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SUMMARY

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## Summary of the study: Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression

Chapter on:

*Parliamentarians  
and  
communications  
regulators  
will find this  
summary of  
particular  
interest*

# Legislative and Regulatory Responses to Disinformation

*“ In some cases, in particular where disinformation is defined broadly or where provisions are included in general penal codes, there is a major risk of censorship. ”*

*Excerpt from the original Report*

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**BROADBAND COMMISSION**  
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## SUMMARY 5

### Background:

This global study maps diverse international responses to disinformation, along with the impacts of counter-disinformation measures on the right to freedom of opinion and expression. Featuring case study examples from the COVID-19 pandemic, it was published in the context of the 10th anniversary of the Broadband Commission for Sustainable Development, which was co-founded by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Telecommunication Union (ITU). Disinformation is a challenge to freedom of expression and the Sustainable Development Goals (SDGs) relevant to the Broadband Commission (specifically, SDG 16 on peaceful and inclusive societies, and SDG 16.10 on public access to information and fundamental freedoms).

The report introduces a typology of disinformation responses that are categorised by their aim of targeting particular aspects of the problem, rather than in terms of the actors behind them (e.g., internet companies).

### These particular summary focuses on legislative responses:

Legislative responses encompass regulatory interventions to tackle disinformation. These responses fall within the umbrella category of those aiming to alter the environment that governs and shapes the behaviour of producers and distributors of disinformation.

As the Balancing Act study notes, some countries propose or have passed legislation unique to disinformation; for others, proposed amendments or legal basis for tackling disinformation are grounded in other sets of legislation, such as the penal code, civil law, electoral law, or cybersecurity law.

Some legislative and regulatory interventions intend to constrain behaviour (e.g., laws applied to disinformation). These measures are often vaguely worded, which introduces a risk of over-blocking and censoring legitimate expression, including acts of journalism.

The study says that law-related responses seeking to constrain disinformation “should be assessed in terms of the international standards that any restrictions to freedom of expression must be provided by law, be proven necessary to a legitimate purpose, and constitute the least restrictive means to pursue the aim. They should also be time-limited if justified as emergency response measures.”

The scope of established legislation varies from media and electoral laws to cybersecurity and penal codes. In the case of regulations, these often either prioritise the perpetrators (particularly individuals and media entities) of what the authorities deem to be disinformation or shift the responsibility to the internet companies to moderate or remove specific content, such as the German Network Enforcement Act. In some cases - in particular, where disinformation is defined broadly or where provisions are included in general penal codes - there is a risk of enabling censorship.

Certain laws are difficult to enforce in practice. For example, after the adoption of the French Fight Against Manipulation of Information Law, stakeholders and political candidates sought to demonstrate the limitations of this law. In addition, Twitter initially blocked an official communication campaign from the government to encourage people to vote, arguing that this action was in compliance with the law. For many small countries worldwide, it is hard in practice to apply laws to international services that do not have significant business or physical presence within the national jurisdiction.

Among the other challenges outlined, the Balancing Act study notes: "while some governments attempt in good faith to update the regulatory environment to tackle disinformation in the digital age, others have been seen to attempt to control citizens' speech by creating new illegal speech categories, or extending existing laws to penalise legitimate speech. The paradox to highlight here, is that governments that appear to be seeking to control speech for political gain try to legitimise their actions by referring to hate speech regulations and anti-disinformation laws". In other words legislative and regulatory, disinformation responses risk being used (or justified for use) for censoring legitimate expression - and clearing the field for official disinformation to spread unchecked."

The Balancing Act also points to law-related interventions that have an enabling significance concerning combating disinformation. Examples are strengthening the right to information, supporting journalism, and mandating media and information literacy (MIL) programmes. Responses invoking legal powers should recognise their limits as solutions, and that even with law and regulation, symbolic roles of political and other leaders, teachers and role-models can be part of the problem or the solution.



The report includes recommendations that States could take, such as action to:

- Review and adapt law-related responses to disinformation with a view to conformity with international human rights standards (especially freedom of expression, including access to information, and privacy rights), and make provision for monitoring and evaluation.
- Develop mechanisms for independent oversight and evaluation of the efficacy of relevant legislation, policy, and regulation.
- Develop mechanisms for independent oversight and evaluation of internet communication companies' practices in fulfilling legal mandates in tackling disinformation.
- Avoid criminalising disinformation to ensure that legitimate journalism and other public interest information are not caught in the nets of "fake news" laws.
- Avoid enabling disproportionate use of internet shutdowns and social media restrictions as mechanisms to tackle disinformation.
- Ensure that any legislation or regulation responding to disinformation crises, like the COVID-19 disinfodemic, is necessary, proportionate, and time- limited.
- Help ensure that there is an enabling legal environment that can support investment in strengthening independent media, including community and public service media, in the context of the economic impacts of the COVID-19 crisis.