

Speech given by Mr Richard Barrett

19th Electoral management bodies

As we have heard there is serious concern throughout the democratic world about harmful content and the use of artificial intelligence in elections.

Many democracies (and perhaps other not so democratic states) have considered introducing legal provisions to respond to this danger.

There are now laws in many states. I will not attempt to do a survey of all these laws but rather I will concentrate on the new law in my own state Ireland which of course I know most about.

This law doesn't have all the answers, but it is a good snapshot of where the world was a few months ago.

In Ireland we had a long running project on a draft law to set up an electoral commission for the first time and early in 2022 a **working group** was established to look at electoral integrity and this work led to provisions in relation to that subject being added to the draft Bill.

The law is now enacted, the **Electoral Reform Act 2022**, but the relevant parts are not yet activated. There is currently a discussion between Ireland and the European Commission as to how the Irish Act, in particular Part 4, impact on freedom to provide services and Ecommerce.

There are three elements of this Act which I will draw your attention to:

Firstly in section 30 at (i) it may be of interest to note, that the new Electoral Commission will have a **function**;

to **protect the integrity** of elections and referendums against the dissemination or publication of online disinformation, online misinformation and manipulative or inauthentic behavior online in accordance with their provisions of this law. I checked other electoral codes looking for such a function in the EMB but did not find one.

Secondly Part 4 of the Act deals with **online political advertising** through regime based on transparency. Headings must identify the ad as a 'political advert', and linked to transparency notice. The latter will reference the use of micro-targeting.

Thirdly and of more interest for today's conference, Part 5 of the Act regulates;
electoral process information,
online electoral information and
manipulative or inauthentic behavior (MIB).

The Act attempts to address the use of undisclosed bots, disinformation, misinformation, look-alike targeting, micro targeting, and manipulative or inauthentic behavior. The definitions in the Irish law may be of interest to other states.

These provisions are focused on the context of **electoral information** during the election. The Electoral Commission must monitor these developments, investigate and combat disinformation, misinformation and MIB and also promote **public awareness**.

The Act sets up a specific **Advisory Board** of experts to advise the Electoral Commission on this function, and a **stakeholder council** of the print and online media to advise on codes of conduct.

The Act puts in place **statutory obligations on online platforms** during the election. In particular they must inform the Electoral Commission if they see disinformation, misinformation or MIB.

The Electoral Commission has access to significant powers

It can issue

takedown notices

correction notices

labeling orders

access blocking orders which cover MIB or undisclosed bots

It can also issue MIB or undisclosed bot notices.

The Electoral Commission can issue these notices or orders but to enforce compliance the Electoral Commission must apply to a **court**. As well as the role for courts there is an **administrative appeal** to an appeal panel.

In addition, the Electoral Commission can issue formal **warnings** to the public.

There is also a provision for **codes of conduct** which may be directed to online platforms, election candidates and political parties.

Section 167 is a particular **bot offence**.

Finally, the scheme of the Irish law may be of interest to EMBs in how it distributes the operation of these functions between the **CEO and the Commission** and the possible use of authorized officials to carry out investigations.

Further (in response to a question) it should be kept in mind that such an active role for an EMB in policing online information at election time creates risks. The EMB may be swamped with allegations, its responses or non-responses might be litigated. There may be allegations that its approach is biased to some parties. In general, it may be politicized in a way that undermines its credibility as a neutral player.