

Personal Data Processing by and for Political Campaigns: The Application of the Council of Europe's Modernized Convention 108

Professor Colin J. Bennett
Department of Political Science
University of Victoria
British Columbia, Canada
www.colinbennett.ca
cjb@uvic.ca



**University
of Victoria**

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**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION
OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING
OF PERSONAL DATA
CONVENTION 108**

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of Europe's Modernised Convention 108**

by

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Directorate General of Human Rights and Rule of Law

*The opinions expressed in this work are the responsibility of the authors and do not necessarily
reflect the official policy of the Council of Europe*

DEMOCRACY AND PRIVACY

- There is a rich tradition of trying to understand the role played by effective privacy protection within different forms of democracy.
 - For *liberal democracy*, privacy advances individual autonomy and self-fulfillment, and reinforces political competition.
 - For *participatory democracy*, privacy bolsters participation and engagement: voting freely, speaking out, engaging in interest groups, signing petitions, participating in civil society activism and protesting.
 - For *deliberative democracy*, privacy enhances the freedom to make choices under conditions of genuine reflection and equal respect for the preferences, values and interests of others.
- We know that privacy is important *for democracy*. **Until recently, we have known relatively little about how privacy has been compromised by democracy**, and by the agents that seek to mobilise, engage and encourage us to vote – or not to vote.

THE TRENDS

- Increasingly elections around the world are “data-driven” through a complex campaign “ecosystem”
- The entry of commercial behavioral marketing techniques into political campaigning has produced widespread **voter surveillance** by a **political influence industry** where:
 - Personal data is a **political asset** through “voter relationship management systems”
 - Personal data is **political intelligence** through testing and experimentation
 - Personal data is **political influence** – through **micro-targeting**

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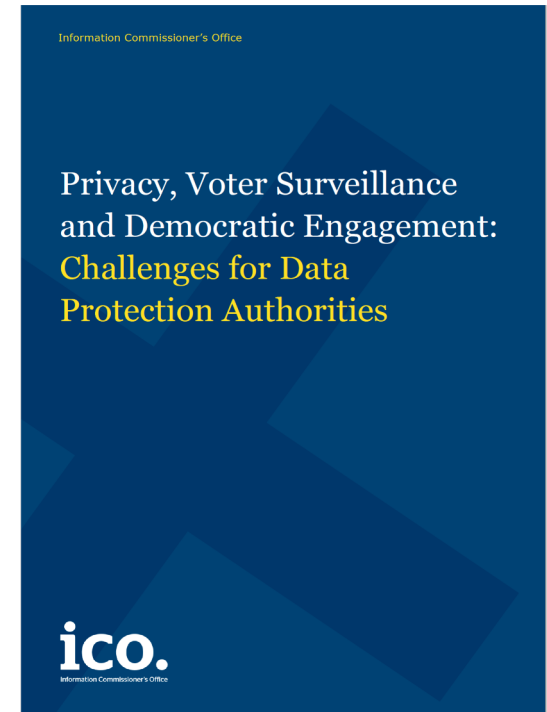


VOTER SURVEILLANCE AND DEMOCRATIC ENGAGEMENT

- Effects on **divisiveness**
- Effects on the **marketplace of ideas**
- Effects on **political participation**
- Effects on **campaigning**
- Effects on **governance**
- Effects on the **party system and electoral competition**

PRIVACY PROTECTION AND POLITICS

- Familiar data protection questions on transparency, fair processing, consent, security, and accountability, are now at the center of an international debate about democracy
- Data protection regulators, privacy advocates and international organizations are now at the center of this global conversation
- Elected officials over the world now realise that the illegal and unethical processing of personal data within elections can hurt them at the ballot box
- Privacy and data protection have rarely in the past been “Big P” political questions ...they are now



CHALLENGES FOR THE PROTECTION OF PRIVACY IN POLITICAL CAMPAIGNS

- What is a **political campaign** – and when do they start and end?
- Voter surveillance is a **global phenomenon**, requiring high degree of international harmonization
- A large, opaque and shifting **ecosystem of global actors** – data controllers and processors within the political influence industry
- The interests on the other side of the debate are compelling – the need for **democratic engagement and mobilization**
- It is difficult to convince **politicians to regulate themselves**
- **Different regulatory authorities** are involved besides data protection agencies, including elections regulators
- **Many legal, institutional and cultural factors** affect the processing of personal data in political campaigns

FACTORS THAT ENABLE OR CONSTRAIN POLITICAL MICRO-TARGETING

There is a complex array of legal, institutional, historical and cultural variables which determine the extent to which elections are, and can be, “data-driven” and therefore how much micro-targeting can occur

Legal

- Constitutional provisions on freedom of communication/speech
- Statutory: Data protection, election law, campaign financing law
- Telemarketing rules, anti-spam rules, election advertising codes

Political

- The party and electoral system
- Mandatory or non-mandatory voting
- Existence of primary elections
- Frequency of referendums

Cultural

- General acceptability of direct candidate to voter campaigning
- Legacies of authoritarian rule
- Trust in political elites

KEY DATA PROTECTION ISSUES IN POLITICAL CAMPAIGNS

- The **identifiability and re-identifiability** of data on political opinions
- The definition of “**political opinions**” as a form of sensitive data
 - Political ideology or belief system
 - Political or partisan affiliation
 - Policy preferences and beliefs
 - Information *revealing* political opinions
- Rules on **consensual political communications**
- Questions of **proportionality** in the light of the **legitimate purposes** of political campaigns
- The processing of personal data that has been made “**public**”
- Duties of **transparency** across all campaigning contexts
- Rules on **automated decision-making (voter profiling)**

AN IMPORTANT ROLE FOR CONVENTION 108+



- Convention 108+ is expressly framed in democratic terms and democracy is a condition for accession
- The Council of Europe is uniquely suited to addressing the privacy implications of data-driven elections and to reconciling privacy protection and the promotion of democratic practices
- The definition of “political opinions” as sensitive forms of data is motivated by historical concerns over voter suppression and discrimination: the Council of Europe has a distinguished track-record of promoting democratic practices in established, as well as, newer democratic states
- Council of Europe has an impressive record of analyzing technological challenges to privacy and framing recommendations
- Council of Europe has a breadth of experience across related regulatory and policy sectors
- Convention 108+ is an accessible and potentially global standard that can serve as a powerful guide to best practices for the variety of data controllers and data processors within political campaigning networks in different jurisdictions
- **There is a huge potential for Council of Europe guidance and recommendation on data protection and political campaigning based on Convention 108+**