Public Consultation on Regulation of Transparency of Online Political Advertising

Summary of Submissions Received

The public consultation on regulation of transparency of online political advertising was open for submissions from 21 September to 19 October 2018.

The general public was invited to contribute views. Main stakeholder groups were also targeted. This includes political parties, academics, the media, online companies and representative bodies. 15 submissions were received in total (See **Fig 1** for list of submissions).

A brief discussion paper on the issue, including key questions for answer, was made available. This provided a structure for responses.

There is general consensus that the regulation of transparency of online political advertising is an important and urgent issue to address, particularly in advance of the European and Local Elections in May 2019.

Concerns

The Transparent Referendum Initiative (TRI) note a number of issues concerning online political advertising which should be addressed. These include:

- Can allow information to be shared in hidden ways.
- The public are denied access to contextual information about a political advert.
- Prevents the ability to hold to account those paying to spread disinformation.
- Lack of clarity in electoral law.
- The non-permanent nature of online advertising.
- The risk of 'broader erosion of trust in democratic processes'.

The Irish Council for Civil Liberties note their concern with regard to the fundamental right to freedom of expression, and the risk that regulations could 'unnecessarily and/or disproportionately interfere with the basic democratic freedoms of expression and association'.

Common Recurring Themes

Some common responses to the questions posed in the discussion paper are thematically outlined below:

Transparency Regulations for online political advertising

- Online political adverts should contain clear and accessible information about its provenance.
- Same standards should apply to online political advertising as those that apply to election posters, i.e. name and address of the buyer of the advert. The required information could also include details about the cost of the advertising.

- The DCU Institute for Future Media and Journalism (FUJO) note that the 'collection, storage and publication' of information should comply with data protection regulations.
- FUJO recommend requirements on transparency for both content creation and distribution.
- FUJO also note the potential complications with regard to accurate determination of location data.
- Input from commercial stakeholders will be important to ensure appropriate transparency requirements
- Controls for standards of truth and accuracy in online political advertising.
- The application of micro-targeting algorithms and engagement metrics for online political advertisements should be made transparent.
- If 'lookalike audience' target lists are used, this should be transparent.
- It is suggested that immediate non-legislative standards for transparency could be introduced in advance of legislation on the issue.
- As the Data Protection Commission (DPC) note, political micro-targeting can also take place in off-line contexts, citing a recent decision by the UK Information Commissioner's Office on such an issue.
- The DCU Institute for Future Media and Journalism (FUJO) recommend the establishment of a 'searchable repository of online political advertising'.
- There is a risk that malicious actors could find a way around regulations.
- Regulations should also take account of private messaging applications.

Definition/Scope of Political Advertising

- The Transparent Referendum Initiative note that political advertising can include two types of activity:
    - **Electoral Advertising:** advertising intended to directly influence voting decisions in an upcoming election or referendum for which the polling day has been set by Government, and which is advertised during the election or referendum period.
    - **Issue based Advertising:** advertising aimed at persuading the viewer to change their opinion on a societal or political issue.
- It is noted that there is a need for a definition of political advertising, possibly to include across a range of media, including online, and also to cover other jurisdictions.
- For example, the Broadcasting Authority of Ireland (BAI) note that:
    - 'Consideration should be given to defining political advertising in a broad manner and applying controls that focus firstly on the intended aim of the advertising campaign and, secondly, on the nature of the organisation (where relevant).'
- It is noted that the definition of 'political purposes' in the Electoral Acts should be examined, largely from the point of view of creating greater freedom of expression and legitimacy for the activities and campaigning work of civil society and advocacy groups.

Legal Framework

- Regulations should be considered in light of existing legal frameworks.
- A principle based approach to legislation is recommended.
- Futureproof regulations for changes in online technology.
- Regulations should be technology neutral.
- It is noted by the Standards in Public Office Commission (SIPO) that the scope of the legislation should align with the definition of 'political purposes' in the context of donations, as well as the scope of provisions for political donations and election expenses in the Electoral Acts.
- It is noted that challenges may arise from extraterritoriality.

Compliance

- Joint liability should be placed on both sellers and buyers.
- It is noted by SIPO that compliance by buyers of adverts with any new regulations should be an extension of existing obligations under the Electoral Acts.
- Appropriate support structures should be developed to ensure compliance.
- FUJO recommend real-time auditing of online political advertising on online platforms during election periods.

Governance

- It is noted that an electoral commission would be the best placed to monitor compliance with the regulations in the long-term.
- SIPO suggest that this role should be assigned to them as a short-term measure.
- The Referendum Commission recommend the possibility of extending the role of the Advertising Standards Authority for Ireland, in respect of regulating advertising in future referendums.

Enforcement

- The monitoring body or authority could be given powers of investigation and prosecution.
- Fines or imprisonment could be imposed on offenders.

Online Platforms

- It is noted that some online platforms have introduced transparency tools, including for example, identify verification for buyers of political adverts
- Online platforms should offer full disclosure of their technological capabilities to control online political advertising.

Time Periods

- SIPO recommends that controls should apply for at least the same time period during which election expenses are regulated.
- It is suggested by some submissions that regulation should apply on an on-going basis.

- There is some concern that controls only applied during electoral periods (i.e. timeframe between announcement of election/referendum and date of the ballot) would not protect the public fully from the risks posed by online political advertising.
- The BAI note the option of operating permanent measures, with 'specific/additional controls in the weeks prior to an election or referendum...'

Impact on Stakeholders

- The public and electorate will benefit from greater transparency in political advertising.
- As TRI note, 'legitimate' buyers of online political adverts, 'cannot currently operate with certainty that they are within the law.' TRI note that this uncertainty also applies to online advertising platforms.
- The DPC note the risk of 'information fatigue' with regard to regulating transparency of online political advertising.
- Regulations should not act to deter political participation.
- An increased administrative burden may be placed on buyers and sellers of online political adverts, but as FUJO note, 'this is a necessity to ensure the integrity of political campaigning in democratic societies.'
- Technology Ireland note the potential burden on online platforms with regard to complying with regulations and the risk of online platforms being the 'arbiter' of what is a political advert.
- FUJO recommend conducting a thorough review of the stakeholders that would be affected by regulation changes (by the Electoral Commission).

Other initiatives to combat disinformation

- A number of submissions support the development of fact-checking initiatives in Ireland.
- ICCL, for example, are supportive of measures to enhance press freedom.

Figure 1. Submissions Received to Public Consultation

Submissions were received from the following:

1. Broadcasting Authority of Ireland
2. Data Protection Commission
3. Standards in Public Office Commission
4. Dr. Jennifer Kavanagh
5. Brian Stanley T.D.
6. Institute for Future Media & Journalism, Dublin City University
7. Private Individual
8. James Lawless T.D.
9. Joint Committee on Communications, Climate Action and Environment
10. Uplift
11. TASC
12. Technology Ireland IBEC
13. Referendum Commission
14. Transparent Referendum Initiative
15. Irish Council for Civil Liberties