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RE: Submission on Disinformation and Freedom of Opinion and Expression

PEN America warmly congratulates you on your appointment and offers our strong support for your mandate and mission. We were heartened to see your immediate focus on disinformation and freedom of opinion and expression and are pleased to share our insights on these inextricable issues.

For just shy of a century, PEN America, as part of the global PEN network, has championed the freedom to write, celebrated the power of words to transform the world, and defended freedom of expression—goals that are strongly implicated in the global disinformation crisis. Today, our work on free expression encompasses not only the defense of liberties but the creation and preservation of conditions under which all voices globally have the practical ability to safely speak, assemble, advocate, and be heard. In that context, we have focused intently on the threat disinformation poses to freedom of expression and to its attendant right to receive and exchange information. As we [wrote in 2017](#), it is essential that we “protect the bedrock of open discourse—trust, citizens’ ability to distinguish fact from falsehood, the opportunity to test competing claims through forthright debate—without which freedom of expression loses its value.” At the same time, we have also warned of the risk that attempts to counter disinformation could lead to new restrictions on speech, and that disinformation can be and too often is used as a false pretense for crackdowns on expression.

Recognizing the scale and complexity of these threats, we have published two in-depth reports, [Faking the News: Fraudulent News and the Fight for Truth](#) and [Truth on the Ballot: Fraudulent News, the Midterm Elections, and Prospects for 2020](#), in which we examined the manifold threats to free expression posed by disinformation. In *Faking News*, published in 2017, we offered a prescient warning about the consequences of the unchecked spread of disinformation, stating that “even those implications that now seem far-fetched should not be excluded from consideration. Such challenges include: the increasing apathy of a poorly informed citizenry; unending political polarization and gridlock; the undermining of the news media as a force for government accountability; a long term risk to the viability of serious news; an inability to devise and implement fact and evidence-driven policies; the

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vulnerability of public discourse to manipulation by private and foreign interests; an increased risk of panic and irrational behavior among citizens and leaders; and government overreach, unfettered by a discredited news media and detached citizenry.” Today, such consequences no longer seem far-fetched. Instead, we have seen them play out, in established democracies as well as more fragile democracies and authoritarian states. At the same time, in our report [Losing the News: The Decimation of Local News and the Search for Solutions](#), PEN America has also documented the collapse of the local news ecosystem in the U.S., and its detrimental impact on democracy. There is an increasingly clear link between the evaporation of credible news sources—especially at the local level—and the rise of disinformation, in the U.S. and globally.

In addition to our research, PEN America has provided [disinformation defense trainings](#) and information to more than 40,000 people and engaged in a robust campaign to [counter the impact of disinformation](#) in the 2020 U.S. elections. Through these efforts and our consultations with journalists and writers globally, we continually gather frontline perspectives on this rapidly evolving threat.

Disinformation is no longer the provenance solely of well-funded intelligence agencies or the great powers; in many places the ability to purchase disinformation as a service is rapidly becoming a normalized part of more traditional marketing and digital advertising services, and a growing array of actors are engaging in disinformation campaigns in increasingly sophisticated and normalized ways. State actors are not only maturing and expanding their capabilities, but settling into long-game strategies designed both to meet immediate political objectives and sow longer term distrust and polarization that has the potential to undermine democracy and free expression on a much grander scale. COVID-19, the Trump era, and the increasing sophistication of micro-targeting capabilities in digital advertising have served as accelerants for these dynamics. In the U.S., we have seen that Black, Spanish-speaking, and immigrant communities are disproportionately and deliberately targeted by purveyors of disinformation. In the context of elections, such efforts may reflect a deliberate effort to disenfranchise these groups; more broadly, such efforts seem designed to sow apathy and distrust, and to fracture political alliances.

While the manifold risks disinformation poses are clear, efforts to respond to it—whether by governments or social media platforms—can also be heavy handed, politicized, and biased. Even good-faith efforts to address disinformation risk disregarding or infringing on free expression, but many governments are also quick to use disinformation as a cover for repression. “Fake news” laws are on the books in many countries, and [charges related to spreading falsehoods](#) are wielded against writers, journalists, and dissidents. Of additional concern are the content moderation practices of the platforms, which remain largely opaque and unaccountable to the public. Especially as platforms face increasing pressure and legitimate good reason to address the spread of disinformation, it is problematic that, due to the almost total opacity and increasing algorithmic automation of their content moderation, we have no clear idea what is being removed, or how different communities globally are being impacted. [As we’ve argued elsewhere](#), technology and social media companies must be more transparent and work harder to maximize the amount of information they share so that the academic community, civil society, and others can conduct research and develop more informed

solutions. Advocacy and public policy based on anecdote are the unfortunate current norm. This is increasingly untenable.

We have immense and accelerating challenges in front of us, however, and the imperfect nature of existing information cannot serve as a pretense for inaction. Significant new questions are being raised by self-regulatory approaches like the Facebook Oversight Board, and fraught regulatory debates playing out in many countries. In addition, several paradigmatic changes are coming to the internet which today's disinformation governance debates are not addressing urgently enough:

- The likelihood that a significant portion of social media traffic will become end-to-end encrypted in the near future, given increasing consumer demand for encrypted communications and Facebook's publicly announced plans to integrate and encrypt its platforms. Current content moderation approaches and the debates around them will be further complicated as the companies themselves lose access to the content of messages being sent.
- Dramatic increases in the use of poorly understood, potentially biased artificial intelligence in prioritizing and moderating content. And the likelihood that many countries and communities globally are being served by AI that has not been trained on culturally appropriate data.
- The continued growth of commercial "disinformation services" and the normalization of disinformation in politics, advertising, and elections.
- The continuing convergence, particularly in state-sponsored digital campaigns of disinformation with other tactics like hacking, harassment, and abuse.

As you know, all of this adds up to a deeply complex but urgent crisis. In confronting it, PEN America recommends the following principles:

- Seek multidisciplinary approaches. There will be no silver bullet for disinformation and a mix of strategies and perspectives, as well as new norms for coordination across them, is needed.
- Seek alignment with international human rights frameworks across fora and interventions.
- Specifically examine how the approaches being taken by platforms, governments, et al., implicate free expression and surface these concerns.
- Seek truly global solutions. Voices from the global south must be heard and have influence in internet governance debates.
- Distinguish between disinformation—wielded deliberately with the intent to deceive—and misinformation, which can still cause harm but may not be spread knowingly, and consider solutions accordingly.
- Balance globally focused approaches with the need to enable less powerful communities and countries to have strong, independent voices. Recognize that disinformation is often deployed as a tool to deliberately disempower specific communities.
- Contend with corporate power. Demand transparency as a foundation to fact-based strategies.
- Demand platform responses to disinformation that are grounded in clear guidelines and standards, transparent processes, and the guarantee of opportunities for appeal and redress.

Platform-related solutions must not be limited to content moderation, but also contend with the role of design and algorithms.

- Empowering and educating information consumers is an essential component of countering disinformation, and one that does not risk posing a new threat to free expression. Strategies to increase media and information literacy among children and adults are needed. We must also recognize that disinformation exploits how the human brain functions, and so psychological and sociological considerations must be a part of designing solutions.

In closing: we at PEN America believe deeply in the power of free expression and intercultural exchange to cut across barriers, mend societal cleavages, and unite people around our common humanity. We believe that empowered consumers of information are society's best defense against the creation and amplification of disinformation. In addition to scientific truth there is truth that we can only produce together, through debate and dialogue. The future of the internet, if it is to be informative, must also be inclusive and free.

Thank you for the opportunity to provide this input, and please do not hesitate to contact us if we can be of further assistance with this report. We look forward to continued engagement on these issues and others related to your mandate.