



Queensland University of Technology
Digital Media Research Centre

Digital Industry Group Inc
By email: hello@digi.org.au

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QUT Digital Media Research Centre submission to the consultation on disinformation industry code

Prepared by Prof Nicolas Suzor, Lucinda Nelson, Prof Jean Burgess, A/Prof Daniel Angus, Dr Kylie Pappalardo

About the DMRC: The DMRC is a global leader in digital humanities and social science research with a focus on communication, media, and the law.

For more information about this submission, contact Prof Nicolas Suzor n.suzor@qut.edu.au.

Summary:

In the attached document, we make the following recommendations regarding the draft disinformation industry code of practice:

1. Refine the definition of 'good faith research' to clarify that academic research approved by an academic ethics committee or institutional review board is sufficient;
2. Expand the definition of 'harm' to include an imminent and serious threat to human rights;
3. Expand the definition of 'disinformation' to ensure the code applies to disinformation spread through films, podcasts and instant messaging; and
4. Build a commitment to human rights into the code.

Refine definition of ‘good faith research’ to defer to IRB approval where applicable

The draft language of clause 5.20 should be amended to clarify that academic research approved by an institutional review board is ‘good faith research’.

Clause 5.20 is crucial to ensuring that independent researchers can study disinformation. Currently, it states: ‘Signatories commit not to prohibit or discourage good faith research into Disinformation on their platforms.’

As acknowledged in the discussion paper and draft code, careful research and input from many different stakeholders is required to address complex issues such as disinformation. We are pleased to see the value of research collaborations recognised in the draft code, but note that independent research remains critically important. There are many more researchers working on issues related to disinformation than there are opportunities to collaborate formally with platforms. Independent research therefore contributes to a greater diversity of scholarly work and may reveal new insights, particularly in relation to the understudied impacts of disinformation on marginalised groups and the global south. There are also worrying trends that make access to data for independent research increasingly more difficult.¹

In this context, we propose a clarification to ensure that clause 5.20 effectively safeguards independent research. Currently, the term ‘good faith’ is not defined, creating some ambiguity. Clause 5.20 needs to distinguish between harmful actions (for example, the actions taken by Cambridge Analytica) and genuine independent and ethically sound research. The best way to draw this distinction is to rely on the academic ethics committees and institutional review boards that oversee academic research. Compliance with an institution’s rigorous ethical requirements and processes should be determinative evidence that the research is in ‘good faith’.

In the interests of preserving independence, it is not appropriate for platforms to determine whether research is in ‘good faith’, particularly given that suitable independent standards and procedures for making this determination already exist. For research undertaken outside of academic systems where there are no institutional review boards, some discretionary evaluation will be required; we suggest therefore that an approved institutional review should be sufficient (but not necessary) to satisfy the meaning of ‘good faith’.

¹ Axel Bruns, ‘Facebook Shuts the Gate after the Horse Has Bolted, and Hurts Real Research in the Process’, *Internet Policy Review* (25 April 2018) <<https://policyreview.info/articles/news/facebook-shuts-gate-after-horse-has-bolted-and-hurts-real-research-process/786>>.

Expand definition of ‘harm’

The definition of ‘harm’ in clause 3.3 should be expanded to include an imminent and serious threat to human rights.

The definition of harm is vitally important, since clause 3.2 specifies that the code focuses only on disinformation that may cause harm. Currently, the draft code defines harm as ‘an imminent and serious threat to: A) democratic political and policymaking processes; or B) public goods such as the protection of citizens’ health, the environment or security.’

Disinformation can cause harm to a range of human rights not covered by this definition, including the rights to freedom of expression (ICCPR article 19), free and fair elections (ICCPR article 25), health (ICESCR article 12), freedom from discrimination (ICCPR articles 2(1) and 26), and the prohibition on incitement to discrimination, hostility or violence (ICCPR article 20).² We suggest amending the definition of harm in clause 3.3 to include an imminent and serious threat to human rights.

Expand scope of code

Clause 4.2 should be revised to ensure that the code applies to disinformation spread through entertainment and education content.

A significant amount of disinformation is spread through instant messaging, videos, broadcasts, podcasts, and other media that is designed to entertain or educate. Digital platforms that facilitate the spread of disinformation have a responsibility to address it, regardless of what format it takes. We strongly recommend the removal of clause 4.2 in its entirety. At the very least, we believe that the code should extend to all digitally distributed content and that sub-clause 4.2(D) should be removed. Our proposed protections for human rights in clause 2.2 (see below) are sufficient to ensure that the code does not impermissibly interfere with freedom of expression. We also suggest that if the final code still excludes private messaging, it should at least distinguish between small group private messaging, where interference is often less justified, and large private group messaging, through which disinformation spreads rapidly and to which the code should apply.

² See Richard Wingfield, ‘A Human Rights-Based Approach to Disinformation’, *Global Partners Digital* (15 October 2019) <<https://www.gp-digital.org/a-human-rights-based-approach-to-disinformation/>>.

Include human rights commitment

Clause 2.2 should be replaced with a commitment to upholding and promoting human rights.

We recognise the importance of protecting freedom of expression, but believe that the draft code does not sufficiently address the impact of disinformation on other human rights. We suggest replacing clause 2.2 with language that incorporates a genuine commitment to human rights principles. We recommend using language that:

- reaffirms the commitment of platforms to fulfilling their responsibility to respect human rights;
- commits platforms to use human rights due diligence to guide the development of policy and enforcement decisions;
- acknowledges the importance of developing appropriate responses to disinformation, particularly given that disinformation can cause harm to a range of human rights;
- explicitly references the standards provided by article 19(3) of the *International Covenant on Civil and Political Rights* that restrictions on free expression should:
 - be provided by law (“or in the context of social media companies, have fixed rules, not subject to their discretion, that are publicly accessible and understandable”);³
 - pursue a legitimate aim; and
 - be necessary and proportionate to that legitimate aim.

³ David Kaye, *Speech Police: The Global Struggle to Govern the Internet* (Columbia Global Reports, 2019) 9.