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## **Feasibility study on the use of Internet in elections**

### **Revised draft as of 9 March 2017**

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#### **The rules of the game: the Internet, Social Media and Election Communications**

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## I. KEY MESSAGES

- New Internet technologies pose challenges for established institutions and principles of regulation of election communications such as freedom of association, spending limits, and regulation of political advertising.
- The Internet and new communications technologies undermine the ability of existing regulation to maintain a level playing field in electoral communication between new and established, rich and poor, corporate and civil society campaigns.
- Election communication has been subject to a complex set of legal and ethical regulations that have evolved since the nineteenth century. The objective is to maintain a level playing field, guard against corruption and safeguard transparency.
- New intermediaries and platforms now occupy important gatekeeper positions once occupied by journalists but have not adopted the ethical obligations of the media. This presents a threat to elections and potential for corrupt practices to emerge.
- These problems are beginning to emerge in the new communications environment that can undermine the legitimacy of democracy. There is therefore a need for new standards in this area, and an expanded watching brief for communications regulators, parliaments, electoral monitors and civil society.

## II. Introduction: What could possibly go wrong? Social Media, Elections and Democratic Legitimacy

In human rights and constitutional law, freedom of expression is fundamental, and political speech is the most protected form of speech. But political communication during election periods has long been subject to various forms of regulation. The aim of these rules is to maintain the integrity, fairness and legitimacy of the election process and its outcome, and guard against the possibility that private interests and powerful minorities can control outcomes through collusion between media and politicians, or the buying of influence over public opinion. These rules are contained in election law, broadcasting law and self-regulatory codes and are also reflected in international human rights standards that require that rules are necessary and proportionate. This policy brief sets out the principles and institutions of campaign regulation and discusses the implications of development in Internet campaigning.

In recent years, a growing number of researchers have raised questions about the potential impact of the Internet, social media and the wider context of media change, on referenda and elections.

- **Broadcasting:** Previously, broadcasting regulation such as advertising restrictions and impartiality obligations could help ensure a level playing field for political debate. As political campaigns move online effectiveness of these regimes declines.
  - **Spending:** Campaign finance controls seek to limit the role of money in electoral outcomes. But existing regulations limiting this advertising spend are no longer effective due to a shift in balance between local and national spending, and because detailed quotas do not effectively record online spend. Rules vary by country and according to local market conditions but it is clear that campaign spending limits will need recalibration.
  - **Targeting:** Targeting of key messages to key demographics raises new challenges for individual autonomy and deliberation. On one hand individual citizens' autonomy may be undermined by a lack of impartial information and on the other, entire demographic groups or regional interests may be excluded from political deliberation.<sup>1</sup>
  - **Intermediaries** adopt powerful new gatekeeper positions that enable them to influence the outcome of electoral processes. Epstein (2015) has highlighted the "search engine manipulation effect" and Diakopoulos (2016) has demonstrated the potentially powerful implications of display of search results.<sup>2</sup> This could lead to new forms of corruption and manipulation that are not captured by existing rules that focus mainly on broadcasting and that cross jurisdiction boundaries.
  - **Truth and misleading statements:** Disintermediation of political campaigning undermines traditional filters based on journalism values of truth, fact-checking and separation of opinion from fact. This has led to a situation in which traditional rules governing false and misleading claims are no longer effective.
  - **Representation of public opinion** (<sup>3</sup> silence periods)<sup>4</sup>. Most democracies have rules governing publication of opinion polls, and campaigning on election day and in a specified period before. These have come under scrutiny because of the difficulty of enforcing them online.
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<sup>1</sup> Baracas, S. (2012). The price of precision: Voter microtargeting and its potential harms to the democratic process. Paper presented at the Proceedings of the first edition workshop on Politics, elections and data pp.33-35.

<sup>2</sup> Diakopoulos, N and M. Koliska. 2016. Algorithmic Transparency in the News Media. *Digital Journalism*; Epstein, R. and Robertson, R.E., 2015. The search engine manipulation effect (SEME) and its possible impact on the outcomes of elections. *Proceedings of the National Academy of Sciences*, 112(33), pp.E4512-E4521.

<sup>3</sup> See [http://www.lse.ac.uk/media@lse/documents/MPP/Policy-Brief-5-Semantic-Polling\\_The-Ethics-of-Online-Public-Opinion.pdf](http://www.lse.ac.uk/media@lse/documents/MPP/Policy-Brief-5-Semantic-Polling_The-Ethics-of-Online-Public-Opinion.pdf)

<sup>4</sup> See Ofcom code rule 6.5. Compare Par Condicio in Italy

- **Transparency:**<sup>5</sup> Public scrutiny of campaigns has been enabled by a number of rules obliging campaigners to be transparent about funding and origin of campaign communications: These include the obligation to note the printer and funder of leaflets. These are difficult to impose online.<sup>6</sup>

Whilst many of these phenomena remain possibilities rather than empirically demonstrable outcomes it is essential that policy and civil society respond to the potential undermining of democratic legitimacy that they present. Existing regulation is based on traditional media and should be reviewed to prevent democratic failures and protect the legitimacy of democratic processes.

The aim of this study is to flag all potential problems which have emerged with the shift of political propaganda and especially election campaigns onto the Internet. Because existing regimes for campaign finance control and transparency within the Council of Europe are quite varied, for example with regards to political advertising and campaign finance, recommendations made will not apply to all member states equally. Some standards set will be at the level of principles, and others concrete rules and institutions.

### III. **Background: Regulation of electoral campaigns: fair clean and clear**

The use of Internet in elections engages standards and regulatory institutions across a range of distinct areas including freedom of expression, freedom of association and electoral law and international election monitoring.

According to the Venice Commission, Guidelines on Political Party Regulation (2010)<sup>7</sup> money in elections is regulated in order to ensure campaigns are:

- Fair: to prevent improper influence (and ensure the independence of parties) on political decisions through financial donations.
- Clean: to ensure all political parties have an opportunity to compete in line with the principle of equal opportunity, and
- Clear: to provide for transparency in expenditure of political parties

The main ways Campaign Communication has been regulated has been through electoral law including

- a. Spending limits & campaign finance controls,

<sup>5</sup> (PPERA Ch III s126) <http://www.legislation.gov.uk/ukpga/2000/41/section/126>

<sup>6</sup> UK electoral commission has repeatedly called all such rules to be applied to campaign communications including Non print communications.

<sup>7</sup> European Commission for Democracy through Law (Venice Commission) 2010 : [Guidelines on Political Party Regulation CDL-AD\(2010\)024](#) pp.35, para.159

- b. Subsidies for campaigning communications.<sup>8</sup>
- c. Pre-poll black outs
- d. Media regulation in particular broadcast licensing.<sup>9</sup>
- e. Rules on political advertising including impartiality, subsidies and free air time<sup>10</sup>;
- f. Self-regulation and journalism ethics.

### **(i) Objectives**

**The overarching objective** of campaign regulation is to protect the integrity of elections, ensure they are free and fair, and not captured by a narrow range of interests.

Rules seek to do this in two ways: on one hand they attempt to facilitate the opinion formation process in society by helping ensure that each citizen has access to a balanced range of views and opinions. On the other hand, they limit the role of money in the electoral process, through for example limits on political advertising and campaign spending. Campaign finance is considered a form of beneficial speech but can be problematic particularly if parties and campaigns depend on a small number of large donations. These policy objectives are achieved through a combination of media law, election law and international human rights standards. According to The Committee for Standards in Public Life in the UK, one of the primary reasons for campaign spending limits was to prevent an "undue focus on fundraising."<sup>11</sup> The commission pointed out that funding of political parties through private contributions is also a form of civic participation and freedom of expression thus any legislation should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

### **(ii) Institutions**

Regulation of political campaigns are internationally recognised in a set of international treaties including The International Covenant on Civil and Political Rights<sup>12</sup> (ICCPR), (ECHR) and the United Nations Convention against Corruption<sup>13</sup>.

<sup>8</sup> IDEA: 142-3.

<sup>9</sup> For the relevant UK rules see the Ofcom broadcasting code section on elections. <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections-and-referendums/>

<sup>10</sup> To see for example communications act 2003 section 333.

<sup>11</sup> The Committee on Standards in Public Life, 1998. [The Funding of Political Parties in the United Kingdom](#), Cm 4057-I, pp.120. para 10.29

<sup>12</sup> United Nations National Assembly. 1966. [International Covenant on Civil and Political Rights](#). Article 25.b. pp.179

<sup>13</sup> [UN Convention against Corruption](#) (UNCAC). 2003. Article 7.3.pp.11

Because of the rate of technological change, it is useful to outline the principles that underlie these important protections of democratic process. The Council of Europe's Parliamentary Assembly in its recommendation 1516 of 2001<sup>14</sup> recommended some general principles the financing of political parties should abide by:

- A reasonable balance between public and private funding.
- A fair criteria for the distribution of state contributions to parties,
- Strict rules concerning private donations including bans on contributions from foreign donors, religious organisations and restrictions on corporations and anonymous donations.
- A limit on parties' expenditures linked to election campaigns.
- Transparency of donations and expenses of political parties.
- The establishment of an independent authority and meaningful sanctions for those who violate the rules.
- The above legislations should also be extended to third party- non-political party group.

### ***Rules on broadcasting and political advertising***

Broadcasting in contrast to press and online media has been subject to detailed regulation of political campaigns. Firstly licence requirements require impartiality in political matters, for many television and radio channels specific codes are applied and these pay particular attention to election and referendum periods. Secondly broadcasters are required to exercise restraint in publication of opinion poll findings and also enforce quiet periods prior to election day. Third, political advertising is regulated as regards to: (i) transparency (ii) advertising time and cost (iii) in some cases such as the UK broadcast political advertising is banned (iv) subsidies for advertising budgets and/ or reserved time on public broadcasters constitutes a form of rationing that serves to level the political playing field.

Political advertising controls have formed an important part of the regime that seeks to guard democracy against capture by money. However this must be balanced with rights to freedom of expression. The fact that advertising bans apply to broadcasters but not online media means that they will be less effective in this objective as political communication shift online. Therefore new developments of the standards of the European Court of human rights will be important. In a case where a fine was imposed on a television channel for broadcasting paid advertisement for a small pensioners' political party, in breach of the blanket prohibition provided for in the national legislation, the Court found a violation of Article 10 of the Convention (*TV Vest AS and Rogaland Pensionistparti v. Norway*). The Court reached a similar conclusion with regard to

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<sup>14</sup> Parliamentary Assembly of the Council of Europe: Recommendation 1516 (2001), Financing of political parties. Para.8

Swiss blanket ban on political advertising in *VgT Verein Gegen Tierfabriken v. Switzerland* where an animal rights organisation attempted to have its commercial against animal farming broadcast on the national television. Not excluding that such a ban could be compatible with the right to freedom of expression in certain situations, the Court did not accept general justifications that (a) the ban prevented financially powerful groups from distorting public debate and that (b) broadcast media must be subject to greater restrictions due to their influence. However, in *Animal Defenders International v. the United Kingdom*, a case with nearly identical facts (animal rights NGO's commercial against cruelty to primates), the Court (a narrow majority) departed from the previous case-law in favour of blanket bans. Adopting a new doctrine of "general measures", the Court widened substantially the states' margin of appreciation, relying much more on the domestic authorities' assessment of the necessity of the measure. The Court's reasoning was based, among other, on the lack of a European consensus on how to regulate paid political advertising in broadcasting, on possible abuse of less restrictive rules, and on the applicant's access to other powerful communication tools such as print media, the internet and demonstrations. Despite the rising importance of the internet and social media, however, the Court found that the prohibition specifically limited to broadcast media made sense, given the immediate and powerful effect of such media. As regards access to broadcast media, according to the Court's case-law Article 3 of Protocol No. 1, which enshrines the principle of equal treatment of citizens in the exercise of their electoral rights, does not as such guarantee any right for a political party to be granted airtime on radio or television during the pre-election campaign. Only in exceptional circumstances, if access was denied to one party in an arbitrary manner and granted to other parties, an issue might arise under that provision (*Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia (dec.)*),

A number of European countries have in place complete bans on political advertising on broadcasting media e.g. Switzerland, the UK. In ECHR cases where such bans have been challenged they have been justified as a means to ensure fair campaigns. Even where such bans are not official in place, an agreement between the main political parties has effectively kept political advertising off T.V such as Denmark. In countries such as the UK, the ban on commercial political advertising is balanced by rationing system whereby commercial public service broadcasters are obliged to carry advertising spots for the political parties based on the share of the vote at the last election. Other countries have adopted other forms of rationing system for example through regulating the amount of funding political parties may use to purchase television advertising.

### ***Ethics and journalism self-regulation***

Elections have long featured a healthy scepticism about whether politicians "tell the truth" but the Brexit referendum and the U.S. Presidential campaign in 2016 has led to a renewed debate about "post-truth, or post-fact politics"<sup>15</sup> and the

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[http://www.nytimes.com/2016/08/24/opinion/campaign-stops/the-age-of-post-truth-politics.html?\\_r=0](http://www.nytimes.com/2016/08/24/opinion/campaign-stops/the-age-of-post-truth-politics.html?_r=0)

role of social media in propagating rumour and untruth.<sup>16</sup> The factual basis of politics has been in part supported by a filter of journalism ethics and fact-checking. As a greater proportion of electoral information is now shown independently of such editorial gatekeeping for example on social media, this raises questions about the efficiency of these filters. Electoral laws do in some cases regulate the telling of deliberate untruths in campaigns<sup>17</sup> in strictly limited circumstances, but such rules may be difficult to enforce in future.

There are a number of other notable rules. For example France Poland and Bulgaria have absolute bans on corporate donations to political parties (Venice Commission: 51).<sup>18</sup> In countries such as Ukraine, new rules on transparency of political advertising and clear labelling of political advertising funding have been recommended by bodies such as the OSCE.<sup>19</sup>

## IV. The Changing Reality of Political Campaigning

### (i) Spending

In Europe, as elsewhere, advertising spend has shifted significantly to digital over the past decade. This has raised questions about the efficacy of existing campaign finance regulation.

A shift of consumers to digital forms has seen advertisers follow suit with their marketing budgets. The result has been the percentage of ad spend devoted to online forms has grown significantly and taken share from more traditional media such as TV, radio and print. In Europe more than a third (36%) of advertising spend is spent on digital channels (up from 6% in 2006) surpassing TV advertising (33%) for the first time in 2015, although this masks significant difference between regions.<sup>20</sup> In the UK, one of the more advanced digital markets, more than 50% of every advertising pound spent goes to online channels.

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<sup>16</sup> <http://www.nytimes.com/2016/08/28/magazine/inside-facebooks-totally-insane-unintentionally-gigantic-hyperpartisan-political-media-machine.html?smid=fb-share&r=0> See also Myth vs. fact: are we living in a post factual democracy? Susan Banducci and Dan Stevens. In The EU referendum analysis 2016: media, in voters and the campaign. Daniel Jackson Et Al eds.

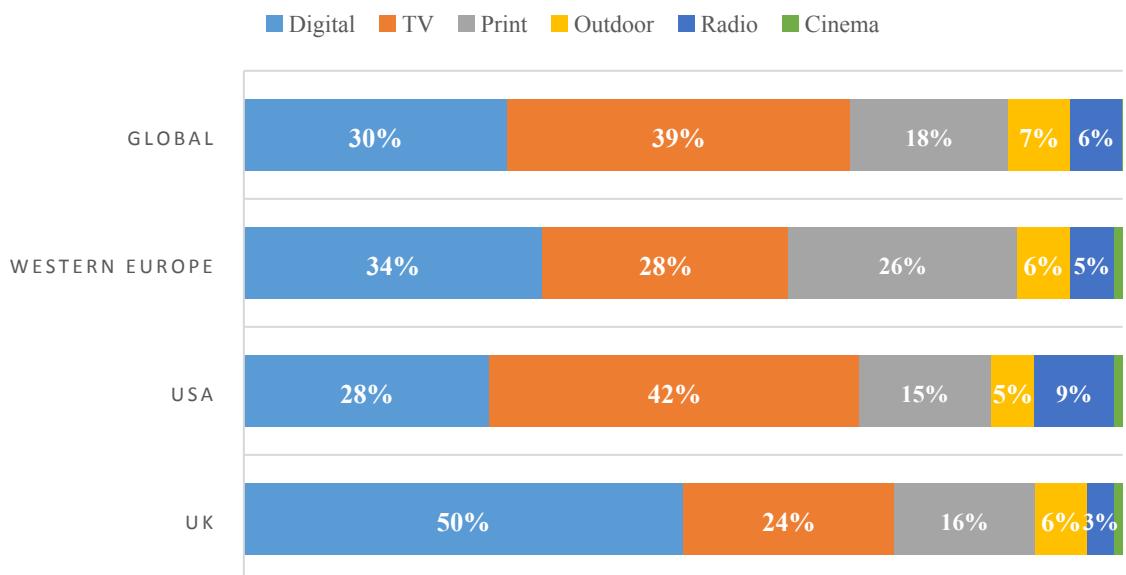
<sup>17</sup> Robertson and Nicol (1992) pp. 615

<sup>18</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)003-e)

<sup>19</sup> <http://www.osce.org/odihr/elections/116830?download=true> (see N. 60)

<sup>20</sup> IAB Europe. 2016. "[adex Benchmark](#)" 2015

## SHARE OF AD SPEND BY MEDIA TYPE: 2015



Source: [Strategy Analytics Advertising Forecast](#), 2015

Reflecting these larger structural trends in the advertising market, political parties have also begun to shift their advertising spend towards digital channels. In the UK, 2015 was the first year where figures have been reported on digital spending on political campaigns. In total £1.6M was spent by the main parties on digital, about 23% of the total advertising budget with the vast majority of the digital budget being spent with Facebook.<sup>21</sup> In the US, even with the presence of T.V advertising spend (largely absent in Europe), almost a billion dollars or 10% of political ad spend is forecast to be spent in the 2016 elections<sup>22</sup>.

Total Political Ad Spend (Share %)					
	2008	2010	2012	2014	2016E
Broadcast	69%	65%	64%	61%	59%
Cable TV	8%	8%	11%	10%	11%
Radio	9%	7%	9%	7%	8%
Print	10%	11%	10%	11%	8%
Out of Home	4%	9%	4%	9%	4%

<sup>21</sup> Electoral Commission. 2016. UK Parliamentary General Election 2015: Campaign spending report pp.28.

<sup>22</sup> Borrell and Associated, Kantar/CMAG, Nomura estimates

Digital	0%	0%	2%	4%	10%
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Source: Borrell and Associated, Kantar/CMAG, Nomura estimates

These new forms of digital advertising are less widely understood than their analogue predecessors and are inherently less transparent. They may undermine existing definitions and lenses based on specific media, and the ability of the regime as a whole to create a level playing field.

## (ii) New Digital Marketing Techniques and their application in politics.<sup>23</sup>

### ***Push vs Pull Advertising***

The basic models for political online advertising do not differ from what is available to commercial firms looking to target potential customers online. There are two categories, push and pull although more recently the lines between the two have blurred as data from one is used to for the other.

The pull method is largely associated with search engine advertising. It is keyword triggered. In other words ads are targeted to users after they search on a keyword which an advertiser has chosen to trigger their advertising copy. For example a political party might choose to bid on a keyword 'EU Referendum' which would trigger their ad to appear on the search results page if a user searched for this term or a related one. This is akin to the yellow pages or telephone book, where a user looking for a product or service consulted a directory which listed providers of that service and potentially advertisers who might have paid for a more prominent listing. The business model is based on cost per click i.e. if the user clicks on the ad in question, the advertiser (in this case the political party) is charged. The amount they are charged is largely dependent on how popular the service they are advertising is and how closely related it is to what they are offering. Another less popular business model is the cost per impression. Ads are charged every time they are displayed rather than when they are clicked. Cost per click is largely the business model for search advertising.

In addition to keyword trigger, advertisers are also able to target and tailor their ads based on what devices users are on, language and regional settings.

Push advertising on the other hand involves little agency from the user. In this case advertisements are displayed to users unprompted as they carry out their regular activities online. This would include adverts on regular publisher's websites; news, magazines, blogs as well as on platforms such as social media and video sites. Here the targeting options are myriad. Advertisers are able to target by demographic group, or interests, according to what websites the users have visited previously, what pages they like, their behavior and personal details and so on.

Increasingly the sharing of data across platforms means the lines between push and pull are blurred. For example Facebook ads can be targeted not just according to data volunteered and in circulation in the Facebook ecosystem but

<sup>23</sup> The author acknowledges the excellent research assistance of Sharif Labo on this paper and particularly on this section.

also what users do outside of Facebook, for example their browsing history on other websites. Similarly an advertiser, a political party for example or a supermarket can upload lists of their users into Facebook and use the platform to advertise to them and similar users. Search advertising can also take advantage of data from users who have performed an action away from the search engine results page, for example a user who has visited a website and did not purchase or sign up can be 'remarketed' to.

### ***Message targeting***

The common thread that emerges from these new advertising techniques is one of a movement from scale to precision. Political parties (and commercial advertisers) have moved from blunt methods that favoured reaching millions of people with a similar message to more precise tools which are able to target smaller audiences with bespoke such messages.

In political terms, it has allowed party officials to reach the thousands that win elections. As one person who was involved with the UK Conservatives election campaign in 2015 put it " People said to me....I don't see anything from you guys....This was like stealth, Basically if you don't live in one of the 100 key constituencies you are going to see very little from us."

## V. Potential Problems associated with New Digital Techniques

These new methods however raise concerns about their impact on the legitimacy and fairness of elections, and the ability of the current regulatory and ethical framework to protect it including:

### (i) Regulation of broadcast advertising

Online media may undermine T.V advertising rules. For example in the recently concluded EU referendum in the UK, Britain Stronger in Europe targeted videos towards certain demographics. One entitled "What would Brexit mean for my children" [targeted at mothers registered almost 600k views](#). With younger demographics increasingly consuming the majority of their [T.V content via online video channels such as YouTube](#), it raises questions as to the effectiveness of the current regulatory framework.

### (ii) Transparency

2015 was the first year where figures have been reported on digital spending on political campaigns in the UK. In total £1.6M was spent by the main parties on digital, about 23% of the total advertising budget with the vast majority of the digital budget being spent with Facebook. There are however big gaps in how digital spending is reported due to current reporting requirements. These gaps mean it is unclear whether or not we are looking at the entire picture. The main issue is there are no separate reporting lines for social or digital media. According to the UK Electoral Commission digital advertising could be hidden within larger categories such as market research, advertising and unsolicited campaign material. Identification of what constitutes digital is made based on the name of the provider. For example Google or Facebook being recognised providers of advertising services on digital platforms however a lot of digital spending takes places via Intermediaries such as advertising agencies or consultancies. A case in point is the Labour Party's reported spend on digital advertising in the 2015 UKPGE. Initial reports about Labours online spend indicated they had spent only £16k spent, however this proved to be erroneous as they had spent about £130,000 using an advertising agency which is common practice. The Electoral Commission has identified this as an important issue to monitor and put forward a recommendation that parties be required to report on more detailed breakdowns including social media spend before the next parliamentary general election.<sup>24</sup>

### (iii) Campaigning on Wedge Issues

The ability to micro-target political messages increases the likelihood that parties and candidates campaign on wedge issues. Issues which are highly divisive in a public forum but also have the ability to mobilize voters such as matters on immigration and welfare.<sup>25</sup> Research from the U.S<sup>26</sup> has shown that candidates

<sup>24</sup> Electoral Commission. 2016. [UK Parliamentary General Election 2015](#): Campaign spending report pp.55-56.

<sup>25</sup> Barcas, S., 2012, November. The price of precision: Voter microtargeting and its potential harms to the democratic process. In *Proceedings of the first edition workshop on Politics, elections and data* (pp. 31-36). ACM.

are more likely to campaign on these wedge issues when the forum is not public. This however again raises questions about the impact this type of precise hidden campaigning and asymmetric informational flows has on the polarization of citizens. Message targeting speaks to the individual concerns of citizens as part of a group. The legitimate concerns of opposing groups are discredited or dismissed. Because these messages are being played out largely in secret they cannot be challenged or fact checked.

#### (iv) **Political Redlining<sup>27</sup>**

Message targeting encourages contact and engagement only with those who are deemed worthy of political campaigning, for example those in marginal seats or judged to be undecided voters might receive attention, however it begs the question what happens to those who are not regarded as strategically important. Groups less likely to vote risk being further disenfranchised with this move to precise targeting during election campaigning'. There is also a risk of a compounding effect. Data on past elections are often used as a guide to inform future campaigning, so groups which are seen as not worth the resources are likely to be bypassed in the future. On the flip side those already seen as 'decided' are likely to receive information only from their affiliated party, if at all (as it might be considered a waste of resources). If democratic societies flourish through the free flow of information which in turn allow citizens to consider issues on balance then any move to restrict information flow might exacerbate polarization. As Karpf (2012) noted advances in technology which allow message targeting removes a "beneficial inefficiency" that aided the public sphere.<sup>28</sup>

#### (v) **Intermediaries**

**Gatekeeping, message targeting and opinion shaping taking place on opaque Internet intermediaries:** By virtue of their new position in not only hosting the audience that political parties wish to reach but also the targeting tools and the all-important user data, they sit on top of a new power hierarchy. These platforms have the ability to facilitate or impede information dissemination. They could in theory make it easier for a political party which their business/ideological interests align with to reach their supporters or vice versa. There are already real concerns about this with one [former Facebook employee recently claiming to have been involved in keeping conservative issues from trending on the site](#). The methods used to curate and display information on these sites are opaque which means it is impossible to independently authenticate these claims. On a structural level this raises questions about the future of the public sphere if discourse fundamental to a democracy is taking place in a privatized sphere. A sphere where the terms of discourse are controlled by a few private Internet companies and which favors those with the resources to understand and make sense of this highly technical world.

<sup>26</sup> Sunshine Hillygus .D & Shields.G. T. 2009. "The Persuadable Voter:Wedge Issues in Presidential Campaigns

<sup>27</sup> Howard, P.2006. New Media Campaigns and the Managed Citizen. Cambridge University Press

<sup>28</sup> Karpf, D. 2012. The MoveOn Effect: The Unexpected Transformation of American Political Advocacy, Oxford University Press.

## (vi) Privacy

Privacy helps protect freedom of speech and facilitates political debate by providing citizens a space to form opinions and develop identities free from surveillance. Political parties as data controllers are subject to data protection rules and have duties to protect fundamental rights. It is important to underline that these should be enforced, as an important part of the protection of the law, given the increasing importance of political databases in strategic election communication. An online sphere where every conversation, comment or post is recorded, scanned and analysed for its commercial and political use could have negative repercussions for the free expression and exchange of views especially as privacy concerns among citizens grow.<sup>29</sup>

## (vii) Overview: the objectives revisited

### *Summary: the new threats to fair clean and clear election campaigning.*

In summary, the economics of campaigning is changing. Television is still important but online is growing most quickly and shaping political campaigns in ways that researchers are only beginning to understand.

Internet campaigning challenges all three of the high level policy objectives identified by the Venice Commission.

Of particular concern is the first objective: maintaining a level playing field and the principle of equality of opportunity for political parties. The key problem is that most safeguards were written into the broadcast licensing regime which contained rationing means to ensure fair access to broadcasters and the audience as they could guarantee. In addition, less money goes further in the era of targeting. Therefore absolute spending limits may do less to protect democracy.

The second objective was guarding against corruption and we can see that the key instruments in particular party finance and campaign finance rules do face challenges. Existing methods for calculating spend and categories for reporting political spend needs to be revisited.

Transparency, the third objective is undermined in a variety of ways. Not only is it more difficult to implement a labelling regime that makes citizens aware of campaign finance it becomes more difficult to implement reporting requirements to electoral regulators. Message targeting involves not just the delivery of messages themselves but a huge amount of resources behind the scenes to analyse the data to determine the target segments and messages<sup>30</sup>. In addition to these established policy principles, academic research has highlighted new challenges to election legitimacy, namely problems of autonomy, privacy deliberation and message targeting that may in the long term need to be addressed to protect the legitimacy of democratic processes.

<sup>29</sup> Kreiss, D. (2012). [Yes we can \(profile you\): A brief primer on campaigns and political data](#). *Stanford Law Review Online*, 64, 70.

<sup>30</sup> Tufekci, Z. (2014). [Engineering the public: Big data, surveillance and computational politics](#).

This is not only about the democratic system as a whole but about each individual citizen –the autonomy of their decisions, the privacy of their data and of the ballot itself. Data privacy and freedoms of association and expression are fundamentally impossible to separate. Increasing the ‘knowability’ of processes of will formation leads to self-censorship and itself chills political mobilisation.

### **The Scottish independence referendum 2014**

The UK Electoral Commission (2013, 2016) made several recommendations; for example ‘there should be proportionate imprint requirements on non-printed material at referendums and elections across the UK. However, we would welcome the opportunity to work with relevant governments, not only in Scotland but also in other parts of the UK, when they are considering future legislation for referendums, to ensure that the imprint rules strike the right balance between ensuring there is transparency about who is behind the material and proportionate and modern regulatory requirements.’

They also recommended that government should refrain from distributing paid for leaflets (15) which was ignored by the government during the EU referendum, and that regulation of the content of campaigns was inappropriate.

## **VI. Recommendations**

The most fundamental, pernicious, and simultaneously difficult to detect implication of the shift to social media is not the rising power of intermediaries but the inability of regulation to level the playing field for political contest and limit the role of money in elections. It is now well accepted, indeed legal and regulatory norms reflect this point, that media institutions play a key role in shaping democratic debate and voter preference formation. This is why a series of safeguards have been developed to prevent abuse of the political process by mass media. These rules must be updated to take account of media change.

### **(i) Standard setting**

[insert relevant EU standards]

In the UK, the review of campaign finance legislation by the electoral commission (2014) and the committee for standards in public life (1998) recognised that the job of a regulator would be to keep legislation under review to account for changes in technology.

“In addition to its overall duty of keeping election and funding arrangements under review, the Election Commission should be specifically charged with monitoring the working of the current arrangements...and the effect on political advertising generally of developing communications technologies.”<sup>31</sup>

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<sup>31</sup> The Committee on Standards in Public Life, 1998. [The Funding of Political Parties in the United Kingdom](#), Cm 4057-I, pp.183.

## (ii) Recommendations

Many of the emergent problems with Internet campaigning concern the content of campaigns messaging which has not been subject to regulation or standard setting. Election monitors and regulators should however maintain a watching brief with regard to issues such as message targeting, redlining and the undermining of deliberation. There are a number of areas where more active standard setting could be fruitful.

### *Personal data and trust in social networks.*

In line with proposal 13 of recommendation CM/Rec (2012) and Recommendation CM PC/Rec (2016) on Internet freedom, Social network services should not process personal data beyond the specified purposes for which they have collected it. Electoral campaigning constitutes in most cases a distinct purpose for which distinct consent is required. The use of personal data for message targeting services in the context of electoral campaigns should be scrutinised by national data protection agencies in collaboration with electoral monitors to ensure that it complies with national laws. Member states should also raise awareness among voters with regard to their online activities being used for political purposes.

### *Freedom of association and the right to freedom of peaceful assembly.*

Recommendation CM PC/Rec (2016) on Internet freedom specifies that individuals and associations are free to use the Internet and Internet platforms to organise themselves for purposes of peaceful assembly. These rights entail responsibilities not only for governments but also for platforms and intermediaries that should develop code of conduct that make explicit their respect for such fundamental rights.

### *Election Observation*

The principles and standards of the Venice Commission should be urgently updated to reflect the importance of online campaigning. This should include an update of methods of monitoring: selection of media for monitoring (content monitoring); revision of spending monitoring, and transparency and data requirements for platforms and intermediaries.

### *The role of electoral commissions*

National electoral commissions' statutory duties should urgently be updated. They should work with independent national regulatory agencies in the communications sector to monitor the importance of online political advertising and campaigning in the overall process of electoral campaigning and review the effectiveness of current quotas, limits and reporting categories in the area of electoral spending and subsidised public service announcements. A wide review of the ability of the legal framework to ensure a fair clean and clear electoral campaign should be conducted. Definitions of the cost of campaigning should be expanded to include consultancy and database costs that relate to campaign spend, or a shift to donation limits rather than spending limits should be considered.

*Media Law*

The role of broadcasting regulation in particular, and its ability to maintain a level playing field in political campaigns should be reviewed. New and innovative measures to ensure that new, less well resourced, and minority political campaigns can be heard should be sought.

*Self-regulation and news accuracy.*

Was the idea of fake news is often exaggerated and used instrumentally by interested parties, there is nonetheless an important role to play for journalism self-regulation in creating professional incentives that support accuracy of reporting. Self-regulatory bodies in journalism should be encouraged to collaborate with Internet intermediaries to create environments conducive to fact checking independently from the state, and also to prevent deliberate misinformation likely to impact electoral processes.

*Campaign and Party Finance*

The shift to online political advertising constitutes a major disruption of political campaigning, and as such should lead national parliaments to review the effectiveness of these rules in their current form.

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