National Academy of Medicine Project on "Principles for Defining & Verifying the Authority of Online Providers of Health Information"

https://nam.edu/programs/principles-for-defining-and-verifying-the-authority-of-online-providers-of-health-information/

Discussion Document available at: https://nam.edu/wp-content/uploads/2021/04/Public-Discussion-Document-NAM-Project-on-Principles-for-Defining-Verifying-the-Authority-of-Online-Providers-of-Health-Information.pdf

Complete comments submitted on behalf of ICAN:

The "Principles for Defining & Verifying the Authority of Online Providers of Health Information" project's purpose is to define "authoritative sources of health information and the criteria by which these sources derive and maintain their authority." To start, it is inherently problematic for any one organization to define certain sources as "trustworthy" or "authoritative." By doing so, the organization is, in essence, deeming all information from other sources to be untrustworthy and non-authoritative. Additionally, assessing authoritativeness of sources as opposed to assessing the specific, shared content is highly problematic.

First, the proposed possible categories of sources providing health information largely consist of government or government-controlled bodies: public health departments, public universities and health professions schools, CDC, NIH, and AHRQ. These sources are not infallible or all-knowing. The Supreme Court has described "the right to criticize the government" as "the heart of what the First Amendment is meant to protect." *McConnell v Fed. Election Com'n*, 540 US 93, 248 (2003). Questioning, scrutinizing, and holding the government to account are what have allowed the United States to peacefully grow and improve over its 232-year history. This is why the First Amendment prohibits government officials from censoring speech they dislike or disagree with. For this principle to have meaning, government officials cannot use a private actor as a cat's paw to censor speech they dislike or disagree with. Nevertheless, based on the proposed plan by the National Academy of Medicine (which itself was originally a creation of Congress), social media companies will likely automatically ascribe information from government actors as "trustworthy" and "authoritative," which will in turn lead to rating, delineating, and perhaps censoring speech that government actors are prohibited from censoring directly. This muzzles the voices of those who do not agree with the government or the majority.

Hence, it is difficult to understand how "the identification and raising of 'authoritative' sources of health information [] will not disadvantage sources that do not meet the requirements of specific authoritative source categories." That is precisely what it will do. If "authoritative" is defined as "able to be trusted as reliable or true according to the best scientific evidence," this implies that information not deemed to come from an "authoritative" source is not able to be trusted and that it is not based on "the best scientific evidence." Therefore, the question of how "best available scientific evidence" is going to be defined is a crucial factor in the project. The understanding that science is rarely, if ever, settled – especially in times of an unprecedented worldwide pandemic – renders any definition of "the best available scientific evidence" fraught with complexity as the science is ever-changing.

The other troubling aspect of this project is the consideration of "the authoritativeness of sources of information rather than the information itself." As acknowledged, "this approach is imperfect (in that organizational authoritativeness cannot guarantee information accuracy)." The Preliminary Discussion Document provides its own example of the CDC having to remove information from its website that should not have been deemed "trustworthy" or "authoritative." It also concedes that "government sources do not always provide authoritative information." This is not a one-off problem. To wit, Congressman Thomas Massie discovered that the CDC was sharing inaccurate and unsupported information regarding the potential benefit of vaccines to individuals who have already had SARS-CoV-2. The vaccines' clinical trial data did not support what the CDC was sharing with the public. However, even after the CDC acknowledged this, the information the CDC was sharing remained unchanged. *See* https://sharylattkisson.com/2021/01/watch-cdc-misinformation-on-covid-vaccine/.

Likewise, Informed Consent Action Network has had to police many of the sources of information listed in the Preliminary Discussion Document (government organizations and public health departments) regarding categorically false claims they were making in their promotional material regarding COVID-19 vaccines. Federal law and the emergency use authorizations for the COVID-19 vaccines provide that:

(i) "All descriptive printed matter, advertising, and promotional material relating to the use of the [] COVID-19 Vaccine[s] clearly and conspicuously shall state that: This product has not been approved or licensed by FDA, but has been authorized for emergency use by FDA, under an EUA to prevent Coronavirus Disease 2019 (COVID-19) for use in individuals 18 years of age and older; and The emergency use of this product is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of the medical product under Section 564(b)(1) of the FD&C Act unless the declaration is terminated or authorization revoked sooner;" and

(ii) "it is reasonable to believe that the [] COVID-19 Vaccine may be effective. Additionally, it is reasonable to conclude, based on the totality of the scientific evidence available, that the known and potential benefits of the [] COVID-19 Vaccine outweigh its known and potential risks."

Nonetheless, there are hundreds, if not thousands, of social media posts, posters, emails, newsletters, and other communications regarding COVID-19 vaccines being created and publicly shared by health agencies in almost every state across the country that are categorically inaccurate and violate the plain requirements for promoting the COVID-19 vaccines. Examples of false claims regarding COVID-19 vaccines from sources that NAM would likely label as "authoritative," such as the New York State Department of Health or the Centers for Disease Control & Prevention, include:

- "The vaccine is safe and effective."
- "[The vaccine] was approved by the FDA, the CDC, and NY's independent vaccine panel."
- "On the journey to FDA approval, each vaccine had to pass through the same thresholds of research & testing as every other vaccine...."

- "All three of the approved COVID-19 vaccines were proven to be safe and 100% effective in preventing hospitalization and death in the clinical trials."

Details regarding these false claims and their removal based on ICAN's policing of their false claims can be found in a petition filed by ICAN with the FDA demanding that it properly enforce its own regulations prohibiting these false claims regarding COVID-19 vaccines. A copy of that petition is available at https://www.regulations.gov/search?filter=FDA-2021-P-0337. The petition requests, among other things, that the FDA "provide public notice to all state health departments, major health insurance carriers, major health systems, and other stakeholders that they are to comply with the [] 'conditions of authorization' in the EUAs and in 21 U.S.C. § 360bbb-3(e)." *Id.*

This is but one example which demonstrates the drawbacks of any designation of authority which might be conferred on the source level. Simply because a source is a governmental or accredited organization does not deem it infallible or even trustworthy. The opposite is also true: simply because a source is not governmental nor accredited does not render it untrustworthy or not authoritative. All opinions held today in all fields of social and hard sciences were almost all minority opinions at some point. It is the ability to challenge the assumed and commonly believed that leads to progress. This need is particularly acute when it comes to challenging positions and information from the government.

A slippery slope is created when a private organization defines, identifies, and raises what it considers authoritative sources above all others, especially where it uses government sources as a means to silence and censor private speech. "Enhancing the accessibility" of certain information simply because it comes from a certain source is cause for great concern.