



LEGAL STATUS OF FAKE NEWS: GLOBAL CHALLENGES AND POSSIBLE SOLUTIONS

STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

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ABSTRACT

Objective: This article dwells on the legal status of "fake news", global challenges, and measures to combat inaccurate information. The current spread of digital disinformation on the Internet destabilizes all social spheres. As a rule, inaccurate information is spread deliberately and the international community has not developed effective methods to fight against fake news on the Internet. The study considers the phenomenon of "fake news", defines this concept, reveals its main features and characteristics.

Methods: In the course of the research, the authors used the methods of collecting and studying single facts; generalization; scientific abstraction; the cognition of laws, as well as the methods of objectivity, specificity, and pluralism.

Results: The study has concluded that fake news is deliberately false information that infringes on the rights and interests of individuals, society, and state, aimed at ensuring the interests of certain individuals, groups, and parties, and entailing negative consequences. Depending on the degree of public danger, the guilty person should be liable for disseminating inaccurate information.



Conclusion: The paper proposes a classification according to the purposes of information dissemination: pursuing political advantages; influencing the economic situation and the market as a whole; increasing traffic; fraud; discrimination; spreading malware; entertainment; drawing attention to certain persons or social movements and parties.

Keywords: fake news; processes; legal responsibility; legal subject; legal object; industrial revolution.

RESUMO

Objetivo: Este artigo aborda o status jurídico das “fake news”, desafios globais e medidas para combater informações imprecisas. A atual disseminação da desinformação digital na Internet desestabiliza todas as esferas sociais. Via de regra, informações imprecisas são divulgadas de forma deliberada e a comunidade internacional não desenvolveu métodos eficazes para combater as notícias falsas na Internet. O estudo considera o fenômeno das “fake news”, define esse conceito, revela suas principais características e características.

Métodos: No decorrer da pesquisa, os autores utilizaram os métodos de coleta e estudo de fatos isolados; generalização; abstração científica; a cognição das leis, bem como os métodos de objetividade, especificidade e pluralismo.

Resultados: O estudo concluiu que as fake news são informações deliberadamente falsas que infringem os direitos e interesses dos indivíduos, da sociedade e do Estado, visando assegurar os interesses de determinados indivíduos, grupos e partidos, acarretando consequências negativas. Dependendo do grau de perigo público, o culpado deve ser responsabilizado pela divulgação de informações imprecisas.

Conclusão: O artigo propõe uma classificação de acordo com as finalidades de divulgação da informação: buscar vantagens políticas; influenciar a situação econômica e o mercado como um todo; aumento do tráfego; fraude; discriminação; disseminação de malware; entretenimento; chamar a atenção para determinadas pessoas ou movimentos sociais e partidos.

Palavras-chave: notícias falsas; processos; responsabilidade legal; sujeito jurídico; objeto jurídico; revolução Industrial.



1 INTRODUCTION

Modern society evolves in an environment where information is the main component of all spheres, therefore, the spread of false information, taking into account the speed of its distribution (when news is transmitted through all communication channels, including the Internet) affects politics, economy and national security (Kirillova et al., 2019). The abundance of false information disguised as reliable news has reached a critical point and requires a comprehensive analysis since fake news is the main threat to international security.

The "fake news" term has recently become widespread in connection with the election of the President of the United States. It denotes information that does not correspond to the existing facts and spread deliberately in pursuit of certain goals (Love et al., 2018). However, the legal status of false information still provokes scientific discussions among experts, lawyers and scholars. It is unclear how to deal with the dissemination of inaccurate information in the legal field and what penalties would be effective.

False information that is spread intentionally is not a new phenomenon. In the last century and even more than several centuries ago, influential people used inaccurate information to achieve certain goals but the current use of this phenomenon is disturbing (Lozano et al., 2020). Indeed, new technologies rapidly disseminate any information, which immediately leads to unfavorable consequences: exchange rates fall, chaos begins, states break their ties and stop any cooperation, and this tension can grow into military conflicts (Cheng, Lee, 2019).

When the news was spread by mass media, false information could lead to negative consequences, but this could not destroy public relations since there was time to check the reliability of the information. Nowadays e-news that is knowingly inaccurate can cause drastic effects, so it is necessary to find effective ways to combat this phenomenon. First of all, it is necessary to fight using legal tools, therefore it is necessary



to determine the main legal features and characteristics of fake news, its role, methods of distribution, and persons involved.

This study aims at determining the legal status of fake news, identifying its main threats, and proposing ways to solve these problems.

2 MATERIALS AND METHODS

2.a. General description (basic principles and methods, description and characteristics)

The research object is the phenomenon of "fake news" which is widespread in the digital information space and often leads to negative consequences. Throughout the research, we used the following methods: the collection and study of single facts; generalization; scientific abstraction; the cognition of consistent patterns.

The method of objectivity reflects the main features and legal characteristics of fake news. Using this principle, we developed our definition of "fake news", highlighted typical features, and suggested that penalties should be imposed on all the perpetrators without exception.

The method of specificity allows considering all the conditions for using "fake news" technologies. Using the forecasting method, we managed to predict negative consequences in various spheres of public life when disseminating inaccurate information.

The method of comparison was used to consider the research object from various perspectives and to reveal different features of the "fake news" phenomenon. In addition, this technique has concluded that inaccurate information disseminated for certain purposes was used at various historical stages. Nowadays technologies and the Internet contribute to the rapid dissemination of inaccurate information and often its distributors cannot be established as perpetrators due to anonymity.

2.b. Algorithm



The methodological basis of the research was formed by the dialectical method of cognizing social and legal phenomena. In addition, we used the following methods: the logical method (the presentation of all materials, the formation of recommendations, proposals, and conclusions); systems analysis; comparative jurisprudence; the historical method; the modeling method; the method of referring to the conclusions of institutional economic theory, taxation, and other sciences.

Thanks to a wide range of methods used, we have determined mechanisms for bringing the relevant subjects of law to legal responsibility. The legal regulation of business and other economic activities using artificial intelligence should be based on the convergence of technology, programming, and law.

2.c. Flow chart

The study was conducted using certain research algorithms. Consequently, we have obtained the following results. The research algorithm is presented in Figure 1.

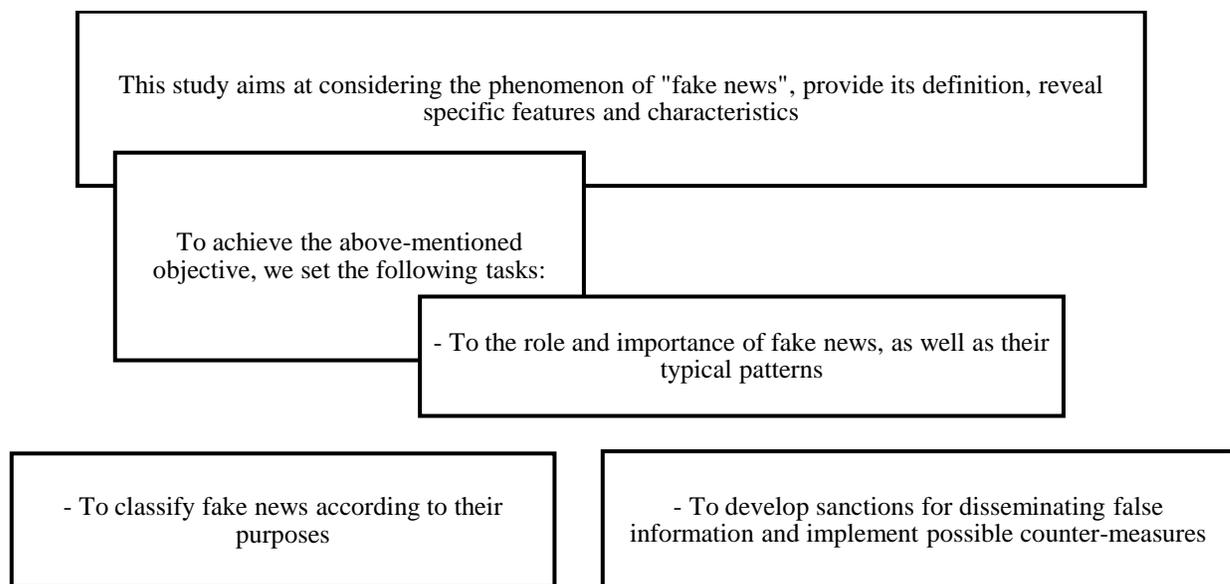


Figure 1. The research algorithm

3 RESULTS

Information is a special tool that affects public relations in all spheres of life. Due to the development of the Internet, it is necessary to create an effective legal mechanism that will ensure the information security of an individual, society, and state, and protect them from the dissemination of inaccurate information.

The speed of information (including unreliable) dissemination can be exemplified by the dissemination of information on the Internet. In 1992, the daily exchange of information between users amounted to 100 GB. In 1998, 100 GB of data was distributed per hour. In 2003, this amount of information was spread in a second. In 2016, users exchanged 26,600 GB of information per second. According to expert estimates, this figure will have reached 105,800 GB per second by 2021. The dynamics of information exchange can be presented as a table (Figueira, Oliveira, 2017) (Figure 2).

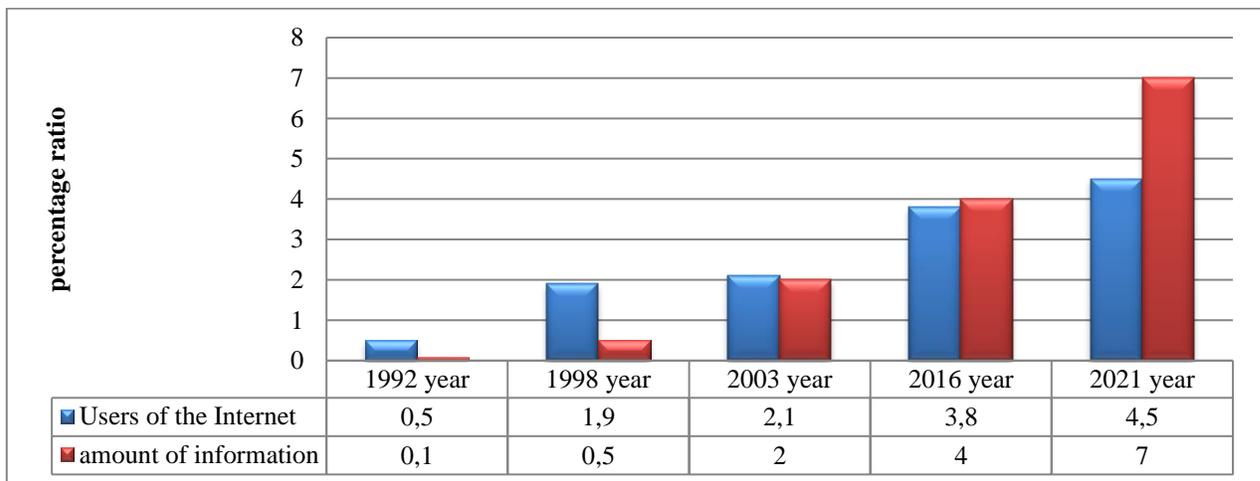


Figure 2. The speed of information exchange on the Internet. Source: Compiled by the authors

Experts already calculate the annual Internet traffic in zettabytes (one zettabyte is equal to one sextillion bytes) (Grech, 2017). With such a speed of news distribution, there is not enough time to study its reliability. The correlation between news publication and its pre-check is broken, which can lead to tragic consequences, such as wars, economic crises, and panic selling. At the same time, it is easy to create fake news: all one needs is a digital platform and access to the Internet. Fake news can generate income since the



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

owners of platforms spreading inaccurate information place advertisements on their resources. Large disinformation operations can be politically motivated (Bronstein, Pennycook, 2019). For example, the 2020 United States presidential election, when information about foreign interference was posted on Facebook. As the campaign was running, disinformation was posted and advertising revenues increased significantly. Thus, distributors of fake news are not interested in stopping their activities (Meel et al., 2019).

When the Internet did not exist or was only evolving, the most crucial information was disseminated by mass media that was responsible for the data collected and spread. In modern conditions, there is too much information and its sources are rather difficult to establish, therefore it is difficult to determine the peoples or parties involved (Wessel et al., 2019).

To propose effective measures to combat false information, it is necessary to consider its features, the ways how it is created, disseminated and the possibilities to take precautions and countermeasures.

The "fake" term is used all over the world. It can be translated from English as "deception, forgery or falsification". The concept of "fake news" includes the following phenomena:

- Any videos, photos, audio recordings, fake text messages;
- Personal blogs that disseminate completely or partially false information;
- Fake pages on popular websites created on behalf of reputable resources that one can trust.

Reputable news is an operative message about important events that have occurred recently or are taking place at the time of the transmission and are of particular interest and significance for the public, political, economic, and any other sphere of public life (Atodiresei et al., 2018). Accordingly, fake news can be defined as a message imitating reliable information but false in whole or in part. However, this definition should be supplemented with the main features and characteristics of fake news.



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

While analyzing unreliable information that spreads on the Internet and could be of interest to the audience, we need to highlight its key features, including falsity; focus on ensuring the interests of certain public organizations, groups, parties, or individuals; intent or intentions with which false information is disseminated (i.e. providing someone's interests); negative consequences. The main features and characteristics of fake news are presented in the following flow chart (Figure 3).

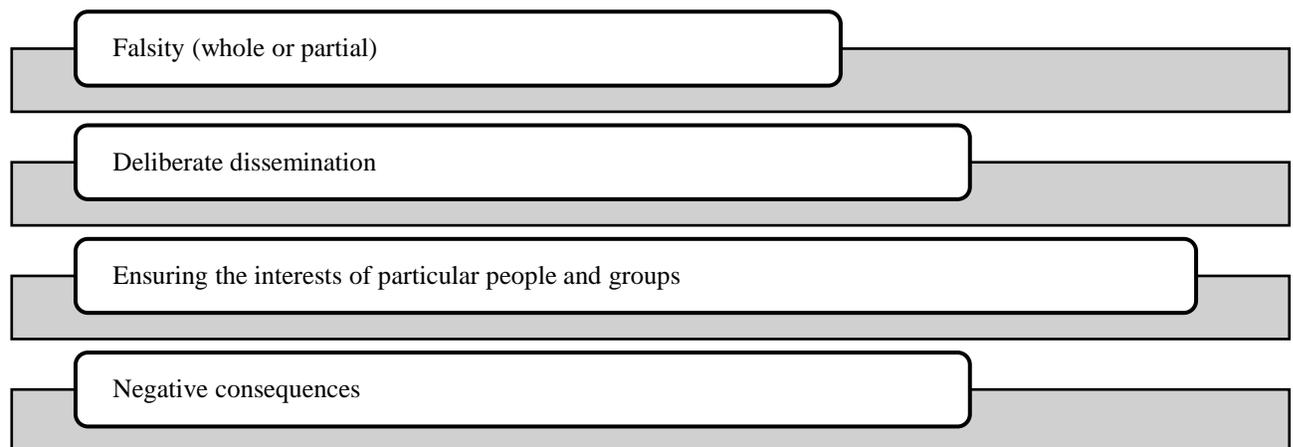


Figure 3. The typical features of "fake news". Source: Compiled by the authors

Among the false information that is distributed on the Internet, the following types of fake news can be distinguished:

- False information that aims at entertaining consumers, for example, the ONN (Onion News Network) creates and distributes fake talk shows, investigations, and mini-series (Ehrenfeld, Barton, 2019);
- Inaccurate information disseminated to achieve political advantages, while the competitive struggle of political leaders or parties can lead to street riots and rallies that arise based on fake news;
- News that incites national hatred or discriminates people based on their gender, nationality, religion, property, official status; with the help of such information weapons, real wars are waged in "hotspots" over the globe (Innes, Davies, Lowe, 2019);



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

- News created to influence an economic situation and the market as a whole; as a result of the spread of such news, stock exchanges and stock prices collapse, thus competitors achieve their goals;
- Inaccurate information disseminated on the Internet to increase traffic (calls to help children, animals, etc. posted on social networks and bringing additional income to mobile operators);
- Information disseminated within the framework of fraudulent schemes to seize the material assets of consumers, represented as fundraising for treatment, rescue, the needs of charitable foundations, etc.;
- False information containing viruses is launched on the Internet to damage information stored on computers;
- Inaccurate information that is initially created to draw attention to a certain person, company, movement, or project.

Thus, fake information is completely or partially false information that infringes on the rights and interests of an individual, society, state and aims at ensuring the interests of individuals, groups, parties, which entails negative consequences. Depending on the degree of public danger, the guilty person should be held liable for the dissemination of false information.

4 DISCUSSION

Considering the legislative regulation of the dissemination of false information, the main disputes arise over the balance between public interests and the freedom of speech (Orellana-Rodriguez, Keane, 2018). The world experts are still searching for a way out since it is impossible to solve the issue under consideration while maintaining public order and the freedom of speech. Any attempts to influence the situation at the legislative level raise many questions and in one way or another infringe on someone's rights (Barrón-Cedeño, Jaradat, 2016).



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

Some legislative initiatives were not supported due to the infringement of civil freedoms. The United States developed a law on private advertising that contained provisions on disclosing information on political advertising placed on party platforms (Barrera et al., 2020). This law aimed at countering any interference in U.S. politics: foreign citizens can finance online information blogs, which play an important role in the election process. Under pressure from public organizations, this bill was not adopted. The main arguments are the need to disclose advertising revenues, strategy development, and funding sources, i.e. the state, under the guise of combating fake news, has the right to interfere in the activities of digital platforms (Wessel et al., 2016).

Western Europe fights false information on the Internet by introducing penalties. In Germany, the owner of a platform that posts knowingly false information faces a fine of 50 million euros if this information is not deleted within 24 hours after receiving the complaint and evidence that this information is false (Bebić, Volarevic, 2018).

Harsher measures were proposed by the Philippine lawmakers. In particular, those who disseminate false information on the Internet must pay a fine of up to \$5 million or be given a sentence from one to five years in prison. If a civil servant spreads false information, the amount of the fine is doubled, as well as the term of imprisonment. Furthermore, civil servants are forever deprived of the right to hold any posts in the state apparatus (Jang et al., 2018).

In Indonesia, whole conglomerates of fake news had been created to manipulate election campaigns. After that, legal provisions were introduced into the current legislation on the need to create special multimedia bureaus under the National Police to combat false information on the Internet. In the Czech Republic, a similar structure was created to monitor online disinformation (Bondielli, Marcelloni, 2019).

However, not all countries apply legal measures to counter fake news, so special websites are being created in Malaysia to monitor information and verify its reliability. A similar online resource is functioning in Qatar (Marsden et al., 2019).

These examples show that countries are concerned about the rapid dissemination of false information. Given the transboundary and extraterritorial nature of this issue,



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

appropriate measures should be taken at the international level. It is recommended to supplement the Information Society Directive, provide liability for the dissemination of fake news, and introduce sanctions for spreading deliberately false information on the Internet.

To prove the spread of fake news, it is important not only to collect facts about the falsification of information but also to provide evidence that inaccurate information can cause or has caused damage to the health of a person or a group of people.

Thus, there are three main elements to hold someone liable for spreading fake news:

- The information disseminated must be deliberately unreliable;
- This information is presented as a reliable fact;
- There is a threat of serious consequences, including the violation of public order, damage to life, health, etc.

The main sanctions against news aggregators or individuals who disseminate deliberately false information should consist in the mandatory blocking of resources that post fake news. At the same time, distributors of fake news should be punished with a fine, whose amount will be calculated depending on the damage caused.

5. CONCLUSION

The study defines "fake news" as knowingly false information that infringes on the rights and interests of an individual, society, and state, aimed at ensuring the interests of certain individuals, groups, and parties, and entailing negative consequences. Depending on the degree of public danger, the guilty person should be liable for disseminating inaccurate information.

It is possible to classify fake information according to the purposes of information dissemination: pursuing political advantages; influencing the economic situation and the market as a whole; increasing traffic; fraud; discrimination; spreading malware; entertainment; drawing attention to certain persons or social movements and parties.



STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

To combat fake news at this stage in the development of the Internet, news aggregators should be obliged to:

- Validate important information before its dissemination, and if unchecked information was disseminated, immediately stop its dissemination;
 - To stop the dissemination of deliberately false information that could be important for society;
 - To prevent the dissemination of inaccurate information, which is disguised as reliable messages (if the information is based on real facts and contains only a part of falsification).
- Further research on the topic should consider the dissemination of inaccurate information in certain areas and spheres, for example, in politics, economy, banking sector, etc. It is necessary to consider the experience of countries that apply penalties, block websites and use other measures against persons or news aggregators posting fake news to cause harm to individuals, parties, society, and the state.

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STATUS JURÍDICO DAS FAKE NEWS: DESAFIOS GLOBAIS E SOLUÇÕES POSSÍVEIS

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