

SUBMISSION

FIRST REPORT OF THE INTERDEPARTMENTAL GROUP ON SECURITY OF IRELAND'S ELECTORAL PROCESS AND DISINFORMATION

JAMES LAWLESS TD

19 OCTOBER 2018

I wish to make a submission in respect of the First Report of the Interdepartmental Group on Security of Ireland's Electoral Process and Disinformation.

Following consideration of my recent Private Members Bill, the Online Advertising and Social Media (Transparency) Bill 2017 the above interdepartmental group was established to consider this bill amongst other relevant issues.

The report issued a number of recommendations and next steps while recognising that the spread of disinformation online and the risk of cyber-attacks on the electoral system pose more substantial risks.

One of the key recommendations (Recommendation 4) details the issues of regulation and transparency of online political advertising. The proposal under this recommendation is to engage with stakeholders (political parties, industry organisations, academia, civil society and NGOs) to develop understanding of the evolving risks to the electoral process and wider disinformation and develop proposals for legislation.

This is the key recommendation I wish to address in this submission.

Background to the introduction of the Online Advertising and Social Media (Transparency) Bill 2017

Recent events in the U.S. elections, the Brexit vote, the Cambridge Analytica exposé and many others show us how in the internet age data has been weaponised and how political power stems from it.

I introduced legislation to the Dáil last year to bring our electoral laws into the 21st century and essentially apply the same disclosure and transparency obligations to online campaigning that have existed for decades for traditional poster and printed materials. My bill mandates that the sponsor and publisher of any political advertisements should be clearly displayed, and that any targeting

algorithm applied be apparent to the recipient. The larger social networks are at an advanced stage of piloting such approaches already whilst even the most basic website can easily incorporate a disclosure notice into any online graphics. Other provisions include online regulation and a ban on the deliberate use of “bot” accounts to create artificial surges, masquerading as “organic” activity.

Ireland has a responsibility to protect our own electoral integrity, with at least one referendum and local, European and possibly general elections on the horizon over the next twelve months. And as the European regulator for very many of the world’s largest corporations, including the technology giants, and essentially as the protector of most of the non-US world’s data, we have an added responsibility to safeguard our international reputation and the rights of all persons within our orbit.

The “Social Media and Online Advertising Transparency Bill 2017” has passed second stage in the Dáil. The vast bulk of the opposition recognised the criticality of such legislation and voted to send it through to next stage. The Oireachtas Communications Committee has also agreed to prioritise the bill’s passage, to schedule additional meetings and to invite in stakeholders. Despite “new politics” and the lack of a government majority however, the *realpolitik* is that the government have found new ways to delay opposition legislation. Over forty bills, including this one, are currently waiting for a “money message” which essentially is a nod from government to progress.

I remain very open to amendments however and to achieve the overriding goal of safeguarding our democracy I have offered to work with all parties and none to edit, alter or even delete provisions as necessary. That is of course the whole point of committee and report stages.

With the BAI saying they don’t cover social media, the Data Protection Minister being apparently not responsible for Data Protection Legislation and still no permanent electoral commission in place to monitor campaign trends and issue guidance there is an urgent need to get such legislation onto the statute books before we next go to the polls.

Civic society groups across all sides of the debate have pointed with increasing alarm at our current exposure and both Fianna Fáil party leader, Micheál Martin TD, and Green party leader Eamon Ryan TD called on the government to accept and progress my bill during Leaders Questions recently.

I have written to Taoiseach Varadkar and to the previous Communications Minister Denis Naughten to invite their engagement on this legislation and to put political differences aside for the greater good. Significantly Mr. Martin Fraser, secretary general to the government, highlighted this piece of legislation and acknowledged the need for it in his report on the strategic communications unit.

The Purpose of my Bill

This Bill is titled the Online Advertising (Transparency) Bill 2017. This bill is principally about extending the same principles of transparency and accountability that we already apply to traditional media to new forms of media. As it stands, under the Electoral Act 1992, it is illegal to display an election poster that does not clearly state the printer and publisher of the ad.

This bill extends this to online advertising, whereby all political ads must display a “transparency notice”, which will indicate the name and address of the person or organisation that paid for the online advertising and a description of the audience targeted by the online political advertising. This will ensure that people using social media platforms know where political messaging is coming from, just as they do with traditional forms of media. The importance of this is clear; people have a right to know where information is coming from, as the source of information is an important factor in assessing the reliability of information provided, as well as the motivation behind the opinion/information being expressed.

It has been widely reported than in the British Brexit referendum, the US Presidential elections as well as French, German, Italian and other recent elections around the world, external entities have used online platforms to masquerade as entities other than what they actually are in an attempt to deceive voters and support a particular side. With the advent of a referendum in Ireland in the near future, and many more elections and referenda expected in the coming months and years, there has already been controversy about the sources of funding and advertising of some online campaigns.

Contrary to some media reports, the bill makes no attempt to arbitrate on “fake news” and is completely content neutral. The requirement is simply that if a post is intended to be of a political nature (with a detailed definition contained within the bill) and it is subject to a paid promotion then it must include a notice indicating who commissioned and sponsored that particular advertisement. This is already required offline in the Electoral Acts from 1992 on. If it is argued that this legislation is not needed, then for consistency all the existing electoral offences relating to printed materials should also be repealed. It is illogical and inconsistent to have different rules for different platforms.

This bill will also help to identify cases in which foreign entities or individuals are making a donation-in-kind to an Irish political party, which is already illegal under the Electoral Act 1997.

The bill will apply to both regional and national online platforms including social media platforms but also online advertising on any other media. The large internet companies are already piloting various forms of transparency notice with Facebook in Canada recently introducing a similar feature on an experimental basis and Twitter and Google also conducting similar trials on their platforms. For

smaller, more local platforms, the requirement can be easily met by the inclusion of a small “ticker tape” type notice, built into the graphic by the designer at the time the Advertisement is created.

This bill also addresses so-called fraudulent social media accounts created by automated software (often termed “bots”). These bots, which are made to look like ordinary social media accounts, are in fact used by one organisation or individual to give prominence to certain messages—political or otherwise. This bill will create a new offence relating to the use of more than 25 social media accounts towards political ends where these are being deliberately manipulated by software or similar programs. The need for this is clear; using bots, it is very easy for one person or organisation to flood a social media platforms with fraudulent or misleading information, in such a way that it seems to be coming from a large number of people but is in fact coming from one source. This phenomenon is sometimes described as “fake organic” where posts are artificially boosted by multiple manufactured likes and reposts, to game the algorithms of social media platforms.

Finally, this bill will extend existing legislation governing the expenditure of public money on party political advertising. This will ensure all state monies are purely spent on state purposes and do not stray into the realm of party political promotion, save existing exceptions as provided for in law.

(I have attached the full Explanatory Memorandum of my Bill at the end of this submission)

Civic Society & Stakeholder Engagement Details

In my preparation and analysis work for this Bill I have undertaken extensive civic society and stakeholder engagement which I have detailed below. I also welcome the Interdepartmental Groups recommendation to conduct similar engagement with numerous stakeholders and I would submit that the attached list be examined as a starting point for future engagement. Furthermore the Communications, Climate Action and Environment Committee have also completed a number of hearings engaging with numerous stakeholders in respect of my bill. I have attached detail below also.

	Name of Person	Organisation
1.	Airis Meier	ALDE (European Parliament)
2.	Siobhan O'Donoghue	Uplift Ireland
3.	Liam Herrick	Irish Council for Civil Liberties
4.	Liz Carolan	Transparent Referendum Initiative
5.	Seamus Dooley	National Union of Journalists
6.	Colm O'Gorman	Amnesty Ireland
7.	Manuel Mateo	(EU) Commissioner Gabriel's Cabinet

8.	Alaphia Zayab	Avaaz
9.	Helen Dixon	Data Protection Commissioner

Legal Advice

	Name of Person	Legal Advice Provided
1.	Mr David O'Neill B.L.	Legal Advice Provided from the Office of the Parliamentary Legal Advisor to the Joint Committee on Communications, Climate Action and Environment
2.	Mr Declan Harmon B.L.	Advice and assistance in Drafting the Online Advertising and Social Media (Transparency) Bill 2017
3.	Mr Paul G Ward B.L.	Advice and assistance in Drafting the Explanatory Memorandum of the Online Advertising and Social Media (Transparency) Bill 2017

Committee Hearings

	Committee	Date
1.	Joint Committee on Communications, Climate Action and Environment Detailed Scrutiny of the Online Advertising and Social Media Transparency Bill 2017 [PMB]; and discussion on the recent revelations in relation to the use of social media and its potential influence on previous and future Elections and Referenda [<i>Representatives from Facebook</i>]	17 April 2018
2.	Mr. Joel Kaplan, Vice President of global policy in Facebook. He was accompanied by Ms Niamh Sweeney who is the head of public policy with Facebook Ireland. Both individuals made submissions to the committee.	Presented at this Committee on the 17 th April 2018
3.	<ul style="list-style-type: none"> • Google • NUJ • SIPO • Department of Communications, Climate Action and Environment • Department of Housing, Planning and Local Government 	Presented at this Committee on the 27 th June 2018

Social Media Platforms Engagement Details

	Social Media Organisation	Person
1.	Facebook	Niamh Sweeney - Head of public policy with Facebook Ireland
2.	Twitter	Karen White - Public Policy, Europe
3.	Google	Ryan Meade - Public Policy Officer

ONLINE ADVERTISING (TRANSPARENCY) BILL 2017
AN BILLE UM FHÓGRAÍOCHT AR-LÍNE AGUS NA MEÁIN SHÓISIALTA
(TRÉDHEARCAHT), 2017

EXPLANATORY MEMORANDUM

Purpose of the Bill

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NB Contrary to some media reports, the bill makes no attempt to arbitrate on “fake news” and is completely content neutral. The requirement is simply that if a post is intended to be of a political nature (with a detailed definition contained within the bill) and it is subject to a paid promotion then it must include a notice indicating who commissioned and sponsored that particular advertisement. This is already required offline in the Electoral Acts from 1992 on. If it is argued that this legislation is not needed, then for consistency all the existing electoral offences relating to printed materials should also be repealed. It is illogical and inconsistent to have different rules for different platforms.

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This bill also addresses so-called fraudulent social media accounts created by automated software (often termed “bots”). These bots, which are made to look like ordinary social media accounts, are in fact used by one organisation or individual to give prominence to certain messages—political or otherwise. This bill will create a new offence relating to the use of more than 25 social media accounts towards political ends where these are being deliberately manipulated by software or similar programs. The need for this is clear; using bots, it is very easy for one person or organisation to flood a social media platforms with fraudulent or misleading information, in such a way that it seems to be coming from a large number of people but is in fact coming from one source. This phenomenon is sometimes described as “fake organic” where posts are artificially boosted by multiple manufactured likes and reposts, to game the algorithms of social media platforms.

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Provisions of the Bill

Part 1 Section 1 provides in standard form the title and commencement of the Act

Part 1 Section 2 defines certain terms used in the bill, namely;

- “bot” means any item of software which is programmed to run automated tasks on an online platform.
- “Minister” means the Minister for Communications, Climate Action and Environment.
- “multiple online presences” means 25 or more accounts or profiles on any online platform.
- “online advertising” means any communication which is placed or promoted for a fee on an online platform.
- “online platform” means any website, web application, or digital application (which shall include a social network or search engine) which has 10,000 or more unique monthly visitors or users in the State in at least six of the preceding twelve months; or, where the online platform is targeted at a local or regional audience, has 1,000 or more unique monthly visitors or users in the State in at least six of the preceding twelve months.
- “online political advertising” means online advertising which is directed towards a political end.
- “Register of Political Parties” means the register provided for in section 25 of the Electoral Act 1992 as substituted by section 11 of the Electoral (Amendment) Act 2001 and as amended by the Electoral (Amendment) (Political Funding) Act 2012.
- “transparency notice” has the meaning assigned to it in section 4.

For the purposes of this Act, a matter is directed towards a political end if it communicates a message that promotes a candidate or candidates for public office in an election within the State or a political party registered on the Register of Political Parties, or if it promotes a message on a matter of political interest or importance or a matter which, at the time when the online advertising is placed or promoted, is before or intended to be before either House of the Oireachtas or the Northern Ireland Assembly or the European Parliament or a local authority within the State or to be the subject matter of a referendum or which has any relation to an industrial dispute going on within the State, but a matter is not directed towards a political end if it is contained in online advertising placed or promoted at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Referendum Act 1998 concerning a referendum.

Part 2 Section 3 deals with the requirement for online political advertising to display a transparency notice. It also states that it shall be the obligation of the online platform used to ensure that such a transparency notice is displayed. It further states that online political advertising shall not be paid from monies out of the Central Fund or from monies voted by the Oireachtas.

Part 2 Section 4 sets out in full the definition of a transparency notice. It details the specific requirements for a valid transparency notice which should be displayed in a clear and conspicuous manner. One of the key requirements of this notice shall be the name and address of the person, company, organisation or entity (whether that entity has legal personality or otherwise) who paid for the online political advertising. Furthermore a notice shall not be deemed to be displayed if it is difficult to read or if the placement is easily overlooked.

Section 4 (2) states an order made under **subsection (1) (c)** which allows the Minister to require additional information requirements on a transparency notice should be laid before the Houses of the Oireachtas as soon as practicable after it is made. **Section 4 (2) (b)** states either House of the Oireachtas may, within 21 days pass a resolution annulling such an Orr made by the Minister under this section.

Part 2 Section 5 deals with the obligation to provide information on the Transparency Notice. Information shall be provided to the online platform selected. The information supplied must enable the online platform to comply with its obligations as set out above in **section 3**. Any person who knowingly supplies the online platform with false or misleading information shall be guilty of an offence.

An offence under this section is punishable on summary conviction by a fine of €500 or imprisonment for a period not exceeding 6 months or both and, on conviction on indictment by a fine not exceeding €10,000 or imprisonment not exceeding 5 years, or both. Furthermore consent of the DPP is necessary for an offence under this section to be brought.

Part 2 Section 6 creates the offence of using a bot to cause multiple online presences directed towards a political end to present as an individual account or profile on an online platform.

The offence is punishable on summary conviction by a fine of €500 or imprisonment for a period not exceeding 6 months or both and, on conviction on indictment by a fine not exceeding €10,000 or imprisonment not exceeding 5 years, or both. Furthermore consent of the DPP is necessary for an offence under this section to be brought.

There is a strong argument to include the sanctions aspect of this bill as an element of SIPO's ambit however since all the existing electoral acts refer to the DPP and An Gardaí; I have applied the same formula here for consistency. That is an aspect that could be reviewed at committee stage.

Appendix 2 – Technical examination of the operation of the Online Advertising and Social Media (Transparency) Bill.

How should political advertising be defined?

An advertisement is directed towards a political end if it:

- Communicates a message that promotes candidate(s) for public office in an election within the State or a political party registered on the Register of Political Parties
- Promotes a message on a matter of political interest or importance or a matter which, at the time the advertisement is placed or promoted:
 - Is before or intended to be before either House of the Oireachtas, the Northern Ireland Assembly, the European Parliament, or a local authority within the State
 - Is to be the subject matter of a referendum
 - Has any relation to an industrial dispute going on within the State

Not directed towards a political end if it is contained in online advertising placed or promoted at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Referendum Act of 1998 concerning a referendum (text included below)

1. The Commission shall have, in addition to any functions conferred on it by any other provision of this Act, the following principal functions in relation to the referendum in respect of which it is established:
 - a. To prepare
 - i. a statement or statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate, and
 - ii. a statement or statements having regard to any submissions under [section 6](#) concerning the proposal to which the referendum relates and setting out the arguments for and against the proposal, and the statements shall be fair to all interests concerned;
 - b. to publish and distribute such statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;
 - c. to foster and promote and, where appropriate, to facilitate debate or discussion in a manner that is fair to all interests concerned in relation to the proposal aforesaid.
2. The Commission shall have all such powers as it considers necessary or expedient for the performance of its functions including, but without prejudice to the generality of the foregoing, the following powers:
 - a. to prepare, publish and distribute brochures, leaflets, pamphlets and posters, and
 - b. to distribute the statements aforesaid to each presidential elector or each household.

3. If the Commission is established before the passing of the Bill containing the proposal or proposals concerned to amend the Constitution, the Commission shall not publish any statement under this section or incur any expenditure without the consent of the Minister for Finance before such passing.

Should it be limited to the promotion of candidates or proposals (the subject of potential elections or referendums)?

No. It should also include:

- The promotion of political parties for election
- The promotion of any messages on matters of political interest that is before or intended to be before either House of the Oireachtas, the Northern Ireland Assembly, the European Parliament, or a local authority within the State
- The promotion of a message on matters related to an ongoing industrial dispute within the State

Should any regulation in this area apply to both candidates and political parties campaigning at elections and also apply to referendum proposals?

Yes, aside from messages published by the Referendum Commission on subject matters covered under Section 3 of the Referendum Act 1998.

Should controls be limited to defined time periods in advance of referendums and/or elections?

No. Political advertisements should always be required to display transparency notices.

What should be made transparent?

- Name and address of the person or entity that paid for the online political advertising
- A description of the audience targeted by the online political advertising and whether a targeting algorithm has been applied
- Such other information as the Minister for Communications, Climate Action and Environment may by order provide

The information must be displayed in a clear and conspicuous manner.

Are there models or proposals which assist in defining these issues?

The Broadcasting Authority of Ireland Guidance Notes for the General Commercial Communications Code defines advertising for a “political end”

- Can be referenced for defining online advertisements directed at “political ends”

Electoral Act 1992

- Political advertising must bear the name and address of the printer and publisher

New York Election Law

- The New York Bill defines “online platform”
 - “... take into account the number of unique United States visitors to the platform and the extent to which the platform publishes paid internet or digital communications. Any public-facing website, web application, or digital application, including, but not limited to, a social network, ad network, or search engine, may be designated an “online platform” pursuant to the state board’s regulations.”
 - Very similar to the definition provided in the Online Advertising and Social Media Bill

Honest Ads Bill

- Defines what counts as a “clear and conspicuous” notice for different mediums
- In addition to requiring that ads are clearly marked with the advertiser’s name, it also requires that online platforms store all its political ads so that the public can access them and see how they are targeted

Which stakeholders will be impacted and how will they be impacted?

- Persons and entities purchasing online political advertisements
 - Required to provide information for transparency notice
 - It will be an offence to provide false or misleading information for the transparency notice
- Online platforms that display these advertisements
 - Obligated to ensure that the online political advertisements on the platform display a transparency notice
- Persons using bots for political ends
 - Will be guilty of an offence
- The electorate
 - Ordinary social media users will be completely unaffected – other than to be reassured that for any political ads they see in their feed, they will have the ability to click through to the publisher and sponsor and see who is behind them.
 - Will be better informed about the source and target audience of online political advertisements

What technical capability have social media and online platforms to control advertising?

- Create advertisement database to provide transparency
 - Google has published an archive of political ads run on its site known as the “Ad Library” where anyone can look up the “candidate name or advertiser, the dates the ads were live, impressions and type”. (TechCrunch, 15/08/2018)
- Verify identity of buyers

- Google also now verifies the identity of customers looking to purchase political ads. (Fortune, 04/05/2018)
- Allow users to see other ads published by the same advertiser
 - Facebook has pledged to disclose in ads who has paid for them. It will also create a “View Ads” page where users can view all ads published by the advertiser. (Fortune, 04/05/2018)
- In general, many social networks have already initiated pilot programmes for transparency while even the most basic website can easily incorporate a disclosure notice into any online graphics.

What organisations should come within the scope?

- Any website, web application, or digital application (which shall include a social network or search engine) which has over 10,000 unique monthly visitors/users in the State in at least 6 of the preceding 12 months
- Online platforms targeted at a local or regional audience with over 1,000 unique monthly visitors/users in the State in at least 6 of the preceding 12 months

How can regulations protect against/prepare for technological advancements?

Regulations should use technology neutral language that can be applied to both current and future technologies.

The Online Advertising and Social Media Bill is technologically and ideologically neutral. It deliberately avoids using platform specific names or terms and as such is “future-proofed” against the next generation of internet.

How to control right to be free from microtargetting / right to know origin of microtargetting concerning political preferences?

The transparency notice must include a description of the audience targeted by the online political advertising.

How can transparency of online political advertising be regulated - obligations placed on sellers or buyers of advertising or both?

Both. Buyers are obligated to provide the information for the transparency notice and sellers are obligated to ensure that the online political advertisements featured on their platform display the proper transparency notice.

What challenges arise from extraterritoriality?

Challenges in relation to prosecuting offenders who are not within the jurisdiction of the State

Who should monitor compliance with governance norms?

It has been suggested that a neutral, independent regulator based in Ireland should be tasked with monitoring compliance. As it stands, the online platform displaying the advertisements is responsible for ensuring that the advertisements comply with the regulation.

How will enforcement work?

Prosecutions shall be brought forth by, or with the consent of, the Director of Public Prosecutions. There is a strong argument to include the sanctions aspect of the Online Advertising and Social Media Bill as an element of SIPO's ambit however since all the existing electoral acts refer to the DPP and An Gardaí, the same formula has been applied here for consistency.

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