

**Parliament of Victoria
Electoral Matters Committee
Parliament House, Spring Street
East Melbourne VIC 3002
Australia**

EMC Submission No 80
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Re: Submission to the Inquiry into the Impacts of Social Media on Elections and Electoral Administration

On behalf of the British and Irish Law Education and Technology Association (BILETA), we thank the Electoral Matters Committee for the invitation to make a submission.

Having reviewed the material and scope of the enquiry, we are pleased to share our views. This submission is made by the named individuals given at the end of the submission on behalf of the Executive Committee of BILETA. Please do not hesitate to contact us should there be any issues which you would like to discuss with us.

How is social media changing elections?

Ethics in political communication has always been a complex issue. It is further complicated by the rise of social media, which has been driving political polarisation. The result is a surge in tribalism, and party politics, in which ideologies are continually pulling away from the centre. Divisive content has been a defining characteristic in the run-up to elections in Brazil, India, Nigeria, US 2016 Presidential election and during "Brexit"¹. It has enabled a style of populist politics that is combative and personal, allowing hate speech and extreme speech to thrive in online space that has overtaken regulatory initiatives². Social media is shortening people's attention spans to the point where little more than slogans and sound bites now serve as the basis of political decision-making³. Unfortunately, the electorate now comes to behave like a television audience, consumed by populism in a political atmosphere in which opinion is dictated by personality and attitude, above rationality and reason. In recent years we have seen an acceleration of tribal anti-intellectualism which is eroding democratic principles based on a rational debate among an informed electorate. Democracy is experiencing a crisis of confidence.

What problems have you seen with social media and online advertising around elections?

Social media survives and thrives on "user" engagement with it. There is considerable concern about the role social media, such as Facebook and Twitter, play in promoting misperceptions

¹ Experiences of Social Media Monitoring During Elections: Cases and Best Practice to Inform Electoral Observation Missions (2019) <https://www.opensocietyfoundations.org/uploads/b01958d0-7dce-41d3-94ec-622f992f5efc/social-media-monitoring-during-elections-20190614.pdf>

² Jones K (2019) Online Disinformation and Political Discourse: Applying a Human Rights Framework <https://www.chathamhouse.org/sites/default/files/2019-11-05-Online-Disinformation-Human-Rights.pdf>

³ Basu S. (2019) WhatsApp, India's Favourite Chat App: A Threat To Democracy? <https://riskgroupllc.com/whatsapp-indias-favourite-chat-app-a-threat-to-democracy/>

during political campaigns. Social media has a distinctive characteristic that makes it very different from those traditional mediums of communication—it allows for microtargeting as demonstrated by the Cambridge Analytica scandal⁴. We are concerned that "political microtargeting" using social media has the potential to be highly manipulative in a way which compromises the voting freedom of the electorate. It aids the dissemination of disinformation and promotes distrust in order to undermine the integrity of democratic processes.

Social media is explicitly designed for engagement. However, how these platforms are structured is highly disadvantageous to the user. It leaves them in a position of extreme vulnerability and very susceptible to manipulation. Sophisticated data analytics algorithms and political bots are helping political actors to accurately identify the individual voters and groups who are most likely to be convinced to vote a certain way. Microtargeting can focus on a particular issue which would provoke the most engagement within a particular community⁵. The language of the advertisement may also be doctored to suit a group or demographic. Accordingly, political actors craft advertising messages specifically to exploit the interests and vulnerabilities of that particular voting demographic group. Hence social media based "political microtargeting" and "computational propaganda" is turning electorates into objects of manipulation. Microtargeting can have several positive or negative objectives: to persuade, inform, or mobilise, or to dissuade, confuse or demobilise voters⁶. It is undermining the public sphere by thwarting public deliberation, aggravating political polarisation, and facilitating the spread of misinformation.

What actions have you seen governments take in relation to social media/online advertising and elections? What results have been achieved by these actions?

The governments around the world seem to be taking a cautious approach to social media advertising. However, some countries have proposed or implemented regulations specifically designed to tackle different aspects of influence campaigns, including the banning of political microtargeting⁷. A bill banning microtargeting in political advertisements has been introduced in the US⁸. The UK does not currently have any legislation that regulates the validity of news and information posted by online platforms, and it also does not have any laws specifically designed to regulate online political advertisements. The Electoral Commission in the UK has recently recommended a legislative amendment to necessitate imprints on online campaign material⁹. In August 2020, the UK government unveiled new proposals that would require political parties and

⁴ Cambridge Analytica described its services as 'data enhancement and audience segmentation techniques' offering a 'psychographic analysis [...] [and] behavioural microtargeting' that might be used for tailor-made marketing and granular voter mobilisation. <https://theconversation.com/psychographics-the-behavioural-analysis-that-helped-cambridge-analytica-know-voters-minds-93675>

⁵ William A. Gorton (2016) Manipulating Citizens: How Political Campaigns' Use of Behavioral Social Science Harms Democracy, *New Political Science*, 38:1, 61-80

⁶ Dobber, T., Ó Fathaigh, R., & Zuiderveen Borgesius, F. J. (2019). The regulation of online political microtargeting in Europe. *Internet Policy Review*, 8(4)

⁷ Bradshaw, S., Neudert, L.-M., & Howard, P. (2020). Government Responses to Social Media Manipulation. Computational Propaganda Project <https://comprop.oii.ox.ac.uk/research/government-responses/>

⁸ <https://eshoo.house.gov/media/press-releases/rep-eshoo-introduces-bill-ban-microtargeted-political-ads>

⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning/report-digital-campaigning-increasing-transparency-voters>

political campaigners to display a digital imprint to apply to all types of campaign content regardless of the country it is being promoted from, and across a variety of digital platforms¹⁰ and it would apply all year round, as while election periods see increased promotional activity, campaigning can happen at any time¹¹. However, there is no timeline for introducing the policy. In 2019 the Government published a report known as the Cairncross Review that determined, among other things, that 'investigative journalism and democracy reporting are the areas of journalism most worthy and most under threat [and] . . . that, given the evidence of a market failure in the supply of public-interest news, public intervention may be the only remedy.'¹² In addition, the UK government has introduced a campaign called "Don't Feed the Beast"¹³ designed to increase awareness for residents in the UK when reading and distributing online information.

The European Commission has introduced a self-regulatory code and guidance for member states about elections to the European Parliament. The self-regulatory Code of Practice on Disinformation, which includes provisions that social media platforms need to follow to ensure transparency about political and issue-based advertising, also to enable users to understand why a given advertisement has targeted them¹⁴. General Data Protection Regulation (GDPR) seeks to mitigate some of the risks and infringements on user privacy that can accrue from data practices. However, it is not the silver bullet when it comes to the protection of the electorate against potential manipulation.

In what can be seen as a direct outcome of Cambridge Analytica scandal, Facebook recently rolled out various measures to ensure transparency in political advertising on its platforms. "Issues Ads" tags is an obligatory authorisation process for anyone wanting to run political or issues. Facebook expanded the features and had, up until now, launched its ad transparency tools in 50 countries. Before the 2019 general election in India, the Election Commission of India convinced the social media platforms like Facebook, Twitter, TikTok, Google and WhatsApp to follow "voluntary code of ethics" to facilitate transparency in paid political advertisements¹⁵. Twitter has recently announced that it will no longer allow political advertisements on its digital platform and Google, now allows just basic demographic targeting for political ads.

What are the most effective ways to address any problems with social media and online advertising around elections?

In the UK and most democratic countries, electoral law is not fit for the digital age. It was primarily developed to ensure equality between political parties and allow for the accountability and

¹⁰<https://www.gov.uk/government/news/political-campaigning-online-to-be-made-more-transparent-under-new-rules>

¹¹<https://www.gov.uk/government/news/political-campaigning-online-to-be-made-more-transparent-under-new-rules>

¹² The Cairncross Review, A Sustainable Future for Journalism 7 (Feb. 2019), <https://perma.cc/624J-37RW>

¹³ <https://sharechecklist.gov.uk/>

¹⁴ Recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament (2018).

https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-cybersecurity-elections-recommendation-5949_en.pdf

¹⁵ <https://scroll.in/latest/938625/social-media-platforms-agree-to-follow-code-of-ethics-in-all-future-polls-election-commission>

regulation of campaigning practices. These laws include the establishment of spending limits as well as imposing controls on the usage of broadcast media for political campaigning. The relevant standards and principles of electoral law should be updated to reflect the importance of social media campaigning. Revisions to these laws 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 shift to online political advertising constitutes a significant disruption of political campaigning, and as such should lead national authorities to review the effectiveness of these rules in their current form¹⁶. We need to re-establish trust and transparency in the electoral process. In our view, electoral commissions should monitor online political advertising during the process of electoral campaigning and review the effectiveness of current limits, and reporting categories in the area of electoral spending and subsidised public service announcements.

There is a need to foster a more expansive atmosphere of accountability within social media companies. In our view, social media in Western countries operate in a specific environment of "legal exceptionalism", where barring some exceptions, companies are not responsible for the content published on their platforms. In the absence of any imposing regulatory body, social media platforms have largely been left to govern themselves. The UK government has published a White Paper proposing a new regulatory framework to improve the safety of the online experience. The government aims to facilitate this through the creation of a statutory "duty of care", which imposes obligations on social media companies to protect users and confront illegal activities¹⁷. In our view, this action is a step in the right direction.

Finally, political micro-targeting and political advertisement is a form of political communication, and thus, it is an exercise of the right to freedom of expression. Further, it can be challenging to define a "political advertisement" as it is subjective; hence it is improbable if not impossible to implement a complete ban effectively.

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¹⁶ 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 includes online public communication. Under Art. L. 163-1 three months prior to elections, online platforms must provide users with information about who paid for the "promotion of content related to a debate of general interest". In Germany, under Article 7(9)(1) of the *Rundfunkstaatsvertrag* (RStV), paid political advertising is prohibited.

¹⁷ <https://www.gov.uk/government/consultations/online-harms-white-paper>