identity of

¹¹¹ 'NetzDG - Gesetz Zur Verbesserung Der Rechtsdurchsetzung in Sozialen Netzwerken' <<https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html>> accessed 5 August 2022.

¹¹² 'Justice Minister Falls Victim to Own Social Media "Censorship" Law' (*The Local Germany*, 8 January 2018) <<https://www.thelocal.de/20180108/justice-minister-falls-victim-to-own-social-media-censorship-law/>> accessed 28 August 2022.

¹¹³ 'Germany Looks to Revise Social Media Law as Europe Watches' *Reuters* (8 March 2018) <<https://www.reuters.com/article/us-germany-hatespeech-idUSKCN1GK1BN>> accessed 28 August 2022.

¹¹⁴ Law n° 2018-1202 of December 22, 2018 relating to the fight against the manipulation of information.

¹¹⁵ Organic Law n° 2018-1201 of December 22, 2018 relating to the fight against the manipulation of information.

¹¹⁶ 'Article L163-2 - Electoral Code - Légifrance'

<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000039278631> accessed 22 November 2022.

¹¹⁷ *ibid.*

those who paid them to promote the content,¹¹⁸ under the penalty of fine and imprisonment.¹¹⁹ The administrative and executive powers of the *Conseil Supérieur de l'Audiovisuel* (the French media regulator) have also been strengthened, with the possibility of issuing ‘the suspension of the distribution of this service until the end of the voting operations’.¹²⁰

The France Highest Court, the *Conseil Constitutionnel*, ruled on the constitutionality of the law, but stated that the provisions were intended only for claims that could objectively demonstrate that the falsehood could change the integrity of the vote, and not for opinions.¹²¹

In July 2019, the country attempted to follow Germany’s example by drafting a controversial law against online hate speech, known as the ‘Avia Law’,¹²² imposing a series of obligation on digital platforms, such as removing content within 24 hours. The proposal was considered unconstitutional by the *Conseil Constitutionnel*, in June 2020, as it was ‘not appropriate, necessary and proportionate to the aim pursued’.¹²³ The decision was considered a victory for freedom of expression.¹²⁴

- **Hungary:** The government has passed a legislation allowing fines and jail, up to five years, for anyone who intentionally spreads misinformation about COVID-19¹²⁵. The Secretary General of the Council of Europe expressed concern about the legislation and pointed that Member States must comply international standards.¹²⁶
- **Brazil:** As mentioned before, more than 50 bills about fake news have already been discussed in Brazil. The only one in a more advanced stage, PL n° 2630/2020, will be discussed in Chapter 4. Nevertheless, other measure deserve to be highlighted here.

¹¹⁸ ‘Article L163-1 - Electoral Code - Légifrance’

<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037850602> accessed 22 November 2022.

¹¹⁹ ‘Article L112 - Electoral Code - Légifrance’

<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037855654> accessed 22 November 2022.

¹²⁰ ‘Article 33-1-1 - Loi N° 86-1067 Du 30 Septembre 1986 Relative à La Liberté de Communication (Loi Léotard) - Légifrance’ <https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000044259601/2022-11-22> accessed 22 November 2022.

¹²¹ ‘Decision No. 2018-773 DC of 20 December 2018 | Conseil Constitutionnel’ <<https://www.conseil-constitutionnel.fr/en/decision/2018/2018773DC.htm>> accessed 14 September 2022.

¹²² LOI n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet (1) 2020 (2020-766).

¹²³ ‘Decision No. 2020-801 DC of June 18, 2020 | Constitutional Council’ <<https://www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm>> accessed 14 September 2022.

¹²⁴ Press Release, ‘Victory! French High Court Rules That Most of Hate Speech Bill Would Undermine Free Expression’ (*Electronic Frontier Foundation*, 18 June 2020) <<https://www.eff.org/press/releases/victory-french-high-court-rules-most-hate-speech-bill-would-undermine-free-expression>> accessed 14 September 2022.

¹²⁵ IPI-Admin, ‘Hungary: Press Freedom Threatened as Orbán Handed New Powers’ (*International Press Institute*, 30 March 2020) <<https://ipi.media/hungary-press-freedom-threatened-as-orban-handed-new-powers/>> accessed 14 September 2022.

¹²⁶ ‘Secretary General Writes to Viktor Orbán Regarding COVID-19 State of Emergency in Hungary’ <https://www.coe.int/en/web/portal/full-news/-/asset_publisher/y5xQt7QdunzT/content/secretary-general-writes-to-viktor-orban-regarding-covid-19-state-of-emergency-in-hungary> accessed 14 September 2022.

Similar to Hungary, but covering only the State of Amazonas, was the publication by the Executive power, the State Governor, in January 2021, the Law 5.369/2021,¹²⁷ stipulating a fine of R\$1,000 to R\$10,000 for those who maliciously spread fake news about pandemics in the State.

2.3.2 *Architecture (code)*

According to Lessig (1998), the code, like the architecture in real space, is not optional, because it sets the terms and you cannot choose whether to obey or not. Thus, ‘life in cyberspace is subject to the code, just as life in real space is subject to the architectures of real space’.¹²⁸

The distribution of content by algorithm based in filter bubbles, dark ads, echo chambers, and confirmation biases, as mentioned earlier, influences information consumption behaviour. Therefore, social media architecture can potentially nudge¹²⁹ the user in spreading fake news, even unconsciously.

Pop-up warnings and warning labels can be considered technological approaches in the scope of architecture, creating friction in the chain. For example, Facebook warns users with pop-ups to notify that they are repeatedly sharing misinformation,¹³⁰ in an attempt to slow down the action and make the user think about it first. In addition, the platform has also published Reports on how it uses artificial intelligence in detecting, classifying, and removing abusive accounts¹³¹ as well as inauthentic behaviour,¹³² being examples of architecture transparency.

AllSides,¹³³ a news service, publishes balanced news with visual columns of political opinions from left, centre, and right, stating that the mission is to strengthen democracy by giving perspectives from all sides, bursting the filter bubble and polarization.

¹²⁷ ‘Lei-n.-5.369-05.01.2021.Pdf’ <<https://www.transparencia.am.gov.br/wp-content/uploads/2021/01/Lei-n.-5.369-05.01.2021.pdf>> accessed 14 September 2022.

¹²⁸ ‘Lessig - 1998 - The Laws of Cyberspace.Pdf’ <https://cyber.harvard.edu/works/lessig/laws_cyberspace.pdf> accessed 14 September 2022.

¹²⁹ ‘Nudge Theory’, *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=Nudge_theory&oldid=1109863061> accessed 18 September 2022.

¹³⁰ ‘Taking Action Against People Who Repeatedly Share Misinformation’ (*Meta*, 26 May 2021) <<https://about.fb.com/news/2021/05/taking-action-against-people-who-repeatedly-share-misinformation/>> accessed 15 September 2022.

¹³¹ ‘Deep Entity Classification: Abusive Account Detection for Online Social Networks - Meta Research’ (*Meta Research*) <<https://research.facebook.com/publications/deep-entity-classification-abusive-account-detection-for-online-social-networks/>> accessed 15 September 2022.

¹³² ‘July 2021 Coordinated Inauthentic Behavior Report’ (*Meta*, 10 August 2021) <<https://about.fb.com/news/2021/08/july-2021-coordinated-inauthentic-behavior-report/>> accessed 15 September 2022.

¹³³ ‘AllSides | Balanced News via Media Bias Ratings for an Unbiased News Perspective’ (*AllSides*, 27 May 2019) <<https://www.allsides.com/unbiased-balanced-news>> accessed 16 September 2022.

*PolitEcho*¹³⁴ also aims to burst the filter bubble, as it allows the user, through its browser extension, to analyse the political leanings of their Facebook friends through a score and graphs, highlighting the differences between the two.

In Brazil, the initiatives like *Pegabot*,¹³⁵ *Fátima*,¹³⁶ and *Tira-Dúvidas do TSE*,¹³⁷ can be considered application architectures aimed at giving more transparency to online consumption too.

- **Pegabot:** due to the great use of bots in Brazil,¹³⁸ mainly engaged in political and electoral¹³⁹ discourse, the Institute of Technology and Society of Rio de Janeiro ('ITS Rio')¹⁴⁰ and the Technology and Equity Institute,¹⁴¹ created a good bot Pegabot (or bot trapper), with funding from the European Union. It is an open-source algorithm for media literacy and bot monitoring that analyses a user's @ on Twitter and checks its probability of being a bot. The analysis considers various factors such as profile (name, photo, date of creation), network (followers, followed) and sentiment (analysis of up to 100 most recent tweets posted). The higher the score, the greater the chance that it is a bot. To activate it, the user needs to enter into the website <https://pegabot.com.br/> and include the @ of the account to be analysed.

- **Fátima:** short for *FactMachine*, is the robot chatbot of *Aos Fatos* ('To the Facts'),¹⁴² a journalistic platform for investigating disinformation and fact-checking campaigns. Fátima works on WhatsApp, Messenger, and Telegram and its main objective is to send verified information to users and debunk fake news.

- **Tira-dúvidas do TSE:** the Superior Electoral Court, in partnership with WhatsApp and fact-checking agencies, launched a chatbot that allows voters to find out if a content is fake and immediately receive verified content on the same topic.

¹³⁴ Sunny He and others, 'PolitEcho' <<http://politecho.org/>> accessed 16 September 2022.

¹³⁵ 'Pegabot: Descubra se aquele perfil de rede social é bot' <<https://pegabot.com.br/>> accessed 16 June 2022.

¹³⁶ 'Aos Fatos | Valorize o Que é Real' <https://www.aosfatos.org/fatima/?gclid=EAIaIQobChMIsInAhOqX-gIVQ-VcCh324QnHEAAYASAAEgJrHPD_BwE> accessed 15 September 2022.

¹³⁷ 'Tira-Dúvidas do TSE no WhatsApp ganha ferramenta inédita de checagem de fatos para as Eleições 2022' (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Setembro/tira-duvidas-do-tse-no-whatsapp-ganha-ferramenta-inedita-de-checagem-de-fatos-para-as-eleicoes-2022-402542>> accessed 15 September 2022.

¹³⁸ 'Ação automatizada pró-Bolsonaro no Twitter aumenta às vésperas do 7 de Setembro, diz relatório' (*Folha de S.Paulo*, 6 September 2021) <<https://www1.folha.uol.com.br/poder/2021/09/acao-automatizada-pro-bolsonaro-no-twitter-aumenta-as-vesperas-do-7-de-setembro-diz-relatorio.shtml>> accessed 15 September 2022.

¹³⁹ 'Ações Automatizadas Guiaram Um a Cada Quatro Perfis Favoráveis Ao Voto Impresso No Twitter' <<https://lupa.uol.com.br/jornalismo/2021/08/12/acoes-automatizadas-voto-impresso/>> accessed 15 September 2022.

¹⁴⁰ 'Institute for Technology and Society of Rio de Janeiro (ITS Rio)' (*ITS Rio*) <<https://itsrio.org/en/en-home/>> accessed 9 November 2022.

¹⁴¹ 'Instituto Tecnologia & Equidade – Nossa missão é alcançar a equidade com uso ético da tecnologia' <<https://tecnologiaequidade.org.br/>> accessed 9 November 2022.

¹⁴² 'Aos Fatos | Valorize o Que é Real' <<https://www.aosfatos.org/>> accessed 16 June 2022.

Another potential example of how architecture can be used to counter fake news is through Blockchain. In a nutshell, news websites or platforms that use the technology can make information traceable, immutable, and transparent, thereby rendering it all but impossible to alter the content once it has been created.¹⁴³

On the other hand, the until then absolutist defender of free speech, Elon Musk, after taking over Twitter, suspended several high-profile journalists¹⁴⁴ and updated the Private Information Policy¹⁴⁵ to prohibit the sharing of another person's live location, although he claimed he was so committed to free speech that he would not even ban the account that tracks his plane.¹⁴⁶ This action can be seen as an attempt, in the architecture of the platform – through its new policy and tracker algorithms – to curate and manipulate speech as well.

2.3.3 Social Norms

According to Lessig, social norms also regulate, as it enforce 'through the understandings and expectations of just about everyone within a particular community'.¹⁴⁷ Thus, social norms can be considered a powerful tool in combating fake news, since it ought to encourage users to act according to social conventions. In this way, media literacy is a promising socio remedy, as it empowers people to consume information and think critically, distinguishing facts, opinions, and false information, as well as understanding the reasons why information is produced and how it can sometimes be used to persuade.¹⁴⁸

Claire Wardle, from *FirstDraft*, has already expressed on Twitter that 'the best way to fight misinformation is to swamp the landscape with accurate information that is easy to digest, is engaging and easy to share on mobile'.¹⁴⁹ In this regard, one study showed that encouraging

¹⁴³ Kai Shu and others (eds), *Disinformation, Misinformation, and Fake News in Social Media: Emerging Research Challenges and Opportunities* (Springer International Publishing 2020)

<<http://link.springer.com/10.1007/978-3-030-42699-6>> accessed 18 December 2022.

¹⁴⁴ 'Twitter Suspends Journalists Who Have Been Covering Elon Musk and the Company' (*NBC News*) <<https://www.nbcnews.com/tech/social-media/twitter-suspends-journalists-covering-elon-musk-company-rcna62032>> accessed 18 December 2022.

¹⁴⁵ Twitter Safety [@TwitterSafety], 'We've Updated Our Private Information Policy to Prohibit Sharing Someone Else's Live Location in Most Cases. Here's What Changed and Why.' <<https://twitter.com/TwitterSafety/status/1603165959669354496>> accessed 18 December 2022.

¹⁴⁶ Elon Musk [@elonmusk], 'My Commitment to Free Speech Extends Even to Not Banning the Account Following My Plane, Even Though That Is a Direct Personal Safety Risk' <<https://twitter.com/elonmusk/status/1589414958508691456>> accessed 18 December 2022.

¹⁴⁷ 'Lessig - 1998 - The Laws of Cyberspace.Pdf' (n 129).

¹⁴⁸ UNESCO, 'Media and Information Literacy Curriculum for Teachers' (2011) <<https://unesdoc.unesco.org/ark:/48223/pf0000192971>> accessed 15 September 2022.

¹⁴⁹ Claire Wardle [@cwardle], 'The Best Way to Fight Misinformation Is to Swamp the Landscape with Accurate Information That Is Easy to Digest, Is Engaging and Easy to Share on Mobile. It Should Also Answer People's Questions and Ultimately Fears. It's the Vacuums That Are Creating Space for Rumors to Run Wild' <<https://twitter.com/cwardle/status/1239999802097782785>> accessed 15 September 2022.

people to fact-check had the positive effect of nudging the AI – and not the user – to slow down the spread of untrustworthy content.¹⁵⁰

In Brazil, a media education project *Redes Cordiais*¹⁵¹ aims to train digital influencers in the fight against fake news and hate speech, as these voices play a key role in building social norms, speaking to millions of followers. In addition, fact-checking agencies such as *Aos Fatos*,¹⁵² *Lupa*,¹⁵³ and *Projeto Comprova*¹⁵⁴ aim to identify and weaken the spread of fake news by investigating suspicious information and providing verified content, and can therefore be considered social actions in this aspect too.

Regarding social media platforms, online moderation conducted by independent bodies, such as Facebook's Oversight Board¹⁵⁵ and Spotify's Safety Advisory Board,¹⁵⁶ also has a social norm perspective, as external members act independently in making decisions about what to remove, what to allow, and why.¹⁵⁷

2.3.4 Market

According to Lessig,¹⁵⁸ the market regulates by price and defines the range of opportunities. As stated in Chapter 1, the fake news industry can be related to the financial aspect too, as it potentially involves large sums of money, turning into a lucrative business. In this regard, some argue that an effective way fighting the spread of fake news is to create mechanisms to investigate and punish those who finance disinformation discourse.

Articulated campaigns speak to millions of people. Here, it is not the content that should be criminalized or curated, but the structures that fund fake news. In addition to public initiative aimed at dismantling the funders, whether through the publication of laws or through law enforcement agencies, one can also highlight the partnership with social media platforms, by creating rules to demonetise the circulation of fake news, for instance. The final report of the

¹⁵⁰ J Nathan Matias, 'Persuading Algorithms With an AI Nudge' (*CivilServant*) <https://civilservant.io/persuading_ais_preserving_liberties_r_worldnews.html> accessed 16 September 2022.

¹⁵¹ 'Redes Cordiais' <<https://www.redescordiais.com.br/>> accessed 15 September 2022.

¹⁵² 'Aos Fatos | Valorize o Que é Real' (n 143).

¹⁵³ 'Lupa | Institucional' <<https://lupa.uol.com.br/institucional>> accessed 18 September 2022.

¹⁵⁴ 'Projeto Comprova - jornalismo colaborativo contra a desinformação' (*Projeto Comprova*) <<https://projetoconprova.com.br/>> accessed 18 September 2022.

¹⁵⁵ 'Oversight Board | Independent Judgment. Transparency. Legitimacy.' <<https://oversightboard.com/>> accessed 15 June 2022.

¹⁵⁶ 'Introducing the Spotify Safety Advisory Council' (*Spotify*, 13 June 2022) <<https://newsroom.spotify.com/2022-06-13/introducing-the-spotify-safety-advisory-council/>> accessed 15 June 2022.

¹⁵⁷ 'Meet the Board | Oversight Board' <<https://www.oversightboard.com/meet-the-board/ronaldo-lemos/>> accessed 18 September 2022.

¹⁵⁸ 'Lessig - 1998 - The Laws of Cyberspace.Pdf' (n 129).

High Level Expert Group on Fake News and Online Disinformation also states that ‘platforms should adapt their advertising policies, including adhering to “follow-the-money” principle, whilst preventing incentives that leads to disinformation, such as to discourage the dissemination and amplification of disinformation for profit.’¹⁵⁹

2.4 Conclusion

To sum up, this Chapter provided some of the key definitions of fake news, in addition to its possible causes, consequences, social impacts and approaches on how to counter it. The brief analysis meant to show how complex the problem is and that there is no silver bullet to fix it. According to Lessig, when talking about regulation, the sum of the four constraints must operate together, since ‘any one alone cannot represent the effect of the four together’.¹⁶⁰

Therefore, what is characterized as freedom of expression in one country may be characterized as illegal and prohibited in another, thereby what is considered the best approach to regulate fake news in one place may be ineffective in another. Answering the first sub-question, to have an effective regulation to tackle fake news, it is first necessary to clearly define the problem by taking into account its various peculiarities, namely, the jurisdiction, the economic and cultural setting, the various roots, the actors involved, their intentions, the objectives and the desired outcomes. Thus, the definition and the consequent proposed approach must be multisectoral and with a transversal focus, and not in a single framework globally speaking.

Chapter 3. European Framework

Besides the fact that defining what fake news is not an easy task, since it involves many factors to be observed, there are also different approaches on how to regulate the issue, as seen earlier. This Chapter gives a brief overview of the efforts made by the European Union, which has been working since 2015 on implementing measures to deal with the issue. The analysis seeks to demonstrate the progress and results achieved so far, as whatever happens in Europe sets an important global precedent. The idea is not to copy and paste rules for Brazil, but to draw reflections of which European approaches could also be adopted in the Brazilian

¹⁵⁹ ‘Final Report of the High Level Expert Group on Fake News and Online Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>> accessed 18 May 2022.

¹⁶⁰ ‘Lessig - 1998 - The Laws of Cyberspace.Pdf’ (n 129).

jurisdiction, as well as to gain knowledge and learn lessons that can be valuable for the discussion as a society.

3.1 Regulatory framework

In the European Union, the concerns related to the spread of fake news were raised in 2015, after a decision of the European Council about ‘the need to challenge Russia’s ongoing disinformation campaigns’.¹⁶¹ The result was the creation of the East Stratcom Task Force in the European External Action Service (‘EEAS’),¹⁶² with an aim to tackle disinformation originating from outside the EU.

The European Parliament Resolution (2017)¹⁶³ called on the European Commission to analyse the legal framework existing at the time with respect to fake news and the need for further legislative intervention in order to limit its dissemination.¹⁶⁴ Between November 2017 and February 2018, the European Commission held a public consultation with citizens, legal entities and journalists, aiming of defining the phenomenon, assessing the effectiveness of measures already taken and outlining future actions to strengthen the quality of information.¹⁶⁵ Shortly thereafter, the Commission conducted a survey (Eurobarometer)¹⁶⁶ via telephone, with citizens in all Member States, about ‘their perception of fake news and their trust in news media sources’.¹⁶⁷

In January 2018, the European Commission established a High-Level Expert Group (‘HLEG’)¹⁶⁸ to advice on policy efforts to tackle fake news, publishing, in March 2018, a Report¹⁶⁹ that brings a multidimensional approach with the collaboration of different

¹⁶¹ ‘European-Council-Conclusions-19-20-March-2015-En.Pdf’

<<https://www.consilium.europa.eu/media/21888/european-council-conclusions-19-20-march-2015-en.pdf>> accessed 18 May 2022.

¹⁶² ‘Questions and Answers about the East StratCom Task Force | EEAS Website’

<https://www.eeas.europa.eu/eeas/questions-and-answers-about-east-stratcom-task-force_en#11232> accessed 16 June 2022.

¹⁶³ European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2276(INI)) 2017, para 36.

¹⁶⁴ *ibid.*

¹⁶⁵ ‘Report of the Public Consultation on Fake News and Online Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/synopsis-report-public-consultation-fake-news-and-online-disinformation>> accessed 18 May 2022.

¹⁶⁶ ‘Final Results of the Eurobarometer on Fake News and Online Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/final-results-eurobarometer-fake-news-and-online-disinformation>> accessed 18 May 2022.

¹⁶⁷ *ibid.*

¹⁶⁸ ‘Experts Appointed to the High-Level Group on Fake News and Online Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/news/experts-appointed-high-level-group-fake-news-and-online-disinformation>> accessed 5 August 2022.

¹⁶⁹ ‘Final Report of the High Level Expert Group on Fake News and Online Disinformation | Shaping Europe’s Digital Future’ (n 160).

stakeholders.¹⁷⁰ Based on this Report, in April 2018, the European Commission released a Communication,¹⁷¹ emphasizing the key role played by the private sector and civil society, and outlining a self-regulatory plan to ‘raise public awareness about disinformation and tackle the phenomenon effectively’.¹⁷² According to the Communication, the spread of disinformation has interrelated causes (such as economic, technological, political and ideological), and distinguishes disinformation operations into three sequential stages: creation, amplification through social media, and dissemination by users. In this context, it states that ‘there should be no expectation that a single solution could address all challenges’,¹⁷³ and so it outlines four principles to shed light on the challenges: transparency, diversity of information, credibility, and inclusive solutions.¹⁷⁴

The Communication was followed by a series of measures, such as the Elections Package¹⁷⁵ and the Code of Practice on Disinformation,¹⁷⁶ both released in September 2018. In the former, Member States were encouraged to set up a cooperation network in order to coordinate responses to potential threats and disinformation campaigns, whereas in the latter, the European Commission convened a multi-stakeholder forum with some of the largest online platforms and advertisers to work, on a voluntary basis, toward self-regulatory standards. The Code of Practice states that all stakeholders have a role to play and the ‘signatories are mindful of the fundamental right to freedom of expression and to an open Internet, and the delicate balance which any efforts to limit the spread and impact of otherwise lawful content must strike’.¹⁷⁷ To that end, the Code of Practice covers several relevant fields in order to increase transparency and mitigate challenges, and some of the efforts include shutting down fake accounts, ensuring that bot activities are not confused with human interactions, facilitating fact-checking activities, and facilitating the ability to find reliable content.¹⁷⁸

¹⁷⁰ *ibid.*

¹⁷¹ ‘Communication - Tackling Online Disinformation: A European Approach | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/library/communication-tackling-online-disinformation-european-approach>> accessed 18 May 2022.

¹⁷² ‘EUR-Lex HTML (EN)’ <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0236>> accessed 24 January 2023.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ ‘State of the Union 2018: European Commission Proposes Measures for Securing Free and Fair European Elections’ (*European Commission - European Commission*) <https://ec.europa.eu/commission/presscorner/detail/en/ip_18_5681> accessed 18 May 2022.

¹⁷⁶ ‘Code of Practice on Disinformation | Shaping Europe’s Digital Future’ (n 35).

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

To complement the Code, the Commission released, in December 2018, the Action Plan against Disinformation,¹⁷⁹ setting out key actions and highlighting steps to be taken for a coordinated response, such as mobilize private sector and raising awareness.¹⁸⁰ The most concrete action plan was the creation of a Rapid Alert System ('RAS')¹⁸¹ aimed at providing alerts in real time, launched in March 2019 and used for the first time to combat COVID-19-related disinformation.¹⁸²

In October 2019, the first Annual Self-Assessment Reports¹⁸³ were published, indicating the efforts implemented by signatories in their commitments under the Code of Practice. The main takeaways were that there was increased transparency in platforms' policies, but at the same time, the provision of data did not meet the needs of researchers for independent examination, and the actions taken by each platform varied significantly.

The COVID-19 pandemic was also at the centre of attention of the European Commission and the High Representative, which published, in June 2020, a Joint Communication – Tackling Coronavirus Disinformation,¹⁸⁴ proposing actions to deal with virus-related disinformation. These included the need to differentiate the content, whether illegal or harmful, in addition to differentiate the intent, whether for public deception or economic gain, and then providing a calibrated response depending on the degree of harm, actors involved, source, etc. Some steps to address the issue included strategic communication and cooperation within and outside the EU, with social media platforms, researchers and fact-checkers.

Late in December 2020, the European Commission published a package¹⁸⁵ with two legislative initiatives, the Digital Markets Act ('DMA')¹⁸⁶ and the Digital Services Act

¹⁷⁹ 'Action Plan on Disinformation: Commission Contribution to the European Council (13-14 December 2018)' (*European Commission - European Commission*) <https://ec.europa.eu/info/publications/action-plan-disinformation-commission-contribution-european-council-13-14-december-2018_en> accessed 16 June 2022.

¹⁸⁰ *ibid.*

¹⁸¹ 'Rapid Alert System | EEAS Website' <https://www.eeas.europa.eu/node/59644_en> accessed 14 August 2022.

¹⁸² Samuel Stolton, 'EU Rapid Alert System Used amid Coronavirus Disinformation Campaign' (*www.euractiv.com*, 4 March 2020) <<https://www.euractiv.com/section/media/news/eu-alert-triggered-after-coronavirus-disinformation-campaign/>> accessed 14 August 2022.

¹⁸³ 'Annual Self-Assessment Reports of Signatories to the Code of Practice on Disinformation 2019 | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/news/annual-self-assessment-reports-signatories-code-practice-disinformation-2019>> accessed 14 August 2022.

¹⁸⁴ 'Tackling Coronavirus Disinformation' (*European Commission - European Commission*) <https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/fighting-disinformation/tackling-coronavirus-disinformation_en> accessed 16 June 2022.

¹⁸⁵ 'The Digital Services Act Package | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>> accessed 16 June 2022.

¹⁸⁶ 'EUR-Lex - 32022R1925 - EN - EUR-Lex' <<https://eur-lex.europa.eu/eli/reg/2022/1925>> accessed 8 November 2022.

(‘DSA’),¹⁸⁷ aiming to foster innovation in a more secure and open digital space. Specifically in the DSA, the Regulation was published in October 2022 and it not only defines content moderation but also brings some initiatives to increase transparency and accountability of platforms, prohibits misleading practices and targeted advertising while protecting freedom of expression. This Regulation will enter into force on the 17th February 2024 and, like the General Data Protection Regulation (‘GDPR’),¹⁸⁸ given its great potential to implement a new standard of transparency and security for online services, may represent an international regulatory trend in content moderation and, consequently, a possibility for solving the problem of fake news.

The topic remains in the spotlight with the publication of the 2022 Strengthened Code of Practice on Disinformation.¹⁸⁹ The 34 signatories¹⁹⁰ commit to work collaboratively through a permanent task-force in different areas, in line with the requirements of the DSA. Some key commitments include demonetizing disinformation, avoiding placing advertising next to it, empowering users, researchers and the fact-checking community, developing transparent policies with regular monitoring, developing a feature to flag misleading information, and measures to curb misinformation in messaging apps, among others.¹⁹¹

3.2 How the European Union inspired the Brazilian market

The analysis of the regulatory framework described above does not aim to simply import solutions or regulations to Brazil, because the roots of fake news may have different causes, as well as the societies, culture, maturity of discussion and the time are different. However, it is true that what the European Union establish plays an important and guiding role at a global level, such as the GDPR, which inspired the Brazilian General Data Protection Law (‘LGPD’).¹⁹² It is therefore worth highlighting some of the European initiatives related to the fight against fake news, which have also inspired Brazil.

¹⁸⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) 2022 (OJ L).

¹⁸⁸ ‘EUR-Lex - 32016R0679 - EN - EUR-Lex’ <<https://eur-lex.europa.eu/eli/reg/2016/679/oj>> accessed 8 November 2022.

¹⁸⁹ ‘2022 Strengthened Code of Practice on Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>> accessed 17 June 2022.

¹⁹⁰ ‘Signatories of the 2022 Strengthened Code of Practice on Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation>> accessed 18 August 2022.

¹⁹¹ ‘The 2022 Code of Practice on Disinformation | Shaping Europe’s Digital Future’ <<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>> accessed 18 December 2022.

¹⁹² ‘L13709’ <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm> accessed 2 November 2022.

The Superior Electoral Court (TSE),¹⁹³ the highest Brazilian Court responsible for Electoral Justice, which plays a key role in the electoral process and the exercise of democracy, has been leading the exchange of knowledge with the Union since 2018, with the first international seminar on the topic,¹⁹⁴ followed by other similar events in 2019¹⁹⁵ and 2021.¹⁹⁶ Through these events, the topic has been gaining importance in the national discussion, mainly focused on learning good practices to be implemented in the political-electoral sector.

Like the European Union, the TSE has been adopting a multi-sectoral and multi-stakeholder strategy in promoting affirmative actions and media literacy. For example, the TSE has been promoting seminars with different stakeholders,¹⁹⁷ training digital influencers,¹⁹⁸ and disseminating verified information with the support of fact-checking agencies,¹⁹⁹ in order to foster discussion and empower users and journalists.

Another strategy, similar to the Code of Practice adopted by the Union, is the partnership between TSE with more than 150 institutions,²⁰⁰ including big tech companies, such as Twitter, Google and Facebook, to work collaboratively on the Electoral Justice Permanent Program on Countering Disinformation.^{201;202} Besides that, similar to the 2022

¹⁹³ ‘Superior Electoral Court’ (n 43).

¹⁹⁴ ‘TSE e União Europeia realizam primeiro seminário internacional sobre fake news’ (*Justiça Eleitoral*) <<https://www.tre-mt.jus.br/comunicacao/noticias/2018/Junho/tse-e-uniao-europeia-realizam-primeiro-seminario-internacional-sobre-fake-news>> accessed 9 October 2022.

¹⁹⁵ ‘TSE realiza seminário internacional sobre fake news, com apoio da União Europeia’ <<https://www.tse.jus.br/imprensa/noticias-tse/2019/Abril/tse-e-uniao-europeia-realizam-seminario-internacional-sobre-fake-news>> accessed 17 June 2022.

¹⁹⁶ ‘Representantes do TSE e da União Europeia destacam ações de enfrentamento da desinformação’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2021/Junho/representantes-do-tse-e-da-uniao-europeia-destacam-acoes-de-enfrentamento-a-desinformacao>> accessed 9 October 2022.

¹⁹⁷ ‘Seminário Internacional Fake News e Eleições’ <<http://www.tse.jus.br/hotsites/seminario-internacional-fake-news-eleicoes>> accessed 9 October 2022.

¹⁹⁸ ‘TSE e Redes Cordiais realizam, com influenciadores digitais, capacitação sobre desinformação’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Agosto/tse-e-redes-cordiais-realizam-com-influenciadores-digitais-capacitacao-sobre-desinformacao>> accessed 9 October 2022.

¹⁹⁹ ‘Eleições 2022: TSE renova parceria com agências de checagem’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Fevereiro/tse-formaliza-renovacao-de-parceria-com-agencias-de-checagem-para-combate-a-desinformacao-nas-eleicoes-2022>> accessed 25 October 2022.

²⁰⁰ ‘Programa de Enfrentamento à Desinformação do TSE tem mais de 150 parcerias’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Julho/programa-de-enfrentamento-a-desinformacao-do-tse-tem-mais-de-150-parcerias-659181>> accessed 9 October 2022.

²⁰¹ ‘PORTARIA Nº 510, DE 04 DE AGOSTO DE 2021.’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/legislacao/compilada/prt/2021/portaria-no-510-de-04-de-agosto-de-2021>> accessed 4 November 2022.

²⁰² ‘Desinformação’ (*Justiça Eleitoral*) <<https://www.justicaeleitoral.jus.br/desinformacao/>> accessed 24 October 2022.

Strengthened Code of Practice, the TSE is trying to demonetize disinformation by avoiding placing advertising next to it as a way to curb the abuse of economic power.²⁰³

When it comes to local regulation, one can infer that France, with its law aimed at combating disinformation during the election period, inspired the TSE to issue its Resolution n° 23.714/2022 with a similar objective during the election period, as will be demonstrated in the Section. 4.2.3.

It can be said that analyzing the discussions and actions taken by the European Union, with its 27 countries and different cultures, but in an aligned way, committed to working to address the problem, provides, besides the acquisition of knowledge, an insight into which initiatives have had positive results and can inspire internal discussions in other countries too. The analysis of the historical regulatory evolution demonstrates how the discussion of the topic has been part of the EU agenda for years, not only in relation to the election period, but also as a guarantee of fundamental rights and online safety.

Brazil is slowly shedding light on the subject and, as will be seen in Chapter 4, since 2018 the country has been experiencing political polarization resulting mainly from the rampant spread of fake news. To mature the discussion of a possible legislation, it is first necessary to understand the phenomenon beyond the political field, and for this, analyzing the actions taken by other jurisdictions can help to get a broad view of the problem, as well as get some inspirations on actions.

3.3 Conclusion

To conclude, this Chapter provided a brief overview on the regulatory history and efforts made by the European Union, which has been dealing with the issue for several years and has already taken a variety of measures to tackle the problem. In response to sub-question 2, some positive lessons can be drawn. First, discussion of the problem can take years to reach a mature level of understanding of how complex it is and how many negative outcomes it can bring. Simply criminalizing the phenomenon is not a realistic option, nor does it solve the problem. Moreover, the discussion should be multi-stakeholder and multidimensional, with the participation of governments, political parties, civil society, academia, and the private sector. It is necessary to provide media literacy to have a critical analysis and awareness of the negative effects of the phenomenon. Moreover, collaborative work, such as the Code of Practice, has a

²⁰³ ‘TSE desmonetiza quatro canais e suspende divulgação de documentário’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/tse-desmonetiza-quatro-canais-e-suspende-divulgacao-de-documentario>> accessed 24 October 2022.

positive impact as it increases transparency and accountability of private companies through a permanent task force in different areas.

Chapter 4. Brazilian Framework

Brazil has one of the largest numbers of Internet users in the world,²⁰⁴ and since the 2018 presidential election, the country has begun to face profound challenges in the communications sector.

At that time, the far-right candidate Jair Bolsonaro,²⁰⁵ a former military officer, representing the Social and Liberal Party, ran against Fernando Haddad,²⁰⁶ a former Minister of Education and former Mayor of São Paulo, left-wing rival and representative of the Workers' Party. Haddad had replaced former President Luiz Inácio Lula da Silva²⁰⁷ at the last minute, due to his ineligibility conditions related to his previous corruption convictions.²⁰⁸ Bolsonaro won the 2018 elections with a speech against corruption, thievery, restoration of the 'traditional family values',²⁰⁹ but at the same time exalting dictatorship, military torture, violence against LGBTQ and black people, against indigenous, women, political opponents and journalists,²¹⁰ polarizing the discourse and the people beyond partisan political opinion.²¹¹ For the first time, the country had been deluged with misleading messages through WhatsApp²¹² and the 'disinformation assumed an unprecedented role in electoral history'.²¹³

²⁰⁴ 'Most Internet Users by Country' (n 28).

²⁰⁵ 'Jair Bolsonaro', *Wikipedia* (2022)

<https://en.wikipedia.org/w/index.php?title=Jair_Bolsonaro&oldid=1119272434> accessed 31 October 2022.

²⁰⁶ 'Fernando Haddad', *Wikipedia* (2022)

<https://en.wikipedia.org/w/index.php?title=Fernando_Haddad&oldid=1119138878> accessed 31 October 2022.

²⁰⁷ 'Luiz Inácio Lula da Silva', *Wikipédia, a enciclopédia livre* (2022)

<https://pt.wikipedia.org/w/index.php?title=Luiz_In%C3%A1cio_Lula_da_Silva&oldid=64730827> accessed 23 November 2022.

²⁰⁸ Dom Phillips, 'Brazil's Former President Lula Walks Free from Prison after Supreme Court Ruling' *The Guardian* (8 November 2019) <<https://www.theguardian.com/world/2019/nov/08/lula-brazil-released-prison-supreme-court-ruling>> accessed 5 November 2022.

²⁰⁹ 'Brazil's Far-Right Candidate Falls Short of Election Stunner, Faces Runoff against Leftist Rival' (CNBC) <<https://www.cnbc.com/2018/10/08/brazil-presidential-election-bolsonaro-to-face-haddad-in-runoff.html>> accessed 31 October 2022.

²¹⁰ 'Bolsonaro Insults Folha Reporter with Sexual Insinuation - 18/02/2020 - Brazil - Folha'

<<https://www1.folha.uol.com.br/internacional/en/brazil/2020/02/bolsonaro-insults-folha-reporter-with-sexual-insinuation.shtml>> accessed 1 November 2022.

²¹¹ Andrew Fishman October 28 2018 and 7:20 P.m, 'Jair Bolsonaro Is Elected President of Brazil. Read His Extremist, Far-Right Positions in His Own Words.' (*The Intercept*) <<https://theintercept.com/2018/10/28/jair-bolsonaro-elected-president-brazil/>> accessed 31 October 2022.

²¹² Mike Isaac and Kevin Roose, 'Disinformation Spreads on WhatsApp Ahead of Brazilian Election' *The New York Times* (19 October 2018) <<http://www.nytimes.com/2018/10/19/technology/whatsapp-brazil-presidential-election.html>> accessed 31 October 2022.

²¹³ 'Tse-Brazil-Counter-Disinformation-Program-2022-f.Pdf' <<https://international.tse.jus.br/en/misinformation-and-fake-news/tse-brazil-counter-disinformation-program-2022-f.pdf>> accessed 4 November 2022.

As mentioned in Chapter 3, the TSE initiate a joint effort with the European Union not to import miracle solutions, as the problem has diverse roots, but to discuss the implications of fake news and to learn about their experiences. At the same time, the TSE took internal measures too, such as the creation of a multidisciplinary strategic cabinet to monitor and respond the challenges the issue could pose to the credibility of the electoral process.²¹⁴ Since then, the Court has been specializing, broadening the discussion with various stakeholders, improving its legislation, working in different fields, and assuming a key role in protecting democracy and the electoral system, as will be show bellow.

This Chapter gives an overview of the Brazilian political scenario that led to the increase in the dissemination of fake news, the regulatory framework, and shed light on some of the efforts implemented to tackle the phenomenon. It is not intended to exhaust the subject, nor to name all the facts that have occurred since then, but the main events that have marked the discussion of the subject in the country.

4.1 Political framework

According to the research conducted by ITS Rio,²¹⁵ relevant patterns were identified regarding the use of WhatsApp in the 2018 Brazilian electoral process, mainly the presence of profiles in messaging groups with a high probability of automated or semi-automated behavior.²¹⁶ InternetLab²¹⁷ did similar work by analyzing the profile of the followers of the presidential pre-candidates on Twitter and concluded that the presence of bots in the political discourse of the 2018 election would be a reality.²¹⁸

Since being elected in 2018 and during Bolsonaro's 4 years in office, the country has experienced an exponential increase in the dissemination of fake news, hate speech and conspiracy theories, endangering democracy, health, the environment and safety of the people. The so-called cabinet of hate, a pro-Bolsonaro network operation allegedly led by his sons,²¹⁹ made use of instant messaging apps and social media to spread fake news, promote riots and

²¹⁴ *ibid.*

²¹⁵ 'Institute for Technology and Society of Rio de Janeiro (ITS Rio)' (n 141).

²¹⁶ 'Poder-Computacional-Relatorio-Whatsapp-Eleicoes-ITS.Pdf' <<https://itsrio.org/wp-content/uploads/2018/10/Poder-Computacional-Relatorio-Whatsapp-Eleicoes-ITS.pdf>> accessed 1 November 2022.

²¹⁷ 'InternetLab' <<https://internetlab.org.br/en/>> accessed 9 November 2022.

²¹⁸ 'Bot or Not: Who Are the Followers of Our Candidates for President?' (n 30).

²¹⁹ 'How Bolsonaro's "Hate Cabinet" Works' (*International Journalism Festival*) <<https://www.journalismfestival.com/programme/2022/the-brazil-of-bolsonaro-attack-on-independent-media>> accessed 3 November 2022.

threats of a coup, and attack those who criticized the president, especially journalists²²⁰ and members of the Supreme Court (STF),²²¹ seeking political, ideological and financial gains.²²²

The STF then started, *ex officio*, through Ordinance No. 69/2019,²²³ a criminal procedure – STF Inquiry n° 4,781,²²⁴ to investigate the threat against democratic institutions, false accusations against members of the Court and dissemination of fake news.²²⁵ This measure was highly criticized because, in addition to being sealed, the Court assumed the role of police, prosecutor and judge, and was therefore considered to censor the speech by violating the right to freedom of expression.²²⁶ The Inquiry was challenged (ADPF 572),²²⁷ but the plenary concluded, by 10 to 1, for the validity of the investigation, which is still ongoing.²²⁸

At the same time, in an internal procedure, Facebook also removed 73 accounts – many of them known as Bolsonaro's supporters – that were allegedly linked to the cabinet of hate.²²⁹ According to the company, there were violations in their policies against foreign interference and coordination of inauthentic behavior.²³⁰

In 2019, the National Congress also initiated a Parliamentary Commission of Inquiry – CPMI Fake News,²³¹ to investigate the mass dissemination of false information in the 2018

²²⁰ Mello (n 32).

²²¹ 'Brazil's Bolsonaro Urges Supreme Court to Shelve "fake News" Probe' *Reuters* (28 May 2020) <<https://www.reuters.com/article/us-brazil-politics-idUSKBN234253>> accessed 3 November 2022.

²²² 'PF Diz Ao STF Que Milícia Digital Usa Estrutura Do "gabinete Do Ódio" | Política | G1' <<https://g1.globo.com/politica/noticia/2022/02/10/pf-diz-ao-stf-que-milicia-digital-usa-estrutura-do-gabinete-do-odio.ghtml>> accessed 8 November 2022.

²²³ 'Comunicado-Supremo-Tribunal-Federal1.Pdf' <<https://www.conjur.com.br/dl/comunicado-supremo-tribunal-federal1.pdf>> accessed 23 November 2022.

²²⁴ 'The Case of the Brazil Fake News Inquiry' (*Global Freedom of Expression*) <<https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-brazil-fake-news-inquiry/>> accessed 3 November 2022.

²²⁵ 'Supreme Court of Brazil's Inquiry against Fake News: Advancement or Step Backwards?' (*IRIS-BH*, 8 April 2019) <<https://irisbh.com.br/en/supreme-court-of-brazils-inquiry-against-fake-news-advancement-or-step-backwards/>> accessed 3 November 2022.

²²⁶ Renan Araujo, 'Brazilian Supreme Court Inquiry into "Fake News" Violates Freedom of Speech | OHRH' <<https://ohrh.law.ox.ac.uk/brazilian-supreme-court-inquiry-into-fake-news-violates-freedom-of-speech/>> accessed 16 June 2022.

²²⁷ 'Supremo Tribunal Federal' <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=5658808>> accessed 23 November 2022.

²²⁸ 'Portal STF Internacional' <https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfDestaque_en_us&idConteudo=445928> accessed 3 November 2022.

²²⁹ 'Facebook Removes 73 False Accounts Connect to The Bolsonaro Family' (*Folha de S.Paulo*, 9 July 2020) <<https://www1.folha.uol.com.br/internacional/en/brazil/2020/07/facebook-removes-73-false-accounts-connect-to-the-bolsonaro-family.shtml>> accessed 3 November 2022.

²³⁰ 'Removendo comportamento inautêntico coordenado' (*Sobre a Meta*, 8 July 2020) <<https://about.fb.com/br/news/2020/07/removendo-comportamento-inautentico-coordenado/>> accessed 3 November 2022.

²³¹ 'CPMI - Fake News - Comissão Parlamentar Mista de Inquérito - Fake News - Atividade Legislativa - Senado Federal' <<https://legis.senado.leg.br/comissoes/comissao?codcol=2292>> accessed 17 June 2022.

elections and the use of social media for orchestrated attacks against the democracy, members of STF and Institutions. However, this investigation is currently suspended.²³²

In addition to threatening democracy, Bolsonaro has also put the health of the people at risk. During the COVID-19, Bolsonaro was heavily criticized for persistently spreading fake news about the virus, its severity and treatment with hydroxychloroquine – without scientific proof,²³³ and for being contrary to recommendations given by the WHO, such as mask-wearing and social distancing.²³⁴ Twitter,²³⁵ YouTube,²³⁶ Instagram and Facebook²³⁷ had to delete some of his posts and videos because he constantly made statements with no scientific basis, such as AIDS developing for those who took the COVID-19 vaccine.²³⁸

More recently, Bolsonaro published fake news related to the seriousness of the Brazilian electoral process and an alleged fraud in the 2018 and 2022 elections, where he would have been undermined, putting the transparency and security of the electronic ballot box in question.²³⁹ In a meeting with foreign ambassadors, Bolsonaro repeated the same claims about electoral fraud²⁴⁰ and the TSE unanimously approved the opening of an administrative investigation against the President,²⁴¹ ordering the removal of the videos.²⁴²

²³² ‘Sem concluir investigações, CPI das Fake News deve encerrar os trabalhos’ (*CNN Brasil*) <<https://www.cnnbrasil.com.br/noticias/sem-concluir-investigacoes-cpi-das-fake-news-deve-encerrar-os-trabalhos/>> accessed 17 June 2022.

²³³ ‘Coronavirus: Fake Cures in Latin America’s Deadly Outbreak’ *BBC News* (11 July 2020) <<https://www.bbc.com/news/53361876>> accessed 3 November 2022.

²³⁴ ‘Brazil: Bolsonaro Sabotages Anti-Covid-19 Efforts’ (*Human Rights Watch*, 10 April 2020) <<https://www.hrw.org/news/2020/04/10/brazil-bolsonaro-sabotages-anti-covid-19-efforts>> accessed 3 November 2022.

²³⁵ ‘Twitter Deletes Bolsonaro’s Tweets’ (*Folha de S.Paulo*, 30 March 2020) <<https://www1.folha.uol.com.br/internacional/en/brazil/2020/03/twitter-deletes-bolsonaros-tweets.shtml>> accessed 3 November 2022.

²³⁶ Adam Satariano, ‘YouTube Pulls Videos by Bolsonaro for Spreading Misinformation on the Virus.’ *The New York Times* (22 July 2021) <<http://www.nytimes.com/2021/07/22/world/youtube-bolsonaro-covid.html>> accessed 3 November 2022.

²³⁷ ‘Facebook, YouTube Take down Bolsonaro Video over False Vaccine Claim | Reuters’ <<https://www.reuters.com/world/americas/facebook-takes-down-bolsonaro-video-over-false-vaccine-claim-2021-10-25/>> accessed 3 November 2022.

²³⁸ ‘Facebook tira do ar live de Bolsonaro com mentira sobre vacina da Covid e Aids’ (*G1*) <<https://g1.globo.com/tecnologia/noticia/2021/10/25/live-bolsonaro.ghtml>> accessed 23 November 2022.

²³⁹ ‘Bolsonaro repete em evento oficial “fake news” que levaram à cassação de deputado aliado’ (*G1*) <<https://g1.globo.com/politica/noticia/2022/06/07/bolsonaro-repete-em-evento-oficial-fake-news-que-levaram-a-cassacao-de-deputado-aliado.ghtml>> accessed 3 November 2022.

²⁴⁰ ‘Bolsonaro Lies about Ballot Boxes to Foreigners - 19/07/2022 - Brazil - Folha’ <<https://www1.folha.uol.com.br/internacional/en/brazil/2022/07/bolsonaro-lies-about-ballot-boxes-to-foreigners.shtml>> accessed 8 November 2022.

²⁴¹ ‘TSE instaura inquérito para investigar ataque às urnas’ (*CNN Brasil*) <<https://www.cnnbrasil.com.br/politica/tse-instaura-inquerito-para-investigar-ataque-as-urnas/>> accessed 3 November 2022.

²⁴² ‘Supreme Court Takes Down Videos in Which Bolsonaro Lies to Ambassadors’ (*Folha de S.Paulo*, 25 August 2022) <<https://www1.folha.uol.com.br/internacional/en/brazil/2022/08/supreme-court-takes-down-videos-in-which-bolsonaro-lies-to-ambassadors.shtml>> accessed 4 November 2022.

During the 2022 presidential elections campaign, Bolsonaro changed to the Liberal Party and ran against Lula, left-wing representative of the Workers' Party. Both campaigns were marked by the dissemination of fake news, such as allegations of satanism, cannibalism and association with trafficking.²⁴³ Nonetheless, in the first round, the TSE removed 334 posts from Bolsonaro supporters against Lula, whereas 10 from the opposite side,²⁴⁴ which shows a pattern followed by the first.

A study conducted by the Federal University of Rio de Janeiro (UFRJ) indicated that the daily average of fake news grew from 196.9 thousand before the first round to 311.5 thousand after – the growth was mainly on Twitter (57%), WhatsApp (36%) and Telegram (23%), and among the topics were false content related to politics and religion.²⁴⁵

On October 28th 2022, just minutes after the vote count gave the majority to Lula, defeating Bolsonaro after one term, the STF, the TSE, the President of Federal Senate and the President of Chamber of Deputies came out publicly to reiterate the integrity of the democratic election process and congratulating the new President.²⁴⁶ This was seen, at the time, as learning from what happened in the 2020 US election, when the former President Trump refused to accept President elect Biden's victory, which resulted in an assault on the Capitol.²⁴⁷ However, the lesson was not really learned – on 08th January 2023, anti-democratic rioters, supporters of Bolsonaro, invaded and destroyed the National Congress buildings in a failed coup attempt.²⁴⁸

Fact-checking agency *Aos Fatos* has evaluated that by 30th December 2022, Bolsonaro has made 6,685 false statements during his 1,459 days as President.²⁴⁹

²⁴³ 'Brazil Election: Accusations and Misinformation on the Campaign Trail' *BBC News* (25 October 2022) <<https://www.bbc.com/news/63374100>> accessed 8 November 2022.

²⁴⁴ 'TSE remove 334 postagens bolsonaristas contra Lula e 10 do PT contra o presidente' <<https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2022/10/21/tse-remove-334-postagens-bolsonaristas-contra-lula-e-10-do-pt-contra-o-presidente.htm>> accessed 8 November 2022.

²⁴⁵ 'Estudo mostra que uso de fake news cresce no 2º turno; "desinformação está mais complexa e sofisticada", diz pesquisadora' (*G1*) <<https://g1.globo.com/politica/eleicoes/2022/noticia/2022/10/25/estudo-mostra-que-uso-de-fake-news-cresce-no-2o-turno-desinformacao-esta-mais-complexa-e-sofisticada-diz-pesquisadora.ghtml>> accessed 23 November 2022.

²⁴⁶ TV Senado, 'Presidente do TSE, Alexandre de Moraes anuncia Lula eleito presidente da República nas Eleições 2022' (*TV Senado*, 30 October 2022) <<https://www12.senado.leg.br/tv/programas/noticias-1/2022/10/presidente-do-tse-alexandre-de-moraes-anuncia-lula-eleito-presidente-da-republica-nas-eleicoes-2022>> accessed 23 November 2022.

²⁴⁷ Jack Nicas, 'What Can U.S. Democracy Learn From Brazil?' *The New York Times* (5 November 2022) <<http://www.nytimes.com/2022/11/05/world/americas/brazil-election-us-democracy.html>> accessed 5 November 2022.

²⁴⁸ Chris Cameron, 'The Attack on Brazil's Seat of Government Resembles the Storming of the U.S. Capitol on Jan. 6, 2021.' *The New York Times* (9 January 2023) <<http://www.nytimes.com/2023/01/08/world/americas/brazil-jan-6-riots.html>> accessed 16 January 2023.

²⁴⁹ 'Todas as declarações de Bolsonaro, checadas' <<https://aosfatos.org/todas-as-declara%C3%A7%C3%B5es-de-bolsonaro/>> accessed 16 January 2023.

4.2 Regulatory framework

As mentioned in the Introduction, the Constitution of the Federative Republic of Brazil²⁵⁰ and the Law n° 5.250/1967²⁵¹ foresee the freedom of expression in the country, whereas the Marco Civil²⁵² establishes civil liability if the service provider fails to remove content ordered by a court.

4.2.1 Congressional Bill – PL n° 2.630/2020

There is no specific law on fake news and more than 50 proposals have tried to regulate the subject.²⁵³ The bill PL n° 2.630/2020²⁵⁴ popularly known as the ‘Fake News Law’, is the only proposal that has made it to an advanced stage of discussion in the National Congress.

The bill was proposed in 2020²⁵⁵ and has been amended several times since then. One of the first versions²⁵⁶ defined disinformation (Article 4, II) as ‘content, in part or in whole, that is unambiguously false or misleading, placed out of context, manipulated or forged, with the potential to cause individual or collective harm, with the exception of humour or parody’.²⁵⁷ That version provided that Internet services providers should take the necessary measure to protect society from the dissemination of fake news through their services (Article 9) and, to that end, listed some actions considered to be ‘good practices’, such as using independent fact-checkers, labelling misleading content, and sending verified information to users (Article 10).²⁵⁸

The current version,²⁵⁹ however, does not provide a definition of the phenomenon, nor does provide best practices to curb it. Even so, Article 36 was included, which provides for the crime of promotion or financing, through the use of automated accounts and other expedients, of the spread of messages that ‘contain a fact that is known to be false and that is capable of compromising the electoral process or of causing harm to physical integrity’.²⁶⁰

²⁵⁰ ‘Constituição Federal - Senado Federal’ (n 6).

²⁵¹ ‘L5250’ (n 5).

²⁵² ‘L12965’ (n 8).

²⁵³ ‘Combate a fake news é tema de 50 propostas na Câmara dos Deputados - Notícias’ (n 40).

²⁵⁴ ‘PL 2630/2020’ (n 41).

²⁵⁵ ‘Senado aprova projeto de combate a notícias falsas; texto vai à Câmara’ (*Senado Federal*) <<https://www12.senado.leg.br/noticias/materias/2020/06/30/aprovado-projeto-de-combate-a-noticias-falsas>> accessed 23 November 2022.

²⁵⁶ ‘Senado Federal - PL 2630/2020’ (*Senado Federal*) <<https://legis.senado.leg.br/sdleg-getter/documento?dm=8110634&ts=1648639813988&disposition=inline>> accessed 23 November 2022.

²⁵⁷ *ibid.*

²⁵⁸ *ibid.*

²⁵⁹ ‘Camara Federal - PL 2630/2020’ (*Portal da Câmara dos Deputados*) <<https://www.camara.leg.br/midias/file/2022/03/fake.pdf>> accessed 23 November 2022.

²⁶⁰ *ibid.*

The current version aims to establish transparency guidelines and mechanisms for Social Network Providers, Instant Messaging Services and Search Engines. With regard to the first two, the proposal calls for the publication of reports containing, for example, the number of accounts or content deleted, made unavailable, or reduced in reach, as well as a description of the tools used in their detection (Article 9). If content is deleted, the user must be notified immediately and the provider must indicate the clause in its terms of use or policies and the legal basis that authorize the decision, and the user will have the right to request a review (Article 15). If the decision is made exclusively through automated systems, the provider must give clear and adequate information about the criteria and procedures used (Article 15, I, d). In addition, these companies will also have to identify the paid content (Article 16), as well as make mechanisms available to offer users with a history for the past 6 months regarding paid content with which they have had contact with (Article 18).

With regard to search engines, the proposal calls for the publication of reports containing the number of de-indexing measures applied, information about automated systems, and general characteristics of the teams involved in the review of the content generated by third parties, including the number of people, their hiring model, statistics on their working language, qualifications and nationality (Article 10).

The penalties for non-compliance range from a fine of up to R\$ 50,000,000.00 per infraction, to suspension or prohibition of activities (Article 31).

It is also worth noting that the proposal foresees respect for the user's 'personal view of the world' (Article 3)²⁶¹ and parliamentary immunity regarding the inviolability of deputies and senators for their words and opinions issued in digital environments (Article 22).²⁶² In addition, journalistic content used by the providers, in any format, including text, video, audio or image, must be paid for by the journalistic companies (Article 38).²⁶³

After so many modifications, the alias 'Fake News Law' has become outdated, as the scope of the current proposal covers other issues, besides no longer having a definition of fake news. Therefore, the consequences of the lack of definition identified in Chapter 2 apply here as well. In addition, the provisions regarding parliamentary immunity and the right to have a personal view of the world go against the spirit of the law, since senators and deputies will not be held liable for publishing online content within their personal view.

²⁶¹ *ibid*

²⁶² *ibid*

²⁶³ *ibid*

Besides that, it is evident that there is an attempt to assign almost exclusively to private companies the obligation and responsibility to curate the speech, without taking into account its business purpose and their Terms of Service and Privacy Policy. On the part of the State, there is only Article 30 that provides for educational practice for the ‘safe, aware and responsible use of Internet applications’,²⁶⁴ how to implement these objectives, nor media literacy.

The bill has raised concerns among society,²⁶⁵ academia,²⁶⁶ and tech companies. In a joint letter, Facebook and Instagram²⁶⁷, Google²⁶⁸, Mercado Livre²⁶⁹ and Twitter²⁷⁰ pointed out how this bill could end up changing the internet and harming users by restricting access to diverse and plural sources of information, as well as making the environment more unprotected for hate speech and misinformation. Moreover, due to the burden of compliance requirements for removing content – such as explanations based on the use of automated systems, terms of use, and legal basis – these platforms could remove less content simply to avoid receiving complaints.

Although the initiative is valuable and extremely necessary, especially in relation to the election period, the text, in its current form, does not have the power to solve the problem of fake news in the country.

It is important to note that at the time of the publication of this thesis, the bill has not yet been approved.

²⁶⁴ *ibid*

²⁶⁵ Katitza Rodriguez and Seth Schoen, ‘5 Serious Flaws in the New Brazilian “Fake News” Bill That Will Undermine Human Rights [UPDATED]’ (*Electronic Frontier Foundation*, 29 June 2020) <<https://www.eff.org/deeplinks/2020/06/5-serious-flaws-new-brazilian-fake-news-bill-will-undermine-human-rights>> accessed 31 October 2022.

²⁶⁶ ‘Technical Note on Congressional Bills on Fake News’ (*ITS Rio*) <<https://itsrio.org/en/publicacoes/technical-note-its/>> accessed 31 October 2022.

²⁶⁷ ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (*Sobre a Meta*, 24 February 2022) <<https://about.fb.com/br/news/2022/02/pl-2630-2020-deixou-de-ser-sobre-combater-as-fake-news/>> accessed 16 June 2022.

²⁶⁸ ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (*Google*, 24 February 2022) <<https://blog.google/intl/pt-br/novidades/iniciativas/pl-26302020-deixou-de-ser-sobre-combater-fake-news/>> accessed 16 June 2022.

²⁶⁹ ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (*Mercado Livre*) <<https://www.mercadolivre.com.br/institucional/nos-comunicamos/noticia/combater-as-fake-news>> accessed 16 June 2022.

²⁷⁰ ‘PL 2630/2020 deixou de ser sobre combater as fake news’ <https://blog.twitter.com/pt_br/topics/company/2022/pl-2630-2020-deixou-de-ser-sobre-combater-as-fake-news> accessed 16 June 2022.

4.2.2 *Provisional Measure – MP n° 1.068/2021*

Provisional Measures ('MP'), published by the President of the Republic in cases of urgency and relevance, have the power of law with immediate effect and validity for 60 days. However, to remain in the legal system, it must be converted into law and have the approval of the National Congress.²⁷¹

In September 2021, Bolsonaro published MP n° 1.068/2021,²⁷² intending to amend the Marco Civil of the Internet²⁷³ to provide for the use of social media. According to the text, the removal of content on social media platforms would be allowed only with just cause and motivation, in cases expressly covered in the included exhaustive list, such as, for instance, paedophilia and terrorism.²⁷⁴ Curiously, the spreading of fake news and hate speech were not included in the list.

The response against the measure was immediate, with seven requests for a Direct Action for the Declaration of Unconstitutionality before the STF, which decided, after analysis, for the total suspension of its effects.²⁷⁵

4.2.3 *Electoral legislations*

When it comes to electoral legislation, it is worth mentioning some measures that the TSE has been using to tackle fake news. The Electoral Code, Law n° 4.737/1965,²⁷⁶ Article 323, provides that the dissemination during the election campaign of facts known to be untrue about parties or candidates and capable of influencing the electorate is punishable by imprisonment. The Law 13.834/2019²⁷⁷ has similar provision and typifies the crime of slanderous accusation for electoral purposes for who spreads false information against candidates.

²⁷¹ 'Entenda a Tramitação Da Medida Provisória - Congresso Nacional' <<https://www.congressonacional.leg.br/materias/medidas-provisorias/entenda-a-tramitacao-da-medida-provisoria>> accessed 23 November 2022.

²⁷² 'Mpv1068' <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/Mpv/mpv1068.htm> accessed 14 September 2022.

²⁷³ 'L12965' (n 8).

²⁷⁴ 'Bolsonaro: New Bill Will Limit Tech Giants' Power to Remove Content' *BBC News* (6 September 2021) <<https://www.bbc.com/news/world-latin-america-58470093>> accessed 1 November 2022.

²⁷⁵ 'Weber' <<https://www.conjur.com.br/dl/rosa-weber-suspende-mp-limita-remocao.pdf>> accessed 14 September 2022.

²⁷⁶ 'Código Eleitoral - Lei n° 4.737, de 15 de julho de 1965' (*Justiça Eleitoral*) <<https://www.tse.jus.br/legislacao/codigo-eleitoral/codigo-eleitoral-1/codigo-eleitoral-lei-nb0-4.737-de-15-de-julho-de-1965>> accessed 1 November 2022.

²⁷⁷ 'L13834' <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13834.htm> accessed 1 November 2022.

In 2021 the TSE created the Electoral Permanent Program on Countering Disinformation - Strategic Plan for Elections 2022 - Ordinance TSE nº 510/2021,²⁷⁸ ‘to reduce the harmful effects of disinformation regarding Electoral Court and its members, the electronic voting system, the electoral process in its different phases and the participants involved’.²⁷⁹ This Ordinance does not apply to disinformation content related to candidates or parties, except when it affects the ‘integrity, credibility and legitimacy of the electoral process’.²⁸⁰

More recently, the TSE approved by unanimously the Resolution nº 23.714/2022,²⁸¹ which provides the combat against disinformation that affects the integrity of the electoral process, prohibiting the disclosure of known untrue or seriously decontextualized facts that affect the integrity of the electoral process (Article 2º). The new Resolution foresees the judicial order for removal, by the platforms, of the identified URL, URI or URN, under penalty of a fine of R\$100,000.00 to R\$150,000.00 per hour (Article 2º, §1º). The measure can also be extended to other situations with identical content, and authorizes the temporary suspension of profiles, accounts and channels that systematically produce disinformation (Article 4º). In addition, it prohibits the paid broadcasting of electoral propaganda on the Internet, including direct or indirect monetization, from 48 hours before and 24 hours after the election (Article 6º).²⁸²

Right after the publication of this Resolution, the Prosecutor General of the Republic filed a Direct Action for the Declaration of Unconstitutionality before the STF, nº 7.261,²⁸³ claiming that it extrapolated the prohibitions and sanctions set forth in the electoral law and expanded the police power of the TSE president.²⁸⁴ The Supreme Court decided, by 9 to 2, for the constitutionality of the Resolution.²⁸⁵

²⁷⁸ ‘PORTARIA Nº 510, DE 04 DE AGOSTO DE 2021’ (n 202).

²⁷⁹ ‘Desinformacao-Planejamento-Estrategico-Web-Ingles-Final-20220525.Pdf’ <<https://www.tse.jus.br/hotsites/catalogo-publicacoes/pdf/desinformacao-planejamento-estrategico-web-ingles-final-20220525.pdf>> accessed 1 November 2022.

²⁸⁰ *ibid.*

²⁸¹ ‘Resolução nº 23.714, de 20 de Outubro de 2022’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/legislacao/compilada/res/2022/resolucao-no-23-714-de-20-de-outubro-de-2022>> accessed 1 November 2022.

²⁸² *ibid.*

²⁸³ Ministério Público Federal- <http://www.mpf.mp.br>, ‘PGR questiona resolução editada pelo TSE a menos de duas semanas do segundo turno’ (*MPF*) <<https://www.mpf.mp.br/pgr/noticias-pgr/pgr-questiona-resolucao-editada-pelo-tse-ha-menos-de-duas-semanas-do-segundo-turno>> accessed 23 November 2022.

²⁸⁴ Ministério Público Federal- <http://www.mpf.mp.br>, ‘Além de inconstitucional, resolução do TSE de combate à desinformação viola jurisprudência da própria Corte, reforça PGR’ (*MPF*) <<https://www.mpf.mp.br/pgr/noticias-pgr/alem-de-inconstitucional-resolucao-do-tse-de-combate-a-desinformacao-viola-jurisprudencia-da-propria-corte-reforca-pgr>> accessed 5 November 2022.

²⁸⁵ ‘STF mantém resolução do TSE contra fake news’ (*CNN Brasil*) <<https://www.cnnbrasil.com.br/politica/stf-tem-placar-a-favor-de-manter-resolucao-do-tse-contra-fake-news/>> accessed 5 November 2022.

According to the President of TSE, Judge Alexandre de Moraes, at the end of the 2022 elections, the Court was able, through this Resolution, in the last 36 hours of the second round, to ‘remove 354 booster posts, demonetise 7 websites, remove 711 URLs, suspend 15 profiles and ban 5 Telegram groups’.²⁸⁶ The Resolution does not exclude the investigation of criminal liability, abuse of power, and misuse of the media communications.

In a comparative analysis, this measure is similar to the one adopted by France, which, during the three months prior the elections, also provides rules for the removal of inaccurate or misleading content that may alter the sincerity of the vote, as seen in Section 2.3.1. In addition, another parallel can also be drawn with the 2022 Strengthened Code of Practice Disinformation in the Union, that probably also inspired the TSE regarding the demonetizing disinformation, in which one avoids placing advertising next to such content, as seen in Section 3.1.

4.3 Judicial bodies initiatives – STF and TSE

During the 2018 presidential election campaign, the TSE ruled for the first time to take down a content by using the term ‘fake news’.²⁸⁷ At the time, 50 actions on the subject were filed with the Court, which took less than two days to decide on applications for preliminary injunctions.²⁸⁸

After that, the TSE initiated a strategy to address the challenges related from ‘the (then unprecedented) targeting of fake news and attacks against the Electoral Justice itself and the electoral process’.²⁸⁹ In 2019, the Court launched a project to tackle disinformation with a focus on the 2020 elections.²⁹⁰ On the occasion, 66 institutions - among them political parties, public and private entities - signed the adhesion to the program and 29 agreements providing for concrete actions and measures to combat fake news were drawn.²⁹¹ The multi-sectoral approach has made the programme the most innovative anti-fake news project created by the electoral body. The main initiatives were the following: creation of the Coalition for Checking, a

²⁸⁶ ‘Combate Às Fake News Está Sendo Aprimorado, Diz Alexandre de Moraes - TV Senado’ <<https://www12.senado.leg.br/tv/programas/noticias-1/2022/10/combate-as-fake-news-esta-sendo-aprimorado-diz-alexandre-de-moraes>> accessed 4 November 2022.

²⁸⁷ ‘TSE aplica pela primeira vez norma que coíbe notícias falsas na internet’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2018/Junho/tse-aplica-pela-primeira-vez-norma-que-coibe-noticias-falsas-na-internet>> accessed 4 November 2022.

²⁸⁸ ‘TSE atuou com celeridade no julgamento de processos sobre fake news durante as Eleições 2018’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2018/Novembro/tse-atuou-com-celeridade-no-julgamento-de-processos-sobre-fake-news-durante-as-eleicoes-2018>> accessed 4 November 2022.

²⁸⁹ ‘Tse-Brazil-Counter-Disinformation-Program-2022-f.Pdf’ (n 212).

²⁹⁰ ‘Programa_de_enfrentamento_resultados.Pdf’ <https://www.justicaeleitoral.jus.br/desinformacao/arquivos/Programa_de_enfrentamento_resultados.pdf> accessed 4 November 2022.

²⁹¹ *ibid.*

partnership with fact-checking agencies, such as *Lupa* and *Aos Fatos*; development of a chatbot on WhatsApp, which had almost 20 million of messages exchanged; creation of *Fato ou Boato*, a website where the TSE could centralize verified information; creation of *Pardal*, an Electoral Complaints System; and partnership with the main online platforms, in order to guarantee a reliable informational environment.²⁹² All these measures were also replicated in the 2022 presidential elections.²⁹³

The need to maintain the project became evident, so in 2021 the TSE determined the Permanent Program on Countering Disinformation, formalized by Ordinance n° 510/2021,²⁹⁴ mentioned in Section 4.2.3, with a particular eye on the 2022 presidential elections. The Program was structured with the focus on freedom of expression and fight against fake news in three axes: inform, empower and respond.²⁹⁵ In the same year, the Supreme Federal Court has also created a similar program, formalized by Resolution n° 742/2021,²⁹⁶ to combat disinformation and practices that undermine confidence in the Court and compromise fundamental rights and democratic stability.²⁹⁷

For the 2022 presidential elections, the TSE, besides having more experience, had a robust and prompt action to combat disinformation. While in 2018 the Court took almost two days to decide a plea, in 2022 it took hours, ruling, where necessary, for the immediate removal of the content. *Pardal*, the complaints system, registered 52,920 complaints of irregular electoral propaganda, whereas in 2018 it registered 48,673.²⁹⁸ This growth in the number of reports portrays a greater participation of the electorate as inspectors of the electoral process, in addition to the performance of the inspection bodies themselves. Although the actions of the STF and TSE have been essential to maintain the democratic system, there is still much to be done.

²⁹² *ibid.*

²⁹³ ‘Desinformação’ (*Justiça Eleitoral*) <<https://www.justicaeleitoral.jus.br/desinformacao/>> accessed 23 November 2022.

²⁹⁴ ‘Portaria n° 510, de 04 de Agosto de 2021’ (n 200).

²⁹⁵ ‘Tse-Brazil-Counter-Disinformation-Program-2022-f.Pdf’ (n 212).

²⁹⁶ ‘Portal STF Internacional’

<https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfDestaque_en_us&idConteudo=472592> accessed 4 November 2022.

²⁹⁷ ‘Supremo Tribunal Federal’ <<https://portal.stf.jus.br/desinformacao/>> accessed 4 November 2022.

²⁹⁸ ‘Eleitor fiscal: aplicativo Pardal bate recorde com mais de 52,9 mil denúncias nas Eleições 2022’ (*Justiça Eleitoral*) <<https://www.tse.jus.br/comunicacao/noticias/2022/Novembro/eleitor-fiscal-aplicativo-pardal-bate-recorde-com-mais-de-52-9-mil-denuncias-nas-eleicoes-2022>> accessed 4 November 2022.

4.4 Conclusion

To summarize, this Chapter highlighted some of the main reasons that triggered the proliferation of fake news in Brazil, as well as the legislative and judicial responses to curb the negative effects of the phenomenon. It has become evident through the historical analysis described above that the spread of fake news in the country was and still is driven by political narratives.

In response to sub-question 3, the current version of the legislative proposal PL n° 2.630/2020 that intends to regulate the subject in the country cannot effectively solve the problem. The bill, which was previously supposed to discuss fake news, after several amendments, addresses other issues and the current version has no further definition of the phenomenon. Thus, trying to regulate a problem through a law, but without even defining or delimiting the scope, is to doom the legislation to failure, as well as having chilling effect in other areas, such as freedom of expression. As was said in Chapter 2, when trying to regulate the problem, one has to look beyond the *stricto sensu*, but take into account the jurisdiction, the economic and cultural scenario, the diverse roots, the agents involved, their intentions, the objectives and the desired outcomes. Although the bill has positive points in bringing transparency and accountability for technology platforms, it also creates legal uncertainty and mechanisms that are considered contradictory, such as parliamentary immunity and the right to have (and share) a personal view of the world. To conclude, the legislative proposal should be debated more deeply, involving various sectors, with a transversal focus, such as civil society, journalistic organizations, political parties and the National Congress, in search of effective instruments to combat fake news.

Chapter 5. Conclusion

The flexible structure of the Internet, as well as the easy access to smartphones, allow for the rapid and large-scale sharing of information. For fear of missing out, people are increasingly connected and exposed to an overload of information hard to assimilate or to make a critical analysis of the content.

The publication and circulation of fake news, rumours and other forms of manipulation of speech have always existed, especially in the field of politics, but now the phenomenon takes advantage of the digital environment and social platforms to keep up with the growing trend of its dissemination. Hence, there is nothing new about the circulation of manipulated or false

content, but the ways in which digital technologies can accelerate its dissemination that are new.

Social media platforms and instant messaging applications are fuelled by the culture of immediacy and sensationalism, but there is more at stake when it comes to fake news. Due to its greater emotional appeal and tied to personal beliefs, this phenomenon can also threaten a country's security and sovereignty, result in violence and riots, polarize society, jeopardize or have a chilling effect on freedom of expression, change the course of democratic elections, as well as endanger the environment and people's health, as demonstrated earlier.

After analysing the social impacts, the different approaches on how to regulate the phenomenon, and the efforts deployed by different jurisdictions, I came to the following contributions regarding the search for possible solutions to combat the proliferation of fake news.

First, it is necessary to define the phenomenon. What began with the term 'post-truth' in 2016, referring to objective facts that exerted less influence on the formation of public opinion, today the term 'fake news' is closely linked to a context of political radicalization and social polarization. Hence, the phenomenon must be analysed as an entire ecosystem, from the cultural and temporal context where it is produced and disseminated, to the motivation, the way it is transmitted, and the intended outcome. Therefore, in the production phase it is necessary to analyse who is behind it (third countries, third parties not affected by the result, political parties, private companies), the reasons (to cause harm, deceive, manipulate, polarize, entertain, obtain economic gain) and the type of information (political, religious, environmental, health), for instance. In the consumption phase, it is necessary to analyse the format (memes, photos, satires, parodies, montages, texts, gossip), in which channels, and how it is shared (offline, online, TV, short videos, live, instant messaging apps). In the dissemination phase, to analyse whether it uses inauthentic profiles, bots, AI, or through the emotional appeal of users. Finally, the desired and obtained results.

Besides analysing all the chain related to the production and dissemination of fake news, it is also extremely important to consider how other countries are working to regulate and tackle the problem. This is because, as previously discussed, since there are several roots, agents involved, and different outcomes, a simple legislation criminalizing the act would not be as effective as intended. To that end, this thesis analysed some of the initiatives adopted by the European Union, which has been working on the issue since 2015, and compared them with the Brazilian initiatives. The comparison of the two jurisdictions intended to trace similarities, gain knowledge, and contribute to the public debate. It is evident that many of the European

Union's attitudes and regulations set an important global legislative precedent, so the comparison also aimed to identify which of the Union's decisions inspired and may continue to inspire Brazil. It is worth mentioning that Brazil has been discussing the issue in the public sector mainly by the TSE, which aims to ensure the fairness of the electoral process and the democratic rule of law, while in the European Union the issue is on the agenda of 27 different countries working together not only focusing on the electoral period.

As stated by Henry A. Giroux in the book *Post-Truth, Fake News*, 'a democracy cannot exist without informed citizens and public spheres and educational apparatuses that uphold standards of truth, honesty, evidence, facts, and justice'.²⁹⁹ The contribution of this research to the topic - and answering the main question about the most appropriate approaches that could be used in Brazil to regulate fake news in the digital environment, without censorship and respecting freedom of expression – must take into account some remarks.

To begin with, to hand over only to private companies, mainly social media platforms, the responsibility of curating the speech, assessing what is or is not fake news, and removing the content, is to exempt the Public Sector from responsibility in the problem. As seen in the German case with the application of NetzDG, as well as the Brazilian bill PL n° 2630/2020, there is a great responsibility on the shoulders of the platforms that have to remove content in a very short time, under risk of heavy fines. The difference is that in the German there is a definition of what content is considered illegal, while in Brazil there is no such provision.

Another extremely important point is that platform liability may further increase the control of content in the hands of the major private big tech companies. This can be understood as giving even more power to such digital monopolies and, the more content they remove, the more gray areas about possible censorship and or diminished free speech arise. Bringing more responsibility to these companies is very welcome and useful, as they have the technical capacity to do so, but the protection of users' fundamental rights must be taken into consideration. Monitoring and filtering can result in over-blocking or blocking the wrong content, for instance. Thus, it is worth having an external oversight board as well.

Although the discussion of the issue has been happening more frequently in the recent years, there is still much to be done, especially when it comes to media literacy. As shown, many of the actions adopted by the European Union were similarly adopted in the TSE and STF in the Brazilian jurisdiction and had positive results as well, such as the creation of

²⁹⁹ *Post-Truth, Fake News* <<https://link-springer-com.tilburguniversity.idm.oclc.org/book/10.1007/978-981-10-8013-5>> accessed 17 December 2022, p. 197.

measures to combat fake news during the election period, the partnership with private entities - including large technology companies - and the adoption of measures to demonetize disinformation.

To conclude, there is no silver bullet to dealing with fake news, but rather several aspects that must be taken into consideration together. First, the terminological conceptualization of the problem and the scope of content moderation, since there is no provision in the current version of the bill PL n° 2.630/2020. Like the European Commission, which conducted a public consultation and survey with citizens, legal entities and journalists on the definition of fake news, when trying to regulate the issue, one should involve and listen to society as a whole. Second, as adopted by the European Union with the Code of Practice and by Brazil with the TSE's Permanent Electoral Program to Combat Disinformation and the STF's Program to Combat Disinformation, a multisectoral and multi-stakeholder approach should be adopted, involving in-depth discussions with public authorities, political parties, private companies, fact-checking agencies, academia, civil society, and education. The 'follow the money' approach highlighted in the final report of the High Level Expert Group on Fake News and Online Disinformation, seen in section 2.3.4, also has great potential, as it seeks to implement transparency and penalization mechanisms for those who secretly invest financial resources in spreading fake news, rather than the content itself. Strict legislative measures with the imposition of fines and jail, such as those in Hungary and in the Amazonas State, in Brazil, can be considered censorship, since they leave it to the exclusive responsibility of the executive power to curate the speech. On the other hand, the legislative measure adopted in France regarding the fight against fake news election period was adopted in a similar way in Brazil, having positive results for the 2022 elections, which may demonstrate a trend for the next elections.

In addition, the Strengthened Code of Practice on Disinformation in the Union has probably inspired the TSE with regard to demonetizing disinformation, an action that can also be implemented on an ongoing basis. Blockchain technology also has an important role to play, as it render the information traceable, immutable and transparent.

Therefore, regulating fake news requires a number of different approaches, namely raise public and private awareness and engagement, transparency in content removal, in paid and boosted advertising, and in algorithms to avoid filter bubbles and dark ads, participation of civil society, academia and politicians, and finally media literacy, empowering users, researchers and the fact-checking community with more information, not less.

Bibliography

1. '2022 Strengthened Code of Practice on Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>> accessed 17 June 2022
2. 'Ação automatizada pró-Bolsonaro no Twitter aumenta às vésperas do 7 de Setembro, diz relatório' (Folha de S.Paulo, 6 September 2021) <<https://www1.folha.uol.com.br/poder/2021/09/acao-automatizada-pro-bolsonaro-no-twitter-aumenta-as-vesperas-do-7-de-setembro-diz-relatorio.shtml>> accessed 15 September 2022
3. 'Ações Automatizadas Guiaram Um a Cada Quatro Perfis Favoráveis Ao Voto Impresso No Twitter' <<https://lupa.uol.com.br/jornalismo/2021/08/12/acoes-automatizadas-voto-impresso/>> accessed 15 September 2022
4. 'Action Plan on Disinformation: Commission Contribution to the European Council (13-14 December 2018)' (European Commission - European Commission) <https://ec.europa.eu/info/publications/action-plan-disinformation-commission-contribution-european-council-13-14-december-2018_en> accessed 16 June 2022
5. Alemanno A, 'How to Counter Fake News? A Taxonomy of Anti-Fake News Approaches' (2018) 9 European Journal of Risk Regulation 1
6. 'AllSides | Balanced News via Media Bias Ratings for an Unbiased News Perspective' (AllSides, 27 May 2019) <<https://www.allsides.com/unbiased-balanced-news>> accessed 16 September 2022
7. 'An Independent Assessment of the Human Rights Impact of Facebook in Myanmar' (Meta, 6 November 2018) <<https://about.fb.com/news/2018/11/myanmar-hria/>> accessed 11 June 2022
8. 'Analysis | How Hillary Clinton Might Have Inspired Trump's "Fake News" Attacks' Washington Post <<https://www.washingtonpost.com/news/the-fix/wp/2018/01/03/how-hillary-clinton-might-have-inspired-trumps-fake-news-attacks/>> accessed 11 June 2022
9. 'Analysis | Tracking All of President Trump's False or Misleading Claims' (Washington Post) <<https://www.washingtonpost.com/graphics/politics/trump-claims-database/>> accessed 11 June 2022
10. 'Annual Self-Assessment Reports of Signatories to the Code of Practice on Disinformation 2019 | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/news/annual-self-assessment-reports-signatories-code-practice-disinformation-2019>> accessed 14 August 2022
11. 'Aos Fatos | Valorize o Que é Real' <https://www.aosfatos.org/fatima/?gclid=EAIaIQobChMIsInAhOqX-gIVQ-VcCh324QnHEAAYASAAEgJrHPD_BwE> accessed 15 September 2022
12. 'Aos Fatos' <<https://www.aosfatos.org/>> accessed 16 June 2022
13. Araujo R, 'Brazilian Supreme Court Inquiry into "Fake News" Violates Freedom of Speech | OHRH' <<https://ohrh.law.ox.ac.uk/brazilian-supreme-court-inquiry-into-fake-news-violates-freedom-of-speech/>> accessed 16 June 2022
14. Arora N, 'Misinformation, Fake News and Rumor Detection' in Anupam Biswas, Ripon Patgiri and Bhaskar Biswas (eds), Principles of Social Networking: The New Horizon and Emerging Challenges (Springer 2022) <https://doi.org/10.1007/978-981-16-3398-0_14> accessed 10 July 2022

15. 'Article 33-1-1 - Loi N° 86-1067 Du 30 Septembre 1986 Relative à La Liberté de Communication (Loi Léotard) - Légifrance'
<https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000044259601/2022-11-22> accessed 22 November 2022
16. 'Article L112 - Electoral Code - Légifrance'
<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037855654> accessed 22 November 2022
17. 'Article L163-1 - Electoral Code - Légifrance'
<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037850602> accessed 22 November 2022
18. 'Article L163-2 - Electoral Code - Légifrance'
<https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000039278631> accessed 22 November 2022
19. 'Attacks on Journalists Explode in Brazil in 2020 and Most of Them Come from President Bolsonaro' (LatAm Journalism Review by the Knight Center, 27 January 2021)
<<https://latamjournalismreview.org/articles/attacks-journalists-brazil-2020-bolsonaro/>> accessed 13 May 2022
20. authorCorporate:UNESCO, 'Media and Information Literacy Curriculum for Teachers' (2011) <<https://unesdoc.unesco.org/ark:/48223/pf0000192971>> accessed 15 September 2022
21. 'Authoritarian Populism and Constitutional Resilience in Brazil' (Georgetown Journal of International Affairs, 10 July 2021) <<https://gjia.georgetown.edu/2021/07/10/authoritarian-populism-and-constitutional-resilience-in-brazil/>> accessed 14 May 2022
22. Bader M, 'Disinformation in Elections' (2018) 29 Security and Human Rights 24
23. Blakemore E, 'How Photos Became a Weapon in Stalin's Great Purge' (HISTORY)
<<https://www.history.com/news/josef-stalin-great-purge-photo-retouching>> accessed 24 November 2022
24. 'Bolsonaro Insults Folha Reporter with Sexual Insinuation - 18/02/2020 - Brazil - Folha'
<<https://www1.folha.uol.com.br/internacional/en/brazil/2020/02/bolsonaro-insults-folha-reporter-with-sexual-insinuation.shtml>> accessed 1 November 2022
25. 'Bolsonaro Lies about Ballot Boxes to Foreigners - 19/07/2022 - Brazil - Folha'
<<https://www1.folha.uol.com.br/internacional/en/brazil/2022/07/bolsonaro-lies-about-ballot-boxes-to-foreigners.shtml>> accessed 8 November 2022
26. 'Bolsonaro: New Bill Will Limit Tech Giants' Power to Remove Content' BBC News (6 September 2021) <<https://www.bbc.com/news/world-latin-america-58470093>> accessed 1 November 2022
27. 'Bolsonaro repete em evento oficial "fake news" que levaram à cassação de deputado aliado' (G1) <<https://g1.globo.com/politica/noticia/2022/06/07/bolsonaro-repete-em-evento-oficial-fake-news-que-levaram-a-cassacao-de-deputado-aliado.ghtml>> accessed 3 November 2022
28. 'Bot or Not: Who Are the Followers of Our Candidates for President?' (InternetLab, 3 July 2018) <<https://internetlab.org.br/en/news/bot-or-not-who-are-the-followers-of-our-candidates-for-president/>> accessed 13 May 2022

29. 'Brazil: Bolsonaro Sabotages Anti-Covid-19 Efforts' (Human Rights Watch, 10 April 2020) <<https://www.hrw.org/news/2020/04/10/brazil-bolsonaro-sabotages-anti-covid-19-efforts>> accessed 3 November 2022
30. 'Brazil: Bolsonaro Threatens Democratic Rule' (Human Rights Watch, 15 September 2021) <<https://www.hrw.org/news/2021/09/15/brazil-bolsonaro-threatens-democratic-rule>> accessed 13 May 2022
31. 'Brazil Election: Accusations and Misinformation on the Campaign Trail' BBC News (25 October 2022) <<https://www.bbc.com/news/63374100>> accessed 8 November 2022
32. 'Brazil's Bolsonaro Urges Supreme Court to Shelve "fake News" Probe' Reuters (28 May 2020) <<https://www.reuters.com/article/us-brazil-politics-idUSKBN234253>> accessed 3 November 2022
33. 'Brazil's Far-Right Candidate Falls Short of Election Stunner, Faces Runoff against Leftist Rival' (CNBC) <<https://www.cnn.com/2018/10/08/brazil-presidential-election-bolsonaro-to-face-haddad-in-runoff.html>> accessed 31 October 2022
34. Bruns A, 'Filter Bubble' (2019) 8 Internet Policy Review <<https://policyreview.info/concepts/filter-bubble>> accessed 4 August 2022
35. Cameron C, 'The Attack on Brazil's Seat of Government Resembles the Storming of the U.S. Capitol on Jan. 6, 2021.' The New York Times (9 January 2023) <<http://www.nytimes.com/2023/01/08/world/americas/brazil-jan-6-riots.html>> accessed 16 January 2023
36. Chakraborty A and others, 'Stop Clickbait: Detecting and Preventing Clickbaits in Online News Media'
37. Christie L, 'COVID-19 Vaccine Misinformation' <<https://post.parliament.uk/covid-19-vaccine-misinformation/>> accessed 29 June 2022
38. Claire Wardle [@cwardle], 'The Best Way to Fight Misinformation Is to Swamp the Landscape with Accurate Information That Is Easy to Digest, Is Engaging and Easy to Share on Mobile. It Should Also Answer People's Questions and Ultimately Fears. It's the Vacuums That Are Creating Space for Rumors to Run Wild' <<https://twitter.com/cwardle/status/1239999802097782785>> accessed 15 September 2022
39. 'Climate Change: US Formally Withdraws from Paris Agreement - BBC News' <<https://www.bbc.com/news/science-environment-54797743>> accessed 22 November 2022
40. 'Code - LESSIG' <<https://lessig.org/product/code>> accessed 25 August 2022
41. 'Code of Practice on Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/news/code-practice-disinformation>> accessed 18 May 2022
42. 'Código Eleitoral - Lei no 4.737, de 15 de julho de 1965' (Justiça Eleitoral) <<https://www.tse.jus.br/legislacao/codigo-eleitoral/codigo-eleitoral-1/codigo-eleitoral-lei-nb0-4.737-de-15-de-julho-de-1965>> accessed 1 November 2022
43. 'Combate a fake news é tema de 50 propostas na Câmara dos Deputados - Notícias' (Portal da Câmara dos Deputados) <<https://www.camara.leg.br/noticias/666062-combate-a-fake-news-e-tema-de-50-propostas-na-camara-dos-deputados/>> accessed 18 May 2022

44. 'Combate Às Fake News Está Sendo Aprimorado, Diz Alexandre de Moraes - TV Senado' <<https://www12.senado.leg.br/tv/programas/noticias-1/2022/10/combate-as-fake-news-esta-sendo-aprimorado-diz-alexandre-de-moraes>> accessed 4 November 2022
45. 'Communication - Tackling Online Disinformation: A European Approach | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/library/communication-tackling-online-disinformation-european-approach>> accessed 18 May 2022
46. 'Comunicado-Supremo-Tribunal-Federal1.Pdf' <<https://www.conjur.com.br/dl/comunicado-supremo-tribunal-federal1.pdf>> accessed 23 November 2022
47. 'Constituição Federal - Senado Federal' <<https://www25.senado.leg.br/web/atividade/legislacao/constituicao-federal>> accessed 18 May 2022
48. 'Coronavirus: Fake Cures in Latin America's Deadly Outbreak' BBC News (11 July 2020) <<https://www.bbc.com/news/53361876>> accessed 3 November 2022
49. 'CPMI - Fake News - Comissão Parlamentar Mista de Inquérito - Fake News - Atividade Legislativa - Senado Federal' <<https://legis.senado.leg.br/comissoes/comissao?codcol=2292>> accessed 17 June 2022
50. 'Daniel Kahneman', , Wikipedia (2022) <https://en.wikipedia.org/w/index.php?title=Daniel_Kahneman&oldid=1122714826> accessed 22 November 2022
51. 'DAPP' (Portal FGV, 22 March 2017) <<https://portal.fgv.br/en/dapp>> accessed 22 November 2022
52. 'DAPP', 'Robôs, Redes Sociais e Política No Brasil: Estudo Sobre Interferências Ilegítimas No Debate Público Na Web' (FGV DAPP, 24 August 2017) <<http://dapp.fgv.br/robos-redes-sociais-e-politica-estudo-da-fgvdapp-aponta-interferencias-ilegitimas-no-debate-publico-na-web/>> accessed 29 July 2022
53. 'Decision No. 2018-773 DC of 20 December 2018 | Conseil Constitutionnel' <<https://www.conseil-constitutionnel.fr/en/decision/2018/2018773DC.htm>> accessed 14 September 2022
54. 'Decision No. 2020-801 DC of June 18, 2020 | Constitutional Council' <<https://www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm>> accessed 14 September 2022
55. 'Deep Entity Classification: Abusive Account Detection for Online Social Networks - Meta Research' (Meta Research) <<https://research.facebook.com/publications/deep-entity-classification-abusive-account-detection-for-online-social-networks/>> accessed 15 September 2022
56. 'Defining Confirmation Bias' (Facing History and Ourselves) <<https://www.facinghistory.org/resource-library/video/defining-confirmation-bias>> accessed 3 August 2022
57. 'Desinformação' (Justiça Eleitoral) <<https://www.justicaeleitoral.jus.br/desinformacao/>> accessed 24 October 2022
58. 'Desinformacao-Planejamento-Estrategico-Web-Ingles-Final-20220525.Pdf' <<https://www.tse.jus.br/hotsites/catalogo-publicacoes/pdf/desinformacao-planejamento-estrategico-web-ingles-final-20220525.pdf>> accessed 1 November 2022

59. 'Disinformation and "Fake News": Final Report - Digital, Culture, Media and Sport Committee - House of Commons'
<<https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/179102.htm>> accessed 17 June 2022
60. 'Documento.Pdf' <<https://legis.senado.leg.br/sdleg-getter/documento?dm=8110634&ts=1648639813988&disposition=inline>> accessed 23 November 2022
61. Dwoskin E, 'Come to the "War Cry Party": How Social Media Helped Drive Mayhem in Brazil' Washington Post (10 January 2023)
<<https://www.washingtonpost.com/technology/2023/01/08/brazil-bolsanaro-twitter-facebook/>> accessed 23 January 2023
62. 'Echo chamber definição e significado | Dicionário Inglês Collins'
<<https://www.collinsdictionary.com/pt/dictionary/english/echo-chamber>> accessed 2 August 2022
63. 'Echo Chambers, Filter Bubbles, and Polarisation: A Literature Review' (Reuters Institute for the Study of Journalism) <<https://reutersinstitute.politics.ox.ac.uk/echo-chambers-filter-bubbles-and-polarisation-literature-review>> accessed 29 July 2022
64. Editor-at-large A by CC CNN, 'Donald Trump Just Claimed He Invented "Fake News"' (CNN) <<https://www.cnn.com/2017/10/08/politics/trump-huckabee-fake/index.html>> accessed 12 June 2022
65. 'Eleições 2022: TSE renova parceria com agências de checagem' (Justiça Eleitoral)
<<https://www.tse.jus.br/comunicacao/noticias/2022/Fevereiro/tse-formaliza-renovacao-de-parceria-com-agencias-de-checagem-para-combate-a-desinformacao-nas-eleicoes-2022>> accessed 25 October 2022
66. 'Eleitor fiscal: aplicativo Pardal bate recorde com mais de 52,9 mil denúncias nas Eleições 2022' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2022/Novembro/eleitor-fiscal-aplicativo-pardal-bate-recorde-com-mais-de-52-9-mil-denuncias-nas-eleicoes-2022>> accessed 4 November 2022
67. Elon Musk [@elonmusk], 'My Commitment to Free Speech Extends Even to Not Banning the Account Following My Plane, Even Though That Is a Direct Personal Safety Risk'
<<https://twitter.com/elonmusk/status/1589414958508691456>> accessed 18 December 2022
68. 'Entenda a Tramitação Da Medida Provisória - Congresso Nacional'
<<https://www.congressonacional.leg.br/materias/medidas-provisorias/entenda-a-tramitacao-da-medida-provisoria>> accessed 23 November 2022
69. Epstein B, 'Why It Is So Difficult to Regulate Disinformation Online' in Steven Livingston and W Lance Bennett (eds), The Disinformation Age (Cambridge University Press 2020)
<<https://www.cambridge.org/core/books/disinformation-age/why-it-is-so-difficult-to-regulate-disinformation-online/A7613D7394F18AAE8F241894E8DA064A>> accessed 8 January 2023
70. 'Estudo mostra que uso de fake news cresce no 2o turno; "desinformação está mais complexa e sofisticada", diz pesquisadora' (G1)
<<https://g1.globo.com/politica/eleicoes/2022/noticia/2022/10/25/estudo-mostra-que-uso-de-fake-news-cresce-no-2o-turno-desinformacao-esta-mais-complexa-e-sofisticada-diz-pesquisadora.ghtml>> accessed 23 November 2022

71. 'EUR-Lex - 32016R0679 - EN - EUR-Lex' <<https://eur-lex.europa.eu/eli/reg/2016/679/oj>> accessed 8 November 2022
72. 'EUR-Lex - 32022R1925 - EN - EUR-Lex' <<https://eur-lex.europa.eu/eli/reg/2022/1925>> accessed 8 November 2022
73. 'EUR-Lex HTML (EN)' <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790>> accessed 22 November 2022
74. 'EUR-Lex' <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0236>> accessed 24 January 2023
75. 'European Convention on Human Rights - Official Texts, Convention and Protocols' <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>> accessed 18 May 2022
76. 'European Parliament. Directorate General for Parliamentary Research Services. - 2021 - Tackling Deepfakes in European Policy..Pdf' <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690039/EPRS_STU\(2021\)690039_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690039/EPRS_STU(2021)690039_EN.pdf)> accessed 24 January 2023
77. 'European-Council-Conclusions-19-20-March-2015-En.Pdf' <<https://www.consilium.europa.eu/media/21888/european-council-conclusions-19-20-march-2015-en.pdf>> accessed 18 May 2022
78. 'Exclusivo: investigação revela exército de perfis falsos usados para influenciar eleições no Brasil' BBC News Brasil <<https://www.bbc.com/portuguese/brasil-42172146>> accessed 15 September 2022
79. 'Experts Appointed to the High-Level Group on Fake News and Online Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/news/experts-appointed-high-level-group-fake-news-and-online-disinformation>> accessed 5 August 2022
80. 'Facebook Removes 73 False Accounts Connect to The Bolsonaro Family' (Folha de S.Paulo, 9 July 2020) <<https://www1.folha.uol.com.br/internacional/en/brazil/2020/07/facebook-removes-73-false-accounts-connect-to-the-bolsonaro-family.shtml>> accessed 3 November 2022
81. 'Facebook tira do ar live de Bolsonaro com mentira sobre vacina da Covid e Aids' (G1) <<https://g1.globo.com/tecnologia/noticia/2021/10/25/live-bolsonaro.ghtml>> accessed 23 November 2022
82. 'Facebook, YouTube Take down Bolsonaro Video over False Vaccine Claim | Reuters' <<https://www.reuters.com/world/americas/facebook-takes-down-bolsonaro-video-over-false-vaccine-claim-2021-10-25/>> accessed 3 November 2022
83. 'Facebook–Cambridge Analytica Data Scandal', , Wikipedia (2022) <https://en.wikipedia.org/w/index.php?title=Facebook%E2%80%93Cambridge_Analytica_data_scandal&oldid=1100480541> accessed 13 August 2022
84. 'Factsheet: Rapid Alert System | EEAS Website' <https://www.eeas.europa.eu/node/59644_en> accessed 14 August 2022
85. 'Fake News Detection in Social Networks Using Geometric Deep Learning | GoodNews Project | Fact Sheet | H2020' (CORDIS | European Commission) <<https://cordis.europa.eu/project/id/812672>> accessed 16 January 2023

86. 'Fake.Pdf' <<https://www.camara.leg.br/midias/file/2022/03/fake.pdf>> accessed 23 November 2022
87. 'Fernando Haddad', , Wikipedia (2022) <https://en.wikipedia.org/w/index.php?title=Fernando_Haddad&oldid=1119138878> accessed 31 October 2022
88. 'Final Report of the High Level Expert Group on Fake News and Online Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>> accessed 18 May 2022
89. 'Final Results of the Eurobarometer on Fake News and Online Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/final-results-eurobarometer-fake-news-and-online-disinformation>> accessed 18 May 2022
90. 'Freedom of Expression Monitors Issue Joint Declaration on "Fake News", Disinformation and Propaganda' (OHCHR) <<https://www.ohchr.org/en/press-releases/2017/03/freedom-expression-monitors-issue-joint-declaration-fake-news-disinformation>> accessed 17 January 2023
91. 'Genocide Threat for Myanmar's Rohingya Greater than Ever, Investigators Warn Human Rights Council' (UN News, 16 September 2019) <<https://news.un.org/en/story/2019/09/1046442>> accessed 11 June 2022
92. Genus A and Stirling A, 'Collingridge and the Dilemma of Control: Towards Responsible and Accountable Innovation' (2018) 47 Research Policy 61
93. 'Germany Looks to Revise Social Media Law as Europe Watches' Reuters (8 March 2018) <<https://www.reuters.com/article/us-germany-hatespeech-idUSKCN1GK1BN>> accessed 28 August 2022
94. Giansiracusa N, How Algorithms Create and Prevent Fake News: Exploring the Impacts of Social Media, Deepfakes, GPT-3, and More (Apress 2021) <<https://link.springer.com/10.1007/978-1-4842-7155-1>> accessed 8 January 2023
95. Hajli N and others, 'Social Bots and the Spread of Disinformation in Social Media: The Challenges of Artificial Intelligence' (2022) 33 British Journal of Management 1238
96. Hakim MS, 'SARS-CoV-2, Covid-19, and the Debunking of Conspiracy Theories' (2021) 31 Reviews in Medical Virology e2222
97. He S and others, 'PolitEcho' <<http://politecho.org/>> accessed 16 September 2022
98. Helm RK and Nasu H, 'Regulatory Responses to "Fake News" and Freedom of Expression: Normative and Empirical Evaluation' (2021) 21 Human Rights Law Review 302
99. 'Hillary Clinton Warns of "Fake News Epidemic"' BBC News (9 December 2016) <<https://www.bbc.com/news/world-us-canada-38258967>> accessed 11 June 2022
100. 'Home - Redes Cordiais' <<https://www.redescordiais.com.br/>> accessed 15 September 2022
101. 'Home En' (InternetLab) <<https://internetlab.org.br/en/>> accessed 9 November 2022
102. 'How Bolsonaro's "Hate Cabinet" Works' (International Journalism Festival) <<https://www.journalismfestival.com/programme/2022/the-brazil-of-bolsonaro-attack-on-independent-media>> accessed 3 November 2022

103. 'How Facebook's Algorithm Amplifies Climate Disinformation' (Global Witness) <<https://en/campaigns/digital-threats/climate-divide-how-facebooks-algorithm-amplifies-climate-disinformation/>> accessed 4 August 2022
104. 'How Macedonian Teens Earn — and Spend — Thousands from Fake News' (NBC News) <<https://www.nbcnews.com/news/world/fake-news-how-partying-macedonian-teen-earns-thousands-publishing-lies-n692451>> accessed 7 July 2022
105. 'How to Fight Disinformation | News | European Parliament' (5 December 2019) <<https://www.europarl.europa.eu/news/en/headlines/priorities/disinformation>> accessed 16 June 2022
106. <http://www.mpf.mp.br> MPF-, 'Além de inconstitucional, resolução do TSE de combate à desinformação viola jurisprudência da própria Corte, reforça PGR' (MPF) <<https://www.mpf.mp.br/pgr/noticias-pgr/alem-de-inconstitucional-resolucao-do-tse-de-combate-a-desinformacao-viola-jurisprudencia-da-propria-corte-reforca-pgr>> accessed 5 November 2022
107. 'PGR questiona resolução editada pelo TSE a menos de duas semanas do segundo turno' (MPF) <<https://www.mpf.mp.br/pgr/noticias-pgr/pgr-questiona-resolucao-editada-pelo-tse-ha-menos-de-duas-semanas-do-segundo-turno>> accessed 23 November 2022
108. Hughes HC and Waismel-Manor I, 'The Macedonian Fake News Industry and the 2016 US Election' (2021) 54 PS: Political Science & Politics 19
109. 'Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making' (Council of Europe Publishing) <<https://edoc.coe.int/en/media/7495-information-disorder-toward-an-interdisciplinary-framework-for-research-and-policy-making.html>> accessed 12 June 2022
110. 'Institute for Technology and Society of Rio de Janeiro (ITS Rio)' (ITS Rio) <<https://itsrio.org/en/en-home/>> accessed 9 November 2022
111. 'Instituto Tecnologia & Equidade – Nossa missão é alcançar a equidade com uso ético da tecnologia' <<https://tecnologiaequidade.org.br/>> accessed 9 November 2022
112. IPI-Admin, 'Hungary: Press Freedom Threatened as Orbán Handed New Powers' (International Press Institute, 30 March 2020) <<https://ipi.media/hungary-press-freedom-threatened-as-orban-handed-new-powers/>> accessed 14 September 2022
113. Isaac M and Roose K, 'Disinformation Spreads on WhatsApp Ahead of Brazilian Election' The New York Times (19 October 2018) <<http://www.nytimes.com/2018/10/19/technology/whatsapp-brazil-presidential-election.html>> accessed 31 October 2022
114. 'Jair Bolsonaro', , Wikipedia (2022) <https://en.wikipedia.org/w/index.php?title=Jair_Bolsonaro&oldid=1119272434> accessed 31 October 2022
115. Jamieson A, "'You Are Fake News': Trump Attacks CNN and BuzzFeed at Press Conference' The Guardian (11 January 2017) <<https://www.theguardian.com/us-news/2017/jan/11/trump-attacks-cnn-buzzfeed-at-press-conference>> accessed 11 June 2022
116. 'July 2021 Coordinated Inauthentic Behavior Report' (Meta, 10 August 2021) <<https://about.fb.com/news/2021/08/july-2021-coordinated-inauthentic-behavior-report/>> accessed 15 September 2022

117. June 13 and 2022, 'Introducing the Spotify Safety Advisory Council' (Spotify, 13 June 2022) <<https://newsroom.spotify.com/2022-06-13/introducing-the-spotify-safety-advisory-council/>> accessed 15 June 2022
118. 'Justice Minister Falls Victim to Own Social Media "Censorship" Law' (The Local Germany, 8 January 2018) <<https://www.thelocal.de/20180108/justice-minister-falls-victim-to-own-social-media-censorship-law/>> accessed 28 August 2022
119. Klein D and Wueller J, 'Fake News: A Legal Perspective' (8 March 2017) <<https://papers.ssrn.com/abstract=2958790>> accessed 23 July 2022
120. 'L5250' <http://www.planalto.gov.br/ccivil_03/leis/l5250.htm> accessed 18 May 2022
121. 'L12965' <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm> accessed 23 January 2023
122. 'L13709' <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm> accessed 2 November 2022
123. 'L13834' <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13834.htm> accessed 1 November 2022
124. Lacity MC, 'Fake News, Technology and Ethics: Can AI and Blockchains Restore Integrity?' (2022) 12 Journal of Information Technology Teaching Cases 121
125. 'Lawrence Lessig' <<https://lessig.org/>> accessed 22 November 2022
126. 'Lei-n.-5.369-05.01.2021.Pdf' <<https://www.transparencia.am.gov.br/wp-content/uploads/2021/01/Lei-n.-5.369-05.01.2021.pdf>> accessed 14 September 2022
127. 'Lessig - 1998 - The Laws of Cyberspace.Pdf' <https://cyber.harvard.edu/works/lessig/laws_cyberspace.pdf> accessed 14 September 2022
128. Lopes L, 'STF mantém resolução do TSE contra fake news' (CNN Brasil) <<https://www.cnnbrasil.com.br/politica/stf-tem-placar-a-favor-de-manter-resolucao-do-tse-contrafake-news/>> accessed 5 November 2022
129. 'Luiz Inácio Lula da Silva', , Wikipédia, a enciclopédia livre (2022) <https://pt.wikipedia.org/w/index.php?title=Luiz_In%C3%A1cio_Lula_da_Silva&oldid=64730827> accessed 23 November 2022
130. 'Lupa | Institucional' <<https://lupa.uol.com.br/institucional>> accessed 18 September 2022
131. 'Mail-In Voter Fraud: Anatomy of a Disinformation Campaign | Berkman Klein Center' (21 October 2020) <<https://cyber.harvard.edu/publication/2020/Mail-in-Voter-Fraud-Disinformation-2020>> accessed 25 July 2022
132. Marchant GE, 'Addressing the Pacing Problem' in Gary E Marchant, Braden R Allenby and Joseph R Herkert (eds), The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight: The Pacing Problem (Springer Netherlands 2011) <https://doi.org/10.1007/978-94-007-1356-7_13> accessed 15 May 2022
133. Marlow T, Miller S and Roberts JT, 'Bots and Online Climate Discourses: Twitter Discourse on President Trump's Announcement of U.S. Withdrawal from the Paris Agreement' (2021) 21 Climate Policy 765

134. Matias JN, 'Persuading Algorithms With an AI Nudge' (CivilServant) <https://civilservant.io/persuading_ais_preserving_liberties_r_worldnews.html> accessed 16 September 2022
135. 'Meet the Board | Oversight Board' <<https://www.oversightboard.com/meet-the-board/ronaldo-lemos/>> accessed 18 September 2022
136. Mello PC, 'Opinion | Brazil's Troll Army Moves Into the Streets' The New York Times (4 August 2020) <<http://www.nytimes.com/2020/08/04/opinion/bolsonaro-office-of-hate-brazil.html>> accessed 13 May 2022
137. 'Milestones: 1866–1898 - Office of the Historian' <<https://history.state.gov/milestones/1866-1898/yellow-journalism>> accessed 8 May 2022
138. Mishra M, 'Here's How Bots Are Exploiting Coronavirus Fears' (Radware Blog, 1 April 2020) <<https://blog.radware.com/security/2020/04/heres-how-bots-are-exploiting-coronavirus-fears/>> accessed 4 August 2022
139. 'Most Internet Users by Country' (Statista) <<https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/>> accessed 14 May 2022
140. 'Mpv1068' <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/Mpv/mpv1068.htm> accessed 14 September 2022
141. Naeem SB, Bhatti R and Khan A, 'An Exploration of How Fake News Is Taking over Social Media and Putting Public Health at Risk' [2020] Health Information and Libraries Journal 10.1111/hir.12320
142. Nations U, 'Universal Declaration of Human Rights' (United Nations) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 13 May 2022
143. 'NetzDG - Gesetz Zur Verbesserung Der Rechtsdurchsetzung in Sozialen Netzwerken' <<https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html>> accessed 5 August 2022
144. Nicas J, 'What Can U.S. Democracy Learn From Brazil?' The New York Times (5 November 2022) <<http://www.nytimes.com/2022/11/05/world/americas/brazil-election-us-democracy.html>> accessed 5 November 2022
145. 'Nudge Theory', , Wikipedia (2022) <https://en.wikipedia.org/w/index.php?title=Nudge_theory&oldid=1109863061> accessed 18 September 2022
146. October 28 2018 AF and P.m 7:20, 'Jair Bolsonaro Is Elected President of Brazil. Read His Extremist, Far-Right Positions in His Own Words.' (The Intercept) <<https://theintercept.com/2018/10/28/jair-bolsonaro-elected-president-brazil/>> accessed 31 October 2022
147. 'Oversight Board | Independent Judgment. Transparency. Legitimacy.' <<https://oversightboard.com/>> accessed 15 June 2022
148. 'Oxford Word of the Year 2016 | Oxford Languages' <<https://languages.oup.com/word-of-the-year/2016/>> accessed 11 June 2022
149. Pariser E, The Filter Bubble: What the Internet Is Hiding from You (Penguin UK 2012)

- 150.** ‘Partidos políticos registrados no TSE’ (Justiça Eleitoral)
<<https://www.tse.jus.br/partidos/partidos-registrados-no-tse>> accessed 26 July 2022
- 151.** ‘Pegabot: Descubra se aquele perfil de rede social é bot’
<<https://pegabot.com.br/pegabot.com.br>> accessed 16 June 2022
- 152.** Pennycook G and Rand DG, ‘The Psychology of Fake News’ (2021) 25 Trends in Cognitive Sciences 388
- 153.** ‘PF Diz Ao STF Que Milícia Digital Usa Estrutura Do “gabinete Do Ódio” | Política | G1’
<<https://g1.globo.com/politica/noticia/2022/02/10/pf-diz-ao-stf-que-milicia-digital-usa-estrutura-do-gabinete-do-odio.ghtml>> accessed 8 November 2022
- 154.** Phillips D, ‘Brazil’s Former President Lula Walks Free from Prison after Supreme Court Ruling’ The Guardian (8 November 2019) <<https://www.theguardian.com/world/2019/nov/08/lula-brazil-released-prison-supreme-court-ruling>> accessed 5 November 2022
- 155.** ‘PL 2630/2020’ (Portal da Câmara dos Deputados) <<https://www.camara.leg.br/propostas-legislativas/2256735>> accessed 13 May 2022
- 156.** ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (Sobre a Meta, 24 February 2022)
<<https://about.fb.com/br/news/2022/02/pl-2630-2020-deixou-de-ser-sobre-combater-as-fake-news/>> accessed 16 June 2022
- 157.** ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (Google, 24 February 2022)
<<https://blog.google/intl/pt-br/novidades/iniciativas/pl-26302020-deixou-de-ser-sobre-combater-fake-news/>> accessed 16 June 2022
- 158.** ‘PL 2630/2020 deixou de ser sobre combater as fake news’ (Mercado Livre)
<<https://www.mercadolivre.com.br/institucional/nos-comunicamos/noticia/combater-as-fake-news>> accessed 16 June 2022
- 159.** ‘PL 2630/2020 deixou de ser sobre combater as fake news’
<https://blog.twitter.com/pt_br/topics/company/2022/pl-2630-2020-deixou-de-ser-sobre-combater-as-fake-news> accessed 16 June 2022
- 160.** ‘Poder-Computacional-Relatorio-Whatsapp-Eleicoes-ITS.Pdf’ <<https://itsrio.org/wp-content/uploads/2018/10/Poder-Computacional-Relatorio-Whatsapp-Eleicoes-ITS.pdf>> accessed 1 November 2022
- 161.** ‘Portal STF Internacional’
<https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfSobreCorte_en_us&idConteudo=120283> accessed 22 November 2022
- 162.** ‘Portal STF’
<https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfDestaque_en_us&idConteudo=445928> accessed 3 November 2022
- 163.** ‘Portal STF’
<https://www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfDestaque_en_us&idConteudo=472592> accessed 4 November 2022
- 164.** ‘PORTARIA No 510, DE 04 DE AGOSTO DE 2021.’ (Justiça Eleitoral)
<<https://www.tse.jus.br/legislacao/compilada/prt/2021/portaria-no-510-de-04-de-agosto-de-2021>> accessed 4 November 2022

- 165.** (Justiça Eleitoral) <<https://www.tse.jus.br/legislacao/compilada/prt/2021/portaria-no-510-de-04-de-agosto-de-2021>> accessed 24 October 2022
- 166.** Post-Truth, Fake News <<https://link-springer-com.tilburguniversity.idm.oclc.org/book/10.1007/978-981-10-8013-5>> accessed 17 December 2022
- 167.** ‘Programa de Enfrentamento à Desinformação do TSE tem mais de 150 parcerias’ (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2022/Julho/programa-de-enfrentamento-a-desinformacao-do-tse-tem-mais-de-150-parcerias-659181>> accessed 9 October 2022
- 168.** ‘Programa_de_enfrentamento_resultados.Pdf’ <https://www.justicaeleitoral.jus.br/desinformacao/arquivos/Programa_de_enfrentamento_resultados.pdf> accessed 4 November 2022
- 169.** ‘Projeto Comprova - jornalismo colaborativo contra a desinformação’ (Projeto Comprova) <<https://projctocomprova.com.br/>> accessed 18 September 2022
- 170.** ‘Protecting the Right to Freedom of Expression under the European Convention on Human Rights - A Handbook for Legal Practitioners’ (Council of Europe Publishing) <<https://edoc.coe.int/en/fundamental-freedoms/7425-protecting-the-right-to-freedom-of-expression-under-the-european-convention-on-human-rights-a-handbook-for-legal-practitioners.html>> accessed 13 May 2022
- 171.** Pública) NVCZ (Agência, “‘Quando você só acredita no que quer, não há como ter democracia’” (El País Brasil, 18 October 2018) <https://brasil.elpais.com/brasil/2018/10/17/politica/1539729903_777514.html> accessed 29 July 2022
- 172.** ‘Questions and Answers about the East StratCom Task Force | EEAS Website’ <https://www.eeas.europa.eu/eeas/questions-and-answers-about-east-stratcom-task-force_en#11232> accessed 16 June 2022
- 173.** Release P, ‘Victory! French High Court Rules That Most of Hate Speech Bill Would Undermine Free Expression’ (Electronic Frontier Foundation, 18 June 2020) <<https://www.eff.org/press/releases/victory-french-high-court-rules-most-hate-speech-bill-would-undermine-free-expression>> accessed 14 September 2022
- 174.** ‘Removendo comportamento inautêntico coordenado’ (Sobre a Meta, 8 July 2020) <<https://about.fb.com/br/news/2020/07/removendo-comportamento-inautentico-coordenado/>> accessed 3 November 2022
- 175.** ‘Representantes do TSE e da União Europeia destacam ações de enfrentamento da desinformação’ (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2021/Junho/representantes-do-tse-e-da-uniao-europeia-destacam-acoes-de-enfrentamento-a-desinformacao>> accessed 9 October 2022
- 176.** ‘RESOLUÇÃO No 23.714, DE 20 DE OUTUBRO DE 2022.’ (Justiça Eleitoral) <<https://www.tse.jus.br/legislacao/compilada/res/2022/resolucao-no-23-714-de-20-de-outubro-de-2022>> accessed 1 November 2022
- 177.** Rhodes SC, ‘Filter Bubbles, Echo Chambers, and Fake News: How Social Media Conditions Individuals to Be Less Critical of Political Misinformation’ (2022) 39 Political Communication 1
- 178.** Rinehart A, ‘Fake News. It’s Complicated.’ (First Draft, 16 February 2017) <<https://firstdraftnews.org:443/articles/fake-news-complicated/>> accessed 3 August 2022

179. Satariano A, 'YouTube Pulls Videos by Bolsonaro for Spreading Misinformation on the Virus.' The New York Times (22 July 2021) <<http://www.nytimes.com/2021/07/22/world/youtube-bolsonaro-covid.html>> accessed 3 November 2022
180. Schoen KR and S, '5 Serious Flaws in the New Brazilian "Fake News" Bill That Will Undermine Human Rights [UPDATED]' (Electronic Frontier Foundation, 29 June 2020) <<https://www.eff.org/deeplinks/2020/06/5-serious-flaws-new-brazilian-fake-news-bill-will-undermine-human-rights>> accessed 31 October 2022
181. 'Scientists Can Lead the Fight against Fake News' (World Economic Forum) <<https://www.weforum.org/agenda/2018/09/scientists-can-lead-the-fight-against-fake-news/>> accessed 16 June 2022
182. 'Secretary General Writes to Viktor Orbán Regarding COVID-19 State of Emergency in Hungary' <https://www.coe.int/en/web/portal/full-news/-/asset_publisher/y5xQt7QdunzT/content/secretary-general-writes-to-victor-orban-regarding-covid-19-state-of-emergency-in-hungary> accessed 14 September 2022
183. 'Sem concluir investigações, CPI das Fake News deve encerrar os trabalhos' (CNN Brasil) <<https://www.cnnbrasil.com.br/noticias/sem-concluir-investigacoes-cpi-das-fake-news-deve-encerrar-os-trabalhos/>> accessed 17 June 2022
184. 'Seminário Internacional Fake News e Eleições' <<http://www.tse.jus.br/hotsites/seminario-internacional-fake-news-eleicoes>> accessed 9 October 2022
185. 'Senado aprova projeto de combate a notícias falsas; texto vai à Câmara' (Senado Federal) <<https://www12.senado.leg.br/noticias/materias/2020/06/30/aprovado-projeto-de-combate-a-noticias-falsas>> accessed 23 November 2022
186. 'Senado Federal' <<https://www12.senado.leg.br/hpsenado>> accessed 28 July 2022
187. Senado TV, 'Presidente do TSE, Alexandre de Moraes anuncia Lula eleito presidente da República nas Eleições 2022' (TV Senado, 30 October 2022) <<https://www12.senado.leg.br/tv/programas/noticias-1/2022/10/presidente-do-tse-alexandre-de-moraes-anuncia-lula-eleito-presidente-da-republica-nas-eleicoes-2022>> accessed 23 November 2022
188. Shearer E, 'Social Media Outpaces Print Newspapers in the U.S. as a News Source' (Pew Research Center) <<https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>> accessed 4 August 2022
189. Shu K and others (eds), Disinformation, Misinformation, and Fake News in Social Media: Emerging Research Challenges and Opportunities (Springer International Publishing 2020) <<http://link.springer.com/10.1007/978-3-030-42699-6>> accessed 18 December 2022
190. 'Signatories of the 2022 Strengthened Code of Practice on Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation>> accessed 18 August 2022
191. 'Snapshot' <<https://firstdraftnews.org/>> accessed 22 November 2022
192. 'State of the Union 2018: European Commission Proposes Measures for Securing Free and Fair European Elections' (European Commission - European Commission) <https://ec.europa.eu/commission/presscorner/detail/en/ip_18_5681> accessed 18 May 2022

193. Stewart E, 'Detecting Fake News: Two Problems for Content Moderation' (2021) 34 *Philosophy & Technology* 923
194. Stolton S, 'EU Rapid Alert System Used amid Coronavirus Disinformation Campaign' (www.euractiv.com, 4 March 2020) <<https://www.euractiv.com/section/media/news/eu-alert-triggered-after-coronavirus-disinformation-campaign/>> accessed 14 August 2022
195. Street F, 'Daniel Kahneman on Human Gullibility' (Farnam Street, 14 September 2016) <<https://fs.blog/human-gullibility/>> accessed 3 August 2022
196. 'Superior Electoral Court' (Plone site) <<https://english.tse.jus.br/interna.html>> accessed 17 May 2022
197. 'Supreme Court of Brazil's Inquiry against Fake News: Advancement or Step Backwards?' (IRIS-BH, 8 April 2019) <<https://irisbh.com.br/en/supreme-court-of-brazils-inquiry-against-fake-news-advancement-or-step-backwards/>> accessed 3 November 2022
198. 'Supreme Court Takes Down Videos in Which Bolsonaro Lies to Ambassadors' (Folha de S.Paulo, 25 August 2022) <<https://www1.folha.uol.com.br/internacional/en/brazil/2022/08/supreme-court-takes-down-videos-in-which-bolsonaro-lies-to-ambassadors.shtml>> accessed 4 November 2022
199. 'Supremo Tribunal Federal' <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=5658808>> accessed 23 November 2022
200. 'Supremo Tribunal Federal' <<https://portal.stf.jus.br/desinformacao/>> accessed 4 November 2022
201. susanwright, 'Collins 2017 Word of the Year Shortlist' (Collins Dictionary Language Blog, 2 November 2017) <<https://blog.collinsdictionary.com/language-lovers/collins-2017-word-of-the-year-shortlist/>> accessed 24 January 2023
202. 'Synopsis Report of the Public Consultation on Fake News and Online Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/synopsis-report-public-consultation-fake-news-and-online-disinformation>> accessed 18 May 2022
203. 'Tackling Coronavirus Disinformation' (European Commission - European Commission) <https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/fighting-disinformation/tackling-coronavirus-disinformation_en> accessed 16 June 2022
204. 'Tackling Deepfakes in European Policy | Think Tank | European Parliament' <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2021\)690039](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)690039)> accessed 13 June 2022
205. 'Taking Action Against People Who Repeatedly Share Misinformation' (Meta, 26 May 2021) <<https://about.fb.com/news/2021/05/taking-action-against-people-who-repeatedly-share-misinformation/>> accessed 15 September 2022
206. 'Technical Note on Congressional Bills on Fake News' (ITS Rio) <<https://itsrio.org/en/publicacoes/technical-note-its/>> accessed 31 October 2022
207. 'The 2022 Code of Practice on Disinformation | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>> accessed 16 June 2022

208. 'The Code of Practice on Disinformation' <<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>> accessed 18 December 2022
209. 'The (Almost) Complete History of "Fake News"' BBC News (22 January 2018) <<https://www.bbc.com/news/blogs-trending-42724320>> accessed 11 June 2022
210. 'The Business of Misinformation - Final Report: How Misinformation Became a Profitable Business in Eastern Europe | CMDS' <<https://cmds.ceu.edu/business-misinformation-final-report-how-misinformation-became-profitable-business-eastern-europe>> accessed 25 July 2022
211. 'The Case of the Brazil Fake News Inquiry' (Global Freedom of Expression) <<https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-brazil-fake-news-inquiry/>> accessed 3 November 2022
212. 'The Chamber of Deputies' (Portal da Câmara dos Deputados) <https://www2.camara.leg.br/english/copy_of_index_html> accessed 28 July 2022
213. 'The Digital Services Act Package | Shaping Europe's Digital Future' <<https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>> accessed 16 June 2022
214. 'The Fight against Disinformation and the Right to Freedom of Expression | Think Tank | European Parliament' <[https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)695445](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)695445)> accessed 9 June 2022
215. 'The Saga of "Pizzagate": The Fake Story That Shows How Conspiracy Theories Spread' BBC News (2 December 2016) <<https://www.bbc.com/news/blogs-trending-38156985>> accessed 23 July 2022
216. 'Tira-Dúvidas do TSE no WhatsApp ganha ferramenta inédita de checagem de fatos para as Eleições 2022' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2022/Setembro/tira-duvidas-do-tse-no-whatsapp-ganha-ferramenta-inedita-de-checagem-de-fatos-para-as-eleicoes-2022-402542>> accessed 15 September 2022
217. 'Todas as declarações de Bolsonaro, checadas' <<https://aosfatos.org/todas-as-declara%C3%A7%C3%B5es-de-bolsonaro/>> accessed 8 November 2022
218. 'TSE aplica pela primeira vez norma que coíbe notícias falsas na internet' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2018/Junho/tse-aplica-pela-primeira-vez-norma-que-coibe-noticias-falsas-na-internet>> accessed 4 November 2022
219. 'TSE atuou com celeridade no julgamento de processos sobre fake news durante as Eleições 2018' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2018/Novembro/tse-atuou-com-celeridade-no-julgamento-de-processos-sobre-fake-news-durante-as-eleicoes-2018>> accessed 4 November 2022
220. 'TSE desmonetiza quatro canais e suspende divulgação de documentário' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/tse-desmonetiza-quatro-canais-e-suspende-divulgacao-de-documentario>> accessed 24 October 2022
221. 'TSE e plataformas digitais assinam acordo nesta terça-feira (15)' <<https://www.tse.jus.br/imprensa/noticias-tse/2022/Fevereiro/tse-e-plataformas-digitais-assinam-acordo-nesta-terca-feira-15>> accessed 17 May 2022

222. 'TSE e Redes Cordiais realizam, com influenciadores digitais, capacitação sobre desinformação' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2022/Agosto/tse-e-redes-cordiais-realizam-com-influenciadores-digitais-capacitacao-sobre-desinformacao>> accessed 9 October 2022
223. 'TSE e União Europeia realizam primeiro seminário internacional sobre fake news' (Justiça Eleitoral) <<https://www.tse.jus.br/comunicacao/noticias/2018/Junho/tse-e-uniao-europeia-realizam-primeiro-seminario-internacional-sobre-fake-news>> accessed 9 October 2022
224. 'TSE instaura inquérito para investigar ataque às urnas' (CNN Brasil) <<https://www.cnnbrasil.com.br/politica/tse-instaura-inquerito-para-investigar-ataque-as-urnas/>> accessed 3 November 2022
225. 'TSE realiza seminário internacional sobre fake news, com apoio da União Europeia' <<https://www.tse.jus.br/imprensa/noticias-tse/2019/Abril/tse-e-uniao-europeia-realizam-seminario-internacional-sobre-fake-news>> accessed 17 June 2022
226. 'TSE remove 334 postagens bolsonaristas contra Lula e 10 do PT contra o presidente' <<https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2022/10/21/tse-remove-334-postagens-bolsonaristas-contra-lula-e-10-do-pt-contra-o-presidente.htm>> accessed 8 November 2022
227. 'Tse-Brazil-Counter-Disinformation-Program-2022-f.Pdf' <<https://international.tse.jus.br/en/misinformation-and-fake-news/tse-brazil-counter-disinformation-program-2022-f.pdf>> accessed 4 November 2022
228. 'Twitter Deletes Bolsonaro's Tweets' (Folha de S.Paulo, 30 March 2020) <<https://www1.folha.uol.com.br/internacional/en/brazil/2020/03/twitter-deletes-bolsonaros-tweets.shtml>> accessed 3 November 2022
229. Twitter Safety [@TwitterSafety], 'We've Updated Our Private Information Policy to Prohibit Sharing Someone Else's Live Location in Most Cases. Here's What Changed and Why. □' <<https://twitter.com/TwitterSafety/status/1603165959669354496>> accessed 18 December 2022
230. 'Twitter Suspends Journalists Who Have Been Covering Elon Musk and the Company' (NBC News) <<https://www.nbcnews.com/tech/social-media/twitter-suspends-journalists-covering-elon-musk-company-rcna62032>> accessed 18 December 2022
231. "'Única forma de combater a desinformação sem afetar a liberdade de ...' (Migalhas, 22 June 2020) <<https://www.migalhas.com.br/quentes/329425/unica-forma-de-combater-a-desinformacao-sem-afetar-a-liberdade-de-expressao-e-ir-atras-do-dinheiro---alerta-ronaldo-lemos>> accessed 22 November 2022
232. Vese D, 'Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency' [2021] European Journal of Risk Regulation 1
233. 'Weber - PARTIDO SOCIALISTA BRASILEIRO - PSB RAFAEL DE .Pdf' <<https://www.conjur.com.br/dl/rosa-weber-suspende-mp-limita-remocao.pdf>> accessed 14 September 2022
234. 'What Is 2017's Word of the Year?' BBC News (2 November 2017) <<https://www.bbc.com/news/uk-41838386>> accessed 16 June 2022
235. 'Working to Stop Misinformation and False News' (Working to Stop Misinformation and False News | Meta for Media) <<https://www.facebook.com/formedia/blog/working-to-stop-misinformation-and-false-news>> accessed 16 June 2022

- 236.** European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2276(INI)) 2017
- 237.** Charter of Fundamental Rights of the European Union 2012 (OJ C)
- 238.** LAW n° 2018-1202 of December 22, 2018 relating to the fight against the manipulation of information (1)
- 239.** LOI n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet (1) 2020 (2020-766)
- 240.** Organic LAW n° 2018-1201 of December 22, 2018 relating to the fight against the manipulation of information (1)
- 241.** Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) 2022 (OJ L)