Regulatory frameworks for free and fair elections in the Digital era

[00:00:18] **Speaker 1** Hello. My name is Andrew Fact and I'm a consultant to UNESCO's. Working in the field of free expression. Today I'm going to be talking about how we deal with elections, given the prevalence of social media and what kind of regulatory framework might be necessary to ensure that elections are free and fair. The importance of free expression in elections was spelled out in a report by the UN Special Rapporteur for free expression back in 2014, where he said it was very important that people were able to express their views. But that might require some regulation to ensure that there is a level playing field for all the participants in an election. And they flagged up, I think, three key issues about an election. And this is an election, whatever the communication environment. The first is that the voters need information about the candidates and the policies and what their intentions are. Secondly, the voters need to be able to freely debate with each other and with the political parties. What those policies might mean for them and raise questions, challenge, etc.. And thirdly, it's important that the candidates themselves are able to communicate their views to the electorate and that the electorate, in turn can interrogate those candidates about what their intentions might be. So there are three key elements, and those are common in all elections. And in most democracies there's an election regulator and there's a series of election laws that govern how those conditions are fulfilled. I think what social media has done and the ability of the Internet to connect large amounts of people is to change the communication background to elections further, dramatically and in very significant ways that represent new challenges for the regulator or for that the ability to conduct a free and fair election. The first big change is what we call the virality of communication. This is the ability for one piece of information to be communicated to thousands or tens of thousands or hundreds of thousands of people in a few seconds, classically through, say, a retweet button on Twitter, like on Facebook, the forwarding capacity on WhatsApp, etc., and that that does create significant challenges if the information that's being put out is inaccurate, either inadvertently or deliberately, because it will reach many, many thousands, many millions of people. And in the case of WhatsApp, if you're not on that group, not access, not accessing that information, you won't know what's being said. That was a factor and WhatsApp was a very big factor in the previous Brazilian election that elected President Bolsonaro, for example, where WhatsApp was one of the major campaign tools employed by the presidential candidate. The second issue around social media is what we call filter bubbles, which is and this is not universal, but what can happen is that people become trapped or enclosed in a series of views that are essentially just like this. And because of the things they choose to watch, the things they choose to access, things that are shared with them, they have no real idea what people are saying outside of that particular bubble. And so it can create a very fractured and sometimes very polarized political community or political communities. That's the second problem. The third is and this is something that really is about people's privacy, is that by collecting information on the way people are using social media, you can micro-targeting voters. You can identify voters down to groups, in some cases two or three or four or five, and send them individually tailored messages that are based on the kinds of likes they have within social media. And so it enables a high degree of, if you like, manipulation of the voters by ensuring that particular voters only see information that you think is relevant to them or that you think they would like, even if there's other information they could have that might be very relevant to their life. But you can stop them seeing that through micro-targeting. Fourth issue is the fact that online you can hide your identity and so you don't necessarily know who you're talking to. And the famous example of this is the Internet research lab in St Petersburg during the previous US presidential election, when people were given 40 to 50 identities, you know, a Christian mother from the Deep South, a distant, an unemployed coal miner from West Virginia, and the Russian employees were

each given about 50 identities to which would put out information which would appear to be coming from those people, whereas it was in fact, coming from from them. So that kind of hidden identity and the use of what we call bots, which is essentially automated characters, so you create essentially machine identities and you can create many, many of them and use them to put out messages in a way that suggests there are many thousands of people who think these things. In fact, it's just one person putting out a message through these bots. And of course, the final piece is, is the general prevalence or the increasing prevalence of shared disinformation and misinformation, relying on the fact that the Internet is a bit of a Wild West when it comes to information that very hard to check the provenance and that people often trust material that comes from friends and family or gossip or rumor. Very few people, if they see something on a social media post, will bother to go and check it out and see if it's verified in any way in a way that might happen with traditional journalism. So so there's a significant challenge there in terms of how do you ensure a free and fair election. So what do we do about that? Well, I think we have to recognize firstly that the social media companies are not publishers. So they're not they're not the authors. A responsible for being authors for all the content that appears. They're essentially a platform, but nevertheless, because they have terms and conditions on what can and can't be said. Because if they have search facilities, the algorithms they build will select certain information depending on what you have looked for in the past. They are more than just a neutral platform. They have a sort of hybrid status. And so I think in order to ensure a fair election, we need some form of co regulatory system. What I mean by that is that the election regulator should be able to set the terms of debate what it feels the social media companies should do to ensure a responsible, free and fair election. So then for the company to decide how to do that. And different companies with different platforms and different engineering will respond to that request in different ways and have to respond in different ways. So what the regulator does is says this is the goal. I want a free and fair election. This is going to involve certain things. Give us some examples. But you tell me, what are the systems and processes that you have to ensure a free and fair election? And the regulator can then say, Well, I think you're missing something. I think you need to take more action here. I think you need to have additional capacities here in this particular part of your platform for an election. And if the platform in the end refuses to comply with those reasonable suggestions to the regulator, then the regulator would have some punitive powers. Usually it's suggested a fine, a fine of some kind based probably on a proportion of turnover. So that really hits the company where it hurts. And I think the key to this regulatory system is not that it's simply imposed from above without any kind of conversation with with the platforms. But the regulator long before an election takes place should be calling on the companies for a dialog. Should be explaining that the election period is this that they're expecting there to be certain problems or challenges, whatever they might be, and that they would look to work with the social media companies to develop a code of conduct which would govern how the companies operate, particularly during that election period. And that would involve a number of things, firstly and fairly standardly. And this would be true outside of an election period. It should deal with manifestly illegal content, and that legal content that should be removed would include threats of violence against candidates or threats of violence against voters, or threats and violence targeted at vulnerable minorities and people who have special protection under international human rights law. So that's that's one thing that's fairly obvious. Secondly, there's a there's needs to be a way of managing what we call harmful content. This is content that's not necessarily illegal but is misleading and potentially very damaging. So this might be a claim about another political party by one of the contestants. Now, these claims can be made. They're often exaggerated. They may be based in some truth, but sometimes they distorted a bit. Sometimes they are outright fabrications. Sometimes those views are genuinely held by the person who's putting them out. Sometimes they're being

cynically put out. Now Platform will find it very hard to separate out deliberate false information from misinformation that sincerely held or information that's partly true, but is exaggerated for a fact. So what what the regular might ask the party to do the platform to do is say, look, if you detect something that feels to be problematic, you should flag it up and indicate to the user that there's a potential problem with this material, that it doesn't conform to existing scientific knowledge. For example, if there's a claim being made about climate or about COVID, or it doesn't comply with what is known about the other party's political persuasions. So and that what that can do is it can indicate to the user that they should be cautious when they look at that material. And there are certainly some studies done that shows if companies do put those cautious words in around a piece of content, that it has a significant impact on how that content is being received. It can also indicate that if they can detect through their own engineering platform that the information's being put out by bots, in other words, it's being retweeted very rapidly without there being distinctive personalities behind it. They can flag up that this may be bot led information. This may be misleading and should be retweeted treated with extreme caution. If inflammatory statements are being made by candidates, that's obviously very difficult because candidates do need to be able to put their views and to block or remove a candidate's statements is a very, very politically sensitive thing for a company to do. But again, what a company can do is flag up the content as potentially misleading or possibly inflammatory. It could also take steps to limit its virality by, for example, not if it was on Twitter not allowing it to be retweeted if it was on Facebook. Removing the light button so it couldn't be picked up by other people in the same way. And with WhatsApp, it could be as WhatsApp did in Myanmar after the military coup. It could reduce the number of people that you could forward a message on to. So instead of it being, say, 125, 250, whatever, it can only be passed on to one more person or two more people. So there's a way of kind of managing content without directly intervening in content that's potentially harmful and the platform becoming the censor. There's ways in which you can flag up concerns about the material that gives essentially the user more choice, because they the goal here is to empower the user of the platform, the person who's looking at it, to give them the information they need to actually deal with the situation there. In this case, an election. And I think what they are also needs to be an election. What the regulator could insist on is some kind of meaningful complaints process so that if people see material that they believe is inflammatory or believe is wrong, they have some means of communicating in the local language. And it's important that the election is being held in Latin America. That's the language either Portuguese or Spanish is available for someone to complain and that there is somebody at the other end who ultimately, even if the complaint is processed initially by automated processes, by machines there, at some point a human needs to get involved and understand what the complaint is and what action should be taken. I think it's also important for the election regulator to undertake a risk assessment before an election and to identify an election where there is a high risk of problems or interference. If, for example, a presidential candidate is saying well before the election that he doesn't believe the election will be fair, that he thinks the voting system would be rigged, that the military or the police should take action to intervene if he loses the election. Those are real warning signs that the social media environment should be monitored very, very carefully. So I think a risk assessment is an essential part of it. And finally, I think regular liaison between the regulator and the major social media companies on trends, what they're seeing, allowing citizens groups or journalist associations to flag up problems. So there's a regular dialog in an election between the regulator and the company to try and identify problems and deal with them before they get to extreme or out of hand. And I think the last piece of work that needs to be done is after the election, the company should commission an independent review of how it did, what the election was like, whether it was fair, what the problems were, whether there was a role for social media, and if so, how is it

fulfilled? And are there lessons that could be learned by the social media company in time for the next election or future election events in other countries?