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*Fake news and online misinformation***

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Introduction

In order to avoid the spread of *fake news,* attempts are made to intervene with regulatory measures, but the Internet, which allows users and their ideas, opinions and manifestations of thought to be connected in different parts of the world effectively prevents greater scrutiny over the exercise of freedoms by individuals. The algorithms[1] used by *Internet Server Providers* play an important role in creating and spreading *fake news,* i.e. false news intentionally spread on the Internet in order to mislead readers, consumers, citizens and voters. It is well known that *ISPs* use algorithms that are able to select information to be suggested to the user, a selection that does not take the reliability and truthfulness of the news article into account but aims to crop the news article on the user's profile. Therefore, in a media environment that offers a great deal of information, the user only receives news articles selected according to his profile which are often unreliable but reflect his way of thinking.

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[1] The algorithm is a mechanically executable sequence of steps; this sequence of steps is capable of transforming an initial state of a system into a new one.

1. *The role of Over the Tops in information management on the Net*

First of all, the Net has changed the way information is produced because the production of information is radically decentralized, in fact anyone can create information, suggest facts, ideas, new points of view, photos, videos and this can be achieved through the creation of a website, blog or just being active on social networks such as Twitter, YouTube, Instagram. The ability of everyone to interact with others has grown exponentially but the enormous amount of information to be used must be sorted out and someone must facilitate its usage, here the role of *intermediaries* is played by both social networks and search engines. Although the Net certainly constitutes the virtual place where information democracy takes on the maximum possibility of global implementation, distribution is the prerogative of a few Over the Tops.

There is a maximum decentralization and openness in the production of information, but on the other hand, there is also a strong push for the concentration of services that make this information actually available and usable by a few multinational companies, all this is not without consequences for the concrete structure of freedom of information.

In order for Internet users to make use of the information, an intermediation role is mainly played by search engines, the most widespread being Google, which determines which information should be indexed and the order in which it should be presented, this directs the user to one direction or another. In the social environment, the user randomly stumbles upon information at the expense of the perception of the truthfulness of the information.

Search algorithms used by different platforms determine the order in which information appears to us, *the information that attracts our attention is conditioned by the way the algorithms that guide their distribution are designed.*

 Google's search engine uses different kinds of filters, in a first step it selects and sorts the contents based on their relevance, relevance determined by the number of input *links*, the correspondence between terms found and terms included in the documents and

so on; a second *step* attributes the content's relevance in relation to the historical series of searches made by all users. [2]

Google's implementation of the search algorithm called *RankBrain* added the third step which allows correlation between multiple *queries* suggested by the user on the same topic regardless of the presence of search terms in documents and whether the search was set ambiguously. [3] Facebook *News Feed* also selects and sorts what contents and news articles should appear on the user's screen and does so according to the individuals' preferences and interests; this way of operating is called *filter bubble*; social networks also use algorithms to define which news are of greatest interest to the user. The algorithms filter the news that is most consistent with the user's view of reality and therefore only receives everything that is consistent with his beliefs. All this is acceptable when we have to choose a restaurant, a trip etc., but something else is when web personalization influences the formation of public opinion.

Free confrontation between different ideas is necessary in order for free political conviction to be formed in democracies and in support of this, the protection of pluralism of information sources is increasingly important while the *filter bubble* creates mechanisms in the virtual community that targets those who have the same ideas and receive information only from them, thus preventing democratic debate between individuals with completely opposite opinions. On social media channels like Facebook, a new model of information distribution is implemented by *sharing*, literally sharing, as well as on Twitter. Sharing takes the form of information sharing among users or groups in communicating also through chats and videos; this sharing can be extended to third parties who in turn also spread commercial information: social networks therefore become an opportunity for the media to increase readers and to represent a place, although virtual, where users live.

When contents considered dangerous for the security reasons: because they instigate violence, sing the praises of terrorism, proselytize for extremist causes etc., are spread, the

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[2] G. PITRUZZELLA, *The freedom of information on the Internet*, in *Media Laws*, 1/2018: «The systems used by search engines and social networks are algorithms based on dozens of "signals" processed by *machine learning* systems... programs are capable of teaching themselves from experience, so software learns from data and predicts the future the same way they estimate the probability of an event».
[3] RankBrain is the name of the new machine learning system based on artificial intelligence which is used to process Google's search results and sort them properly.

web giants come into play and develop technologies necessary to control extremist contents by implementing *counterspeech*.[4] The supervisory system is not fully effective; the supervision action is carried out mainly automatically through the use of algorithms designed to recognize and remove violent messages or those that can be traced back to terrorist groups, but also the use of many human operators who carry out further screenings. However, there is a tendency to exclude and deny the responsibility of web operators for the spread of contents expressed by others especially in the way it was sorted by the main source, the phenomenon and spread of *hate speech* or *fake news* published online especially through *social networks.* The situation in the European area of influence is different, in fact, the governmental regulatory interventions that provide for sanctions for those responsible for inciting hatred or violence are legitimate even if maximum care must be taken as the individual's right to express his or her thoughts is protected by excessive incisiveness.[5] There is a clear tendency for the web operators to take full responsibility for the contents and to proceed with possible removal, but significantly reducing the automatic identification of contents and images considered dangerous.

2. *Fake news*

Fake news is not new in the world of information, but on the Internet, it becomes more important because the possibilities for it to be produced and spread are much greater. In fact, in an information system such as the Internet, decentralized and in the absence of control and responsibility mechanisms as in traditional publishing, the ease of implement-

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[4] In this regard, Facebook, Twitter, Microsoft and YouTube joined the States in drawing up action plans aimed at obtaining the removal of content considered dangerous from their platforms. The *Global Internet Forum in Counter Terrorism* is part of this integrated intervention, a program aimed at preventing violent extremists from using the *hosting services of the platforms participating in the project.*

[5] It is worth mentioning the German law that came into force on January 1, 2018 which was defined by the media as the "Facebook law" and aims to tackle online *hate speech*; the UK has adopted a white paper which provides for the creation of a code of conduct for Internet companies, with the power to impose administrative sanctions and order the shutdown of sites in the event of violations. In Spain, the 2015 legislation known as "Ley Mordaza" is significant, i.e. the gag law, which intervenes in a restrictive sense with reference to various aspects of freedom of expression of thought; in France, a bill obliges search engine and *social network* operators to remove any content *prima facie* deemed to incite hatred, violence or discrimination within 24 hours of the request.

ing *fake news* is increased and easily circulated as a result of *shares* and *likes* on social net-works[6].

The lack of information *gatekeepers* means that if a lie is highlighted on the screen and relayed to millions of people, it appears as an uncontroversial fact as a result of the algorithm's logic as mentioned in the introduction. *Fake news* is not only partially or totally false news but also incorrect news because they are inaccurate, distorted, incomplete or not well documented, they are aimed at the user in a decision-making groove predetermined by the objectives of those who programmed the algorithm. Hence the need to access the logic behind the algorithms functioning for a greater scrutiny over the amount of processed data and for a greater supervision of the aims pursued[7].

The web is now the primary source of knowledge in the information society, in fact most people tend to meet their information needs by consulting online platforms; among the different platforms it is possible to distinguish between those that provide traditional information services such as newspapers and radios which extended their activities on the web and social networks where information is not derived from the platforms' editorial process but is the result of users' *uploads*. Information overload on the Net increasingly reduces the time spent on content verification; citizens are not aware of the implications of implementing profiling technologies which establish the presentation and organization of contents using automated decision mechanisms and algorithms. The lack of awareness of this overview by most online information users means that Internet users are not particu-

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[6] The first type of *fake news* concerns the attempts by power groups, from small personalities to sovereign states, to shape public opinion at will by manipulating information, here if it always refers to what happened during the American elections, whose outcome would have been heavily influenced not so much by content conveyed on the Net, but by very influential individuals who changed the vote of a substantial part of the voters thanks to the massive spread of false news

The other notion of *fake news* was used to describe the endless amount of data, opinions and stories of low authenticity that the Net is full of; especially on social networks where everyone can publish everything they want without supervision, it is easy to find stories, comments and statements whose reliability is almost zero and which often turn out to be false. They are information circulating on the Net that for often random reasons sometimes manage to have an audience because they are often reproduced by individuals with a large audience. It can also be defined as "chatter" in which there are completely invented statements, and sometimes baseless assumptions on important topics.

[7] The issue was also analyzed by the administrative judicial authority which allows the use of automation tools for data collection and evaluation of discretionary activities especially technical ones, but must respect two main aspects as a minimum guarantee for each hypothesis of the use of algorithms in public decision making or the full upstream knowledge of the module used and the criteria applied, furthermore, the responsibility of the decision to the body holding the power that must carry out the necessary logical assessment and legitimacy of the choice and results entrusted to the algorithm. (Council of State judgements 2270 and 8472 of 2019).

larly keen on verifying the degree of truthfulness of news articles given the amount of information they have to deal with; but they are often inclined to share contents with other users because they believe it to be true. Most of the time those who spread *fake news* use fake names and operate *fake accounts* i.e. anonymous or fake digital profiles often created by robots.

Algorithms therefore have a strong impact on online misinformation and on the process of shaping public opinion which is less influenced by traditional media; moreover, the algorithms used by platforms try to keep users on them for as long as possible which leads to amplifying the most sensational news articles which are capable of arousing users' emotions and reactions by leveraging their opinions and beliefs through profiling.

3. *Information network and democracy*

A few years ago the network was celebrated by many as the place to implement a virtual democracy, a new agora to achieve a fully horizontal democracy, but with experience it was understood that the web and social networks are almost never the site of reasonable discussions, but arenas where convictions collide, most of the time, without rational justification or not supported by direct knowledge and experience. The transparency of new technologies on which they relied and the birth of a mature digital citizenship remained mere utopias. The proliferation of the so-called hoaxes or fake news (most common definition) is the result of a structural change in the relationship between citizens and information. In fact, the customization of information introduced by Google's Page Rank search algorithm[8] and consequently the return of suitable results for the individual user created a bubble around each browser that sends only what conforms to their opinions, and everything that does not conform is retained by the filter that separates it from their personal bubble. But even the old information apparatus and party journals aimed to propose a certain vision of reality; the substantial difference is that there is technically no audience in the network, i.e. an audience watching a show, reading a text or listening to a radio pro-

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[8] Wikipedia: PageRank is an analysis algorithm that assigns a numerical weight to each element of a set of documents connected by hyperlinks, for example the set of pages in the World Wide Web, in order to quantify the relative importance within the its set.

gram, but there is only an individual within the bubble and what is used is a partial and limited representation of the world made to measure, based on its consolidated preferences in the past. Another substantial difference is that one is almost never really aware of living in a bubble; while in the classic information channels, although the information was always partial, every citizen had the possibility of choosing a newspaper from among many, or the power to change the channel with the remote control, choosing independently whether or not to expose themselves to a certain information flow. All this disappears on the network, because one is not able to understand how the algorithms are building us a tailor-made world. The era of network customization, due to the Page Rank algorithm, filters all information from the outside world, making only what conforms to our opinions, tastes and political ideas reach us. When one searches for news on the web one thinks the information received is objective, neutral or the same information that all users are seeing; this means you can't fully understand how often the bubble filter you're in is.

4. *Checking information*

The technological society is capable of breaking geographical barriers and giving shape to globalization concept, generating the need to find supranational responses to new global reference dimension. Therefore, the problem of the national legislation's ability to regulate rights, freedoms and relations arises, which need solutions that go beyond state borders in order to be effectively protected in the technological society[9]. The fundamental global character of the new society leads us to consider supranational acts in order to understand whether there are significant references suitable for founding new freedoms in this type of act, endowed by their nature with the ability to produce effects on different States and particularly interesting for the role they play in the interpretation of constitutional principles and norms. In this regard, reference can be made to Article 19 of the Universal Declaration of Human Rights, adopted by the United Nations Assembly on December 10, 1948 which qualifies the right of freedom of manifestation of thought as the right "to seek, receive and spread information by any means regardless of borders". It also notes

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[9] T.E. FROSINI, *Liberté, Egalité, Internet,* Naples, 2015: The issue is complex and calls on the jurist to examine how bytes affect constitutional rights and freedoms. S. RODOTÀ, *Il mondo nella rete. Quali i diritti, quali i vincoli,* Bari, 2014.

Article 19 of the International Covenant on Civil and Political Rights, adopted by the United Nations on December 16, 1966 and in force from 1976, which provides for the freedom of expression through any means chosen by the individual. These acts are referred to by the United Nations Human Rights Council, which classifies the Internet as a fundamental tool for the exercise of freedom of expression and the other fundamental rights provided for in those acts and is also a necessary condition for guaranteeing other fundamental rights.[10] The Charter of Fundamental Rights of the European Union provided for a number of principles and constitutive rights for the new freedoms made possible by technology including freedom of expression and information to be exercised without borders.[11] Europe has repeatedly stressed the importance of guaranteeing rights and freedoms in the technological society through acts, resolutions and recommendations while recognizing the value of public Internet service and the protection of human rights and fundamental freedoms both online and offline, with the consequent need to help users understand their online rights and actually exercise them.[12]

In 2016, the European Commission, having become fully aware of the *fake news* phenomenon and their ability to reduce the citizens' confidence in the media and public institutions, began a legislative process to stem the phenomenon and try to regulate it, questioning the role that different players must have, trying to define their responsibilities in order to find and implement coherent strategies and measures throughout the European Union. The European objective is to fight misinformation and in order to do this, there is a need for greater collaboration between the various parties involved, more coordination between the different activities and at the same time strengthening citizens' awareness of new media usage. The Common Framework to tackle hybrid threats was also adopted by

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[10] *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, presented to the UN General Assembly on May 16, 2011.

[11] More recently, the Council of Europe, with its recommendation titled *The Guide to Human Rights for Internet Users*, made it clear from the *onset* that States are obliged to guarantee each person the human rights and fundamental freedoms enshrined in the European Convention on Human Rights, stressing that this obligation is also applicable to the Internet context.

[12] How can we forget the European acts relating to electronic communications, especially the 'package' of the 2002 Directives, the 2009 Telecom Package and 2015/2120 Regulation which lays down measures on open internet access and in particular the principle of Net neutrality and Article 3 recognizing the right of end-users to access and spread information and content.

the Commission in the same year.[13]; the public consultation on false news and misinformation was launched the following year and set up a group of high-level experts in order to develop a common strategy with the Member States in order to strike a balance between freedom of information and the citizens' right to information.[14] In 2018, the first report of the group shows that the term *fake news* fails to fully grasp the problem of misinformation because it relates to contents that are not completely *fake* but contents that fabricates hidden information through facts that go far beyond something resembling the news and that includes *fake followers*, manipulated videos or targeted advertisements. Even the term itself is inadequate in representing the complexity of the phenomenon because its use by politicians and supporters is to reject something with which they are not in favor and disagree, and even the citizens often associate the term with debate between political parties. The European approach to tackling misinformation takes the form of a code of good practice that provides for a form of self-regulation among big players and the increase of fact checkers on the Net but at the same time increases transparency, credibility and reliability of information as well as regulating the *fake news* phenomenon. The *Codex of Practice on Disinformation* is a codex signed between the European Commission, private companies and associations, it refers to a legal *framework* including the European Charter of Fundamental Rights, the European Convention on Human Rights, the European Directive 2000/31 on electronic commerce and in particular the articles governing the conduct *of providers, hosts* and *social networks*, the provisions on the protection of personal data, the Directive 2005/29 for commercial practices and the 2006 Directive on commercial practices. The codex was signed by Facebook, Google, Twitter, Mozzilla, associations representing online platforms, associations representing the advertising industries and advertisers. The general objectives of the codex are identifying the actions that signatories can take when dealing with challenges posed by misinformation, improving the assessment of advertising placement on online platforms with the aim of obtaining revenue from misinformation and *clickbaiting* mechanisms, ensuring transparency of advertising with political focus, making it clear why

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[13] European Commission, *Joint Framework to tackle hybrid threats. The European Union's response,* in *www.europa.eu*, April 6, 2016.

[14] *A multi-dimensional approach to disinformation*, report of the independent High-Level Group on fake news and online disinformation, in *www.europa.eu*, 2018.

some advertisements reach targets rather than others, developing specific policies against this phenomenon, intensifying efforts to close *fake* accounts and establish clear rules to stem bot problems by recognizing what is human from what is not, ensuring the integrity of services, fundamental rights and the right to anonymity. At the same time, the codex provides for the need to make users aware of the online tools and platforms with which they interact, respecting privacy but also allowing data access in order to implement *fact checking* and research activities, implementing *fact checkers* reliability indicators that are used as mechanisms to recognize misinformation, analyzing political announcements, closing false accounts, using *tools* to allow users recognize what is reliable from what does not represent reality.[15]

The Communications Guarantees Authority promotes platforms' self-regulation and the exchange of good practices in order to tackle the *fake news* phenomenon, highlight the centrality of Big Data and Artificial Intelligence, underline self-regulation limits and the measures adopted especially in terms of algorithms which must always be in line with freedom of expression and consistent with direct access to documents through investigating and establishing research tables. AGCOM highlights several times that misinformation processes spread mainly when content monetization and *clickbaiting* are evident and when investments in information decrease, reducing confidence in the traditional information system[16].

Conclusions

We live in the so-called post-truth era: the risk of deliberate misinformation in every area of individual and collective life increases exponentially with the use of the Internet and especially with the use of *social networks*. While waiting for algorithms capable of keeping the user's freedom of choice and the pluralism of information together to be implemented, a

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[15] Here is how majors implement the good practices of the Codex: Facebook blocks economic incentives to pages, people and domains that spread misleading information by closing accounts and eliminating non-authentic content that may violate privacy and blocks contents deemed harmful from advertising; so also Google and every year it publishes a report of ads that are not true or that do not meet the principle of transparency, and implements algorithms to improve the search for sources. Twitter mainly adopts restrictive measures regarding links to ads that do not comply with the principles of transparency.

[16] F. SIACCHITANO, A. PANZA, *Fake news and online misinformation: international measures*, in *MediaLaws*, 2018.

perspective of change could be to invest in the user's preparation, i.e. to provide the user with the cultural and technical tools needed to verify the credibility of a news article.

Abstract

It is always very difficult to strike a balance between the right to freedom of expression and the need for citizens to be informed in the right way. Multiple needs are emerging: the first needs include; new media awareness, understanding the operating logic, data usage, transparency in relation to *digital literacy* which is influenced by the cultural and social level of the audience; the other needs include encouraging cooperation between member states, civil societies, public institutions, big players and lastly to strengthen the research community in order to build a valid and strong network of fact checkers.

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