



Labelling Speech

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4.1 INTRODUCTION

Chapter 7 of this edited volume offers insight into the current measures taken by EU countries against disinformation and propaganda in the online environment. A crucial aspect of these legislative or administrative measures, which needs to be taken into consideration, is their conformity with the broader European legal framework. Over its core components loom the standards of European democratic societies jointly enshrined in the European Convention on Human Rights (hereinafter referred to as ‘the Convention’; ECHR 2019a) and supported by the European Court of Human Rights (ECHR) case law (ECHR 2019b). This chapter aims to guide the reader through the current position of the ECHR on the issue of permissible tools for combating disinformation and propaganda.

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4.2 DISINFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

The dissemination of propaganda and disinformation constitutes a challenging legal environment, primarily from the perspective of labelling the legal permissibility of the content as an exercise of freedom of expression.

When discussing disinformation in the context of freedom of expression, two valuable perspectives on the disseminated information often collide. Disinformation (see Chapter 1) is mostly defined based on its deceptiveness, representing the deliberately fabricated nature of the information without regard for the truth or available facts, as well as the intention of the author to mislead the audience by promoting falsehood or spreading doubt about verifiable facts (McGonagle 2017, 203). It is therefore the lack of truthfulness and the insufficient sincerity of the author's intentions which allow for the identification of disinformation among other content.

However, the category of disinformation, or fake news—a subcategory with particular relevance in this context—encompasses a broad spectrum of content, which covers topics ranging from harmless to widely impactful (Katsirea 2018, 174). As for the classification of disinformation from the freedom of expression perspective, it is the impact of the content which is relevant in establishing infringement upon the fundamental rights and freedoms of others. The ECHR has a time-proven doctrine regarding the dissemination of defamatory information by traditional media. The main distinction made here is between an untruthful allegation concerning provable facts and subjective value judgements forming opinions, critique, or speculations (Regules 2018, 15). Journalistic freedom of expression receives broad recognition as a core component of a democratic society, serving as a public watchdog.¹ Nevertheless, there are boundaries recognised through the traditionally developed ethical codes of journalism (Katsirea 2018, 171). ECHR case law therefore operates with the expectation of factual accuracy and adequate verification of sources by traditional media.² As such, provably false factual claims do not receive protection under the Convention (Regules 2018, 16). Broadly instructive in this

¹ *Sunday Times v. the United Kingdom*, no. 6538/74, §41, ECHR 1979; *Observer and Guardian v United Kingdom*, no. 13585/88, §59, ECHR 1991.

² *Tønsberg Blad AS and Marit Haukom v. Norway*, no. 510/04, ECHR 2007; *Bladet Tromsø and Stensaas v Norway*, no. 21980/93, ECHR 1999.

regard is the opinion of the Venice Commission establishing a set of requirements relevant in the case of an unproven defamatory allegation of fact (Venice Commission 2004). Content falsifying history or denying the Holocaust are therefore among classical examples of unprotected untruthful expressions (Katsirea 2018, 177).

This is, however, not the usual issue of fake news or propaganda content. Rather than spreading provably false factual disinformation, the sources of such content provide a more or less sophisticated mix of abridged factual descriptions, leading emotional expressions, speculative fabrications, and other manipulative techniques introduced in detail in earlier chapters. This presents the first challenge to the classification of disinformation under the freedom of expression framework. Due to often merely partial manipulation of provable facts and the otherwise predominant role of content representing value judgements, there is limited applicability of the available case law concerning defamatory media coverage. Furthermore, given that, in general, most media news consists more of socially agreed truths and reasoned subjective opinions rather than proven absolute truths (Katsirea 2018, 176), the issue of truthfulness in disinformation is a matter of scale rather than bipolar assessment. By default, most disinformation must therefore be perceived as a protected form of expression unless proven otherwise.

A further consideration of relevance regarding the category of speech that the given disinformation represents: The ECHR developed throughout its case law an implied hierarchy of protection rendered to content depending on its purpose. There is a distinctly stronger tendency towards awarding protection to expressions of political speech over purely commercial content (Katsirea 2018, 173). This is reflected in particular through the permitted margin of appreciation—that is, the freedom of national authorities and courts to interpret and limit protection provided under the Convention.³ It is, however, not at all clear, what level of protection in this hierarchy a particular piece of disinformation should receive given the broadness of possible form, content, and purpose constituting these expressions. Even if it can be argued that a certain portion of fake news is generated primarily with commercial, rather than political, intentions (Katsirea 2018, 174), the profit-making objective does

³Markt Intern and Beermann v. Germany, no. 10572/83, ECHR 1990.

not exclude the given expression from legal protection by default.⁴ At the same time, despite a large portion of the most controversial disinformation being focused on political matters, deeper and more specific examination of the particular content is required in order to determine its nature as a valued form of democratic political expression or rather of foreign propaganda constituting an abuse of the protective framework of the Convention.⁵

Lastly, the intentions of the author come into play when assessing his or her good faith in disseminating the given information. Intentions are of an internal and subjective nature; there is therefore only indirect evidence available to this effect. If one of the defining aspects of disinformation, as compared to misinformation, is the intention to deceive on the part of the author, there is inherent bad faith connected with spreading disinformation. However, this does not mean that the assessment of good faith can be done without, as suggested by Regules (2018, 16). The bad faith must be established, along with the factual falsity, in order to consider the given content unprotected disinformation. Nevertheless, proving bad faith may not be as straightforward in the case of fake news, particularly if the content is built on previous news or sources. If the intention of the author can only be indirectly verified, it is a matter of evidence which should, therefore, in a particular case exclude or permit a defence of good faith. The reliability of information and sources is increasingly relativised not just by fake news per se, but in general through the democratisation of media and the online information environment. Taking into consideration the effect of filter bubbles in online media (Flaxman et al. 2016), there is sufficient room for argumentation for the good faith basis of some fake news, reflecting the diversity of subjective perspectives and opinions freely shared in a democratic society. This then poses an additional challenge to restrictive measures against content labelled as disinformation.

To summarise this initial overview, disinformation encompasses a broad category of content which may be permissible under the Convention to a greatly varying degree. The versatility of this content upon closer inspection prevents a systematic classification; however, it does provide for three

⁴Markt Intern and Beermann v. Germany, no. 10572/83, ECHR 1990.

⁵Kuhnen v. the Federal Republic of Germany (inadmissible), no. 12194/86, ECHR 1988.

main aspects which indicate the position of specific content labelled as disinformation within the freedom of expression framework:

- **Provability:** Disinformation is in general not provably untrue but contains a mixture of misinterpreted factual claims and value judgements which can be classified as manipulative techniques. The assessment then depends on the provable presence of false factual claims in the particular content.
- **Purpose:** The scope of protection pursuant to ECHR case law is influenced by the purpose of the expression. Fake news has components of political as well as commercial speech, whereas each stands on the opposite spectrum of the hierarchy. Contextual interpretation of the purpose of the content will therefore (co)determinate the scope of protection.
- **Intention of the author:** The good faith of the author in the sources and purpose of the content has relevance to its protection. Even though disinformation is characterised by the bad faith of the author, there is no possible direct evidence regarding the intent of the author, and filter bubbles and other aspects of the online infosphere may today constitute sufficient evidence for a good faith defence in a particular case.

This introductory discussion provides an indication of the complexity of viewing disinformation from the freedom of expression perspective. The following sections shall provide more detailed insight into the relevant aspects hinted upon or which follow from this discussion.

4.2.1 European Convention on Human Rights

As already noted, the Convention is a prominent beacon in the European framework of fundamental rights and freedoms of an individual. Its unifying and harmonising impact on the approach to protect these values among the member states of the Council of Europe can hardly be overstated. A great deal of the central position dedicated to this framework is built on the basis of comprehensive ECHR case law, which throughout the past 60 years (ECHR 2018) has provided a guiding interpretation on the scope and application of the provisions under the Convention as well as their gradual evolving adaptation to new technological, social, and

political contexts (Bychawska-Siniarska 2017, 9). The guiding role of the ECHR case law in the context of permissible freedom of expression was explicitly recognised even by the Court of Justice of the European Union (CJEU).⁶ As such, the Convention and its values are an integral part of all 47 legal systems of the Council of Europe member states (Equality and Human Rights Commission 2017), which include all EU member states as well as the additional states of wider Europe. It thereby establishes the binding nature of this international treaty and its inescapable relevance for the functioning of public authorities and the decision-making of domestic courts throughout Europe (Bychawska-Siniarska 2017, 9). For all these reasons, ECHR case law deserves particular attention when considering permissible regulatory measures by European institutions towards combatting disinformation and propaganda.

It must be further noted that, despite a prolonged complex legal relationship between the application and enforcement of the Convention and the framework of the European Union (Kuijer 2018), there is a close overlap in the protection provided by these legal structures for freedom of expression. The Convention stood at the basis of the values enshrined in the Charter of Fundamental Rights of the European Union, which sets them in close alignment (Lemmens 2001). Furthermore, recent activity of the European Parliament indicates a continuing validity of efforts towards closer interconnection of these supranational legal frameworks through accession of the European Union to the Convention (European Parliament 2019). Due to this close relation and the baseline nature of the Convention, this chapter is, following other academics (Sluijs 2012, 520), predominantly limited in focus on the Convention and ECHR case law while recognising the increasing subsidiary relevance of the Charter of Fundamental Rights of the European Union as well as national constitutional or specific legislation. EU law is then taken into more explicit consideration only in the final section when discussing the existing framework for the (co)liability of hosting providers.

⁶ Buivids, C-345/17, §66, CJEU 2019, ECLI:EU:C:2019:122.

4.2.2 *Freedom of Expression*

Freedom of expression constitutes one of the core elements of the Convention, enshrined in the provisions of Article 10 and stipulating broad understanding of an individual fundamental right to free expression as well as access to information. It is perceived as one of the cardinal European values and reiterated in most international documents on human rights (Flauss 2009, 813). The court described it as constituting ‘one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment’.⁷

It is crucial to highlight at this point that ECHR case law serves as an intrinsic part of the normative structure of the Convention, forming a set of binding precedents with the status of mandatory legal norms shaping the meaning of the respective provisions as such. This allows the Convention to be adequately responsive to the dynamic developments of standards and values but lays upon the reader an additional requirement of expertise while seeking interpretation of the provisions under the present-day conditions (Bychawska-Siniarska 2017, 10).

4.2.3 *Doctrine of Margin Appreciation*

Part of the structural quality of the Convention is reflected in the established doctrine of margin appreciation⁸ pursued by the ECHR, which provides for a degree of discretion for national public authorities and courts with regard to interpretation and application of the Convention (Bychawska-Siniarska 2017, 10). As such, the margin differs depending on the particularities, as it does in regard to the protection of freedom of expression, whose margin is, under the current interpretation, in principle comparatively low (Bychawska-Siniarska 2017, 10). Any state interference with the freedom must be necessitated by the fulfilment of three conditions: the action must be prescribed by law, it must be considered necessary in a democratic society, and it must be proportionate in respect to the aim pursued (Greer 2000, 10). These elements of the so-called proportionality test shall be closely inspected in a later section of this chapter.

⁷Lingens v. Austria, no. 9815/82, §41, ECHR 1986.

⁸Handyside v. the United Kingdom, no. 5493/72, §48, ECHR 1976.

4.2.4 *Components of Freedom of Expression*

The constituting element of the broader freedom of expression is the often-referenced freedom of speech. It is built upon the principle of protecting the freedom of any individual or community to voice opinions and ideas without fear of retaliation, censorship, or legal sanction. The possibility to voice one's opinions freely is a necessary precondition for the purposeful guarantee of freedom of conscience (Olteanu 2015, 261). The freedom of expression, as provided in the first paragraph of Article 10 of the Convention, is composed of three constituting components: the freedom to hold opinions (freedom of thought), the freedom to impart information and ideas (freedom of speech), and the freedom to receive information and ideas (freedom of access).

The freedom to hold opinions is a logical precondition to other aspects of free expression. Its protection is general and nearly absolute, following from the fact that it is seen from the perspective of the international community as the foundation of a democratic society (UN Human Rights Committee 2011).

In the context of disinformation, it presents the conceptual justification for the existence of disinformation. The public sector in a democratic state is not permitted to enforce one-sided information or an interpretation of an event (Bychawska-Siniarska 2017, 13). Furthermore, the difference between dissent, conspiratorial information, and disinformation is often blurry and a matter of individual perspective. The natural lack of full information and the right of each individual to a subjective perception and interpretation of events or actions provide for a democratic divergence of opinions, but they also serve as a protective shield for disseminators of disinformation. As described in Chapter 1, there is a variety of manipulative techniques to be employed and degrees of deceptiveness associated with disinformation. From the legal perspective, this fine gradation may spell the difference between the exercise of fundamental freedom and abuse of its protective framework.

Nevertheless, the dissemination of disinformation and propaganda goes by its nature beyond mere freedom of thought to its manifestation as an information shared in communication. The basic dimensions of this freedom relate to democratic governance and therefore concern primarily

free political competition⁹ and criticism of government¹⁰ (Bychawska-Siniarska 2017, 14). There are many shades of freedom of speech that were considered by the ECHR in its case law, whether concerning political opinions, information on economic matters,¹¹ or manifestations of artistic ideas.¹² Disinformation may in essence touch upon any of these categories given that their content is not restricted to a particular context.

The individual's right to have access to information and ideas is to be interpreted in a broad sense, giving a potential basis to the right to have access to disinformation. Everyone's opinions and ideas are formed to a large degree based on external inputs. Therefore, our ability to cope with contradictory information or complex concepts is a result of repeated exposure and interaction with unstructured and conflicting pieces of information, from which each individual forms his subjective worldview and opinions on particular issues and topics. In this context, combating disinformation or propaganda includes measures towards education and awareness (Barderi 2018, 7). If freedom of expression unlocks the potential for individuality and diversity, the right to access information is the basis for the individual development of critical thinking (McPeck 2016). Nevertheless, the scope of freedom of access is limited to the lawful sources of information and ideas available.¹³ Due to the unestablished nature of fake news as expressions, it cannot be seen as a basis for their protection, but merely as a basis for the permissible dissemination of diverse opinions and content.

⁹ *Handyside v. the United Kingdom*, no. 5493/72, §42 et seq., ECHR 1976.

¹⁰ *Lingens v. Austria*, no. 9815/82, §34 et seq., ECHR 1986; *Şener v. Turkey*, no. 26680/95, §25 et seq., ECHR 2000; *Thoma v. Luxembourg*, no. 38432/97, §32 et seq., ECHR 2001; *Maronek v. Slovakia*, no. 32686/96, §46 et seq., ECHR 2001; *Dichand and Others v. Austria*, no. 29271/95, §25 et seq., ECHR 2002.

¹¹ *Krone Verlag GmbH & Co. KG v. Austria (No. 3)*, no. 39069/97, §21 et seq., ECHR 2003.

¹² *Muller and Others v. Switzerland*, no. 10737/84, §26 et seq., ECHR 1988.

¹³ *Osterreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, §28 et seq., ECHR 2013; *Autronic AG v. Switzerland*, no. 12726/87, §47, ECHR 1990.

4.2.5 *Typology of Speech*

The speech protected under the Convention is to be understood in a broad sense, encompassing various forms of idea manifestation (including e.g. pictures¹⁴ or actions¹⁵) as well as their formats of expression (including e.g. radio broadcasts¹⁶ or printed documents¹⁷). Consequently, various means of production, transmission, and distribution of expression are covered by the freedom, following the development of information and communication technologies (Bychawska-Siniarska 2017, 18). The internet age has not just brought new formats for expression, but also new challenges in the form of globalised information sharing platforms, which may restrict guaranteed freedoms through commercially controlled, technological means (Oozeer 2014, 348). This technological transformation can also be seen as a crucial enabler, leading to the increasing urgency of the disinformation issue.

4.2.5.1 *Hate Speech and Other Unprotected Forms of Speech*

A particular category of speech which needs to be taken into consideration while discussing disinformation consists of the established forms of unprotected speech—that is, content aimed at incitement of violence,¹⁸ the expression of hate towards minorities,¹⁹ or Holocaust denial or its abuse.²⁰ Article 10 of the Convention may not contain the explicit exclusion of these expressions; however, the Convention needs to be read as a whole, which brings into play Articles 14 and 17. Article 14 prohibits discrimination, whereas Article 17 prevents any interpretation of the Convention that would imply the right of any party to the destruction or limitation of any right or freedom under the Convention to a greater extent than it provides. This, in effect, forms the basis for the aforementioned categories of unprotected speech as established by ECHR case law (Bleich 2014, 292). In fact, hate speech may take a multitude

¹⁴ Muller and Others v. Switzerland, no. 10737/84, ECHR 1988.

¹⁵ Steel and Others v. the United Kingdom, no. 24838/94, §88 et seq., ECHR 1998.

¹⁶ Groppera Radio AG and Others v. Switzerland, no. 10890/84, ECHR 1990.

¹⁷ Handyside v. the United Kingdom, no. 5493/72, ECHR 1976.

¹⁸ Sürek v. Turkey (No. 3), no. 24735/94, §40, ECHR 1999.

¹⁹ Vejdeland and Others v. Sweden, no. 1813/07, §8, ECHR 2012.

²⁰ PETA Deutschland v. Germany, no. 43481/09, §49, ECHR 2012.

of forms beyond the originally adjudicated racial hate.²¹ These include ethnic hate,²² incitement to violence and supporting a terrorist activity,²³ negationism and revisionism,²⁴ religious hate,²⁵ or threats to the democratic order²⁶ (ECHR 2019c, 1–5). Such speech may contain a form of disinformation in the sense that it is fabulised or intentionally biased, but that is essentially a secondary attribute, in essence not related to the basis for exclusion from the scope of protected speech, as established above. The European approach to hate speech is, in effect, significantly more complex than the parallel system developed in the United States (Bleich 2014, 284); however, that also means that the category of hate speech is less clear-cut, and assessment under the Convention requires careful consideration of the specific circumstances of each case (Bleich 2014, 294). In consequence, hate speech can hardly be perceived as a definitive category, similar to the above established challenging classification of disinformation. Furthermore, these two categories may overlap, but given that their indicative attributes differ, the overlap is merely partial. Additionally, fake news containing expressions of hate, in particular hate against a minority, is unlikely to constitute the so-called hard cases (Dworkin 1975) in the sense of challenging the setting for guiding judicial interpretation. However, as gradually established throughout this chapter, a large portion of disinformation is likely to constitute such ‘hard cases’ due to a lack of clear guidelines for their adjudication.

4.2.5.2 *Conflict of Fundamental Rights or Freedoms*

The provided cases establishing the exclusion of hate speech from protection due to the excessive infringement on the expression of the rights and freedoms of others can be viewed as one extreme of a spectrum. However, most situations concerning hate speech as well as fake news do not qualify for such extremity despite presenting an obvious conflict between equally

²¹ Glimmerveen and Haqenbeek v. the Netherlands, no. 8348/78,8406/78, ECHR 1979.

²² Pavel Ivanov v. Russia, no. 35222/04, ECHR 2007.

²³ Roj TV A/S v. Denmark, no. 24683/14, ECHR 2018.

²⁴ Garaudy v. France, no. 65831/01, ECHR 2003.

²⁵ Norwood v. the United Kingdom, no. 23131/03, ECHR 2004.

²⁶ B.H, M.W, H.P and G.K. v. Austria, no. 12774/87, decision of the Commission 1989.

valued fundamental rights and freedoms. This is in fact the basis for most defamatory cases concerning freedom of expression in the media (ECHR 2019d). Such conflicts need to be resolved on the basis of a balancing test. This results in the proportionate restriction of the concerned rights and freedoms. This aspect shall be considered further throughout the text of this chapter.

4.2.5.3 *Restrictions Permitted Under the Convention*

In consequence, most expressions constituting disinformation or propaganda need to be perceived as falling under the protection of Article 10 of the Convention. This means that restriction of their dissemination by state authorities is permissible under the margin of appreciation if the conditions foreseen by the Convention are met.

4.3 PERMISSIBLE RESTRICTIONS TO FREEDOM OF SPEECH THROUGH STATE ACTION

Restrictions to freedom of speech must be assessed in a particular context; no general approach to the restriction of content is permissible under Article 17 of the Convention. Additionally, equality of rights protected under the Convention necessitates all restrictive authoritative actions be subject to a balancing act of permissibility (Bychawska-Siniarska 2017, 32). Following from ECHR case law, the central role in balancing the conflicting freedoms and interests falls to the three-part test for adjudicating the necessity of interference with freedom in a democratic society. Cumulative conditions for permissible interference with freedom of speech by national authorities are threefold: (i) interference is prescribed by law,²⁷ (ii) it is aimed at the protection of one of the interests or values enlisted in the second paragraph of Article 10,²⁸ and (iii) it is a necessary measure in a democratic society.²⁹

The fulfilment of these conditions is to be interpreted in a strict manner in order to protect broad freedom of speech. Under this premise,

²⁷The Sunday Times v. the United Kingdom, no. 6538/74, §46 et seq., ECHR 1979.

²⁸Handyside v. the United Kingdom, no. 5493/72, §43–50, ECHR 1976.

²⁹The Sunday Times v. the United Kingdom, no. 6538/74, §58 et seq., ECHR 1979.

a borderline case should in general be awarded in favour of the individual and his freedom rather than a state's claim to overriding interest (Rzepliński 1997, 2–3).

The restrictive approach means that no additional interests or values to those foreseen by the Convention should be used as a basis for the interference, and the content of the aforementioned three criteria should not be interpreted beyond their ordinary meaning (European Commission of Human Rights 1977, 74). This position of the ECHR towards measures limiting freedom of speech is of high relevance for possible legislative measures aimed at the systematic combating of disinformation or propaganda.

Nevertheless, apart from the criteria expressly stated in the aforementioned paragraphs, the ECHR established through its more recent case law that some regard should be given to the specific context of the expression (Bychawska-Siniarska 2017, 12). This means that consideration may be given to its particular purpose, for instance, political or commercial (Katsirea 2018, 173); its form of dissemination, such as audiovisual media or online access (Callamard 2017, 325–26); or its predominant target audience, for example, the public without restriction, including children, or just a particular interest group (Bychawska-Siniarska 2017, 12).

Furthermore, as presented early in this chapter, some of the core aspects defining disinformation, such as a provable falsity and the intention to deceive, may be considered relevant under contextual circumstances. These were mostly inferred for cases of controversial and defamatory journalistic expressions, which is close to the context of fake news. The requirements for upholding the baseline of journalistic ethics by traditional media were already mentioned; however, fake news is predominantly shared by new media in the online environment. Therefore, consideration must additionally be given to the plausibility of extending the requirement of upholding certain journalistic standards to online news dissemination as well. This issue is far from simple given that relevant online media consists of a significantly broader spectrum of subjects and structures than traditional media. There is likely little dispute over the applicability of the requirements to online news platforms of traditional media outlets. Similarly, online media with a traditional content creation process (by employees or an otherwise limited and accountable group) also likely conform with general parameters for applicability of these requirements. However, a sizable portion of the considered fake

news does not originate from these structures but rather through user-generated content hosted on online platforms established for this purpose. This modern approach to the democratisation of online content creation challenges the traditional perception of journalism (Normahfuzah 2017) and also alters the consideration of applicable requirements. The source of the content is diluted among a multitude of authors who have no permanent link to the hosting provider. The hosting provider often lacks even general information about the identity of the content creators and in many cases refrains from any moderating or editing role with regards to the disseminated content.

The ECHR established in its case law that media needs to be perceived in a broad sense, including also others who engage in a public debate rather than just traditional media.³⁰ Katsirea infers from this interpretation that new online media should be treated similarly to traditional journalists (Katsirea 2018, 173). However, this is by no means decidedly inferable from the available case law. The position of a content creator contributing to a platform for user-generated content can vary greatly, from an occasional contributor of a comment or link to a regular blogger on par with a journalist. In any case, the multitude of creators contributing to the hosting platform fragments the roles. Therefore, the predominantly loose relationships between content creators and hosting providers cannot be compared to the structures present in traditional media for content review and editing. In consequence, the room to enforce liability for the content against the individual users is comparatively diminished. This is the basis for considerations over the (co)liability of hosting providers, which shall be discussed in the concluding section of this chapter.

4.3.1 *State Interference*

State interference restricting the freedom of expression is to be understood as any form of interference from any authority with public power or in public service (Bychawska-Siniarska 2017, 34). Therefore, any action of public bodies leading to the limitation of accessibility to content is to be considered as such interference. In general, censorship may take place either before or after the expression has been made available to the public.

³⁰Steel and Morris v. the United Kingdom, no. 68416/01, ECHR 2005.

Censorship prior to publishing is especially perceived by the ECHR as a major intervention in the freedom of expression, which should therefore be applied with particular caution (Bychawska-Siniarska 2017, 35). For this reason, even though Article 10 of the Convention does not prohibit such a measure per se, established interpretation pursuant to ECHR case law sees only a narrow window for its permissibility.³¹ Another form of interference which may come into consideration with regards to disinformation is to order the author to reveal journalistic sources and documents under sanction.³² The ECHR did not, to the knowledge of the author, deal as of yet with a specific case concerning such measures against a disinformation disseminator, in particular with regard to the assessment of the intensity of measures taken against such expressions.

However, most suitable interference would likely constitute a post-publication censorship action or a withdrawal of a published expression from public accessibility. In such a case, the impact of the restriction concerning the denial of access and deletion of content published online seems less invasive than most interferences reproached by the ECHR in the available case law. These also encompass, aside from the abovementioned cases of prior censorship, criminal persecution for the expression as such,³³ confiscation of the means through which the information was disseminated,³⁴ or a prohibition of advertisement,³⁵ political in particular.³⁶

Depending on the specific content of the disinformation or propaganda, some of these more invasive interferences may be considered relevant along with post-publication censorship, specifically criminal persecution or an advertisement prohibition of extremist political ideas. However, these would likely be extreme cases, solved under respective, specific national laws.

³¹The Sunday Times v. the United Kingdom (No. 2), no. 13166/87, §51, ECHR 1991; Observer and Guardian v. the United Kingdom, no. 13585/88, §59, ECHR 1991.

³²Goodwin v. the United Kingdom, no. 17488/90, §27, ECHR 1996.

³³Castells v. Spain, no. 11798/85, ECHR 1992.

³⁴Muller and Others v. Switzerland, no. 10737/84, §28, ECHR 1988.

³⁵Casado Coca v. Spain, no. 15450/89, §49, ECHR 1994.

³⁶TV Vest AS & Rogaland Pensjonistparti v. Norway, no. 21132/05, §63, ECHR 2008.

4.3.2 *Prescribed by Law*

The first condition concerning the permissibility of state interference is its basis in national law. The measure should be enforced pursuant to national legal provisions, or, depending on the legal system of the state, in accordance with the common law, even though the parliamentary legitimacy of the measure may play a role in the justification of the restriction under the Convention (Bychawska-Siniarska 2017, 39). Therefore, as such, even the unwritten components of the common law system are perceived as a relevant basis for state interference (Ajevski 2014, 125). The court also maintains, among the relevant aspects of the legal basis, its public accessibility and foreseeability.³⁷ Following from these requirements, measures based on unpublished internal regulations or other sub-statutory provisions would in general not be a permissible basis for the restriction of the freedom of expression (Bychawska-Siniarska 2017, 42). Through this prism, most current national laws contain a general basis for measures against disinformation; however, most lack sufficiently specific regulatory provisions.

4.3.3 *Legitimate Aim*

Even with the respective legal framework in place, its application needs to be considered with regard to its aim. The ECHR ‘has a very relaxed attitude towards the states’ claims of following a legitimate aim and for not requiring a very strict connection between the state action and the legitimate aim pursued’ (Ajevski 2014, 126). Aims pursued by legitimate restrictions of freedom of speech are listed under paragraph 2 of Article 10 of the Convention.

Due to the broad spectrum of content presented under disinformation or propaganda, a legitimate aim may be inferred from a multitude of available bases. However, the mere deceptive nature of the content is insufficient ground for restriction unless it can be further connected to interference with one of the protected interests. These include (i) national security, (ii) territorial integrity, (iii) public safety, (iv) prevention of disorder or crime, (v) protection of health or morals, (vi) protection of the reputation or rights of others, (vii) confidence of information, or (viii) the authority and impartiality of the judiciary.

³⁷Leander v. Sweden, no. 9248/81, §50, ECHR 1987.

4.3.3.1 *National Security*

Restrictions in the interest of national security must respect the strict limits set by ECHR case law.³⁸ The court held that it is in general unnecessary to prevent the disclosure of certain information if it had already been made public.³⁹ National security information cannot be regarded en masse as confidential in order to apply restricted access to it.⁴⁰ Disinformation can certainly acquire a quality threatening the interests of national security; however, the legitimacy of its restriction needs to also take into consideration the nature of the dissemination media.⁴¹ In this sense, fake news shared through ill-reputed portals broadly known for propaganda or conspiratorial content are unlikely to pose a serious threat to the interests of national security as such, and additional justification for the legitimacy of this aim may be required.

4.3.3.2 *Territorial Integrity*

Similar considerations apply to the interest of territorial integrity, which mostly concerns dissemination of separatist propaganda.⁴² The article must be sufficiently capable of inciting violence or local dissent in order to infringe upon this interest.⁴³ Mere one-sidedness of political opinions or interpretation of events formulating criticism of the government do not in itself justify such interference with freedom of expression.⁴⁴ The propagandistic or deceptive nature of the expression must result in an abuse of rights or convincing promotion of conduct contrary to the spirit of the Convention so as to allow for restrictive action.⁴⁵

³⁸ *Observer and Guardian v. the United Kingdom*, no. 13585/88, ECHR 1991.

³⁹ *Weber v. Switzerland*, no. 11034/84, §49, ECHR 1990.

⁴⁰ *Vereniging Weekblad Bluf! v. the Netherlands*, no. 16616/90, §38 et seq., ECHR 1995.

⁴¹ *Stoll v. Switzerland*, no. 69698/01, §117 et seq., ECHR 2007.

⁴² *Sürek and Ozdemir v. Turkey*, no. 26682/95, §49–50, ECHR 1999.

⁴³ *Sürek v. Turkey (No. 3)*, no. 24735/94, §40–41, ECHR 1999.

⁴⁴ *Sürek and Ozdemir v. Turkey*, no. 23927/94, 24277/94, §58 et seq., ECHR 1999.

⁴⁵ *Kuhnen v. the Federal Republic of Germany (inadmissible)*, no. 12194/86, ECHR 1988.

4.3.3.3 *Public Safety, Prevention of Disorder or Crime, Authority, and Impartiality of the Judiciary*

The public safety interest may be relevant to disinformation causing panic or regarding functions and the availability of public services, such as health services, public transport, or basic utilities. Another possible basis is interference with the interest of disorder or crime prevention, previously adjudicated expressions encouraging the disobedience of armed forces,⁴⁶ or public support of violent criminal behaviour. Disinformation concerning high-profile criminal investigations or undermining the public opinion of police authorities may also be seen as conflicting with this interest. Respective case law is, however, as of yet, to the knowledge of the author, not available. Nevertheless, an analogy may be drawn from disputes concerning expressions weakening the authority and impartiality of the judiciary.⁴⁷

4.3.3.4 *Protection of Reputation or Rights of Others*

The conflict with reputation or rights of other individuals is present primarily in cases of defamatory media content or less extreme instances of hate speech. Manifestations of hate which constitute the basis for the restriction of freedom of expression in this form include expressions supporting terrorism,⁴⁸ condoning war crimes,⁴⁹ inciting religious intolerance,⁵⁰ insulting state officials,⁵¹ or containing hateful defamation⁵² (ECHR 2019c, 13–18). The defamatory expressions were partially discussed earlier with regard to the duties and responsibilities of journalists in relation to their content and shall be further delved into in the next section.

⁴⁶Saszmann v. Austria (inadmissible), no. 23697/94, ECHR 1997.

⁴⁷Kudeshkina v. Russia, no. 29492/05, §81, ECHR 2009.

⁴⁸Leroy v. France, no. 36109/03, ECHR 2008; Stomakhin v. Russia, no. 52273/07, ECHR 2018.

⁴⁹Lehideux and Isorni v. France, no. 24662/94, ECHR 1998.

⁵⁰İ.A. v. Turkey, no. 42571/98, ECHR 2005.

⁵¹Otegi Mondragon v. Spain, no. 2034/07, ECHR 2011; Stern Taulats and Roura Capellera v. Spain, no. 51168/15, 51186/15, ECHR 2018.

⁵²Pihl v. Sweden (inadmissible), no. 74742/14, ECHR 2017; Savva Terentyev v. Russia, no. 10692/09, ECHR 2018.

4.3.3.5 *Protection of Health or Morals, Confidence of Information*

Fake news is unlikely to affect the other listed legitimate interests given that protection of morals mostly concerns obscene art expressions,⁵³ and confidential information is unlikely to be divulged as disinformation.

4.3.4 *Necessary in a Democratic Society*

Even action based on an adequate legal basis and pursuing a legitimate aim may not be deemed a permissible restriction of the freedom of expression unless found necessary. This test of proportionality in a narrow sense is perceived as the most important part of the three-part proportionality test (Ajevski 2014, 126). The assessment of proportionality reflects the principles governing a democratic society (Bychawska-Siniarska 2017, 44). The restrictive action must therefore be an appropriately strong reaction to a ‘pressing social need’.⁵⁴ In essence, this is the aspect on which most ECHR cases are decided (Ajevski 2014, 126), and it was therefore partially formalised in the case law through a set of interpretative principles for the meaning of the phrase ‘necessary in a democratic society’. These state the following:

The adjective ‘necessary’ is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’ ... the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention ... the phrase ‘necessary in a democratic society’ means that, to be compatible with the Convention, the interference must, inter alia, correspond to a ‘pressing social need’ and be ‘proportionate to the legitimate aim pursued’ ... [and that] those paragraphs of Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted.⁵⁵

⁵³Muller and Others v. Switzerland, no. 10737/84, ECHR 1988; Vereinigung Bildender Künstler v. Austria, no. 68354/01, ECHR 2007.

⁵⁴The Observer and the Guardian v. the United Kingdom, no. 13585/88, §40, ECHR 1991.

⁵⁵Silver and others v. the United Kingdom, no. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, §97, ECHR 1983.

The principles guide the ECHR in specific cases where consideration of the content of the expression, the circumstances of its dissemination, and the role of the author create the context of their application. This context then affects the available margin of appreciation for the state authorities in a way revealed throughout this chapter. Therefore, classification of the expression as political speech limits the margin for state intervention, whereas identification of the author as a journalist accentuates the duties on his or her part in order to retain the freedom of expression. In this regard, the particularities of a given set of fake news or propaganda content may justify proportionate restrictive measures, such as post-publication censorship, but the variety also provides for limits on generalised or generic restrictive measures of expressions categorised under disinformation in a broader sense.

4.4 EXPRESSIONS INFRINGING UPON THE FUNDAMENTAL RIGHTS OR FREEDOMS OF OTHERS

As mentioned above, when considering speech in conflict with the fundamental freedoms or rights of others, the case law developed an important distinction between content that constitutes verifiable facts and that which is a mere sum of an author's opinions. This distinction is highly relevant because, whereas the facts can be checked against sources and refuted, opinions include value judgements which cannot be subject to a test of truth, and their restriction would in effect infringe upon freedom of thought as such.⁵⁶ In fact, value judgements concerning political questions enjoy an even greater level of protection as they are perceived as a crucial component in a democratic society (Bychawska-Siniarska 2017, 78). This perspective stands behind some of the challenges in the qualification of fake news under the Convention as they often fall within the grey zone of speculative or manipulative pieces, which may distort facts but do so without full fabrication. Therefore, if free speech in the form of diverse personal value judgements on political matters retains a high

⁵⁶Lingens v. Austria, no. 9815/82, §46, ECHR 1986; Oberschlick v. Austria, no. 11662/85, §63, ECHR 1991; Dichand and Others v. Austria, no. 29271/95, §42, ECHR 2002.

level of protection, the authorities in many cases lack a reliable mechanism or framework to distinguish between these categories and need to limit restrictive measures accordingly. It is mainly the risk of false positives which acts as an obstacle in legitimising some of the widely aimed measures against disinformation and propaganda. The legal framework of the Convention may provide a better setting for the restriction of fake news on a case-by-case adjudication based on conflict with the rights and freedoms of others. This is, however, unlikely to provide an adequate and timely response to the issue given its current scale.

The traditional avenue explored with regard to truthfulness of allegations concerns journalistic content deemed defamatory by the affected party. In principle, the author of a comment must in case of a dispute prove his defamatory assertions of facts are based on the truth—in other words, follow from verifiable sources. There is, however, a more nuanced balancing required. The role of media as a ‘public watchdog’⁵⁷ provides it with a particularly important position with regard to issues of public concern. In such capacity, ECHR case law⁵⁸ established that the message or alternative voice may be more important than adequate fulfilment of journalistic standards, for instance, the thorough verification of sources. There is no specific definition of issues which constitute a matter of public concern; however, the case law deduced this aspect in various situations concerning issues in the public domain,⁵⁹ concerning public positions,⁶⁰ or public financing.⁶¹

This does not create a basis for fake news per se, but it indicates that the requirements of journalistic duties can be modified depending on the context of the expression. Based on the case law of European high courts,⁶² as well as the ECHR,⁶³ the Venice Commission identified ten

⁵⁷ *Bergens Tidende and others*, no. 26132/95, §57, ECHR 2000.

⁵⁸ *Thorgeirson v. Iceland*, no. 13778/88, §65, ECHR 1992.

⁵⁹ *Sürek v. Turkey (No. 2)*, no. 24122/94, ECHR 1999.

⁶⁰ *Guja v. Moldova*, no. 14277/04, ECHR 2008.

⁶¹ *İzzettin Dogan and others v. Turkey*, no. 62649/10, ECHR 2016.

⁶² *Reynolds v. Times Newspapers Limited*, Highest Court of the United Kingdom 1999; *Böll case*, Bundesverfassungsgericht 1998; no. I. US 156/99, Constitutional Court of the Czech Republic 2000; no. 1 BvR 1531/96, Federal Constitutional Court of Germany 1998; no. 2001/19, Supreme Court of Norway 2001; no. 144/1998, Constitutional Court of Spain 1998; no. 28/1996, Constitutional Court of Spain 1996.

⁶³ *Bladet Tromsø and Stensaas V. Norway*, no. 21980/93, ECHR 1999.

core factors to be considered in this balancing. These include, among others, the seriousness of the allegation, its source, attempts at its verification, urgency of the matter, the tone of the article, and circumstances of its publication (Venice Commission 2004, 4). Additionally, journalistic standards as such are not a unified set of universal principles but rather a dynamic set of best practices that is itself developing based on the transformation of the media environment (Friend and Singer 2015). There are particular efforts towards transitioning the traditional prerequisites for quality journalism into the online environment (Chapman and Oermann 2019, 3). The abovementioned aspects constitute the basis for a good faith defence, as recognised by ECHR case law.⁶⁴ As Bychawska-Siniarska summarises, ‘Where a journalist or a publication has a legitimate purpose, the matter is of public concern, and reasonable efforts were made to verify the facts, the press shall not be liable even if the respective facts prove to be untrue’ (Bychawska-Siniarska 2017, 78).

The measured acceptance of allegations or rumours as part of the press is established in ECHR case law.⁶⁵ There is, however, an important distinction between rumours or unfitting allegations based on good faith journalistic research and disinformation and propaganda. The intention of the author to mislead or manipulate through expression is contrary to the requirement of bona fide action and appropriate duty of care when assessing the sources (Venice Commission 2004, 4). As such, a good faith defence for disinformation as a form of journalistic expression is unlikely to hold up under judicial review. Nevertheless, as already discussed earlier in this chapter, this conclusion has only limited relevance in the context of online media, where professional standards applicable to journalists cannot be readily extended to all commentators and contributors. Furthermore, notwithstanding the conclusion that a case against particular disinformation targeting an individual is in principle likely to be strong, these legal considerations cannot be directly transposed to measures by public authorities in combatting disinformation or propaganda through measures of scale.

⁶⁴ *Dalban v. Romania*, no. 28114/95, §50, ECHR 1999.

⁶⁵ *Bladet Tromsø and Stensaas V. Norway*, no. 21980/93, §59, ECHR 1999; *Dalban v. Romania*, no. 28114/95, §49, ECHR 1999; *Thorgeirson v. Iceland*, no. 13778/88, §65, ECHR 1992.

Acknowledging these limitations, an alternative approach is being developed for the online environment. This builds on exploiting the unique position of providers of online environments where information is shared and disseminated. Platforms which host user-generated content projected themselves for a long time in the neutral role of a mere storage service provider; however, growing political and regulatory pressure (Fioretti 2018) is pushing them increasingly into the spotlight as active moderators and contributors to the dissemination and distribution of content online. It is therefore through the legal framework of (co)liability of these hosting providers that measures regulating disinformation and propaganda can be taken and expanded.

4.5 DISINFORMATION SUPPRESSION THROUGH HOSTING PROVIDER LIABILITY

The regulatory benefits of enforcing restrictions on disinformation and propaganda through requirements set for hosting providers originate from their uniquely strong position in the technical sense. The hosting provider effectively creates the online environment where the information is disseminated and can be accessed by users through the facilitation of underlying data storage. Such an entity is therefore optimally positioned for the supervision of stored content, in particular when present day means of big data analysis and content recognition are taken into consideration. In the default setting, such a provider has a shared liability for the content with the user due to his contribution to facilitating the dissemination. However, efforts towards encouraging innovation and development of internet services in the European Union before the turn of the millennium led to the adoption of the Directive on electronic commerce⁶⁶ (Pearce and Platten 2000, 363 et seq.), which provided for a protective setting of exceptions from this liability on the basis of ‘safe harbour’ provisions.⁶⁷ One of these applies to hosting providers, that is, platforms for user-generated content, such as social media or various news portals. The directive set conditions for the application of safe harbour on hosting providers consisting of (i) no actual knowledge about the illicit content,

⁶⁶Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

⁶⁷Art. 12–14 of Directive on electronic commerce.

(ii) independence of the content creator from the provider, and (iii) expeditious removal of the content upon obtaining such knowledge (through a so-called ‘notice and action’ flagging framework).⁶⁸ The applicability of this protective provision is increasingly challenged with respect to various forms of hosting services (Friedmann 2014, 148 et seq.; Husovec 2017b, 115 et seq.) and with regard to the negative impact of newly emergent issues like disinformation.

The pressure on major hosting providers is a combination of voluntary basis cooperation with the European Commission and the gradual development of interpretation to their detriment based on relevant case law. The overview of EU joint and coordinated actions against disinformation (European Commission 2019a) indicates the increasing complexity of the cooperative network and consistently developing the basis of measures implemented by the hosting providers pursuant to impulses originating from the European Commission.

The initial signals of a turn in the tide of interpretation were provided by the CJEU through its case law⁶⁹; however, it was mainly the ECHR which established the crucial precedents for today’s approach to content moderation through platform provider activity. Notwithstanding the limited control of the platform over user-generated content as such, the ECHR held as applicable the participation of the platform in the liability for such content (Husovec 2013, 109). Authoritative here was the Grand Chamber decision in the case *Delfi AS v. Estonia*.⁷⁰ The court concluded that in case of an insufficiently responsive action against illegal content, the platform provider is to be held liable and adequate sanction is permissible under Article 10 of the Convention. Through this, an alternative approach to curbing disinformation was thereby opened—in other words, through the moderating role of the hosting providers (Husovec 2016, 17). Nevertheless, there are limits to the pressure which can be put on these intermediaries. Resulting from the subsequent case law,⁷¹ it still remains essential to subject each piece of content to a balancing test assessing its impact and permissibility through the above-discussed criteria

⁶⁸ Art. 14 of Directive on electronic commerce.

⁶⁹ *Google France SARL a Google*, no. C-236/08, C-237/08, C-238/08, CJEU 2010; *L’Oreal and others*, no. C-324/09, CJEU 2011.

⁷⁰ *Delfi v. Estonia*, no. 64569/09, §147 et seq., ECHR 2015.

⁷¹ *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, §78 et seq., ECHR 2016.

for conflict between fundamental rights and freedoms (Council of Europe 2018, 7 et seq.). Furthermore, the obligations of the provider need to be proportionate to its size and reach, meaning that small media platforms unknown to the wider public are allowed to have less strict management of user-generated content than those of greater renown.⁷² The pressure mounted on the platforms is not limited to the dissemination of disinformation and ranges across various forms of widely persisting illicit content, be it hate speech (Heldt 2019) or unlicensed copyright content (European Commission 2019b).

All these regulatory measures signify the growing urgency for reliable classification and detection of content which should be restricted from dissemination by the hosting providers. However, the diversity of forms it may take makes such a goal tenaciously elusive. Nevertheless, unless sufficient efforts are put towards developing tools and frameworks for classification and identification of such content under independent and neutral conditions, the regulatory mechanism has a likely effect of inducing private censorship through the hosting providers (Kuczerawy 2015, 46). We can already see the negative impact of unsuitable applications of the framework in Russia through multiple cases of unjustified collateral blocking of internet content (Husovec 2017a). The issue, however, reaches beyond the scope of the ECHR's jurisdiction, necessitating an orchestrated global response (Aswad 2018).

This is a problematic outlook not just with regards to the influential role of major platforms but also due to the limited capacity of public institutions to exert necessary control over minor platforms which may play a disproportionately large role in disinformation dissemination.

4.6 CONCLUSIONS

This chapter provided an additional legal perspective on the topic of disinformation and propaganda dissemination through the prism of freedom of speech under the European Convention on Human Rights. At first, the term disinformation was confronted with this legal framework and defining characteristics were discussed. The core aspects established as relevant include the provability of its untruthfulness, qualification of its purpose, and disclosure of the author's intention. The focus was then

⁷² Pihl v. Sweden (inadmissible), no. 74742/14, §31, ECHR 2017.

turned to the umbrella role of the Convention and ECHR case law in the European legal environment and its relation to the Charter of Fundamental Rights of the European Union. The reader was then introduced to the basic concepts of this framework, including the definition of freedom of expression as a fundamental right, its constituting components, and the role of the margin appreciation doctrine.

An important aspect of disinformation highlighted throughout the chapter is its versatility and varying degree of illegality. For this reason, the application of scale rather than bipolar qualification was continuously emphasised. The freedom of speech framework functions primarily as a countermeasure against censorship and the forced restriction of democratic discussion. This then demands high standards of reliability from the measures and tools aimed at labelling speech as disinformation or propaganda. From this legal perspective, there is a fine gradation in the qualification of expressions, which may spell the difference between the exercise of a fundamental freedom and abuse of its protective framework under the Convention.

The subsequent text concerned relevant features of the expression that the ECHR is taking into consideration while weighing its protection under the Convention. There are extreme forms of expression which are excluded from protection altogether, primarily represented by discriminatory hate speech, but most forms of expression considered disinformation shall fall under the protection of Article 10 of the Convention and can therefore be restricted only pursuant to interference permitted under this framework.

Such permissible restriction must pass the three-part proportionality test establishing that (i) the interference is prescribed by law, (ii) it is aimed at the protection of one of the interests or values listed in the second paragraph of Article 10, and (iii) it is a necessary measure in a democratic society. The case law generally leans towards a restrictive interpretation, allowing for broad freedom of speech.

The text of the chapter then follows these three core components and elaborates on their applicability with respect to measures of combating speech labelled as disinformation or propaganda. The conclusion concerning state interference is that efforts against broadly or generically defined disinformation would most likely be impermissible under the Convention and case-by-case assessment of expressions is due in this regard. It is mainly the risk of false positives which acts as an obstacle in legitimising some of the widely aimed measures.

The second setting discussed is when the state provides protection to individuals against expressions infringing upon their fundamental rights or freedoms. This mostly concerns the extensively adjudicated sphere of defamatory disputes between individuals and media. Particularities of this setting are described, such as the important distinction between content that constitutes verifiable facts and that which is a mere sum of author's opinions. The disinformation phenomenon is then looked at from the perspective of political expressions; in the context of the role of media as a 'public watchdog'; as well as with acknowledgement of the modern democratisation of online content creation and the subsequent challenges to the established requirements for upholding journalistic standards. A constituting feature of disinformation, the intention of the author to mislead or manipulate, is highlighted as an important element which is removing the option of bona fide protection commonly granted to the media in this context.

The main issue with the previous setting is practical, primarily due to limited scalability. For this reason, the currently prevalently pursued venue for combatting disinformation and propaganda are actions by hosting service providers, given that they share liability for the content with the user due to their role in facilitating its dissemination. The measures currently in place are mostly the consequence of a balanced pressure from European authorities and the voluntary cooperation of the largest hosting providers as well as a recent restrictive interpretation by the European courts of the protective provisions shielding these providers from such liability within the European Union.

Nevertheless, there are limits to the pressure which can be put on these intermediaries, especially minor platforms, which may, however, play a disproportionately large role in disinformation and propaganda dissemination. The evaluation of content through the major platforms additionally creates the threat of undue private censorship. This makes the development and validation of detection and analytical tools under independent and neutral conditions an increasingly crucial issue.

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