



ICCL Q&A on the Political Advertising Provisions of the Draft Electoral Reform Bill 2020

March 22nd 2021

What are the issues of concern for ICCL on the Advertising Provisions of the Draft Bill?

We have two broad areas of concern, firstly with regards to head 120 “Buyers of Online Political Advertisements” and the definitions used therein. Secondly, with regards to Head 121 “Public Information Requirements for Online Political Advertisements” and how privacy and transparency rights are balanced.

What is the concern with the definitions used in Head 120?

The definition of ‘political purposes’. contained in this Draft Heads of Bill relies on the definition provided in the 1997 Electoral Act which limits the abilities of CSOs to fundraise. The drafters of this Heads of Bill acknowledge the issue on pg5 of the Bill and draw attention to the fact that civil society organisations have highlighted the impact this definition has on their work and their ability to fundraise. Despite this, the 1997 Act’s definition is used in order to ensure consistency.

Why is this an issue?

If the 1997 Act’s definition is used in this Bill, it will further entrench and possibly worsen the issues being faced by CSOs by transposing existing restrictions into advertising regulations. At the same time, the proposals to confine the political advertising rules to defined election periods would appear to indicate a link to electoral politics, which is in conflict with the more general definition of ‘political purposes’.

It is clear that the political advertising proposals are dealing with two distinct areas: advertising on electoral and party political matters, and advertising on social issues. It may well be appropriate to regulate advertising in both areas, but different considerations arise with both concepts and they should be dealt with distinctly.

What Can be done?

The development of this Bill presents an opportunity to update and clarify the “political purposes” definition in the 1997 Act by incorporating the legislative remedy proposed by the Electoral (Civil Society Freedom) (Amendment) Bill 2019 which is before the Oireachtas.

We are also of the view that the Draft Bill presents an opportunity to develop transparency guidelines and criteria for ‘issue based advertisements’ as distinct from ‘political advertisements’.

‘Issue based advertising’ is advertising that concerns matters of social or economic policy outside of electoral periods. Regulations on advertisements such as these are already the case within the existing practice of some social media companies. Different considerations of freedom of expression and freedom of association apply in the context of individuals and civil society organisations seeking to express views on matters of public interest. Thusly different criteria with regard to the transparency of these advertisements should apply.

Why are the provisions of the “Public Information Requirements for Online Political Advertisements” in head 121 of concern?

We believe that the level of detailed personal information that it will be necessary for individuals and organisations to provide and display in order to place advertisements as outlined in Head 121(2)(a) deserve further scrutiny. The public display and online archiving (as per head 121(4) and 121(6)) of this type of information may have a chilling effect on the ability of certain members of the population being able to exercise their democratic rights. For example, members of discriminated against minorities being forced to publicly declare their support for an organisation or cause in order to place advertisements.

This provision may have a serious chilling effect on the enjoyment of democratic rights to freely participate in the democratic process and violate the right to privacy.

What about “micro-targeting” and “look-alike” targeting lists?

Heading 121(2)(b) and 121(2)(c) set out the transparency provisions that political advertisements must contain with regard to so-called “micro-targeting” and ‘lookalike’ targeting lists. However, many (perhaps all) such technologies are incompatible with the GDPR because they process personal data, including “special category” data, unlawfully. ICCL has submitted detailed evidence on this point to the Data Protection Commissioner.

Where can I see the full ICCL submission on the Political Advertising Provisions of the Draft Bill?

The full submission is available on our website and can be seen by clicking [here](#).