



THE
FUTURE
OF
FREE
SPEECH

MISINFORMATION AND THE FIRST AMENDMENT

WHAT IS MISINFORMATION?

Misinformation refers to false or inaccurate information that is spread without the intent to deceive or cause harm. In contrast, Disinformation is false information deliberately created or shared to mislead, harm, or manipulate others. A third category, Malinformation, means factually true information that is used in a misleading way or out of context to inflict harm. The key difference is intent and context.

THE FIRST AMENDMENT PROTECTS FALSE SPEECH

Under U.S. law, the First Amendment's free speech guarantee means that ***even false or misleading speech*** is protected from government censorship. The Supreme Court has made clear that there is no general First Amendment exception for false statements.

In ***United States v. Alvarez*** (2012), the Court struck down a law that criminalized lying about receiving military honors. The Justices reaffirmed that "falsity alone may not suffice to bring the speech outside the First Amendment." The reasoning behind this is that allowing broad bans on false speech could chill public debate and invite abuse. Instead, the Constitution favors countering lies with truth in the marketplace of ideas. As Justice Kennedy noted, "The remedy for speech that is false is speech that is true... The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth."

UNPROTECTED CATEGORIES OF SPEECH/EXCEPTIONS

There are a few very narrow categories of speech that do not receive First Amendment protection.

Defamation

False statements of fact about a person that damage a person's reputation, conveyed verbally (slander) or in writing (libel). Defamatory statements are not protected if the speaker acted with the required level of fault (e.g. "actual malice" for public figures, which means that they knew the statement was false or recklessly disregarding the truth). State defamation laws allow injured parties to sue for damages, but the laws are narrowly tailored to balance reputation harm with free speech (for example, truthful statements or mere opinions cannot be punished, even if they happen to damage someone's reputation).



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Fraud

Deliberate and material falsehoods used to obtain money, property, or other tangible benefits (for example, financial scams or false advertising of products. A “properly tailored fraud action” might require proof of “a false representation of a material fact,” knowledge “that the representation was false,” “intent to mislead the listener,” and reliance by or injury to the listener.

Similarly, **perjury** (lying under oath) and **impersonating government officials** are criminal because these false statements are integral to criminal conduct.

Commercial Speech

Speech that primarily exists for a commercial purpose. It is still protected by the First Amendment but not to the same degree as other protected categories of speech. In *Central Hudson Gas & Electric v. Public Service Commission* (1980), the Supreme Court established that commercial speech can be restricted if it is misleading or concerns illegal activity, and if the government can show that the regulation serves a substantial interest, directly advances that interest, and is narrowly tailored to achieve its goal without being overly broad.

THE GLOBAL CAUTIONARY TALE

In the European Union, officials warned that a planned live-streamed interview with then presidential candidate Donald Trump on X could violate the Digital Services Act (DSA), suggesting that platforms risk penalties for merely hosting disfavored by government political speech.

Additionally, EU leaders have pushed for a so called “Democracy Shield” to further strengthen government authority to compel platforms to remove content they consider propaganda or foreign interference.