

News Media Europe response to the European Commission public consultation on an initiative on sponsored political content

Introduction

The issue of political advertisement has received significant attention in recent years. There have been suggestions that the EU should seek to further regulate such advertising, notably based on the understanding that what is illegal offline should also be illegal online.

In addition, while advertising revenues continue to play a major role in the business models of news media publishers, there is recognition that our industry holds a responsibility as providers of advertising services that enable the dissemination of political advertising.

As concerns about disinformation grow and the risk of excessive or abusive regulatory interventions continue, specific attention to this issue is warranted to avoid negative consequences for free speech and ensure the independence of media.

Definition of political advertising

Political advertising can cover a wide range of activities and formats, including newspapers, online news, tv and radio broadcasts, billboards and social media. Political ads also promote a range of different interests, such as particular parties or candidates, fund raising, sharing of specific information or even campaigns around certain issues.

Political advertising is also often regulated, especially during electoral periods, through relevant electoral laws. Depending on the Member State, sellers of advertising space such as media companies must ensure that such laws are observed in order to ensure a fair election process in line with constitutional tradition of the Member State concerned.

It is important for news media publishers that political advertising is recognised for what it is, and certainly not as newspapers or online news websites or other similar publications. Unfortunately, political advertising sometimes masquerades as news and legitimate news businesses are faced with unfair and harmful competition from such operations.

Dressing up political material as independent local news damages and erodes public trust in both politicians and the local news media. Political leaflets and similar publications mimicking independent local newspapers undermine professional and legitimate journalism that adheres to high deontological standards. Further reflection on how to tackle this issue is required.

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Another challenge when defining political ads is to draw a distinction with commercial advertising, even when such advertising is issue-based. For example, a commercial entity may decide to support an advertising campaign related to race or gender equality. We do not believe that such advertising should fall within the scope of political advertising rules.

It is therefore important to consider how such advertising can be differentiated from political advertising. One solution is to focus on identifying the advertiser and relevant actors with links to the said campaign and its funding (campaigner, candidate, party, sponsor, etc) rather than the content itself. We believe such an approach could provide nuance that is needed.

As the issue of political advertising is increasingly associated with debates around disinformation and misuse of user data, it is important to differentiate lawful and legitimate political advertising from manipulative techniques. For example, political and democratic debates can be undermined by misinformation.

Variations of misinformation on social networks such as rumours about candidates that are not properly verified can go viral and earn millions of user interactions to the detriment of the quality of the political debate. This issue must be examined from the perspective of the responsibilities that social networks should have.

Transparency of political advertising

Political advertising, as any other form of advertising, is subject to certain transparency rules. There is recognition both amongst self-regulatory bodies and competent public authorities that it is important to ensure sound transparency to avoid any form of harm towards consumers. In practice, much of the key discussions have focused on how to implement transparency.

Depending on the Member State, several transparency disclosures may be required and implemented in different ways, this includes issues around labelling of the ad and the identity of the person funding the ad (or co-sponsors). In the digital environment, EU rules in the current e-Commerce Directive are applicable as regards commercial communications.

At any rate, it is important that political ads are (at least) subject to those same requirements to ensure the adequate protection of consumers and a fair level playing field within the relevant advertising markets. Yet, as a result of their sensitive nature political ads may also be subject to additional substance and transparency requirements.

To that extent, it may no longer be appropriate for industry stakeholders such as ourselves to comment on the appropriateness of such measures which run deep into the democratic fabric of societies. It is clear that there are legitimate underlying public policy concerns about ensuring fair, transparent and open democratic processes which must take precedent.

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Rules for political advertising

Political advertising is also often regulated, especially during electoral periods, through relevant national electoral laws. Therefore, sellers of advertising space such as media companies must ensure that such laws are observed in order to ensure a fair election process in line with the constitutional tradition of Member States.

In many Member States such laws seem to apply equally across all advertising mediums, whether in print, online, radio or tv broadcast. Yet it is also clear that it is in the online environment that many controversies around political advertising take place. In particular, it is clear that large social networks could do more to ensure sound conditions for political ads.

Google and Facebook own most of the relevant user data and dominate the technology used to push for political advertising. Political messages are also pushed through social networks' organic content, for instance with Facebook uploads and YouTube videos. We notice that depending on the sensitivity of the election, large platforms consciously decide whether to maintain or ban political advertising on their networks.

Accordingly, it becomes relevant to consider whether the scope of future proposals should be targeted or broad instead. From the perspective of private editorial media, it would not make sense to add additional rules that replicate existing ones if there is no clear added value or reason to do so considering the underlying policy objectives.

Targeting of political advertising

The use of audience data has opened many opportunities for advertisers to reach out to audiences in more effective ways. However, the mismanagement of personal data by certain platforms and advertisers also creates important risks for the integrity of democratic processes, both through deceptive manipulation techniques and disinformation campaigns.

There are accordingly important discussions about the measures that should be taken to mitigate such risks going forward. The range of solutions being debated is broad, from more minimal intervention such as transparency for users such as information about why they were targeted and opt-outs from profiling techniques, to complete bans on targeted political ads.

Some of these measures will already be addressed as part of the reviewed Code of Practice on disinformation and the Digital Services Act, which is set to increase transparency and accountability across digital services through new accountability tools and greater user empowerment. Yet, such initiatives are no substitute for the proper enforcement of data protection and privacy laws to large online platforms.

From a practical standpoint, it is also important for editorial media that sell advertising space that any new rules and responsibilities are clear and implementable with due consideration for how advertisers operate. Specifically, contemporary online advertising is often based on the trading of

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ads through advertising technology intermediaries. This also underlines why greater transparency in the ad-tech ecosystem is important.

In this sense, there is a need to ensure that advertisers are able to communicate information that is relevant for the purpose of fulfilling informational transparency requirements along the advertising supply-chain. This is technically possible but may require the introduction of new dedicated standards to support such processes, which policy makers should anticipate.