PERSPECTIVE

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Labelling Fake News: The Politics of Regulating Disinformation in Thailand

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The Anti-Fake News Centre was launched on 1 November 2019. Image taken from FaceBook on 7 April 2022: https://www.facebook.com/AntiFakeNewsCenter/about/?ref=page_internal.

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EXECUTIVE SUMMARY

- In Thailand, determining what news is true or fake appears to be a political matter. The Thai authorities associate "fake news" with public harm and as a national threat, giving rise to stringent regulatory responses.

- Official hostility toward "fake news" is influenced by virulent political conflicts that have been played out in off- and online spaces. Since the 2006 coup, various laws to punish those sharing false information and bureaucratic agencies to surveil social media content, have been created. Built on existing legal-bureaucratic tools, the latest anti-fake news regulations will potentially streamline national responses to "fake news" by establishing anti-fake news agencies in every ministry and across 76 governor offices.

- Such legal-bureaucratic instruments are subject to political misuse through biased identification of false and true information, and discriminatory lawsuits. These are exemplified by the Anti-Fake News Centre whose fact-check system is skewed toward official interpretation of political events, therewith at times dismissing criticisms of the government as false news.

- In addition, the record of charges against purveyors of "fake news" reveals that opposition politicians and civil society critics are primary targets of the regulatory measures. In contrast, regime-backed cyber troopers who weaponise disinformation against government critics have rarely met the same legal consequences.

- Political misuse of regulatory measures not only reinforce censorship and autocratic propensities, but also sow public mistrust in official mechanisms to curb disinformation. This sentiment potentially undermines fact-check systems at large, making the public even more vulnerable to disinformation campaigns which genuinely do exist.

INTRODUCTION

In June 2021, amid Thailand's uphill battle against Covid-19, Deputy Prime Minister Prawit Wongsuwan instructed the Ministry of Digital Economy and Society (MDES) and security agencies to take tough action against purveyors of fake news that "cause confusion among the public, affecting the government's disease control operations."[1] Meanwhile, Prime Minister Prayut Chanocha told the Council of State (the government's legal advisory body) to look into the laws in foreign countries, including India, aimed at countering the spread of fake news.[2] These calls set the stage for new anti-fake news regulations, which were approved by the cabinet in February 2022 and, at the time of writing, reviewed by the Legislative Review Board.[3] The new regulations, in a nutshell, streamline national agencies and offices of provincial governors to better monitor "fake news" that "creates social divisions, ruins the country's reputation, and damages the economy."[4] But these latest regulations are a déjà vu; similar regulatory measures have long been enforced.

Instead of mitigating disinformation per se, these measures have often been used as a political weapon fundamentally because they endow the government and its elite allies with power to determine what news is true or fake, and to punish purveyors of the latter information.

This article traces the trajectory of Thailand's efforts to regulate online information since 2006 which culminated in the 2022 anti-fake news regulations, and how regulatory measures have been politically misused. The first section addresses the perspectives of Thai authorities on what constitutes "fake news". The following section elucidates the interplay between anti-establishment activism in the off- and online spaces, and the establishment's legal-bureaucratic pushbacks. The third section deep-dives into how the "fake news" regulations have been politically exploited, by examining the Anti-Fake News Centre Thailand's (AFNC) fact-check system. Founded in 2019, the AFNC often cites official sources as true news despite these merely being an official interpretation of political events. This practice is linked to penalties against alleged "fake news" purveyors; these tend to be opposition politicians or civil society critics contradicting the official truth. In contrast, cyber troopers that spread distorted information on behalf of the establishment have not faced similar legal setbacks. The last section suggests that politicising and weaponising "fake news" regulations not only reinforce censorship and autocratic propensities, but also sow public mistrust in official mechanisms for curbing disinformation. This sentiment potentially undermines fact-check systems at large, making the public even more vulnerable to disinformation campaigns that genuinely do exist.

CONTESTED MEANINGS OF "FAKE NEWS"

The phenomenon of "fake news" is not entirely new.[5] It has recently gained international traction in light of, among other things, the 2016 US elections and Brexit. In these events, false online information was attributed to the eroding of democracy,[6] while political leaders instrumentalised the term "fake news" to downplay criticisms.[7] Because of the term's vague

and controversial connotations, many media experts instead prefer more fine-grained terms such as mis-, dis- and malinformation. Disinformation is content that is "intentionally false and designed to cause harm…when disinformation is shared, it often turns into misinformation. Misinformation also describes false content, but the person sharing does not realise that it is false or misleading." Malinformation "describes genuine information that is shared with an intent to cause harm."[8]

In Thailand, however, the term "fake news" (in Thai *Khao Bplom*) remains stubbornly popular especially in official use. This is possibly because maintaining a clear-cut dichotomy between what is considered as true and false information makes it convenient to associate information diverging from that of official sources with falsehood that yields harmful effects on the public at large. For example, the MDES defines "fake news" as information that appears on social media platforms or in a computer system, and that is entirely or partially false, causing damage to citizens and the country.[9] The key word here is "causing damage" which has been reiterated time and again by representatives of the MDES as a reference to "fake news".[10] In the policy rhetoric of the security apparatus, "fake news" is even considered a security threat. In 2020, then-army chief General Apirat Kongsompong, in a public speech, pointed out that "the threat now is fake news… It's like cyber warfare... Some political parties... have the platform of their propaganda directed to (people) who are 16 and 17 [years old]…They try to indoctrinate them with fake news."[11] Similarly, in the policy white papers of the National Security Council and the Internal Security Operations Command (ISOC), "fake news" are linked with cyber threat, a cause of national disharmony, and distorted perceptions about the monarchy.[12] While Thailand may be plagued with disinformation (e.g. in the areas of health-related scams and commercial crimes), it is the rise of digital dissent that best explains this level of official hostility toward disinformation.

EVOLUTION OF REGULATIONS IN DIGITAL SPACE

Thailand's political conflicts have played out in off- and online spaces. Particularly, after the 2006 military putsch in light of anti-Thaksin Shinawatra movements, Thaksin supporters and anti-coup activists took to social networking sites, in tandem with local radio stations, to express their frustration. This sentiment exacerbated in 2008 after the Constitutional Court disbanded the Thaksin-backed People's Power Party. Blaming royalist elites for this debacle, Thaksin supporters and pro-democracy activists staged mass protests in 2009 and 2010, which were met with bloody military crackdowns. Insulting comments and vulgar memes against the royal family appeared on Facebook and YouTube;[13] this was a form of transgressive digital activism the authorities were unwilling to tolerate.[14]

The governments and its elite allies soon established multiple bureaucratic bodies to enforce a plethora of laws.[15] The genesis of this process is dated to the 2007 Computer-related Crimes Act (CCA). Despite its original aim to curtail online scams and pornography, the law primarily penalises those importing into a computer system "forged or false computer data…to cause public panic."[16] Concurrently, the Ministry of Information and Communication Technology (MICT) – founded in 2002 and initially granted some power

to regulate online content – morphed into the government's strong arm to police digital space. In June 2010, the Democrat Party-led government strengthened cross-ministry collaboration to enforce the CCA and to protect the monarchy amid the 2009-2010 protests. That year, the police created the "Cyber Scouts" programme to monitor anti-monarchy content online.[17] In 2011, the Yingluck Shinawatra-led government established the Cyber Operation Centre and the Technology Crime Suppression Division.[18]

The 2014-2019 period of military rule consolidated and expanded this bureaucratic-legal infrastructure. The 2014 coup-makers were gravely concerned about popular resistance especially through the use of social media platforms. Upon its seizure of power, the junta packed once independent and civilian entities such as the National Broadcasting and Telecommunications Commission (NBTC) with military loyalists. In 2016, the military government launched a set of "digital economy" bills, which toughened the CCA to punish those importing "distorted," "forged" and "false" information into a computer system;[19] and replaced the MICT with the Ministry of Digital Economy and Society. Despite its diverse mandates, the MDES' tangible achievement is developing the Anti-Fake News Centre Thailand in 2019, the initiative that was experimented on in 2017 through the creation of Central Centre to Monitor Social Media Content under the junta-appointed National Reform Committee.[20] Also in 2019, the Cybersecurity and National Intelligence Bills were passed to enhance capacities that among other things aid state surveillance of "fake news".[21] In 2020, the police's Technology Crime Suppression Division set up the cyber police bureau to monitor cybercrimes and threats, including "fake news".[22] In August 2021, the MDES updated the regulation under the CCA to compel computer software providers (e.g. App Stores) and social media platforms to retain users' traffic data. [23]

Introduced in May-June 2021 and approved in February 2022, the new anti-fake news regulations build upon these existing legal-bureaucratic instruments. Once the legislative review panel finally approves the regulations, three tiers of governmental agencies will be established: the central coordination centre (under the MDES), coordination centres in each of the 20 ministries, and similar centres in each of the 76 governor offices. The central coordination centre will oversee the centres at the ministerial and provincial levels, and create volunteer networks to monitor "fake news" in social media. Upon the report of false information pertaining to the areas of responsibility of a certain ministry or a province, a respective ministerial or provincial centre will file complaints against those involved in circulating it. The authorities will also be compelled to remove false content posted on an online platform, and publish "true" information within one hour. If the authorities fail to carry out this procedure, they will be subject to disciplinary actions.[24]

These latest anti-fake news measures have stirred criticisms of the vague definition of what constitutes true and false information, and of the government acting as the only arbiter of truth. What is more, as with preceding laws, these regulations could serve as an additional tool to censor and suppress dissent.

THAILAND'S LEGAL-BUREAUCRATIC MEASURES AGAINST "FAKE NEWS" (2007-2022)
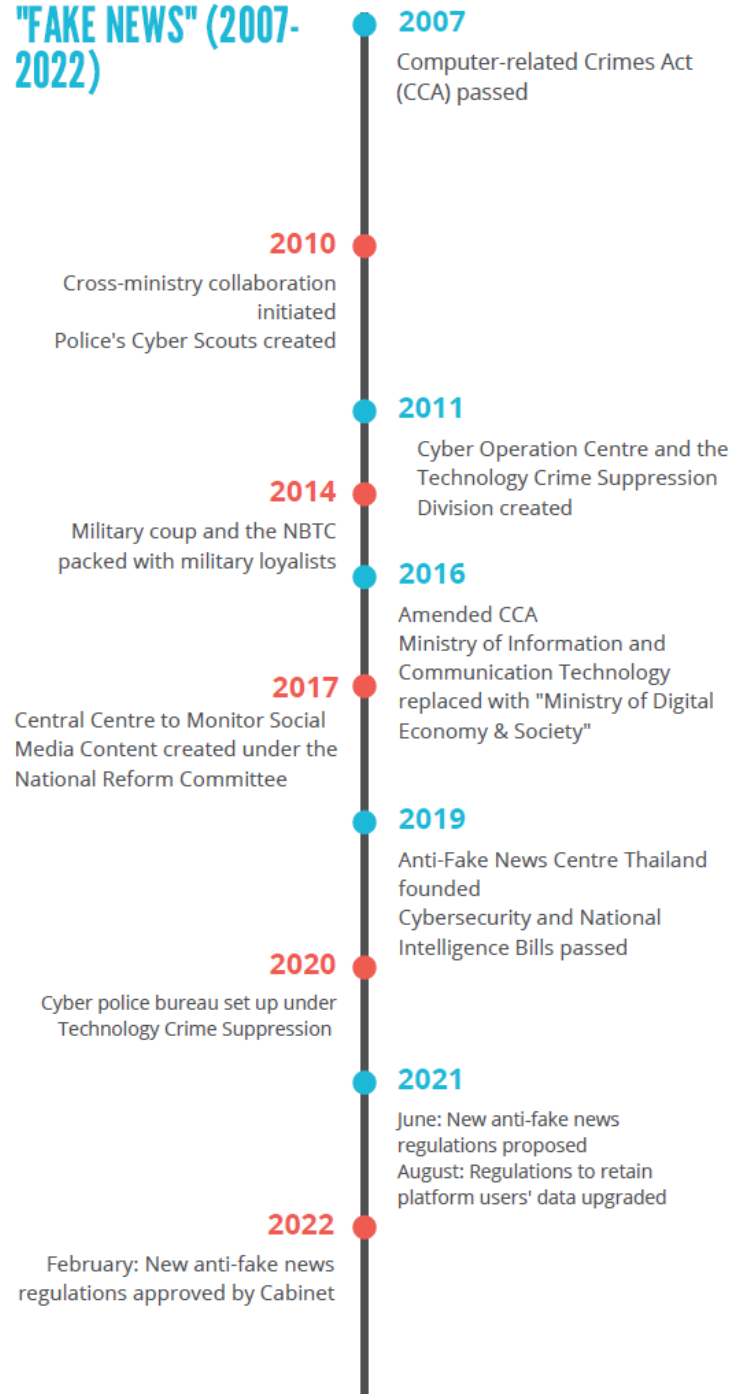
2007
Computer-related Crimes Act (CCA) passed

2010
Cross-ministry collaboration initiated
Police's Cyber Scouts created

2011
Cyber Operation Centre and the Technology Crime Suppression Division created

2014
Military coup and the NBTC packed with military loyalists

2016
Amended CCA
Ministry of Information and Communication Technology replaced with "Ministry of Digital Economy & Society"

2017
Central Centre to Monitor Social Media Content created under the National Reform Committee

2019
Anti-Fake News Centre Thailand founded
Cybersecurity and National Intelligence Bills passed

2020
Cyber police bureau set up under Technology Crime Suppression

2021
June: New anti-fake news regulations proposed
August: Regulations to retain platform users' data upgraded

2022
February: New anti-fake news regulations approved by Cabinet

Figure 1: Timeline of evolution of legal-bureaucratic measures against fake news (2007-February 2022)
Source: Author's own compilation

HOW OFFICIAL MECHANISMS ARE POLITICISED AND WEAPONISED

Regulating fake news is a political matter when governments and their elite allies are endowed with the power to decide what news is true and fake, and to penalise purveyors of the latter information. In unpacking the misuse of fake news regulations, this section analyses: 1) online content the authorities flag as true and false; and 2) who are targeted or not with "fake news" charges.

Anti-Fake News Centre and the Politicisation of Fact-check System

A thorough investigation of the Anti-Fake News Centre Thailand's database reveals how labelling fake news is politicised. The AFNC receives reports concerning online information; identifies these as false, distorted or true news; and publishes fact-checked information. Within the AFNC's search function from 1 October 2019 to 31 January 2022, this author found 244 fact-checked stories related to government policies, which represent some of the most common complaints the Centre received.[25] Of these 244 reports, the AFNC flagged 148 news as false, 64 as true and 23 as distorted.[26] Based on this author's classification, the 148 news items labelled as false are about government policies pertinent to; i) the economy and citizens' livelihoods (56); ii) public services (48); iii) public health (25); iv) general governance, including news related to the monarchy (11); and v) religion (8). Reports of false information regarding the economic and public health policies featured most prominently because of the health-related anxiety during the pandemic, declining trust in official sources of information regarding Covid-19 measures, and economic desperation caused by lost income and rising unemployment. Regarding the latter driver, many posted on their social media news about the government's massive increase in pension and cash assistance, most of which the AFNC validly refuted as untrue. The Centre also labelled as false conspiracy-based news concerning religious matters, such as government policies to allow mass migration of Muslims to Thailand or to make Islamic teachings a compulsory course in the official curriculum at the expense of Buddhist lessons.[27]
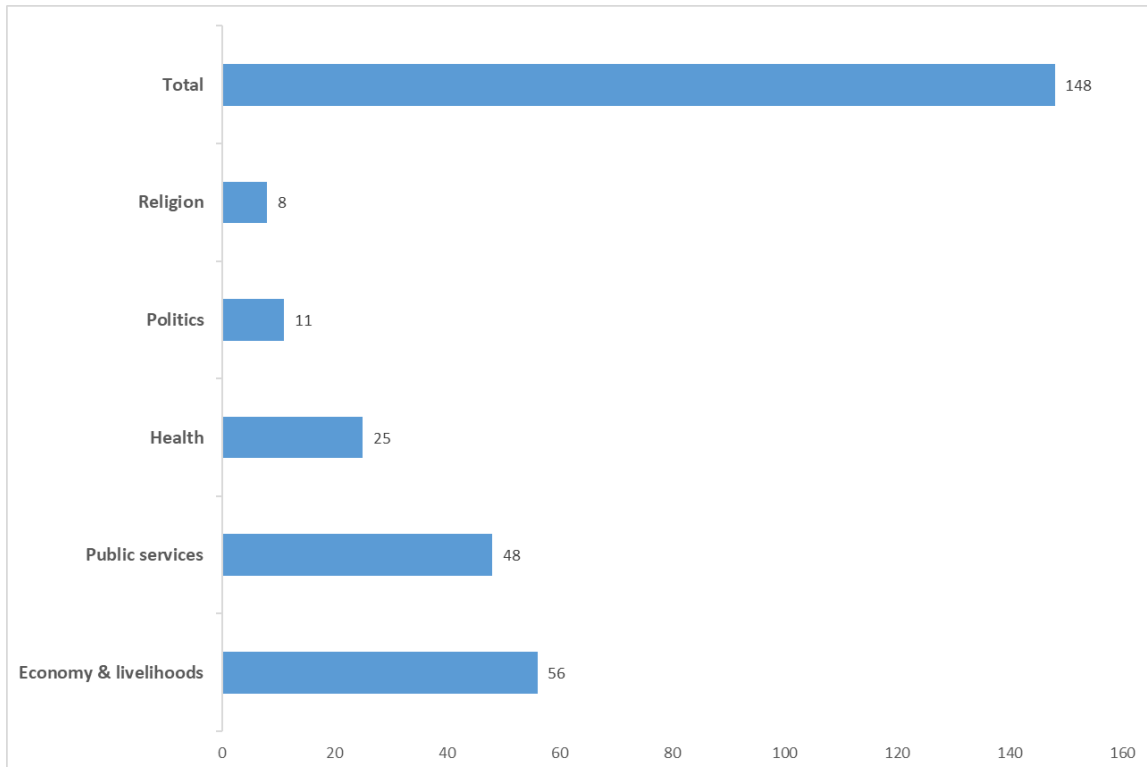
Figure 2: Common themes of news related to government policies that the AFNC identifies as false (1 October 2019-31 January 2022)
Source: Author's own compilation based on the AFNC's database

The AFNC seems to be neutral and accurate in flagging non-political content, especially when that affects public services and citizens' livelihood (e.g. the scam about the national post office giving away discount coupons to people to go shopping).[28] But when it comes to content that can have major political impact on government legitimacy, things get tricky. The Centre at times conflates facts with interpretations of what these facts mean, resulting in opinions divergent from official interpretations being labelled as fake news. Take for example the online news concerning the government's failure to manage its public debt, following the pandemic-induced economic recession. In September 2021, the government increased the ceiling of public debt-to-gross domestic product (GDP) ratio from 60 to 70 per cent in order to borrow more for various policies. Parts of the public, already bearing inherent mistrust in the government's handling of the economic crisis, were alarmed and therefore interpreted this policy change as an economic misstep.[29] Instead of acknowledging the root cause of this perception, the AFNC branded it fake news by showing "true" economic figures, and concluding from these facts that the government could still manage its debt.[30]

Relatedly, sources of "true" information that the AFNC cites in its fact-check system mostly stem from ministries or other state-affiliated agencies, inevitably associating true news with official facts. These official facts are, however, inseparable from official narratives that may benefit the "truth management" carried out by incumbent elites.[31] A telling case is the government's Covid-19 vaccine (mis)management. In mid-2021, Covid-19 severely hit the

country and the government's prioritisation of Sinovac and AztraZeneca vaccines drew heavy public criticisms. In September that year, the Ministry of Foreign Affairs (MOFA) came under attack after its minister allegedly advised the Prime Minister against accepting Singapore's donation of 100,000 Moderna vaccine doses, reasoning that such an act would amount to a loss of face for Thailand. The MOFA reportedly recommended the "swap" option instead of donation.[32] Soon after, the AFNC cited the MOFA statement to label as false the information that Thailand had rejected the vaccine donation from Singapore, while highlighting the view that the MOFA in fact preferred exchanging/swapping vaccines with partner countries.[33] It would appear that this official response is different from the news flagged as fake only in wording and not in content, a damage control tactic on which the MOFA sometimes relies.[34]

Moreover, some official facts cited as true by the AFNC can later lose their validity due to the situation's volatility. A case in point is the March 2020 news regarding Thai Airways' bankruptcy. The AFNC classified that claim to be fake news, and cited Thai Airways as its source of true information.[35] However, the offending news turned out not to be entirely false. In June 2021, the Thai Airways was in fact on the verge of bankruptcy, and was saved when its creditors approved its debt restructuring plan. [36] As of the time of writing, the AFNC has yet to address this issue.

The Weaponisation of "Fake News" Penalties

Intertwined with the AFNC's monitoring system is legal punishment of "fake news" purveyors, as earlier described. The laws involved are oftentimes instrumentalised to suppress criticism of the government and its elite allies. Between November 2019 and December 2021, the AFNC reported more than 23 million shares of "fake news." Of this number, the police filed lawsuits against 1,193 violators, and at least 287 persons were convicted as of 2021.[37] At times those charged with violating the CCA are ordinary citizens. For instance, on 23 March 2020, a Facebook user posted that when he landed at Bangkok's Suvarnabhumi Airport, he did not encounter any Covid-19 screening. After the airport operators' alleged that his post was not factual and could cause public panic, this Facebook user was charged and held without bail for 12 days.[38]

In other cases, the accused violators are high-profile opposition politicians, scholars and activists whose criticisms of government policies are blatantly deemed as false. Such a lawsuit adds to a series of other charges that these figures have to spend time, energy and money fighting in court.[39] A case in point is the leader of the dissolved Future Forward Party, Thanathorn Juangroongruangkit. In March 2021, he criticised the government for mishandling the vaccine campaign and giving unfair advantage to Siam Bioscience, a domestic producer of AztraZeneca owned by King Maha Vajiralongkorn. Soon after this exposé, the MDES and Prime Minister's Office filed the complaint that his "fake news" damaged royal reputation, thus violating both Article 112 (royal offence) and the CCA.[40] However, Thanatorn's disclosure coincided with public suspicion regarding the government's lack of transparency in prioritising the AstraZeneca vaccine at the expense of other vaccines.[41] Supposedly independent bodies, including the Election Commission (EC), have similarly weaponised fake news allegations against those accusing them of being

involved in irregularities during the 2019 elections. A host of journalists, intellectuals and pro-democracy activists such as Sirote Klampaiboon, Nutta Mahattana, Pinkaew Laungaramsri, have been charged with disseminating false information, soon after criticising the EC's partisanship.[42]

These penalties against fake news purveyors are, however, one-sided. Based on this author's search, the AFNC flagged as fake at least two news items concerning the Future Forward Party. That party, together with other opposition politicians and dissidents, has systematically been targeted by organised disinformation campaigns, many of which are allegedly sponsored by the army.[43] The disinformation ranges from the Party's close ties with the Illuminati Movement to pro-democracy activists' collaboration with George Soros and the West to overthrow the monarchy.[44] When targets of these campaigns pressed the AFNC and the MDES for tougher responses to the campaigns, their efforts have not yielded substantive outcomes.[45] And when in 2021, the current minister of MDES, Chaiyawut Tanakamanusorn, was asked how he would curtail information campaigns that demonise opposition activists, his response was; "I don't know. I didn't do it."[46]

CONCLUSION

In Thailand, "fake news" regulations can be used as a political tool to inflict censorship and suppress dissent. This development has already entrenched autocracy by creating high political costs for critics of the government and its elite allies. The examples of the EC abusing fake news allegations, moreover, show the difficulty in addressing electoral irregularities in connection with the military-supported Palang Pracharat Party that became the ruling party after the 2019 elections. This tendency could contribute to an uneven electoral playing field that has been sustaining the Prayut regime. It will not be surprising if "fake news" regulations such as those recently approved are exploited again in the looming snap elections.

What is more, political misuse of laws and regulations can erode public trust in state mechanisms that are supposed to tackle the disinformation that is increasingly affecting citizens, especially health-related scams and commercial crimes. When organisations such as the AFNC are politically partisan, citizens have little option for institutional fact-check systems. Existing tools such as Cofact, AFP Thailand and Thai PBS provide bottom-up avenues for fact-checking information that might be false or misleading. But compared to institutional fact-check systems, organisational creators of these channels may not have the resources to make these tools more accessible to the general public.

Ultimately, weaponising anti-fake news laws against government critics damages the rule of law, and may even push critics and their supporters to endorse biased information unfavourable to the government and its elite allies. Instead of mitigating the problem, political misuse of "fake news" regulations and mechanisms may counterproductively drive the proliferation of disinformation and fail to inoculate the public against it.

ENDNOTES

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