Submission of Recommendations Regarding the Consultation on Regulation of Online Political Advertising in Ireland

Institute for Future Media and Journalism
Dublin City University
Glasnevin
Dublin 9

19 October 2018

DCU | Institute for Future Media & Journalism

Introduction

Given the central importance of elections and referendums to democracy, it is necessary to regulate political advertising to ensure the integrity, fairness and legitimacy of the election process and its outcome. Although online advertising enables legitimate campaigners to communicate with voters in new ways, it also presents significant risks and challenges, which could mislead voters and undermine the integrity of the electoral process. The regulatory framework for online political advertising needs to be updated to address these challenges. However, it is important to recognise that the digital environment evolves rapidly with new platforms and capabilities likely to emerge in the near future. Therefore, any regulatory measures require careful consideration to account for existing and emerging capabilities in digital advertising. In this document, we outline our key recommendations to increase the transparency of online political advertising, to prevent the misuse of online campaigning, and to ensure public confidence in the electoral system.

Key Recommendations

The establishment of the Electoral Commission as outlined in the Programme for Partnership Government and recommended by the Interdepartmental Group on the Security of Ireland Electoral Process and Disinformation.

The establishment of a searchable repository of online political advertising, which includes information about adverts (source, source location, content production, costs) and their distribution (channels, target audience, use of data).

A requirement to include imprints on all online political advertising to indicate who is responsible for creating the material.

1. Questions on the Definition and Scope of Political Advertising

Political advertising may be defined as campaign materials, in whatever medium, that aim to influence how people vote in elections or referendums. Currently, the Irish regulatory regime allows for political advertising in the print media, but paid political advertising on television and radio is prohibited by legislation[1]. However, given the high-level of media integration in the digital environment, it is questionable whether maintaining such categorical distinctions remains justifiable. We recommend that greater consistency and standardisation is applied in the regulatory requirements for all political advertising across print, broadcast and online.

[1] Rafter, K. (2009). Political Advertising: the regulatory position and the public view. Dublin: Broadcasting Authority of Ireland.

Should the definition of political advertising be limited to the promotion of candidates or proposals (the subject of potential elections or referendums)?
The ban on paid political advertising in broadcast media applies not just to political parties and election candidates, but also to organisations promoting issues which are considered to be of a political nature. As such, these latter organisations are precluded from all forms of broadcast advertising. Consequently, any advertisements which are directed towards procuring or opposing changes in legislation, government policies or policies of government authorities are deemed to have a political end and are, therefore, banned. We believe the broad scope of this ban inhibits public engagement with policy and means that civil society and campaign groups are often left without redress when illegitimate groups spend money to undermine their position. There is also some concern regarding limitations on freedom of expression that arise from the broad interpretation of "political" taken by existing regulatory organisations such as the Standards in Public Office Commission. We recommend that the definition of "political", as per the Electoral Acts, be examined in detail by the newly established Electoral Commission taking into account the recommendations of the Coalition for Civil Society Freedom and with a view towards enabling greater freedom of expression for legitimate campaign groups and civil society.

Should any regulation in this area apply to both candidates and political parties campaigning at elections and also apply to referendum proposals?
As the potential to undermine electoral democracy exists for both elections and referendums, it is important that both electoral processes s are treated in a broadly comparable manner. However, there is perhaps a greater potential for the emergence of unregulated campaign groups and/or advertisers in the case of referendums.

Should controls be limited to defined time periods in advance of referendums and/or elections?
The evidence indicates that most of the public do not tune into a campaign until it is underway. Thus, political advertising is likely to be most efficacious in the weeks of the official campaign period once an election or referendum has been called. In recent referendums for example, over half of all voters made up their minds in the course of the three week campaign period. To ban political advertising in advance of the period of time is likely to be problematic for freedom of expression.

2. Questions on Increasing Transparency

The online environment presents a number of transparency issues. Currently, the source of an online advert may not be evident to voters. This lack of transparency is further complicated by the potential use of 'fake' social media accounts and automated bots to generate content for a particular campaign. Similarly, there are media platforms that not subject to policy of legislation in this jurisdiction and malicious actors can use a range of tools to bypass technological barriers. In addition, there are concerns about

micro-targeting segments of the electorate through high-tailored “dark” advertisements that are not visible to the general electorate. Consequently, a key consideration for regulation is determining which aspects of online advertising should be made transparent.

What should be made transparent?

We recommend that transparency be required for both content creation, and distribution. To improve transparency in electoral and referendum campaigns, regulation should be applied to both campaign groups and digital media platforms. The total volume of paid for adverts across digital platforms, the total paid for each advert, the time it was selected to be visible for and if demographic micro-targeting options were selected as part of the advert distribution strategy should be submitted by both digital platforms and campaign groups. In addition to this, where funding (either paid directly or through benefits in kind) is used for content production and distribution should also be included; this includes information about what organisations campaigners have paid to produce digital media content and manage its distribution online. These details must encompass direct payments as well as indirect benefits such as vouchers, or services, and gifts. To address the problem posed by ‘dark’ advertising’ the range of platforms and strategies employed on different digital media platforms used by campaigners such as WhatsApp or Telegram should also be included. To ensure that all parties are adhering to electoral rules and regulations, there should be some capacity to audit these campaigns during elections and/or immediately afterwards where problems arise.

In order to ensure the integrity of the democratic process through an informed citizenry, it is necessary to know who is funding political campaigns. The identity of the account owner or organisation should be required to be made fully transparent by the advertiser as well as contact information, but the collection, storage and publication of such information must be compliant with data protection regulation. We recommend that the location of the advertiser should be made clear. However, there are potential complications in this regard: it is not sufficient to rely on the location data provided by social media companies as automated location identification by social media companies has proven unreliable for accuracy. For example, an advert may be identified as originating in another country, but the user may simply be an Irish person on holiday/work travel. Furthermore, anyone who uses a Virtual Private Network (VPN) or proxy server can obscure and distort location data or may have no control over the location of the server. To this end, measures requiring accurate identification of the user posting a political advert must be developed. However, even by combining location GPRS data and requiring posters to include location information, we do not envision that this approach would be fool proof.

If consistency is desired, should any regulation in this area broadly mirror the transparency provisions in the Electoral Acts in relation to notices, bills, posters and other similar documents, i.e. the advertisement's printer and the publisher?
To achieve consistency and acknowledging the reality of cross platform sharing of content, the same or similar rules should be applied to digital adverts as analogue adverts. However, additional rules should be applied to digital advertising to achieve the desired effect that the provisions of the Electoral Act envision (e.g. with regard to micro-targeting). In addition, we recommend that the responsibility on political advertisers to be accurate, fair and transparent in sources of information be included in regulation and/or guidelines.

Should the geographic location of the printer and publisher also be included?
We recommend that campaign groups are required to provide information regarding who produces the content for political digital campaigns and where this work is outsourced to other markets, the location of the content producers should be included.

Intended target of the ad?
As noted above, we recommend that both digital platforms and campaign groups should be required to submit detailed information regarding how they distribute adverts, including any targeted advertising to specific demographics by disclosing what demographic criteria are selected and what demographics have been excluded from advert distribution.

Organisation whose custom target list the recipient belongs to?
All citizens who have their information collected for political advertising or campaign purposes should be made aware that their information is being stored, what information is recorded, by whom, and how it is being used as well as given the opportunity to have their information removed from any databases. Furthermore, the process of identifying which database/list a individual is on, and being removed should be made as accessible as possible.

The "lookalike audience" target list?
To ensure transparency, all information regarding the strategic distribution of political advertising online should be made transparent by both digital platforms and campaigners where micro targeting options are selected and the digital platform has presented these adverts to 'lookalike' audiences.

3. Questions on existing models or proposals which may assist in defining these issues

There are a range of useful proposals from other markets. However, it is notable that other markets - for example, in UK, USA and across Europe - have a number of public interest institutions (such as NGO initiatives, independent fact-checking and verification organisations, media monitoring and research groups) already in operation that are not present in the Irish environment. We must recognise that the starting position in this regard is a step behind other markets. Therefore, to tackle problems that arise in the information ecology, we recommend that the development of similar initiatives in Ireland such as independent OSINT, verification and media monitoring organisations. The establishment of an independent and impartial Electoral Commission is also crucial in this regard.

4. Questions on Stakeholders

Which stakeholders will be impacted?

We may conceptually group those who will be directly impacted by any legislative changes into: citizens; campaign groups; and digital media platforms. Campaign groups include political parties, candidates, interest groups/NGOs and civil society more broadly. Digital media and associated advertising platforms include social media platforms, the online platforms of traditional media, non-linear audio-visual media services, and video sharing platforms. Should regulation aim for consistency between print, broadcast, and online media, then all media publishers would be directly affected. The impact on citizens will not be limited to those individuals who may progress from passive consumer to activist during campaigns. Political engagement and the freedom to participate in the electoral process is an important part democratic societies and any regulations should not be so heavy handed as to discourage political participation. In addition, from a normative point of view, we can understand that in an ideal world a vote, whether for a party, candidate or a referendum issue, should match the values of the voter. Yet, many rely on heuristics in deciding on a vote. It is thus imperative that all citizens are aware of who is targeting them with any particular political information.

Are there other stakeholders likely to be impacted?

We recommend a thorough review of the stakeholders that may be affected by regulation changes. This should be conducted by the newly established Electoral Commission. There is the possibility that think tanks, research units, fact-checker organisations, academics and websites that use cookies to target advertising many be affected by some of the proposals and care must be taken to ensure that they may continue to conduct their work and public outreach.

What impact will regulation have on which stakeholders?
We recognise that many of the proposed changes to legislation will make political campaigning more labour intensive for campaign groups. However, the increased administration and technological literacy required to ensure compliance is a necessity to ensure the integrity of political campaigning in democratic societies. To address this, we suggest that educational resources be made easily available to campaigners and a support structures be implemented. Similarly, we must acknowledge the inequality of resources around some political campaigns and to address this we would recommend limiting the amount that campaign groups can spend on digital advertising. Digital media platforms are well positioned and resourced to provide the details of digital advertising campaigns and should be required to facilitate the real-time observation of the adverts that they are taking payment for. Further to this, we suggest digital media platforms be required to apply rules to all political advertising all year round and not just at election times.

5. Questions on the Technical / Operational Capability to Control Advertising/ Governance

What technical capability have social media and online platforms to control advertising?
There is very little information regarding what exactly social and other digital media platforms can control and what resources, both human and technological they have to address these problems. We recommend that digital media platforms taking political adverts produce reports and enter into a dialogue to offer a comprehensive description of their technological and human resource capabilities in this regard, which should be inspected and audited for veracity. However, we do know that platforms can require advertisers to disclose a range of mandatory information upon placing ads/campaigns and verify that information as much as possible.

What limitations are there for online platforms?
We do not believe that the suggested regulations placed on both digital platforms or campaigns groups will be sufficient to address all the problems that have arisen and will arise in the future. Skilled malicious actors such as hackers and hoaxers can find ways to work around social media rules and regulations. The desire and ability to evade the regulation is inherent in these campaigns. Where regulation presents a barrier, these actors develop solutions. Something that can respond to this reality in a meaningful way must be implemented to remedy the limitations that platforms have to respond to the new developments by malicious actors. To address the fast evolution of evasion techniques, and to monitor the practices of malicious actors, a range of safety nets that uphold the quality of the information environment should be developed. We also recommend a thorough review of digital media platforms and tools be undertaken by the newly established Electoral Commission.

What organisations should come within the scope?
If the aim is to ensure a healthy information environment in general or in the lead up to election than all organisations within jurisdictional reach that carry advertisements should come within the scope including private messaging services.

How can regulations protect against/prepare for technological advancements?
Regulations alone cannot comprehensively future proof an industry that is based on creative solutions to technological problems. The potential changes signaled in the FuJo Media Digital News Reports 2015 - 2018 show that younger users are less inclined to use public facing platforms such as Facebook and are more engaged on closed platforms such as WhatsApp and Snapchat. This should be taken into consideration. That is why extra monitoring, reviewing and reporting measures must be implemented to ensure that any implemented regulation remains meaningful and to signal any changes in the digital environment that might render them obsolete or ineffective.

How to control right to be free from microtargeting/right to know origin of microtargeting concerning political preferences?
In line with the spirit of the GDPR regulation, we recommend that where information on individuals is being recorded and stored by any campaign group or media platform that they should be made aware and have the option of opting out.

6. Questions on the Legal Framework for Regulating Online Communications

How can the transparency of online political advertising be regulated – considering obligations placed on sellers or buyers of advertising or both?
We recommend that the legal framework include both the buyers and sellers of advertising. Those wishing to place political advertising should be required to follow rules including providing detailed information regarding spend, the time adverts are to run, location, content creation, distribution as well as demographic targeting. To ensure compliance, fines should be imposed where the information provided is false or misleading.

Separately, digital platforms should be required to provide the same information (which facilitates cross referencing and compliance). We recommend that digital platforms be required to implement meaningful communication channels with media monitors, and enforcement agencies ahead of election times that can address issues of explicit non-compliance and to address those actors that are not covered by or evade the regulations. As part of the measures to be implemented, digital platforms should have set time limits for the removal of content, and fines where they fail to comply. Further to this, where there are repeated problems from specific pages,

accounts or users there should be timely bans for advertising from these pages/users. To ensure compliance, digital platforms should have requirements and facilities regarding auditing of their work around election times.

What challenges arise from extraterritoriality?

The issue of extraterritoriality is highly complex. We recognise a gap in applying regulations to platforms which are not in this jurisdiction including users of these platforms There is little that can be achieved by the complete ban on foreign advertising that does not fall within the jurisdiction. For those platforms that are subject to regulation, a complete ban may disenfranchise parts of the electorate who are not full time resident in Ireland. As noted above, there are technological and real world workarounds to expose real locations and for selecting locations, such as the use of proxies or VPN servers. Similarly, there is a need to negotiate political advertising from the perspective of Ireland's membership of the EU and the need to protect the health of the EU democratic process. Any regulation regarding the limitations on advertising from outside the nation state must consider the possible outcome of a Referendum on the extension of voting right to the diaspora who must be facilitated to engage with Irish politics and would have rights to engage in the homeland political processes. Further to this, migrant groups in Ireland from other countries where personal privacy is important for safety when engaging with 'homeland' political affairs should be consulted to determine how any transparency regulations implemented in Ireland could affect their capacity to digitally engage across borders.

Who should monitor compliance with governance norms?

We recommend that an Electoral Commission independent of government and of commercial media should be developed to identify and respond to any breaches of regulation and to address emerging issues that are not yet identified. The pace and scale of evolution of digital misinformation and disinformation campaigns requires a response that has the flexibility to respond to rapid developments, particularly at election time - but ideally all year round – and that have a meaningful communication channel with the social platforms as well as public facing outreach to address disinformation that cannot be removed (e.g. via non cooperative platforms). The Commission would build on such skills as OSINT, fact checking and verification source tracing, image and video manipulation expertise, emerging technologies such as blockchain.

What short-term or long-term measures are suitable?

Some very short term emergency measures may need to be implemented in the Electoral Acts in order to safeguard the electoral process in any 2019 elections. However, an Electoral Commission should be simultaneously established with legislation introduced before the summer recess in 2019. It is vital that the Electoral Commission not be considered a 'long term' option. This has been on the agenda for many years and is contained in the Programme for Partnership Government.

How will enforcement work?

In line with recommendations from other jurisdictions, we suggest the use of significant fines for social media platforms that do not comply with regulations as well as fines and/or bans for political parties, NGOs and campaigning organisations. However, enforcement should not be implemented without support mechanisms to enable compliance. We recommend the provision of information campaigns and materials for campaigners as well as open communications channels between enforcement agencies, the campaigning groups, and digital platforms. As there is no way to comprehensively address the range of existing problems, and those that will inevitably emerge, through legislation, we stress the need for real-time reviewing and public reporting on the quality of political campaigns at election time.

We look forward to engaging further in the development of this policy and the Open Policy Forum in November.

Sincerely,

Jane Suiter
Director, DCU Institute for Future Media and Journalism

Niamh Kirk
PhD Researcher, DCU School of Communications

Eileen Culloty
Post-Doctoral Researcher, DCU Institute for Future Media and Journalism

Tanya Lokot
Assistant Professor, DCU School of Communications