

ARTICLE 19



# Political advertisement, campaign financing and freedom of expression

Briefing for Kyrgyzstan Parliamentary elections

2020



This project is funded by  
the European Union



**MEDIA**  
DIALOGUE

First published by ARTICLE 19, 2020  
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A19/ECA/2021/010/English

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# Table of Contents

<a href="#">Political advertisement, campaign financing and freedom of expression</a>	4
Applicable international human rights standards	5
Freedom of expression challenges associated with online political advertising	7
Online micro-targeting	8
Approaches to regulation of online political advertising	10
Freedom of expression response to regulation of online political advertising and micro-targeting	11
<a href="#">About ARTICLE 19</a>	13
<a href="#">Endnotes</a>	14

# Political advertisement, campaign financing and freedom of expression

Free and fair elections are fundamental to a functioning democracy and the media play a crucial role in the conduct of democratic elections – including by hosting political advertising, where permitted. Political speech (which encompasses political advertising) is entitled to the highest degree of protection under international human rights law but may be legitimately restricted to ensure a fair electoral playing field.

The rules governing political advertising differ significantly across countries. In general there are stricter limits placed on broadcast advertising than ads in print media, based on the rationale that TV and radio have a strong(er) and more immediate impact on viewers, and are typically subject to greater state regulation.

Increasingly, campaign spending is taking place online through channels other than traditional media, as social media and digital platforms have become integral to political campaigning.<sup>1</sup> Additionally, online political micro-targeting is increasingly used to target voters based on the personalisation of political advertisements linked with the use of voters' personal data profiles. While micro-targeting could enhance participation, and small political parties have benefited from increased direct access to voters, in practice it is often misleading and exclusionary,<sup>2</sup> and highlights the need for more robust oversight of data collection practices. Furthermore, various forms of problematic content (such as forms of 'hate speech') and polarising messages, sometimes distributed or amplified through coordinated inauthentic behaviour or sponsored content, have inflamed election-related tensions. This is complicated by the fluid relationship between unpaid/organic and paid/sponsored content, as unpaid content may be sponsored to extend its reach, or conversely, users may opt to reshare political ads to their own followers.

In Kyrgyzstan, transparency of campaign financing and spending has been found insufficient by international organisations, including the OSCE.<sup>3</sup> This also applies to online political advertising and spending. Hence, in this briefing, ARTICLE 19 outlines key freedom of expression issues linked with political advertising, focusing on challenges associated with online campaigning. It describes international standards on the right to freedom of expression and information, especially in relation to political speech. This is followed by series of recommendations to the Kyrgyzstan Government, Central Election Commission and private actors, especially the media and social media platforms.

## Applicable international human rights standards

The basic international law framework on freedom of expression is set out in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which grants “everyone,” including political parties and candidates, the right to hold an opinion without interference and impart their views and ideas freely;<sup>4</sup> and a corresponding right of the public to seek and receive those views and ideas. This right can be restricted only under very narrow circumstances.<sup>5</sup> These rules apply the same online as offline.<sup>6</sup>

Elections raise two aspects of the right to freedom of expression:

- the right to engage *in political* debate by political candidates, voters, journalists, and others and
- the right of *access to information*, which includes the right of voters to understand how to vote and form an opinion on the key electoral issues.

Hence, under international standards, voters should have access to diverse and pluralistic sources of information, and all political candidates should have fair access to the media, but this can be achieved through a variety of means and there is no consensus that the democratic process should necessarily include paid political advertising.<sup>7</sup> International standards and regional courts are thus more nuanced in their approach to paid political advertising and recognise that certain limitations may be legitimate, reflecting the difficult challenge of ensuring the right balance between limiting the influence of money on electoral outcomes and preventing arbitrary restrictions on political communication.<sup>8</sup>

Where paid political advertising is permitted, the media should make ad space available to parties and candidates on a non-discriminatory basis,<sup>9</sup> meaning that open access and equal treatment should be guaranteed, as well as equal costs for all candidates/parties.<sup>10</sup> In addition, the absolute cost of ad placements should not be overly high,<sup>11</sup> and political parties should be able to generate funds to afford paying for them.<sup>12</sup> Ads should be identified as such and must not be confused with news or editorial content.<sup>13</sup> The media should be exempt from liability for unlawful ads.<sup>14</sup> Also, the rules on election spending should apply to both legacy and digital media, taking into account their differences, including transparency rules on political advertising.<sup>15</sup>

To guarantee equal opportunity of candidates, ad spending may be limited.<sup>16</sup> A number of international standards reference the role of party and campaign finance in the electoral process, for example the UN Convention Against Corruption,<sup>17</sup> as well as guidelines from organisations such as the Venice Commission of the Council of Europe,<sup>18</sup> the OSCE,<sup>19</sup> and International IDEA.<sup>20</sup> At the regional and national level, direct limits on political advertising in traditional media are often coupled with rules on electoral campaign financing that limit the contributions of individuals, corporations or foreign entities, and/or require proactive disclosure of spending.

Although international human rights law places binding obligations on States, traditional and digital media companies also have a responsibility to respect human rights in accordance with the UN Guiding Principles on Business and Human Rights.<sup>21</sup> Freedom of expression

mandates also stated in their 2020 Joint Declaration that digital actors should conduct human rights due diligence to ensure that their products, policies and practices, including for the collection of private data and micro-targeting, do not interfere with human rights,<sup>22</sup> and micro-targeting should not be permitted without user consent.<sup>23</sup> The due diligence process should assess whether the platforms' political ad policies "arbitrarily limit" the ability of candidates or parties to disseminate their messages.<sup>24</sup> Transparency should be a priority, including through the use of advertisement archives, and disclosures related to data harvesting and targeting.<sup>25</sup> Online intermediaries should make a "reasonable effort to adopt measures that make it possible for users to access a diversity of political views and perspectives" and ensure that algorithmic ranking does not unduly restrict access to election-related content from a diversity of viewpoints.<sup>26</sup>

## Freedom of expression challenges associated with online political advertising

In general, national laws permit paid political advertising in print media with few, if any, restrictions.<sup>27</sup> However, national rules diverge wildly on paid broadcast political advertising, with some banning it entirely (e.g. Switzerland), often replacing it with free airtime allocated to the parties during the election period (e.g. the UK, France, Spain and Denmark).<sup>28</sup> Still other countries allow TV and radio ads subject to expenditure limits and spending disclosure rules (e.g. Portugal and Poland), or subject only to the minimum international standard that political advertising be made available to political parties on a non-discriminatory basis (e.g. Canada<sup>29</sup> and the USA).<sup>30</sup>

The enforcement of current rules on political ads is a key challenge in the context of digital technologies. Existing national rules on political advertising are becoming less effective as voters increasingly access election news online,<sup>31</sup> broadcast audiences continue to shrink, and political campaigns shift their focus to target voters on social media.<sup>32</sup> Online content is frequently exempt from the legal requirements imposed on broadcasters, including sponsor and author disclosures and clear separation of advertising from organic content. It can even be difficult to discern the origin of campaign communications.<sup>33</sup>

Certain countries have responded to the rise of digital political advertising by simply extending pre-existing ad rules so that they apply online.<sup>34</sup> Other countries have adopted specialised rules mandating heightened online transparency.<sup>35</sup> Other countries permit online political advertising but require platforms to maintain digital ad registries of political and issue-based ads.<sup>36</sup> This approach largely codifies the self-regulatory approach taken by the European Union, which asks the platforms to ensure transparency of political and issue-based advertising.<sup>37</sup>

## Online micro-targeting

Political parties, coalitions and candidates wishing to engage with voters increasingly rely on personal data and profiling techniques to monitor and target potential supporters. These micro-targeting techniques are “geared towards addressing persuadable or mobilisable voters with tailor-made messages while ignoring others.”<sup>38</sup>

Political micro-targeting is nothing new; geographical targeting, for example, is a common tactic in traditional campaigning. However, online targeted advertising relies on AdTech companies, data brokers, and other third-party companies to track users across websites and apps, and combine this data with offline information to develop highly specific information and profiles about users,<sup>39</sup> all while monitoring the outcomes and iterating/improving on approaches used in real-time. What distinguishes online targeting from earlier forms of targeting is the breadth and depth of data typically held about voters and their online behaviour, as well as the speed, scale and low cost at which micro-targeting can be deployed.

Micro-targeting has some positive features: it can help to improve the efficiency of campaigns with limited resources and increase meaningful communication with voters on issues that are important to them, e.g. a prime ministerial candidate who distributes leaflets to voters on conservation plans for their local park. Smaller political parties and independent candidates can benefit from the use of micro-targeting by allowing them to access potential voters that they could not otherwise afford to target using traditional campaigning tactics.<sup>40</sup> They can thus spread their messages to a targeted base, while spending less than via broadcast media or newspapers by using free blogs, video sharing platforms and social media.<sup>41</sup> Micro-targeting tends to benefit new and heterogenous candidates and political parties at both extremes of the political spectrum, to the detriment of larger, incumbent parties that cater to a relatively stable and moderate voter base.<sup>42</sup>

There are a number of potential problems associated with digital micro-targeting. In particular:

- Micro-targeting raises the question of individual autonomy and deliberation in a context where certain voters may not receive impartial information, and other demographic groups may fail to receive any information at all.<sup>43</sup> It causes double harm by not only violating the rights of those who are targeted, but violating the right to information of those who are not targeted and therefore unaware of the political messages that others are exposed to.<sup>44</sup> Furthermore, individuals may not know or understand the extent of profiling and the influence it has on their views.
- Reliance on personal data may infringe personal data rights.<sup>45</sup>
- Collecting data on ethnicity, religion, political affiliation, or proxies for sensitive information can lead to abuse.<sup>46</sup> Furthermore, advertisers may not even know the basis on which users are targeted. As a result, even where targeting decisions are not made based on protected characteristics, the nature of algorithmic profiling means that discriminatory outcomes may still result.<sup>47</sup>



- Unlike traditional political advertising, which is broadcast or disseminated to a relatively wide audience, it can be difficult to detect, report and respond to problematic content such as misinformation and/or 'hate speech' that is only distributed to a small segment of users. This also raises the spectre of a political actor presenting conflicting policy positions to different groups, although there is no empirical evidence of this to date.<sup>48</sup> These strategies can be combined with A/B testing to rapidly optimise ad campaigns in response to data about user engagement.
- It may become practically impossible to supervise the fairness of elections and sanction electoral infractions if the watchdogs of election campaigns, namely election authorities, NGOs, and journalists, are unable to monitor political communications, either because they lack technical access or the mandate.<sup>49</sup>

## Approaches to regulation of online political advertising

A number of proposals have been put forward to address online political advertising around the world, often containing serious shortcomings.

- A common response to the challenges posed by online political advertising is to propose a general suspension of the practice or bans. From the perspective of freedom of expression, there are a number of problems with such blanket bans on political advertising online – either by States or social media companies. Banning political ads online poses a danger of censoring political speech in a sweeping way, including “issue ads”- meaning ads that advocate for or against legislative issues of national importance, such as climate change, healthcare, immigration, national security, taxes. Bans may serve to benefit incumbents and more powerful candidates and harm those without pre-existing large audiences who rely on paid advertising to reach potential supporters. Access to paid political ads can be an important tool for opposition candidates to present their messages, especially in countries with state-owned or state-controlled media that give preferential treatment to the ruling party.
- Another proposal is to regulate or adopt social media policies that restrict the content of online political advertising where ads contain misinformation or ‘hate speech’. There is also increasing pressure on platforms to screen or fact-check ads.<sup>50</sup> However, these approaches are also problematic as the right to freedom of expression does not recognise any valid censorship based on the truthfulness of the speech; blanket censorship of misinformation violates the right to freedom of expression.<sup>51</sup> Further, TV and radio broadcasters are generally not liable for false or unlawful statements in political ads – instead, political candidates or parties have recourse to mechanisms such as the right of reply/correction, and/or defamation suits.<sup>52</sup> Making social media companies liable for the content they have not created or interfered with also violates the right to freedom of expression.

## Freedom of expression response to regulation of online political advertising and micro-targeting

Responses to the challenges posed by online political advertising should reflect international human rights standards, including those governing the right to freedom of expression and information. Given the importance of protecting political speech, and the disparity of existing national rules on political advertising, ARTICLE 19's current approach focuses on improving transparency and proactive disclosure of campaign financing and advertising, separated below by recommendations to States, media actors, and social media platforms.

ARTICLE 19 suggests that neither blanket bans on online political advertising nor vaguely worded restrictions on 'harmful' content such as misinformation or 'hate speech' should be considered proportionate responses to the issue and likely violate international standards on freedom of expression. Conversely, measures to increase the transparency of political advertising, enforce data privacy laws, and/or place carefully crafted restrictions on certain practices (e.g. ads aimed at voter suppression and certain forms of micro-targeting) can be formulated in a rights-compliant manner.

In Kyrgyzstan, transparency of campaign financing and advertising is lacking in general, including for online political advertising. For these reasons, **general legal framework on political and campaign finance should be improved** to ensure greater transparency. Parties and candidates should be required to be transparent in a timely fashion including to the media; they should be required to submit financial reports on an annual basis, regarding their spending on elections and, in particular, spending on legacy and digital media, and other digital communications efforts.

Campaign finance regulations should provide for **an obligation to disclose sources of campaign funding before election day**, publishing detailed final reports on campaign incomes and expenditures and results of their audit, and envisage a range of dissuasive and proportionate sanctions for violations of campaign finance rules.

Further, as for the online political advertising ARTICLE 19 recommends that Kyrgyzstan **guarantee mandatory and publicly accessible ad transparency**. Political ads should be clearly distinguishable from editorial content, including news, whatever their form and including online, and clearly labelled with information about who paid for them.<sup>53</sup> Furthermore, ARTICLE 19 supports the **use of digital ad databases to keep and publish all regulated ads**, the amount of money spent on advertising, and the name of the person who authorised the ad, which should be accessible in a format that allows for bulk retrieval by researchers and policymakers.<sup>54</sup>

The Government should also **improve data protection and privacy laws and create independent and adequately resource privacy regulator**.

The Central Election Commission also has a role to play in addressing the issue. It should run civic and **voter education campaigns** to ensure the freedom of voters to form an informed opinion and increase their confidence in the electoral process, with appropriate measures in place to reach groups with special needs, such as language barriers, persons with

disabilities, and first-time voters. It should also **educate political parties and candidates** on their obligations, including with respect to data protection and serve as a convener to develop good practice, for example by coordinating **codes of conduct for political parties** to define appropriate standards of behaviour in political campaigns, including online ads.

The primary responsibility for responsible political advertising should continue to rest on political parties, candidates, and their campaign teams. Political parties and candidates, along with social media platforms, interest groups, analytics companies, data brokers, and ad networks are involved in the processing of personal data for political purposes and must carefully review their responsibilities to conform with data protection requirements, and be transparent about how personal data is processed.<sup>55</sup> Candidates should consider **pledging to adhere to voluntary codes of conduct** setting minimum standards for political advertising. Any campaigning that involves processing of personal data must be carried out in compliance with international standards on **the right to privacy and involve obtaining explicit consent**.

# About ARTICLE 19

ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), is an independent human rights organisation that works around the world to protect and promote the rights to freedom of expression and information. It takes its name and mandate from Article 19 of the Universal Declaration of Human Rights which guarantees the right to freedom of expression.

ARTICLE 19 has produced a number of standard-setting documents and policy briefs based on international and comparative law and best practice on issues concerning the right to freedom of expression. Increasingly, ARTICLE 19 is also examining the role of international internet technical standard-setting bodies and internet governance bodies in protecting and promoting freedom of expression.

If you would like to discuss this brief further, or if you have a matter you would like to bring to the attention of ARTICLE 19, you can contact us by e-mail at [info@article19.org](mailto:info@article19.org).

# Endnotes

- 1 See, e.g. Z. Montellaro, [Political ads expected to explode, even as economy tanks](#), Politico, 15 May 2020 and J. Lieberman, [Online Political Ads Find Lonely, Isolated Voters-And Barrage Them](#), The Observer, 5 March 2016.
- 2 Council of Europe, Committee of experts on Media Pluralism and Transparency of Media Ownership (MSI-MED), [Study on the use of internet in electoral campaigns – The rules of the game: the Internet, Social Media and Election Communications](#), 14 November 2017.
- 3 See, e.g. Office for Democratic Institutions and Human Rights, [Kyrgyz Republic, Presidential Election, 15 October 2017](#), OSCE/ODIHR Election Observation Mission Final Report.
- 4 Article 19 of the ICCPR gives legal force to the right to freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR); this right is also protected by regional human rights treaties. See Article 10 of the European Convention for the Protection of Human Rights, 4 September 1950; Article 9 of the African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981; and Article 13 of the American Convention on Human Rights, 22 November 1969.
- 5 UN Human Rights Committee, General Comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, paras 37-38.
- 6 A/HRC/17/27.
- 7 The UN Human Rights Committee has not expressly pronounced on the acceptable restrictions that may be placed on political advertising. General Comment No. 34 refers to both commercial and public advertising without explicitly referencing political advertising. General Comment No. 25 refers to the right to "advertise political ideas" (para. 25), although it is left to interpretation whether this refers to paid ads.
- 8 From comparative perspective, the European Court of Human Rights, which has not yet examined online political advertising, issued several important decisions on broadcast ads; such as *Animal Defenders International v. the United Kingdom* (in which the Court upheld a ban on political advertising challenged by an animal rights NGO outside an election period); *gT Verein gegen Tierfabriken v Switzerland*, App No 24699/94, 28 June 2001 (in which the Court unanimously stated that a political advertising ban on television, as applied to an animal rights group wishing to broadcast a political advertisement, violated the right to freedom of expression); and *TV Vest AS and Rogaland Penjonistparti v. Norway*, App. No. 21132/05, 11 December 2008 (in which the Court stated that the blanket ban of political TV advertising in Norway violated the right to freedom of expression).
- 9 See UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information. Joint Statement on the Media and Elections. Organization for Security and Co-operation in Europe, 2009. The Declaration states: It should be illegal for the media to discriminate, on the basis of political opinion or other recognised grounds, in the allocation of and charging for paid political advertisements, where these are permitted by law.
- 10 Council of Europe, Committee of Ministers, 2007, [Recommendation CM/Rec\(2007\)15 on measures concerning media coverage of election campaigns](#), para li.5.
- 11 OSCE/ODIHR, Electoral Observation Mission to Georgia, 2012, p. 18.
- 12 [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), UN Doc. A/HRC/26/30, 2 July 2014, para 14.
- 13 *Ibid.* Also see International IDEA, [International obligations for elections. Guidelines for legal frameworks](#), 2014, para 229.
- 14 UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information. Joint Statement on the Media and Elections. Organization for Security and Co-operation in

- Europe, 2009. See also ARTICLE 19, Guidelines for Transitional Democracies, p. 58; and [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), para 60.
- 15 2020 Joint Declaration, 1(b)(iv).
  - 16 Venice Commission, [Code of good practice in electoral matters](#), 2002, Guidelines section 1.2.3.e.
  - 17 See, UN Convention Against Corruption, Article 7 para 3 which states “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties;” and Human Rights Committee, General Comment 25, *op.cit.*, para 19.
  - 18 Council of Europe Venice Commission, [Elections and referendums, political parties](#).
  - 19 Organisation for Security and Cooperation in Europe, [Election Handbooks](#).
  - 20 International Institute for Democracy Electoral Assistance, [Election Guidelines](#).
  - 21 UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, 21 March 2011, Annex, endorsed by the UN Human Rights Council in HRC Resolution 17/4, A/HRC/RES/17/14, 16 June 2011, UN Doc. No. HR/PUB/11/04.
  - 22 UN Special Rapporteur on Freedom of Expression and Opinion, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression, [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#), 2020, 2(i).
  - 23 *Ibid*, 1(b)(vi).
  - 24 *Ibid*, 2(iii).
  - 25 *Ibid*, 2(iv)-(v).
  - 26 *Ibid*, 2(ii).
  - 27 ACE Electoral Knowledge Project, Paid Political Advertising, 3rd ed., 2012.
  - 28 E.g. Denmark bans political messaging in advertisements during election periods, in order to protect voters from excessive influence, and to create a level playing field for candidates; see Section 76 (3) and (4) in the Danish Radio and Television Broadcasting Act, no 827 of 26 August 2009, as amended by Act no 1269 of 16 December 2009. The UK bans political advertisements from TV or radio; parties are instead given limited airtime for party political broadcasts, see Communications Act 2003, c. 21, Article 333. Print media ads in the UK (e.g. posters or newspapers) whose principal function is to influence voters in elections or referendums are exempt from these rules.
  - 29 Canadian Radio-television and Telecommunications Commission, [Guidelines for TV and radio broadcasters and TV service providers during an election](#).
  - 30 US federal law mandates that broadcast networks *must* carry political ads from candidates running for office. Section 315(a) of the Communications Act imposes a “no censorship” requirement on broadcasters for ads by federal, state, and local candidates. Once a candidate is legally qualified and once a station decides to accept advertising for a political race, it cannot reject candidate ads based on their content. Under the reasonable access rules that apply to federal candidates, broadcasters must accept ads once a political campaign has started.
  - 31 See, e.g. [Public consultation on EU citizenship 2015](#).
  - 32 See, e.g. D. Tambini, [Social Media Power and Election Legitimacy](#), Digital dominance: the power of Google, Amazon, Facebook, and Apple. Oxford University Press, New York, NY, 2018, pp. 265-293.
  - 33 E.g. in the UK, there are strict spending limits for political parties and non-party campaigners need to register with the electoral commission if they spend over £20,000 during an election campaign period. However, third parties often fail to register, and invest heavily in online advertising. For example, the source of the £435,154 that a company called Britain’s Future spent on pro-Brexit Facebook ads since October 2018, was never disclosed; see J. Waterson, [Obscure Pro-Brexit Group Spends Tens of Thousands on Facebook Ads](#), The Guardian, 14 January 2019.

- 34 E.g. in France, Article L. 52-1 of the Electoral Code prohibits, during the six months prior to an election, “the use, for the purpose of election propaganda, of any commercial advertising in the press or any means of audiovisual communication.” This rule also covers online public communication; see A. Granchet, France, In M. Cappello (Ed.), *Media coverage of elections: the legal framework in Europe*, 2017, p. 29–37.
- 35 E.g., in the USA, virtually “all paid political advertising on the internet must contain a full, clear, and conspicuous disclaimer on its face;” see E. Weintraub, [The Law of Internet Communication Disclaimers](#), 18 December 2019.
- 36 E.g. [Elections Canada](#) defines issue advertising as the “transmission of a message to the public *during an election period* that takes a *position on an issue* with which a *candidate or registered party is associated* without identifying the candidate or party in any way” (emphasis added). Timing, content, and context must all be taken into account. Examples of issue ads include those that address “social, domestic or foreign policy, economics, or national security issues.”
- 37 European Commission, [EU Code of Practice on Disinformation](#), 2018. It should be noted that the Code of Practice defines political advertising but not ‘issue-based advertising.’ Political advertising is defined as “advertisements advocating for or against the election of a candidate or passage of referenda in national and European elections,” whereas signatories are called on to: “use reasonable efforts towards devising approaches to publicly disclose “issue-based advertising”. Such efforts will include the development of a working definition of “issue-based advertising” which does not limit reporting on political discussion and the publishing of political opinion and excludes commercial,” II.B. The difficulty of defining issue-based advertising has been a topic of ongoing discussion, see e.g. [Study on the assessment of the Code of Practice against Disinformation SMART 2019/0041](#), May 2020, p. 5.
- 38 See, e.g. S. Kruschinski, Restrictions on data-driven political micro-targeting in Germany, *Internet Policy Review*, 31 December 2017. Similarly, the [UK Information Commissioner](#) defines micro-targeting as “targeting techniques that use data analytics to identify the specific interests of individuals, create more relevant or personalised messaging targeting those individuals, predict the impact of that messaging, and then deliver that messaging directly to them.”
- 39 See e.g. the UK Information Commissioner Office (ICO) report *Democracy Disrupted*. In 2018, the UK ICO fined a site offering pregnancy and childcare advice for collecting and selling personal information about more than 1 million people without proper disclosure or consent. The company, Lifecycle Marketing Ltd, then sold the data to a marketer that built profiles for use in targeted mail advertising by the UK Labour Party in marginal seats.
- 40 See e.g. US research concluding that voters see disproportionately more Facebook ads from challengers and down-ballot candidates relative to television. E. Fowler et al, *Political Advertising Online and Offline*, Annual Meeting of the American Political Science Association Conference, August. Vol. 29, 2019.
- 41 Indeed, restrictions on issue advertising by third parties in the 2019 Canadian parliamentary elections were criticised by free speech organisations for making it difficult to disseminate ads on topics such as climate change or public health. See, e.g. C. Zwibel, [Do Canada’s Election Laws Chill Free Speech? Canadian Civil Liberties Association](#), 2019.
- 42 See, e.g. J. Serrano et al, *The Rise of Germany’s AfD: A Social Media Analysis*, Proceedings of the 10th International Conference on Social Media and Society, 2019; or Panoptikon, [Who \(really\) targets you? Facebook in Polish election campaigns](#), 2020.
- 43 See e.g. K. Jones, *Online disinformation and political discourse: applying a human rights framework*, 2019.
- 44 J. Bayer, *Double harm to voters: Data-driven micro-targeting and democratic public discourse*, *Internet Policy Review* 9.1, 2020, 1-17.
- 45 See, e.g. The Guardian, [50 million Facebook profiles harvested for Cambridge Analytica in major data breach](#), 17 March 2018.
- 46 See, e.g. Facebook, [About personalised audiences on the basis of client lists](#), accessed on 29 July 2020; R. Meyer, [Could Facebook Have Caught Its ‘Jew Hater’ Ad Targeting?](#) *The Atlantic*, 15 September 2017; J. Angwin, A. Tobin, and M. Varner. [Facebook \(still\) letting housing advertisers exclude users by race](#), 2017.



- 47 See e.g. M. Ali, P. Sapiezynski, M. Bogen, A. Korolova, A. Mislove and A. Rieke, *Discrimination through optimization: How Facebook's ad delivery can lead to skewed outcomes*, 2019.
- 48 This possibility was mentioned in F. Zuiderveen Borgesius et al, *Online Political Microtargeting: Promises and Threats for Democracy*, *Utrecht Law Review*, Vol. 14, No. 1, p. 82-96, 2018. However, research from the USA suggests that this has not happened in previous elections. Furthermore, traditional campaigning forces candidates to focus on a narrow subset of issues, e.g. the economy and foreign policy, in order to reach typical voters who will only see a few ads or attend one rally. In practice then, most voters only know the policy positions of candidates on one or two key issues. See also G. Egorov, *Single-issue campaigns and multidimensional politics*. No. w21265. National Bureau of Economic Research, 2015.
- 49 See e.g. the UK Electoral Commission's discussion of the different – and occasionally unclear – roles of the Electoral Commission, police, Advertising Standards Authority, Information Commissioner and Statistics Authority in responding to electoral misconduct in UK elections, in Electoral Commission, *Digital campaigning - increasing transparency for voters*.
- 50 In 2019-2020, platforms came under intense public pressure. Facebook's own employees [wrote a letter](#) to the company challenging the decision not to ban false political ads (unlike non-political ads on the platform).
- 51 C.f. UN Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. [Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda](#), 3 March 2017, stating: "general prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information" are incompatible and should be abolished."
- 52 See UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information. *Joint Statement on the Media and Elections*. Organization for Security and Co-operation in Europe, 2009. The Declaration states: "[The media] should also be exempted from liability for disseminating unlawful statements made directly by parties or candidates – whether in the context of live broadcasting or advertising – unless the statements have been ruled unlawful by a court or the statements constitute direct incitement to violence and the media outlet had an opportunity to prevent their dissemination."
- 53 For a legislative proposal, see e.g. UK Cabinet Office, [Transparency in digital campaigning: Technical consultation on digital imprints](#), August 2020.
- 54 Mozilla Foundation, [Facebook and Google: This is What an Effective Ad Archive API Looks Like](#), 27 March 2019.
- 55 See European Data Protection Board, [Statement 2/2019 on the use of personal data in the course of political campaigns](#), adopted 13 March 2019.





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