



**Selected Papers of #AoIR2022:
The 23rd Annual Conference of the
Association of Internet Researchers**
Dublin, Ireland / 2-5 Nov 2022

BEYOND PERFORMATIVE TRANSPARENCY: LESSONS LEARNED FROM THE EU CODE OF PRACTICE ON DISINFORMATION

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In June 2020, the European Commission requested that signatories to the EU Code of Practice on Disinformation should provide “monthly reports on their policies and actions to address COVID-19 related disinformation” (European Commission, 2020). Six signatories (Google, Meta, Microsoft, Mozilla, TikTok and Twitter) took part in this monitoring programme. While the European Commission asked signatories to address the specific topics, the decision of how to structure the reports and what level of detail to include was left up to the platforms themselves, leading to a high level of variation between the nature of each signatory’s reports. We conducted an in-depth analysis of the 47 reports submitted between August 2020 and April 2021 and coded each self-reported action (1114 in total) to assess their quality and relevance.

Overall, we found that while the transparency reports were designed to provide clear, meaningful data, in reality the process of assessing each platforms disinformation actions was labour intensive and difficult to assess due to instances of repetition, vague descriptions and even reporting of actions which were irrelevant to COVID-19 or disinformation. While data was requested at both an EU and Member State level, the application region was unclear or unstated for 40 percent of actions and 68 percent did not report any outcomes, metrics or results. The lack of granular data showed a reluctance to share relevant metrics that would highlight both the scale of the problem and the impact of actions taken to address disinformation. Additionally, the platform actions were often reported through a public relations lens using a promotional tone, with some actions copied directly from blog posts or press releases.

The EU Code has attempted to approach the issue of disinformation through a self-regulatory model, but this has seen limited success. Occupying the grey area of legal but “harmful” content, disinformation is difficult to define, poorly understood, always

Suggested Citation (APA): Park, K., & Culloty, E. (2022, November). *Beyond Performative Transparency: Lessons Learned from the EU Code of Practice On Disinformation*. Paper presented at AoIR 2022: The 23rd Annual Conference of the Association of Internet Researchers. Dublin, Ireland: AoIR. Retrieved from <http://spir.aoir.org>.

evolving, and entangled in the fundamental right to freedom of expression. Self-regulatory mechanisms to increase the accountability of digital platforms, such as the EU Code, have repeatedly failed to address these core issues. The study of disinformation is hampered by a lack of access to meaningful data and while Code signatories have committed to providing data for research, so far the quality of data provision has been extremely poor. The findings from our analysis are consistent with the findings from previous monitoring reports about the Code which have concluded that self-regulation is not sufficient and that there is a need for independent verification of signatory claims, clear reporting standards such as the use of KPIs and greater access to data for researchers (ERGA, 2020; European Commission et al., 2020). The lessons learned from the Code so far are that while platforms may express that they are meeting their commitments as signatories, the quality of their efforts does not always match expectations. Moreover, there is little evidence to suggest that the co-regulatory framework envisaged by the EU's Digital Services Act will improve this situation as promises around transparency and access to data will still be dependent upon platform co-operation, leading to the danger of "accountability theatre" as opposed to true accountability (Douek, 2022).

In rethinking regulation, we argue that the way in which we understand the role that social media platforms play in both the collection of data and the social outcomes that result from these data extraction processes needs to be questioned. Data colonialism contends that digital platforms translate the social into data that can be mined as capital, and in doing so they reshape our social relations (Couldry and Mejias, 2019b), as evidenced by the concept of the 'platform society' (van Dijck et al., 2018). When it comes to disinformation, this introduces a certain level of culpability, as while platforms can claim there are limits to the extent they can verify or monitor all information posted by users, incentives to post disinformation, such as making a profit through gaining an audience, or the motivation to scroll a newsfeed to consume news, exist because of the affordances and design that a platform has encouraged as part of its data extraction efforts.

As we have found in our own analysis, the performance of corporate responsibility often clouds the quality of transparency reports. This is particularly true for researcher access to data, when such access may uncover issues which harm a platform's public image (Roose, 2021). However, the idea that platforms can or should control access to relevant data based on their corporate interests is rooted in a belief that user data itself is a "replenishable, inexhaustible, owner-less resource" or a raw material (Couldry and Mejias, 2019a) and that platforms do the work of extracting, processing and profiting from that which is freely available. A critical perspective on this, calls for truly transparent access to data based on the idea that what platforms hold as property is based on a "commercially motivated form of extraction" rather than a "naturally occurring form of social knowledge" (Couldry and Mejias, 2019b).

As Evelyn Douek (2022) has argued, there is a need for a "second wave of regulatory thinking" that moves beyond ambiguous platform policies, vague definitions of harm and transparency reports which offer little insight. We argue that European debates about regulating online disinformation need to be set against a broader perspective on regulating the digital environment as a public infrastructure. As Busch (2021) writes, the

pandemic has revealed the extent to which certain platforms act as systemic infrastructures in areas such as education, healthcare and communication, concluding that regulation of platforms should move towards a public infrastructure based regulation in which platforms are obligated to act in the public interest. We believe that policymakers can achieve better civic and democratic outcomes by focusing - not on a minority of large platforms and the content they host - but on regulating the digital environment as a public infrastructure through, for example, robust competition, data portability, and interoperability rules. Such actions have the potential to break the dominance of Big Tech while incentivising better and new services for citizens.

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