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CLOSING THE DIGITAL LOOPHOLES THAT PAVE THE WAY FOR FOREIGN INTERFERENCE IN U.S. ELECTIONS

New Research Study Supports the Honest Ads Act

In the 2016 election cycle, 14 percent — a total of \$1.4 billion — of the \$9.8 billion spent on political advertising went toward digital political ads, and digital advertising surpassed cable advertising spending, according to the advertising tracking firm Borrell Associates.¹ That is up from only \$160 million spent on digital political ads in 2012, and just \$22 million in 2008.²

However, because of legal loopholes and the nature of digital advertising, who paid for these ads designed to influence the election has been a secret.

Until now.

A new study from University of Wisconsin-Madison Professor Young Mie Kim and her team, Project DATA (Digital Ad Tracking & Analysis), developed a user-based digital ad-tracking tool that captured millions of political ads disseminated in the final weeks before the 2016 election. Their peer-reviewed analysis, “Stealth Media? Groups and Targets behind Divisive Issue Campaigns on Facebook,” is forthcoming in *Political Communication*. This report summarizes their findings.³

To select the ads analyzed in the study, Professor Kim and her team randomly selected 50,000 ads (out of the 5 million in the dataset), and using keyword searches, identified ads discussing eight nationally salient issues: abortion, LGBT issues, guns, immigration, nationalism, race (e.g. “All Lives Matter,” “Black Lives Matter”), terrorism, and candidate scandals (e.g., Access Hollywood, Clinton email server, Clinton Foundation). After excluding ads run by candidates and party committees, the team then identified the 228 Facebook pages or groups that sponsored the ads, and pulled all ads run by those groups from the dataset.



The content of this report was reviewed and approved by University of Wisconsin-Madison Professor Young Mie Kim, Scholar-In-Residence at Campaign Legal Center, and her research team, Project DATA. The full paper is available at go.wisc.edu/stealthmedia.

For the study, volunteers⁴ representing the voting-eligible U.S. population⁵ consented to put an ad-tracking tool on their browsers ahead of the 2016 elections. With this tool, Professor Kim and her research team captured and analyzed 5 million *paid ads* on Facebook⁶ that were shown to 9,519 individuals in the weeks before the 2016 elections (between September 28 and November 8, 2016). The team also tracked the actors behind, and the targets of, this deluge of digital political advertising.

The study provides compelling support for the Honest Ads Act, a bipartisan, bicameral bill that would close many of the digital loopholes exploited by Russia and other unknown actors in the 2016 elections. The bill would help root out foreign interference and make advertisers more accountable.

Some of the findings from Professor Kim’s groundbreaking study include:

- **122 “suspicious” Facebook advertisers were actively buying political ads. One out of six suspicious advertisers later turned out to be Kremlin-linked Russian groups, verified by data released by the House Intelligence Committee.⁷**

Of the 228 groups that purchased political ads about hot-button political issues in the weeks before the 2016 elections, 122 were identified by Professor Kim and her team as “suspicious”⁸— which means that *there was no publicly available information about nearly half of the sponsors of Facebook ads featuring hot-button political issues in the weeks before the 2016 elections.*



Content provided by Project DATA*

Facebook pages were identified as “suspicious” if (a) the Facebook page has since been taken down or banned by Facebook; (b) the Facebook page has shown little activity since Election Day 2016, and no information about the group exists elsewhere; or (c) the Facebook page or landing page remains accessible, but no information about the group sponsoring the page exists elsewhere.

Professor Kim and her team ultimately cross-referenced its list of “suspicious” sponsors of Facebook ads with the House Intelligence Committee’s list of pages used by Russia’s Internet Research Agency to influence the 2016 elections — and learned that one out of six of these “suspicious” ad sponsors was a Kremlin-linked Russian group.

The true identity of other suspicious groups that ran politically charged ads just before Election Day 2016 still remains unknown.

This secrecy would not be possible on broadcast advertising. Any TV or radio ad that pertains to a “political matter of national importance” is subject to basic levels of transparency: broadcasters must collect information about the group that bought the advertisement, as well as how much the group paid for the ad and where it was disseminated. Then, broadcasters must make that information publicly available.

- **The vast majority of ads provided little information about their sponsors.**

Under current law, spending on digital ads is reported to the Federal Election Commission (“FEC”) only if it comes from a candidate, political party, or political action committee (“PAC”), or if the ad expressly advocates for the election or defeat of a candidate.

In the case of these Facebook ads, the volume of political ads sponsored by groups that never filed a report with the FEC was four times larger than that of groups that were registered as political committees or had filed expenditure reports with the FEC.

As a legal matter, this may not be surprising. Most spending on digital ads that only discuss divisive issues — even those that attack candidates but omit key terms of express advocacy such as “vote for” or “vote against” — is never reported to the FEC.

However, this finding reinforces the notion that digital media presents new opportunities for anonymous actors to influence the public with limited accountability.

- **9 percent of ads expressly advocated for or against candidates, and should have been subject to disclosure under current law.**



*Content provided by Project DATA**

Professor Kim and her team identified that 9 percent of the ads in the study expressly advocated for the election or defeat of candidates, and were therefore “independent expenditures” under current law.

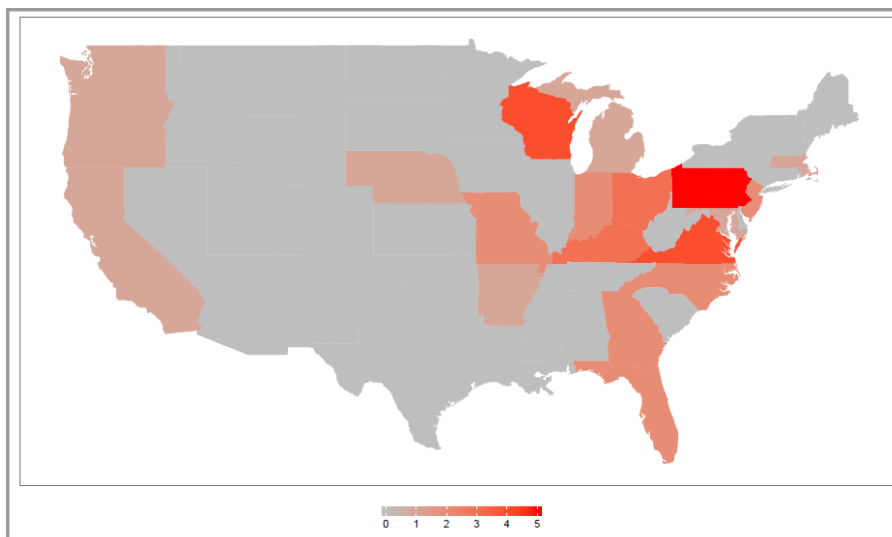
Independent expenditures are generally subject to mandatory disclosure requirements, but it appears that the spending on many of these ads was never reported to the FEC. This may be a function of digital advertising generally being secret — if ads are only seen by the viewers to whom the ads are targeted, it becomes very difficult for the FEC or watchdog organizations to monitor compliance with the law.

- **25 percent of ads mentioned candidate names and would have been subject to disclosure if run on TV or radio.**

Under current law, broadcast ads aired near an election that mention a candidate and are targeted to that candidate’s voters are regulated as “electioneering communications.” An “electioneering communication” must include a disclaimer on the ad stating who paid for it, and the group running the ad is subject to requirements that it file a report with the FEC disclosing the expenditure and the source of its funding. The same ad run online, however, can escape these transparency requirements.

Twenty-five percent of the Facebook ads in the study by Professor Kim and her team mentioned the two major party presidential candidates, and would have been subject to disclosure if run on TV or radio. But just because they were run online, these ads largely escaped these transparency requirements.

- **Secretive Facebook ads targeted voters in swing states, especially those in Pennsylvania and Wisconsin, with divisive issue-based messages.**



Targeted Individuals by State

Shows the degree to which individuals in the shaded states were exposed to ads across the 8 issue categories. Pennsylvania scored the highest on this index, as it was targeted significantly more than the national average across 5 of the 8 issue domains.

Content provided by Project DATA

The research by Professor Kim and her team showed that digital advertising about hot-button social issues clearly targeted battleground states. Pennsylvania and Wisconsin, in particular, were among the most targeted states with Facebook ads featuring divisive issues such as guns, immigration, and race relations.

Professor Kim and her team found that Facebook ads discussing racial conflict were concentrated in the battleground states of North Carolina and Wisconsin. Meanwhile, voters in Michigan, North Carolina, and Wisconsin were disproportionately targeted with a high volume of ads concerning the threat of terrorism (e.g., ads concerning ISIS).

Different groups of voters received different messages. For example, low-income voters (households with incomes less than \$40,000 a year) were specifically targeted with Facebook ads about immigration and race issues.

Recommendations

Facebook's newly announced plans to increase transparency for political ads might help address some of these issues. Facebook says it will require a broad range of politically focused ads to include a disclaimer stating the name of the group that paid for it, and that it will maintain an archive of political ads.

Yet, Facebook's plans for self-regulation have yet to be implemented, and they could change at any time. Moreover, Facebook's plans for self-regulation will not affect any other platforms that sell digital political advertising, and other platforms could choose to play by different rules, if they opt to implement any voluntary measures at all.

The Honest Ads Act would remedy some of the disturbing digital advertising practices outlined in the Project DATA study on all digital platforms. The bill aims to close campaign finance law's internet blind spot by ensuring that digital political ads are subject to the same transparency requirements that apply to similar ads run on broadcast mediums.

The Honest Ads Act:

1) Expands recordkeeping requirements

The Honest Ads Act would require that platforms like Facebook maintain copies of digital ads from advertisers whose spending on political advertising exceeds \$500 per year on the platform, and collect basic contact information about the advertiser. This would subject digital ads to the same level of transparency as broadcast ads.

Professor Kim and her team's analysis found that nearly half of the groups running ads featuring hot-button political issues in the weeks before the 2016 election had no public footprint. This would not be possible under the Honest Ads Act: Facebook would have been required to collect and publicize information about the groups running the ads, such as an address, a website, a contact person, and board members.

The Honest Ads Act's recordkeeping requirement would also shine a spotlight on the issue-based targeting in battleground states, as this public file would also include information about an ad's audience, cost, and duration.

2) Expands reporting requirements

Fully a quarter of the ads in the Project DATA study mentioned the two major party presidential candidates, but they were entirely exempt from current law's transparency requirements. If the Honest Ads Act became law, those ads would be considered "electioneering communications" subject to disclaimers and disclosure.

Under current law, "electioneering communications" are defined as broadcast — but not digital — ads run near an election that name a candidate, and are targeted to that candidate's voters, but that don't expressly tell viewers to vote for or against a candidate. The Honest Ads Act would expand this definition to include paid online ads, not just broadcast ads, targeted to voters. An "electioneering communication" must carry an on-ad disclaimer identifying its sponsor and is subject to reporting

requirements once more than \$10,000 is spent. The report, filed with the FEC, describes the amount spent on the ad, the candidate mentioned, and the names of contributors who gave for the purpose of furthering the advertisement.

3) Clarifies digital ad disclaimer requirements

Disclaimers stating who paid for political ads are ubiquitous during election season. Political ads on TV and radio end with a statement from the narrator declaring the name of the entity that paid for the message. Newspaper ads and mailers must include a box stating the name of the group that bought them. Yet few of the Facebook ads in the study provided viewers with any information about which groups paid for the messages.

Under current law, only digital ads that expressly advocate for the election or defeat of a candidate are supposed to include disclaimers. Yet because the FEC has created ambiguity about how even these narrow disclaimer rules apply to digital communications, disclaimers are routinely omitted from digital ads. Nine percent of the Facebook ads in the Project DATA study should have included disclaimers under current law, but most omitted them.

The Honest Ads Act would require digital ads to adhere to the same disclaimer rules as offline ads. The bill would also prohibit the FEC from deciding that digital ads are exempt from disclaimer requirements.

If the Honest Ads Act were law, approximately 38 percent of the Facebook ads in the study by Professor Kim and her team would have been required to include disclaimers, which would have provided viewers with valuable information about who was trying to influence them online.

¹ Kip Cassino, *What Happened to Political Advertising in 2016 (and forever)*, BORRELL ASSOCIATES, INC. (2017).

² *Id.*

³ The research utilized a user-based digital ad-tracking tool. The research team recruited consenting volunteers and asked them to add an ad tracking tool to their browsers that automatically captured all paid political ads shown to users and the associated meta information (e.g., the landing pages of the ads and the time stamps) at the time of user exposure. Neither the browser extension nor the survey collected user data or personally identifiable information, nor did the project collect users' personal profiles or friend networks.

The browser extension works in a secured, encrypted web server, and the data is stored on a secure data server. The server architecture separates ad data, meta-information, and survey data. When matching ad data, its meta data, and survey responses, the extension anonymized user identifiers (i.e., 36-digit user IDs assigned at the installation of the browser extension). The data analysis includes aggregate-level information only.

⁴ The research followed the established protocols for the protection of human subjects in research. Only consenting volunteers participated in the research. The research did not collect users' personal profiles or friend networks. Anonymized user identifiers were utilized for data analysis. The research was approved by the Institutional Review Board for Protection of Human Subjects in Research (2015-1573).

⁵ U.S. citizens 18 years old or older who were eligible to vote and able to understand written English were defined as the population as well as the recruitment pool. The sampling method was designed to mirror the U.S. voting age population in terms of gender, race/ethnicity, education, household income, state (50 states plus Washington, D.C.), and voter registration status. The sample of research participants was generally similar to the U.S. voting age population.

⁶ The study looked at Sponsored Feed Ads (a total of 1,362,098 ads) and Right Column Ads (a total of 3,737,379 ads).

⁷ With keyword matching, the research identified Facebook ads containing the keyword of policy-relevant issues including abortion, LGBT, guns, immigration, nationalism, race, and terrorism, as well as candidates' scandalous issues (e.g., the Access Hollywood tape, the Clinton email server, or the Clinton Foundation). Hand coders examined the content of identified issue campaigns. Ads were removed if the content of an ad was not political (i.e., a false positive) or if it was political, but had no direct policy implication or election relevance (e.g., the message, "Conserve the nature"). The average intercoder reliability, Cohen's Kappa, was .99.

⁸ A group running an issue campaign is defined as a suspicious group if a) the group's Facebook page (i.e., the Facebook page linked to the ad) or landing page was taken down or banned by Facebook (Facebook took down Facebook pages linked to Russian ads identified by Facebook, or banned the groups operated by the Internet Research Agency since September 6, 2017) and no information about the group (if the name of the group was indicated in the ad or on the landing page URL) exists; b) the group's Facebook page or website exists but shows little activity since Election Day 2016 and no information about the group exists elsewhere; or c) the group's Facebook page or landing page is accessible, but no information about the group exists elsewhere.

** Screenshot ad images that appear in this report were replicated by Project DATA based on the ad's text and images collected by the team.*