

# Manipulative Machines

## Regulation of the Use of Social Bots to Manipulate Public Opinion on the Internet through Criminal Law in Germany

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Social bots are profiles in online social networks that are automated by computer programs while appearing as human users. They are among the phenomena which are discussed critically under the umbrella term of disinformation. In German law, social bots have often been examined from the perspective of public and administrative law. Most authors thus far have discussed which public law instruments *should* be used to regulate the potentially harmful effects of social bots and - in view of conflicting fundamental rights positions – *could* be used to do so. Some authors have already examined possible risks of criminal liability, too. This dissertation contributes to the debate from the viewpoint of criminal policy. It addresses the question of whether criminal law regulation of social bots would be both *permissible* and *advisable*.

First, the author examines the factual background of social bots. Inter alia, he describes the results of a field study he conducted himself to better comprehend the subject. He emphasizes the question of what spread of social bots can be *empirically* proven at the time of writing. He then examines which risks of criminal liability already exist under German law when using social bots. He focuses on the statutes against defamation and insult, as well as data manipulation and computer sabotage. The author shows that potential perpetrators are already subject to various statutes of German criminal law when using social bots to spread certain harmful contents.

In the follow main section, the author considers four approaches to *new* criminal law regulation: a so-called abstract endangerment offense, an aptitude offense, a qualification solution, and a sentencing solution. First, he derives criteria which can be used to evaluate the potential new regulations in terms of constitutional law and criminal policy. Then, he examines the four regulatory approaches in detail. He delves into the questions of whether the use of social bots falls under the scope of fundamental rights (especially the freedom of speech), whether a specific legal interest can be identified that would be protected by a criminal regulation of social bots, which regulatory alternatives should be considered, and whether a new criminalization would merely be so-called symbolic legislation.

Ultimately, the author rejects all four approaches: The abstract endangerment offense and aptitude offense would be inadmissible under constitutional law. A qualification solution would be permissible under constitutional law but would not be advisable in terms of legal policy. Finally, he rejects a sentencing solution as too vague, incoherent, and not enforceable. The study concludes that the use of social bots to manipulate public opinion on the internet should *not* be regulated by means of criminal law.