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“Co-regulation and transparency as key principles for fighting online disinformation under EU law”



Typology of information disorders

Disinformation : false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm ([EU Code of Practice on Disinformation](#))

Misinformation : false or misleading content shared without harmful intent though the effects can be still harmful, e.g. when people share false information with friends and family in good faith. ([EU Code of Practice on Disinformation](#))

Fake news?

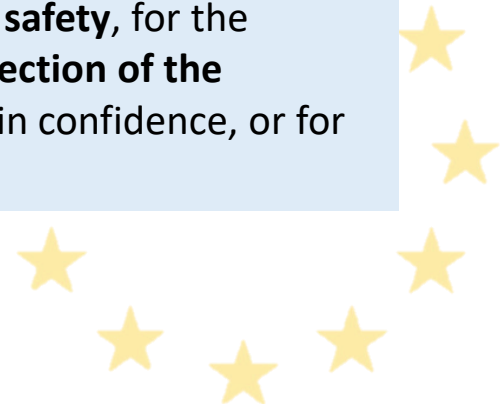
- Widely weaponized by politicians (first used by Donald J. Trump in 2016)
- Applies to a wide variety of definitions and uses
- “Fake news is a term that is great for clickbait but terrible as a target for effective regulation.” ([Epstein B., 2020](#))

Challenges when regulating disinformation

- Where should the line be drawn ?
- Protection of the **freedom of expression**

Article 10 ECHR – Freedom of expression

1. Everyone has the right to **freedom of expression**. This right shall include freedom to **hold opinions** and to **receive and impart information and ideas without interference by public authority** and regardless of frontiers. (...)
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, **restrictions** or penalties as are prescribed by law and are **necessary in a democratic society**, in the interests of national security, territorial integrity or **public safety**, for the **prevention of disorder** or crime, **for the protection of health or morals, for the protection of the reputation or rights of others**, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



Disinformation : “lawful yet awful” content

Disinformation is not illegal *per se*, but can have negative impact on society as a whole

Legally prohibiting disinformation would be an unnecessary restriction on freedom of speech & of the press

BUT online platforms have a role in the spread of online disinformation

- Regulation can be a method for more transparency regarding the methods used by the platforms to fight disinformation
- Regulating how platforms should and should not curate online content can be beneficial for freedom of expression

NB: in some cases, disinformation might fall under specific speech prohibition. In that case, disinformation is illegal content.

- Example: in Belgium, denying the holocaust is a criminal offence

Disinformation : “lawful yet awful” content

Online platforms rely on their **terms of services to moderate content** that does not respect their policies

Different sanctions can be applied to derogatory content :

- Deletion
- Decreased dissemination (shadow banning)
- Flagging

Critics :

- Platforms decide themselves and can change their policies at any time
- Lack of transparency and claims from users
- Contractualization of freedom of expression

Different type of responses against information disorders

Co-regulation

- **Co-regulation** is a mechanism whereby the (...) Legislator entrusts the attainment of specific policy objectives set out in legislation or other policy documents to parties which are recognised in the field (such as economic operators, social partners, non-governmental organisations, standardisation bodies or associations). ([EU Better Regulation Toolbox](#))
- Ex: Digital Services Act

Self-regulation

- **Self-regulation** is where business or industry sectors formulate codes of conduct or operating constraints on their own initiative for which they are responsible for enforcing. ([EU Better Regulation Toolbox](#))
- Ex : Online platforms' Terms of Service

Other policies

- Media/digital education
- Media pluralism
- Debunking
- Etc...

Research Questions

Is a **co-regulatory framework** based on **strong transparency obligations** for online platforms efficient to reduce the spread of online disinformation ?

- Impact of online platform content moderation practices
- Balance of power between online stakeholders (platforms, regulators, users, civil society)

Is the **European regulatory framework** coherent with such an approach?"

- Impact of the Digital Services Act (DSA)
 - Transparency obligations
 - Due diligence obligations
 - Data access for third parties (e.g. vetted researchers)