Transparent Referendum Initiative

Submission on Regulation of Online Political Advertising in Ireland

Transparent Referendum Initiative, October 19th 2018

Summary

Online advertising provides a valuable platform for political parties, candidates and groups to inform, persuade and engage the public. However, it also provides a platform for unscrupulous actors to spread disinformation, undermine public trust or influence electoral processes.

The issue, from a regulatory perspective, is two-fold: activity is difficult to detect and trace; and our institutions are not equipped to respond to poor behaviour once it is detected.

A two phase response is required. Immediate action is needed to ensure that voters can trust the integrity of the 2019 electoral processes. Therefore;

1) An **emergency, non-statutory agreement** should be reached with advertising platforms ensuring **real-time transparency of electoral and issue based advertising** as interoperable open data**.**

The challenges presented by online advertising are one part of a systemic problem that requires systemic solutions; "quick fixes" will not future-proof Irish democracy. Therefore,

2) **Government should expedite the establishment of a permanent, independent Electoral Commission**, as part of reforming the Electoral Acts so they are capable of dealing with current and future challenges to democracy posed by technology.

A commitment to debating legislative proposals before the 2019 Dail summer recess would provide reassurances that emergency measures are not displacing sustainable solutions.

The definition of "political" advertising.

The term "political advertising" can refer to two separate types of paid online activity;

1) Electoral advertising - which intends to directly influence the voting intention of citizens in an election or referendum period by advocating a voting decision. For example, "Vote Yes in the upcoming referendum"
2) Issue based advertising - which, although it isn't aimed at a specific electoral vote, nonetheless is aimed at persuading the viewer to change their opinion on a societal or

political issue, as distinct from commercial advertising which aims to change their purchasing behaviour.

Online electoral advertising is direct expenditure to influence the composition of our elected chambers, and in the case of referendums, the wording of our constitution. It is already enshrined in law that this advertising should be subject to rules; they are banned from TV and radio, and cannot appear in print or posters without key information. Election advertising should be subject to transparency measures, and also to broader regulation under reformed Electoral Acts.

Issue based advertising, as part of broader advocacy work, is an important part of the work of civil society. It should not be subject to the Electoral Acts. However, as this activity helps shape public opinion, and involves expenditure to do so, it should be both detectable and traceable.

We therefore recommend that the proposed transparency measures outlined below apply to both online electoral and issue based ads.

The problem

Online advertising is one of many emergent issues facing democratic processes. “Quick fix” solutions will not deliver the future-proofing Irish democracy needs. Longer term reform, underpinned by legislation, is needed. However, right now Ireland faces a crisis that cannot wait for legislative processes.

Stakeholders

Online political advertising is a regulatory blind spot that benefits those who might wish to behave poorly, while negatively affecting those who wish to act within the bounds of the law. It is affecting at least three stakeholders:

- **Citizens** are unable to evaluate information online, as they are not offered consistent information on its provenance. Journalists cannot offer them comprehensive analysis of campaign messages and activities as much activity is undetectable and untraceable. This risks eroding trust in the democratic process and the broader media and information environment.
- **Legitimate campaign groups, candidates, parties and civil society** cannot currently operate with certainty that they are within the law. Yet at the same time, they see no restrictions or avenues for redress where often untraceable actors are spending money to disparage or deligitimise their position, their character, or reputation.
- **Advertising platforms** felt so much uncertainty about what activity they could allow under the law, including after consulting with SIPO, that they withdrew or restricted services in the May 2018 abortion referendum. The withdrawal of services with no warning or opportunity to appeal has since been used to question the company’s impartiality and if the process overall was fair.

Priority issues urgent action should address

Urgent action is needed in time for the upcoming May 2019 Local and European Elections. This action should address the following concerns about online electoral - and to some extent issue based - advertising:

1. It allows anyone to **share information in hidden ways**, that are not open to scrutiny / fact checking, including information that is false, misleading, manipulated or defamatory
2. It allows individuals and groups to **anonymously spend money to influence a referendum or election process,** without sharing their location, identity, intent or source of financing. This allows overseas groups or vested interests to mask their identity and position themselves as Irish or grassroots groups.
3. It **denies consumers access to the contextual information** they need to evaluate a piece of information they have been shown, and journalists, civil society and regulators the ability to **trace and hold to account** those who are paying to spread disinformation.
4. The ephemeral nature of online ads, where content is deleted or accounts shut down, leaves **no permanent trace** of the information which had been promoted in an electoral process, and the financial transaction that enabled it.
5. The in-app nature of the existing transparency tools of advertising platforms makes it **difficult to bring together insights from across platforms**, to identify new purchasers of advertising, and to build “big picture” insights of electoral processes.
6. There needs to be **clarity on how existing electoral law applies** to activity online, including what counts as material support from outside groups, and the definition of “political”. On this latter point we urge consideration be paid to the Coalition for Civil Society Freedom, who argue that the current definition in the Electoral Act may cover all civil society public affairs advocacy, and thus contravene human rights law.
7. A lack of regulation enabled private companies to take unplanned, unexplained and unendorsed self-regulatory steps which disrupted campaigns in the recent referendum. The **Government needs take a lead in setting out clearly, and in writing, the expectations for both advertising platforms and campaigners** as soon as possible.

Failure to deal with ambiguities in the law and its implementation could lead to legal challenges of the results of future votes, and the broader erosion of trust in democratic processes.

Recommendations: emergency non-legislative measures

In order to ensure the integrity of the May 2019 Local and European Elections, as well as any potential forthcoming General Election, the following immediate actions are recommended:

1) A non-statutory agreement between government and advertising companies, committing to the implementation of **coordinated and interoperable transparency measures** for online electoral and issue based ads in Ireland (see detailed recommendations below)
2) **Clarification** on key definitions and responsibilities under the existing acts.
3) **A commitment from the government, to introducing legislation** reforming the Electoral Acts and establishing an independent Electoral Commission before the 2019 summer recess.
4) A **commitment from opposition parties** to actively engage in ensuring this process is evidence driven, and focused on positioning Ireland as leading globally in addressing the challenges of digital threats to democracy.

The Irish Government, as the host country and regulator for many of these companies, should also ensure that any measures introduced here in Ireland also be implemented by the advertising companies for those in the 26 other EU member states that will vote in May.

Detailed proposals for a non-statutory agreement:

1) **Real-time transparency**: Clear information about an ad should be easily accessible to the viewer. The following data points should be included:
    a) *Sponsor of the ad*: including
        i) the amount spent,
        ii) the name and location of the organisation that bought the ad,
        iii) a list or a link to its disclosed donors, where appropriate
    b) *Time and targeting parameters*:
        i) time period during which the ad is/was running,
        ii) the ad targeting criteria selected by the advertiser, (if applicable)
        iii) and (if applicable) the ad targeting criteria that indicate why the recipient was included in a so-called “look alike” target list
    c) *Engagement metrics*: number of user impressions the ad has paid to reach, number of active engagements by users (if feasible to calculate in real time)

2) **Open API of ad data:** The above information should also be available to citizens, journalists and oversight groups not directly targeted by the advertising. The data should be available through an API that can be analysed in combination with data from other platforms. Interoperability will be key, and this will require companies working together on a basic standard for the data release.
    a) All the information in the real-time disclosure for each ad should be compiled and stored by advertising platforms in machine readable, searchable databases available through an open API.
    b) If the ad mentioned a candidate, party, referendum topic or electoral issue, that should be logged.

   c) This data should be available online for public viewing at all times, both during and after the referendum.

3) **Monitoring and feedback**: In line with the recommendations Digital Advertising Alliance "Application of the Self-Regulatory Principles of Transparency & Accountability to Political Advertising", any agreement should nominate an independent body who can monitor implementation. This group should also provide opportunities for groups to feedback and engage with the platforms.

4) **Clarification from the state:** Of immediate importance is the issuance of clarity from the state on:
   a) The definition of "political" as per the Electoral Acts, and therefore the activities over which SIPO has a remit. This should take into consideration the concerns and recommendations of the Coalition for Civil Society Freedom.
   b) What constitutes in-kind support from overseas groups, in particular when it comes to the promotion of content from campaign groups by overseas actors.

About the Transparent Referendum Initiative

www.tref.ie

The Transparent Referendum Initiative is a volunteer led initiative launched in February 2018. It set out to bring online advertising during the referendum on the 8th amendment into the public domain, so that it could be exposed to scrutiny and used to build insights for electoral reform.

The project worked with 600 volunteers across Ireland to build the world's first real-time, open database of digital ads during a live campaign, collecting 1535 Facebook ads from 317 groups.

This data was the basis of scores of pieces of analysis and investigative journalism by the Irish Times, the Guardian, the Times, the BBC, the New York Times, Buzzfeed, Politico, the Journal, Channel 4, Wired, CNN, NBC, CBC, Reuters, the Sunday Business Post, Vice and many others. This scrutiny led to two unprecedented changes in policy by Facebook during that period of time, and a ban on political advertising by Google.

In April of 2018 TRI launched a research partnership with UCD's Geary Institute, with the aim of ensuring that insights from the project fed into reform of Ireland's electoral laws.

The project was founded by Liz Carolan, transparency and open data expert, Craig Dwyer, social media consultant, and Peter Tanham, digital advertising entrepreneur. Killian McLoughlin joined the project from the Geary Institute to support on data management and analysis.

TRI receives no external funding.

See also the Transparent Referendum Initiative's Submission to the Joint Committee on Communications, Climate Action and Environment, and our Policy Proposals for regulating online advertising.