

# Inquiring Minds– 8 November 2019

Melissa Butler, Moderator

## Lies, Damn Lies, and the Internet

Hey, did you know that not everything you read on the internet is true? What protections do we need from the darker side of the internet?

Should experts be empowered as fact-checkers to flag false or misleading claims on social media? Should this extend to claims about politics or should they be exempt from fact-checking?

Should social media platforms refuse ads that lie? Should they be required to disclose who pays for ads?

If social media platforms knowingly allow lies to circulate, does that undermine democracy? Or does it support democracy by promoting free speech rights?

What if a falsehood is about you? What recourse do (or should) you have against internet posts that might damage your reputation or even threaten your security? Should individuals have a “right to be forgotten”?

Sue Halpern, “The Problem of Political Advertising on Social Media,” *The New Yorker*, Oct. 24, 2019

In the course of the 2016 Presidential election, Donald Trump and Hillary Clinton spent eighty-one million dollars on Facebook ads. With a little more than a year to go until the next election, candidates have already spent more than sixty-three million dollars marketing themselves on Facebook and Google. Trump’s campaign has spent more than anyone else’s, with a total of twenty-four million dollars in digital-ad buys. Two of those ads, which were released on Facebook on October 2nd, falsely accused the former Vice-President Joe Biden of offering Ukrainian officials a billion dollars to drop a case against his son Hunter. The ads, which were seen by over four million people, include a six-second video edited to make it seem like Biden openly confesses to the scheme. When the Biden campaign asked Facebook to remove the ad, however, the company refused. “Our approach is grounded in Facebook’s fundamental belief in free expression, respect for the democratic process, and the belief that, in mature democracies with a free press, political speech is already arguably the most scrutinized speech there is,” Katie Harbath, Facebook’s public-policy director for global elections, wrote to the Biden campaign. “Thus, when a politician speaks or makes an ad, we do not send it to third party fact-checkers.”

Most of the time, when taken to task for spreading hateful, distorted, and demonstrably false information, Facebook executives claim that the social network is merely a neutral platform, unmoored from the content it carries. Nick Clegg, Facebook’s vice-president of global affairs and communications, likens Facebook to a tennis court. “Our job is to make sure the court is ready—the surface is flat, the lines painted, the net at the correct height,” he said last month during a speech in Washington. “But we don’t pick up the racket and start playing. How the players play the game is up to them.” It’s a convenient, yet

inaccurate, analogy. Facebook runs on proprietary algorithms that promote some content over others; those algorithms are not neutral. Neither are the company's idiosyncratic and inconsistent "content moderation" policies, which are supposed to police behavior on the site. As an investigation by BuzzFeed recently discovered, Facebook has rejected over a hundred political ads from Trump, Biden, Sanders, Warren, and others on the grounds that they don't meet Facebook's design standards or its public-decency policy. In one case, it rejected a Trump ad because it included a clip of Joe Biden saying "son of a bitch."

During an exchange with Representative Alexandria Ocasio-Cortez at a House Financial Services Committee hearing, on Wednesday, Facebook's C.E.O., Mark Zuckerberg, struggled to elucidate his company's political-advertising policy. "Could I run ads targeting Republicans in primaries saying they voted for the Green New Deal?" Ocasio-Cortez asked him. Zuckerberg responded, "Sorry, can you repeat that?" She did, and then asked whether he had a problem with "the complete lack of fact-checking on political advertisements." Zuckerberg looked confused. "Well, Congresswoman," he answered, "I think lying is bad, and if you were to run an ad that had a lie, that would be bad." It was a childish, almost innocent answer. Ultimately, he said, such an ad would not be prohibited on Facebook.

Making specious claims about a political opponent has a long and storied history in this country. In 1800, for example, Thomas Jefferson's camp claimed, falsely, that John Adams was going to take the country to war with France. Lies have been a feature of political campaigns ever since. Newspaper publishers are not required to run political ads, but broadcasters are bound by the Federal Communications Act, which stipulates that they "shall have no power of censorship over the material broadcast." Though it does not require them to air political ads, there are strict controls on broadcasters picking some and rejecting others. If false claims are made, candidates are free to sue for defamation, but it's a high hurdle for a public figure to clear. (There are some clear restrictions: for instance, direct incitements to violence, or lies about the date of an election, which veers into the territory of voter fraud, are not allowed.)

Although Facebook runs a live-video service, it is not considered a broadcaster as defined by the F.C.C. Neither is YouTube. Social media was exempt from Federal Election Commission disclosure laws, which require political advertisements to state who is paying for them, until December, 2017. Disclosure turns out to be crucial, as we learned from the 2016 election, when foreign agents used social-media ads to influence its outcome and exacerbate social divisions. (Facebook, where many of these ads appeared, began including disclosure statements in May, 2018.) The Honest Ads Act, first introduced in Congress, in 2017, by Amy Klobuchar, the Democratic senator and Presidential hopeful from Minnesota, and reintroduced this year with Lindsey Graham as co-sponsor, aimed to close this loophole. The goal, Klobuchar said, is to "ensure that all major platforms that sell political advertisements are held to the same rules of the road, something that is already required for television, radio and print political advertising." It was blocked by Senate Republicans on Tuesday. Disclosure, it should be noted, is unrelated to content. There was no mystery about who was paying for Trump's misleading Biden ad.

As necessary as it is to extend existing election laws to encompass online media, it's equally important for those laws to acknowledge that Internet platforms, while at times performing the roles of publisher and broadcaster, are something else altogether. Facebook, especially, is a "narrowcaster." It derives its power in the marketplace from its ability to acquire tremendous amounts of data about people (they don't have to be Facebook users), which it then uses to sell targeted ads based on people's personalities, affiliations, demographics, and other very specific attributes. Not everyone will see those ads, and that's the point. Facebook's tools, and its unprecedented cache of data, allows marketers—both commercial and political—to test various approaches and identify users who are most susceptible to their message.

Embedded in the First Amendment's protection of political speech is the assumption that deceptions will be exposed and then rejected in the marketplace of ideas. In Zuckerberg's view, Facebook, though a private company, is the public square where such ideas can be debated. But when political ads with false claims circulate only among the people who will be most receptive to them, there is little chance that the veracity of those ads will be openly debated. Social media intentionally bypasses the marketplace of ideas. "We think people should be able to see for themselves what politicians are saying," Zuckerberg said in a speech last week at Georgetown University, but that's not how social media works. To that end, he added, the problem with the ads pushed to American Facebook users by hackers in service to the Kremlin during the 2016 election, many of which were deceptive and untrue, was that they came from a foreign country. They would have been permissible had they been pumped out by people in the U.S. More than eleven million Americans saw those ads. Zuckerberg also reiterated his view that Facebook users should be able to say whatever they want unless it puts others in harm's way. But harm comes in many forms, as the fallout from the 2016 election demonstrates every day.

Of course, Facebook's fiduciary duty rests with its shareholders, not with the public. Regulation, whether it's from the Federal Election Commission or from Congress, threatens the bottom line, and some regulation—most pointedly, Elizabeth Warren's proposal to break up big tech—threatens the company existentially. In September, Zuckerberg went to Washington to meet with Trump, who has put social-media companies on notice for what he and other conservatives perceive to be their liberal bias; a few days later, the company announced its decision not to fact-check political ads during the 2020 race. Shortly after, Facebook rejected Biden's request, and the Warren campaign took the opportunity to troll Facebook with its own Facebook ad, this one claiming that Zuckerberg had endorsed Trump for President. It was deliberately false, as Warren herself disclosed, and that was the point. "[Zuckerberg has] given Donald Trump free rein to lie on his platform," Warren wrote, "and then to pay Facebook gobs of money to push out their lies to American voters." Clearly, malign foreign actors are not necessary to inject poison into the stream of political discourse. The dissemination of untruths promoted by algorithms created to maximize ad revenue is a deceptive accounting of the "free" in "free speech."

---

**But, maybe there's no problem—people are really pretty discriminating already.  
CONSIDER:**

**A.W. Geiger**, “Key findings about the online news landscape in America,” Fact Tank, Pew Research Center, Sept. 11, 2019.

**The share of Americans who prefer to get their news online is growing.** In 2018, 34% of U.S. adults said they preferred to get news online, whether through websites, apps or social media. That’s compared with 28% in 2016. (Television remains the most popular source of news, with 44% of Americans citing a preference for TV.)...

**More Americans get news on social media than from print newspapers.** In 2018, one-in-five adults said they often get news on social media. And Facebook continues to dominate as the most common social media site used for news by Americans: About four-in-ten Americans (43%) get news on this site....

**Americans are skeptical of the information they see on social media.** Even as they regularly turn to social media for news, a majority of those who often get news on social media (57%) say they expect the news they see on these platforms to be largely inaccurate. Concerns about the inaccuracies in news on social media are prevalent even among those who say they *prefer* to get their news there....

**Made-up news affects how people use social media.** Half of Americans (52%) say they have changed the way they use social media because of the issue of made-up news. Furthermore, among the Americans who ever get news through social media, half have stopped following a news source because they thought it was posting made-up news and information. At the same time, about a third (31%) of social media news consumers say they at least sometimes click on news stories they think are made up

Rebecca Heilweil, “How Close Is an American Right-to-Be-Forgotten, Forbes, Mar. 4, 2018

If you were reading this post in Europe now, and thought it “inaccurate” or “excessive,” you would have the legal right to request that Google remove it from its search results, thanks to a 2014 European Court of Justice ruling.

The Court, which is charged with interpreting E.U. law, determined that Europeans had a “right to delist,” meaning that individuals, corporations and even government officials could request that material be removed from Google’s search results, if deemed “inaccurate, inadequate, irrelevant or excessive,” and not related to discourse regarding the public interest.

While 88% of Americans support this so-called “right-to-be-forgotten,” the prospects of similar legislation or court decision in the U.S. are dim.

Since Google’s European right-to-be-forgotten program began, the company has delisted 43% of 2.4 million URL removal requests, according to its recent transparency report.

Close to 90 percent of those filing requests were private individuals. Web pages that users wanted to be delisted included directories, social media, news articles and government pages.

The New York State Assembly has come nearest to an American version of a right-to-be-forgotten. [A 2018 bill], titled “An act to amend the civil rights law and the civil practice law and rules, in relation to creating the right to be forgotten act,” in large part mimics of the European Court of Justice’s decision.... Consumer Watchdog, a progressive non-

profit, has vocally supported efforts to establish an American right-to-be-forgotten, and has endorsed the proposed legislation in New York.

In 2014, the organization wrote to Google, arguing that “Google is clearly making the Right To Be Forgotten work for its users in Europe, but that is because you must under the law. We call on you to voluntarily offer the same right to Google users in the United States.”

“They clearly can do it, because they’re doing it in Europe,” says John Simpson, the organization's privacy project director. He says that Consumer Watchdog never received a response from Google.

In 2015, the organization filed a complaint with the Federal Trade Commission. The complaint forwarded that “Describing yourself as championing users’ privacy while not offering a key privacy tool – indeed one offered all across Europe – is deceptive behavior.” The organization also argued that Google had, therefore, violated Section 5 of the Federal Trade Commission Act.

Simpson adds that other than acknowledging receipt of Consumer Watchdog’s letter, there have been no developments.

Before the internet, he argues, young people who made mistakes—from embarrassing statements to minor crimes—that ended up in the public record eventually benefitted from “privacy-by-obscurity.”

“Those things slipped out of the general consciousness of the public,” he says. Now, a youthful offense can remain at the top of search results indefinitely.

Some believe that a legally mandated American right-to-be-forgotten would violate the First Amendment.

“[T]he deeper problem with the [New York] bill is simply that it aims to censor what people say, under a broad, vague test based on what the government thinks the public should or shouldn’t be discussing,” wrote American law professor Eugene Volokh in the Washington Post last year.

He continued: “There is no “right to be forgotten” in the abstract; no law can ensure that, and no law can be limited to that. Instead, the “right” this aims to protect is the power to suppress speech — the power to force people (on pain of financial ruin) to stop talking about other people, when some government body decides that they should stop.”

Simpson acknowledges that “Europe does not have a First Amendment the way we do.” However, he says that right-to-be-forgotten does not censor material, but simply changes Google’s search results (and it’s unclear whether search lists are protected speech).

Free speech organizations, including the Electronic Frontier Foundation, are also worried about current efforts by French regulators to extend the European right-to-be-forgotten from European internet domains to world-wide delisting. EFF argues these efforts could run afoul of the U.S. Constitution.

Another American law that seems to mimic some aspects of the European right-to-be-forgotten is California’s “eraser law” for minors, which, in a sense, “seals” juvenile internet records.

Ultimately, if ever passed, the New York State Assembly bill would certainly inspire a slew of legal challenges. “It would affect Google.com, and then I suspect there would be some sort of battle over whether New York could have jurisdiction over a broader area,” says Simpson.

An Update: On the Right to Be Forgotten

“Right to be forgotten’ on Google only applies in EU, court rules,” *The Guardian*, September 24, 2019

The “right to be forgotten” online does not extend beyond the borders of the European Union, the bloc’s highest court has ruled in a major victory for Google.

The right, enshrined in a 2014 legal ruling, required search engines to delete embarrassing or out-of-date information, when requested by the individuals concerned but in a landmark ruling on Tuesday, the European court of justice said search engine operators faced no obligation to remove information outside the 28-country zone.

It however said search engines must “seriously discourage” internet users from going onto non-EU versions of their pages to find that information.

“The balance between right to privacy and protection of personal data, on the one hand, and the freedom of information of internet users, on the other, is likely to vary significantly around the world,” the court said in a statement on the decision. The right to be forgotten was not an absolute right, the court said, and had to be balanced against other fundamental rights, in accordance with proportionality. Privacy campaigners hailed “a victory for global freedom of expression”, while Google welcomed the court’s decision.

The case originated in a dispute between Google and the French privacy regulator CNIL, which in 2015 called for the firm to globally remove links to pages containing damaging or false information about a person.

Google introduced a geo-blocking feature in 2016 following year, which stopped European users from being able to see delisted links. However, it resisted censoring search results for people in other parts of the world, challenging a €100,000 (£88,376) fine CNIL tried to impose.

The technology firm argued that, if this rule were applied outside Europe, the obligation could be abused by authoritarian governments trying to cover up human rights abuses. Google says it has received 845,501 “right to be forgotten” requests in the past five years, leading to the removal of 45% of the 3.3m links referred to in the requests. Although the content itself remains online, it cannot be found through online searches of the individual’s name....

