Preface

The problem of disinformation needs no introduction for the readers of this book. It has been a topic of heightened public concern since the 2016 US presidential election at the latest, and since then we have seen and read about numerous legislative and self-regulatory initiatives, official positions taken by various public authorities, and a huge amount of academic analysis on the subject. We think that it is worth continuing to think together about how to tackle the problem, because we do not seem to be moving towards a satisfactory solution.

Of course, the problem of disinformation did not start in 2016. As long as there have been public debates, and especially since technology has made mass communication possible, disinformation has been present in the public sphere. It was therefore not the Internet that caused it; nevertheless, the interactive services made available on the Internet, especially social media platforms, have changed the structure of the public sphere and thus the phenomenon of disinformation. Since potentially everyone on the Internet can be a speaker, and since the loss of the former monopoly on disseminating information to the masses, which was primarily available to the media and the elites who were given the opportunity to speak through the media, the risk of disinformation has increased exponentially. Arguably, false information spreads much more widely, much faster, and much more effectively on the Internet. In addition, not only users who have not had access to the public sphere but also some governments and secret services have discovered the potential of this and are trying to influence public opinion or the outcome of an election through disinformation campaigns. And this carries serious dangers for the proper functioning of democracy, or even – especially in war zones, civil war zones, or in times of epidemics – for human lives.

The quality of public discourse is in all likelihood on the decline, although its overall opaque nature makes it difficult to say for sure. In any case, we may feel that the hopes, expressed at the dawn of the Internet in the 1990s, that internet

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communication would bring us closer to expanding democracy, broadening public debate and thus increasing the quality of joint decision-making are at least under threat. Internet content services destroy the cohesion between members of societies, trap users in filter bubbles, and ignore the aspects of public interest, or more precisely of democracy, in the interest of economic profit.

In principle, the range of tools for countering disinformation is very broad. The doctrine of freedom of expression allows legal systems, in principle, to prohibit untrue statements that cause harm but, in the age of global communication, national bans seem less effective. However, individual states' approaches to freedom of expression vary considerably and global agreement is unlikely (for example, the First Amendment to the US Constitution would only allow for a very narrow scope of action against false speech). Setting legal limits is difficult to imagine as an effective solution, since the law enforcement bodies (courts, authorities) would hardly be able to handle the huge number of potential disinformation cases spreading at an astonishing speed.

Indirect action against disinformation, which does not place the onus on the speakers but on the online platforms that make publishing the speech possible, is also feasible. This direction promises greater success, but also raises serious and difficult questions: putting the decision on which user content to delete in the hands of the platforms could harm freedom of expression. If we also accept that platforms define in their own private speech codes what they consider 'dangerous' speech (which does not necessarily mean that the content is illegal), then we are not only leaving the oversight but also the norm-setting to them. Some may argue that never before in the former media world has there been such a concentration of power, now in the hands of platforms, to influence the public sphere, and that in itself is dangerous.

Self-regulation by the industry also seems possible, but obviously only on a voluntary basis, and the technology market has not been very good at voluntarily reducing its own room for manoeuvre and handing over to an independent body decisions that directly affect its operations and thus its financial interests. The establishment of a co-regulatory system based on cooperation between public authorities (or even regional, supranational organisations, such as the European Union) and market players is also conceivable, and although this has already been initiated in the EU, its impact is not yet clear and will likely not be global.

We also have civil society and education, which are perhaps the best placed to mitigate the harmful effects of disinformation through awareness-raising without state coercion. These can be a valuable complement to public and industry efforts, but are unlikely to provide a comprehensive and definitive solution on their own.

Strengthening credible and reliable news sources is a vital interest in this situation. At the same time, the trust index of legacy media is deteriorating almost everywhere, with people less and less confident that the media can provide them

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with verified, accurate information and that they perform their duties impartially. The impact of internet communication, the weakening economic base of legacy media, the changing needs of audiences, and the polarisation of societies are also behind this phenomenon, making it difficult to imagine that the media can regain the role they once played in the public sphere.

It is not only the online debates of individual users that often present a disappointing picture, but the quality of public debate in the mainstream media is also in decline. It may seem that, in the age of the Internet, everyone has the right to their own truth. But 'someone's truth', or even 'alternative facts', are not 'the truth' and not 'the facts'. If the public is dominated by personal convictions as opposed to commonly agreed facts, and if the public at large is no longer interested in the latter, there is little chance of disinformation being countered.

Could there be no good solution to the problem of disinformation? At the moment, we cannot rule out this possibility either. Even so, for the time being, it is worth thinking about and fighting this phenomenon. This book was born out of that consideration. Its authors are lawyers, academics, and eminent representatives of their fields from all over the world. We, the editors, hope that their contributions will provide a broad picture of how disinformation is being tackled around the world. Apart from the introductory chapter, which sets out the basic issues in a common conceptual framework and describes the structure of the volume, the book largely refrains from describing the problem in detail, as we believe that it is well known to all interested parties and that it is similar in the various countries of the world.

We have tried to focus on the possible solutions that have emerged so far in different legal systems or regional organisations, and on the possible additional instruments suggested by our expert authors. The contributing authors approach the problem of disinformation and misinformation in different ways, but all working towards the same overall goals and objectives. Some propose new government regulations to combat the problem. Other contributing authors believe that the best solutions must involve better efforts at moderation and responsible journalism, with or without 'encouragement' from governmental authorities, so-called regulation by raised eyebrow. Finally, some believe that the best solutions must come from the bottom up rather than the top down; consistent with this approach, these contributing authors propose engaging non-governmental organisations and civil society entities to better inform voters and also empower citizens, through media literacy efforts and the like, to discern more reliably truth from fiction in the marketplace of political ideas. The editors believe that all of the reform proposals that follow have potential merit. Moreover, it seems very likely that all three general approaches, in combination, will prove necessary to identify, adopt, and then implement successfully reforms that can and will work (and, critically, that will do more good than harm).

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We believe that the quality of public discourse determines the quality of democracy, and the quality of democracy determines the well-being of people. So the stakes are high. We hope that this volume will be a valuable contribution to the ongoing debate on its subject.

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