
Miscellaneous

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Regulation of artificial intelligence in digital media to combat disinformation and defend the democratic state

Abstract

In February 2024, the Superior Electoral Court of Brazil met in session to determine rules and regulations to guide the municipal elections of the country in October of 2024. Among the topics debated, the leading one was the deliberations on illicit acts in electoral advertisements in digital media, concerning the use of artificial intelligence, ensuing in regulations on the use of technology in developing, producing and distribution of political advertisements in digital forms such as: audio, video or audiovisual media. The article will discuss the deliberations of the Superior Electoral Court, which based its decisions on current legislation in the European Union and in the 2023 general elections in Argentina, regarding production aided by artificial intelligence for electoral campaigns. Argentina's general election of 2023 was paramount and now a base of a regional case regarding the use of artificial intelligence will be debated in light of reflections on media and technology from authors such as Santaella (2023), Simon (2022), Chagas (2017) e Bucci (2024).

Keywords

Deepfake, Regulation of artificial intelligence, Electoral process, Digital media.

1. Introduction

The subjective narratives and war of meanings behind images linked to political communication are not contemporary phenomena. Before the current communication scenario, political cartoons and popular productions already influenced voters and their perception of the political reality in which they found themselves.

Despite recent popular technological capabilities for producing, publishing and sharing images and audiovisual products, Bucci (2024) remembers that the political narratives behind these productions are old. During the Vaccine Revolt that occurred in Brazil in 1904, the dispute between political figures for and against the government of the time was notorious, in speeches that defended public health policies and those that preached the end of the State's interest in health. At the time, narratives circulating in anti-vaccination movements were supported by the speeches of public figures and experts, literature produced by supporters of the movement and even fanciful illustrations.

These images and other productions had the same purpose as memes shared on social media during electoral campaign, as observed from the United States presidential elections in 2008. During the electoral political advertisements calendar, those material serve as tools to assist in identification of the candidate within specific groups in the electorate, in addition to serving as a basis for gathering supporters and endearing public perception (Chagas et al., 2017), which supports Bucci's (2024) defense that the imagery material shared today is part of ancient political communications practices.

However, Empoli (2019) draws attention in his work to two characteristics of current power plays and the actions of political figures, mainly in electoral processes. The first is that political discourse, especially after the United States' 2016 presidential elections, began to focus more on affectivity than on the presentation of data and presentation of facts. This characteristic is striking from the contemporary social phenomenon that D'Ancona (2018) names as the "Post-Truth Era" being the circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and to personal belief.

Empoli (2019) indicates that current political figures, mainly linked to the global rise of the extreme right, realized this historical-social moment and began to develop strategies aimed at attracting a loyal electorate, using tools such as spectacularization of appearances and public debates, misinformation and, until then, memes themselves as an affective response to data presented by rival politicians.

Another characteristic that Empoli (2019) points out is the acknowledgment of these politicians of the power of using algorithms and social networks to benefit their electoral campaigns. The author describes in his research how disinformation and algorithmic interference exposed by the Cambridge Analytics scandal played an important role in the 2016 United States presidential elections. Aware of the power of social networks, spectacularization and disinformation, these elements and tools they become part of the electoral campaigns of political figures who wish to create great commotion based on narratives, even if fictitious, and trivialize political debates to create activists and voters who are fervent worshippers of their public figures (Chagas et al., 2017).

These political figures, experts who align themselves with the fictions and spectacularization of said politicians, activists and enthusiastic voters, realized, according to Empoli (2019) that politics, especially in post-truth times, is not made from numbers and interests but from evoking and "awaken passions" (Empoli, 2019).

Amid the technological and social changes of recent decades, including in politics, on November 2022, version 3.5 of the ChatGPT chatbot was launched, now with the inclusion of generative artificial intelligence (GAI) in its programming, which allows the synthetic creation of texts, images, sounds and audiovisual products from a training bank fed with thousands of productions. The launch of this tool generates a great marketing commotion worldwide, which Simon (2022: 1833) called the AI Gold Rush. Launched in open source format, the tool is beginning to be used by companies, governments and ordinary citizens around the world in an irresponsible and unregulated manner, causing panic in some sectors such as the artistic, academic sectors and communicators who were fighting disinformation (Santaella, 2023).

However, for figures that Empoli (2019) names as "chaos engineers", the GAI represented a great opportunity and tool to play with the senses, create disinformation and reinforce narrative fictions with the help of misleading content that is more difficult to verify its authenticity. This first phase, as Santaella (2023) indicates, was a period where

chaos engineers took advantage of the production of material without ethical, moral, regulatory and even criminal conduct.

In June 2023, still without guidelines, journalist Eliot Higgins created misinformation material where an image construction of a narrative is exposed in which the former president of the United States, Donald Trump, had been arrested, generating commotion among his supporters and those who defended his arrest. The sequence of images synthetically generated by GAI took advantage of a moment when the politician's possible arrest was imminent to ensure his ability to circulate on social media, reaching more than 4 million views on the original network that it was published.

The commotion surrounding the fake images of Trump's arrest generated by GAI has amplified debates about the fantasy construction of reality through synthetically created images. The discussions hurried legislators from several countries, to conceive regulations such as the electoral regulations for political advertisement established by the Superior Electoral Court of Brazil (TSE) for the 2024 municipal elections and the by-law of the European Union Artificial Intelligence Regularization Law, which had been under debate since 2021.

Despite the concern about the rise in the use of GAI in electoral processes and legislation that is trying to account for future political scenarios in campaign and election cycles, we had the first example regionally in South America of an election with a large amount of synthetically generated material. Argentina's 2023 general elections took place without a specific legislation and had support from the political advisors of the main candidates, as well as voters. The Argentine electoral process was even used as an example for the ratification of electoral regulations by the TSE in Brazil.

The work proposes a discussion of recent legislation on digital media and social networks by the TSE in Brazil and the European Union in light of the electoral case in Argentina. With this, the article proposes notes on potentialities and problematizations that legislation can cause in the digital environment and political communication in media, thus also impacting the cultural and social construction of voters and perception of reality regarding the democratic governments that are part of it.

2. The need for regularization

Liberal democracy has freedom of expression as one of its main assumptions, with this perspective presented in different ways in different constitutional letters. However, it is essential to bear in mind that the aforementioned axiom cannot be confused with a fallacious neutrality of media systems. The drastic impact of communication and information technologies on society in recent years is representative for understanding the engendering between the political, economic and technological-media dimensions.

Technology incorporated by a society changes social relations, the perception of space and time, that is, it changes the relationship between human beings and nature and between human beings themselves. It doesn't matter if for better or worse, there is a change in the relationship with the world and in the understanding we have of it. Arguing that the computer, telephone, knife or any other instrument alone does not change the organization of space can be a misleading position. Technology only has meaning in its use within given social relations. Therefore, technology is necessary for someone. Seen this way, it is not neutral. However, this is not a deterministic position. Its adoption is subject to tensions that also condition, alter and question its use (Josgrilberg, 2005).

Reinforcing what was indicated by Santaella (2023) about the first phase of the AI Gold Rush, in April 2023 the Future of Life Institute published a public letter addressed to the main companies and governments that were experimenting with GAI, asking that what was being done at a global level be stopped until new research and academic and legislative debates took place, defining better parameters for the technology. The concern is that the lack of regulation was creating an environment conducive to malicious and even criminal use of technological advances.

On that date, one of the candidates for the presidency of Argentina, the Minister of Economy, Sergio Massa, had shared a video synthetically generated by GAI, of a synthetic human being (GAI avatar), to present a technological advancement fair, regarding the concern with the Argentine knowledge economy and that the fair, as it was being presented, represented the “part of Argentina’s future” (Massa, 2023)¹.

Even after the concern indicated by the Future of Life Institute (2023), the use of GAI platforms in the virtual environment continued to occur, which led to commotions around synthetic images about Donald Trump’s arrest and there was also a commotion with reference to images generated of Pope Francis with clothes in a non-ecclesiastical style. Even presenting AI hallucinations, the imagery construction and popular commotion in response alerted governments and institutions around the world about the real need to regulate the use of this tool.

Next, the article is going to list the main points and advances of two pieces of legislation relating to regularization.

2.1. *European Union AI Law*

The legislation approved by the European Union this year is the first legal framework to regulate AI and GAI platforms. Although the proposal was placed on the agenda for debate in the European parliament in 2021, the recent commotion surrounding the use of technology, especially in the first phase of the AI Gold Rush, generated an emergency in the debate and approval of the legislation.

The AI Law aims as a whole to:

[...] improving the functioning of the internal market by providing for a uniform legal regime, in particular for the development, placing on the market, putting into service and use of artificial intelligence systems (AI systems) in the Union, in line with Union values, in order to promote the adoption of human-centric and trustworthy artificial intelligence (AI), whilst ensuring a high level of protection of health, safety, fundamental rights enshrined in Charter of Fundamental Rights of the European Union (‘Charter’), namely democracy, the rule of law and protection of the environment, protection against the harmful effects of AI systems in the Union, and supporting innovation (European Parliament, 2024: 161).

In the points that are aimed at regulation during electoral periods, the law indicates that any AI platform that can be used to directly influence elections must be classified as “high risk AI systems” (European Parliament, 2024). Influence is not demarcated in legislation, so it’s vague definition may open future loopholes in the use of technology. The legislation itself makes it clear that, even with classification, use is permitted to “organize, optimize and structure political campaigns from an administrative and logistical point of view” (European Parliament, 2024: 432), as long as the productions do not result in the exposure of a natural person.

¹ Publication on Sergio Massa’s official account. Available at:

<https://twitter.com/SergioMassa/status/1634655754094366720/video/1> Accessed at: 10 abr. 2024.

This issue should generate more discussions in the future, as we observe new cases of use in electoral processes due to a lack of definition of the platform's impact. Even disinformation, already indicated by the UN as a risk to democratic governments, does not have unanimity regarding the certainty of its influence in electoral processes. Allcott and Gentzkow (2017), who have a reference study on the fight against disinformation on the influence of disinformation on the 2016 presidential election process in the United States, indicated in the work of Sumpter (2019), that perhaps voters may not have been influenced, but misinformation may have had the effect of only reinforcing the convictions of those who were already going to vote for then-candidate Donald Trump or candidate Hillary Clinton (Sumpter, 2019).

As it will be explained in the next topics, there is also a difficulty in defining political advertisement using AI in publications that circulated during the Argentine electoral process. The synthetic images are found on the social media accounts of the main candidates or that circulated on digital media, the vast majority of which circulated outside the period determined for the audiovisual campaign and with imagery presentations that make it difficult to link with direct electoral propaganda on the planned social media. As can be verified in the Argentine law 27504 of 2019. This topic will be revisited later in the analysis of the content published by the candidates.

2.2. Resolution of the Superior Electoral Court of Brazil

Resolution N° 23,732 of February 27, 2024 of the Superior Electoral Court of Brazil (TSE), regulated the use of artificial intelligence in electoral advertisement disseminated mainly on digital media. The case of the presidential elections in Argentina was cited by the rapporteur, minister Carmem Lúcia, during the plenary session on February 27, 2024 as an example of an electoral process without electoral regulation. Article 9-B of the Brazilian resolution indicates:

The use in electoral advertisement, in any modality of synthetic multimedia content generated through artificial intelligence to create, replace, omit, merge or change the speed or superimpose images or sounds imposes on the person responsible for the ad the duty to inform explicitly, highlight it and make accessible the content if manufactured or manipulated if technology was used. (Lúcia, 2024)²

In the same session of the TSE on February 27, the then president of the Court, minister Alexandre de Moraes, indicated that the resolution authored by minister Carmem Lúcia aims to guarantee voters the consumption of quality information, thus being able to exercise their right to choose and the right to vote directly. In the same speech, Moraes indicates that artificial intelligence can bloat digital militias that mainly use disinformation to attack electoral processes, citing the case of the 2023 presidential election in Argentina (UOL, 2024).

One of the main points of the regulation is the prohibition of the use of deepfake, to attack or to favor any of the candidates, even if there is authorization to produce this content from a living, deceased or fictitious person (Lúcia, 2024). As will be seen in the next topics, during the Argentine electoral process, deepfake was widely used by candidates' advisors and voters to create audiovisual products, mostly attacking the

² Free translation of "A utilização na propaganda eleitoral, em qualquer modalidade, de conteúdo sintético multimídia gerado por meio de inteligência artificial para criar, substituir, omitir, mesclar ou alterar a velocidade ou sobrepor imagens ou sons impõe ao responsável pela propaganda o dever de informar, de modo explícito, destacado e acessível que o conteúdo foi fabricado ou manipulado e a tecnologia utilizada."

ideology or figure of the rival candidate. This article proposes to call deepfake the use of the deep dub technique to cause harm or misinformation about an individual or a group, without considering the artistic or cultural use for audiovisual production, which already falls within the definition of deep dub.

Although the TSE resolution also deals with the use of chatbots and avatars to mediate conversations between candidates and voters, the main points used to analyze the case of the Argentine presidential election will be the legislation on deepfake and production for digital media. In this sense, we will next address the issue of memetic production in the political sphere, using content shared at the time of the 2023 elections for the Argentine presidency as elements of analysis.

2.3. The use of political memes in the 2023 Argentine election

In contemporary times, the digitalization of social and political relations means that the logics relating to different fields of experience and knowledge become intertwined. Working from the mediatization paradigm, Couldry and Hepp (2017) argue that digitalization constitutes a third stage of the mediatization process. This restructuring of human experience is carried forward through the intertwining of technologies with our daily lives; the media become vectors through which possibilities for interaction, consumption, work and sociability flow.

Put more generally, digitalization involves a further deepening, both in the connectedness of the infrastructures on which media-related practice depends—so, for example, the digital is now dependent on the development of Wi-Fi and other mobile services—and in the layering of connected media practices in which individuals or groups are now routinely engaged. Media environments have become characterized increasingly by ‘convergence’ (Jenkins, 2006b; Jensen, 2010), meaning less a merger of all media devices into one kind of super-device, and more convergence at the level of the ‘data’ or content which, being digital, becomes communicable across multiple devices, some new, some older (Couldry & Hepp, 2017: 11–12).

In this way, our relationships take place in an environment of interconnection. As we discussed in this text, the community experience of politics, which required engagement and deliberation, has its essential form in contemporary times in the sharing of content via communication applications. Following this chain, political debate is now governed by the logics of social media, and what would be complex is now synthesized into simplified representations called memes—these can be understood as “digital objects” in the conception outlined by Hui (2012), being constituted by data and instituted through ontologies as metadata. In addition to symbols or representations, they also condition our experience and cognition.

The production of digital media content in electoral contexts has been marked, since the middle of the first decade of the 21st century, by the widespread use of political memes via the internet. According to Waggins (2019), these remixed messages (of different types, such as images, GIFs, videos, etc.) seek to go viral, with the objective of proposing an argument, visually, in order to initiate, extend, counter or influence a speech. The researcher points out that the use of humor, an essential element in these contents, functions as an introductory element of ideological conceptions.

In the case of Political Memes Shared Over the Internet (PIMs), for Kirner-Ludwig (2022) the messages have a narrow interpretative character, serving not to promote debate about dissident political positions and achieve reasonableness, but to constitute an

element of confirmation specific premises for certain groups. As a result, rejection of other groups and their ideas is commonly seen, strengthening antagonisms.

This identity composition is also alluded to by Dean (2019), who argues that the “memeification of politics” is strongly influenced by visual media culture, relating directly to both the processes of affective relationships mobilized by politics and the participation of citizens mediated by the digital dimension in political matters. By instigating attention, PIMs invest in identifying or repulsing their political and/or humorous assumptions, in a process that aims at engagement—that is, reactivity to a message.

The use of AI for the synthetic production of PIMs, since the final product is a result of a training bench of the GAI tool with several images, popularized the ability to edit, publish and share memetic material, and can be used both by advice from the political figure, as well as their activism on social media. Even though it is not the intention of this research to discuss memetic communication, the brief contextualization presented is considered important, since these elements can be noted in content shared on networks in the context of the 2023 Argentine elections.

3. Methodological collection process

It is important to note that Hui’s (2013) work on digital objects supports us in thinking about the research object presented here. According to the theorist, we must understand such elements—which include PIMs—as intertwined with experience and cognition in contemporary times. These productions, by eliciting interactions in a mediated way through exposure and sharing, imply cognitive activity of experiencing. Analyzing PIMs helps us understand how these “objects pervade our everyday life online, and it is in fact very difficult for us to separate what is online and offline anymore” (Hui, 2013: 380). Thus, synthetic content, by participating in the digital ecosystem in which we are all inserted as mediatized societies (Couldry and Hepp, 2017), demands understanding as products resulting from our interactions, being fed by values, beliefs, discourses and ideologies.

Based on the Chagas et al. (2017) collection system, and carrying out an essayistic movement of analysis in the image representations based on the concepts of Bucci (2024) and Santaella (2023), we therefore follow a process that encompasses the collection of digital objects (synthetic content) shared through social media platforms. For this work, publications on the social network X (formerly Twitter) of the two candidates for the Argentine presidency who went on to the second round of the elections were verified, as they could generate more material for analysis. Javier Milei (winning candidate) and Sergio Massa (losing candidate) made publications throughout the Argentine electoral year of 2023, which together reached more than 34 million views, on their accounts (@J Milei and @SergioMassa). The posts also received more than 450,000 likes and more than 24,000 comments. It is important to record these numbers related to these digital objects, as where “there are more digital objects, there are more relations” (Hui, 2013) and these relationships, even if virtual, were decisive for the emotions of the electorate who voted and elected Javier Milei for the presidency of Argentina. It is worth noting that many posts were deleted or censored by the network, and their rescue was possible by registering news sites about AI productions shared by the then Argentine presidential candidates.

In total, 17 synthetic productions were collected and analyzed, and those that brought the greatest reflections are exposed in this article. It is important to note that the 17 synthetic products collected were the only ones available in the accounts of both

candidates published in 2023, which could be accessed on April 10, 2024 (date of completion of the data collection process). This is because many of them were deleted by Twitter itself, denounced for misinformation and, in some cases, recovery was only possible by news agencies because the material had become notorious.

Although Argentina only has 18.5% (8.5 million users) of its population registered with an account on the social network X (formerly Twitter), the platform is the digital arena where politicians and celebrities most like to use to speak out and make themselves heard (Torres, 2024). According to Fondevila-Gascón and Perelló-Sobrepere (2014), when X had not yet finished its transparency program, Latin America was responsible for 49% of Twitter engagement, with Argentina accounting for 45.4% of this value. Together, Massa and Milei's accounts have more than 5 million followers³. Even though most Argentines do not like Twitter, according to Torres (2024), posts by politicians and activists are resonant, even if few. In addition, official government publications and announcements are already made only through Twitter, among social media platforms. For Torres (2024), if it weren't for the press, these announcements would be known by a very small portion of the population that does not want to be in a hostile place.

About the data collected, posts published from January 2023 until the end of the election period that contained political propaganda, directly and indirectly referenced the elections, and had clear indications of imagery produced by artificial intelligence were checked. It is important to note that some of the images produced by AI may have been left out, since the process depended on the instrumentalization of the authors and the platform has no indication of material produced by AI.

The first collected material was published on March 11th by Massa, the other 16 publications become more frequent from August 17th and continue until November 16th, 2023. On April 10th, 2024, the *corpus* of the work was constructed, indicating the caption of each publication, date of posting, number of comments, views, likes and shares of each image shared by both candidates' accounts. Although the authors maintain direct links to the publication, checking other posts that had already been deleted or censored by the platform showed that care was needed to take screenshots to keep the material safe for future analysis. Even with this care, some images were only possible to recover through the work of incorporating the initial post into news published on the websites O Globo, Poder 360, Medium and The New York Times.

Once the images were collected and stored, the process of analyzing the symbols, AI hallucinations and narrative construction presented in the synthetic material began supported, mainly, by the reflections of Bucci and Santaella on image generation by AI. Care was taken to observe the material keeping in mind how the Brazilian Electoral Resolution (2024) and how the European Parliament's AI Law (2024) could understand the images shared by both candidates or whether they could not contemplate the analysis of the collected material. For moments in which the legislation mentioned proved to be inefficient in carrying out the analysis, we resorted to the symbology exposed in the synthetic productions themselves, in addition to the work of researchers Bucci (2024), Chagas et al. (2017), Dean (2019), Kirner-Ludwig (2022) and Wiggins (2019).

³ Data collected on March 11, 2025.

4. Analyzing synthetic productions

An important point to consider initially is that all the images collected were published outside Argentina's electoral advertisement window for digital media. That fact leads to an initial discussion on how to apply these publications into the European AI Law or the Resolutions of Brazil's TSE, since the images and videos themselves do not contain elements that could directly classify them as electoral ads.

None of the images and videos indicate the platforms or softwares that were used in their construction, which in itself would make it difficult to classify the platform under the European AI Law and would also be acting against the Brazilian TSE Resolution that requires indication of the use of technology in any of the published products. The identification was possible, mainly, due to the existence of AI hallucinations, where the technology will deliver an image work according to the command requested, even if there is no logic in what is being presented. For example, Figure 1, where we can see the figure of Sergio Massa surrounded by a crowd that has anatomical inconsistencies on their faces, a repetition of some citizens and, in fact, Massa has two opposable thumbs, totaling 6 fingers on his hand, a anatomical characteristic that Sergio Massa does not have.

Figure 1. Advertisement by Sergio Massa generated by GAI



Source: New York Times.

For Argentine legislation, electoral ads within a political campaign period is understood as: “The issuance and publication of advertising notices for promotion for electoral purposes in graphic media, public roads, internet, mobile and landline telephones, and static advertising in public shows, may only take place during the campaign period”⁴ (Código Electoral Nacional, 1972).

⁴ Free translation of “La emisión y publicación de avisos publicitarios para promoción con fines electorales en medios gráficos, vía pública, internet, telefonía móvil y fija, y publicidad estática en espectáculos públicos, sólo podrá tener lugar durante el período de campaña establecido en esta ley.”.

In this case, even if for Nicas and Herrera (2023) the image will come close to political advertisement due to the synthetic aesthetics of a communist propagandist pamphlet from China or the Soviet Union, the insertion of the phrase “vote for a justicialist”⁵ could configure the image as electoral ad in favor of Massa. However, for other materials analyzed in this work, the indication is not very clear.

4.1. *Is a lion hugging a duck, a political ad?*

One of the symbols most used by candidate Javier Milei during the campaign was to associate himself with the figure of a lion and his voters being “the lions”. This was reflected in several publications made by the candidate during the period observed, where there are images generated by GAI of lions that can be related to Milei’s ads and speech. As we can see in Figure 2, published on November 4, Javier presents a lion in an unnatural color, alluding to the Israeli flag. This use is linked to the religious narrative of the figure of Milei.

Figure 2. Publication on X de Milei with caption “Por si querés la imagen original...”



Source: X account, @JMilei.

According to Palacios (2023), the current president of Argentina says that 2.000 years ago he was a Roman gladiator who spared a lion from death at God’s request. This lion would have been reincarnated as one of his dogs, nicknamed Conan, who would give him advice, including economic advice through telepathy after the animal’s death. These narratives, like the one supported by Milei, reinforce what Bucci (2024) indicates about the use of sacred and religious symbols by political figures and far-right movements as a defense of submission, obedience and a standardization of servitude to a hierarchical, paternal and leader figure. Despite AI generation, Bucci (2024) highlights that these narratives have been used for much longer.

Despite Milei’s notorious connection with the symbolism of the lion and its use in narratives of political movements to which the Argentine president is part through his

⁵ Free translation of “vote a un justicialista”.

ideological defense, some productions may be difficult to classify according to the legislation highlighted in these articles. For example, how to measure the impact of possible damage that Figure 2 can generate, to classify the platform where it was generated as “high risk”? The European AI Law does not yet make it clear how to proceed in this situation, as the candidate can claim the use of artificial intelligence only for beneficial use in his campaign and claim that there was no harmful impact from its production.

The Brazilian TSE Resolution also does not make it clear whether Figure 2 could be classified as an electoral ad. But if any damage caused by its circulation were found, could the content, for example, be removed from digital networks since the lion in the colors of the Israeli flag did not give permission for the use of its image? At least that’s what would happen hypothetically, since the TSE Resolution provides for the inappropriate use of material generated by GAI without permission from fictitious figures.

Of the publications made by Milei, the one that had the greatest reach on the platform was the posting of an image generated by GAI of an anthropomorphic lion hugging an anthropomorphic duck—a representation that refers to his alliance with another presidential candidate and current Minister of Security of Argentina, Patricia Bullrich. The post, which alone has more than 28 million views, generated a series of comments generating similar images, proving the effectiveness of the work of memes in political communication defended by Chagas et al. (2017), Dean (2019), Kirner-Ludwig (2022) and Wiggins (2019).

But could we consider an IAG-generated 2D cartoon illustration of an anthropomorphic lion hugging an anthropomorphic duck as political ad? According to what was advocated by Chagas et al. (2017), the answer would be positive, as it is a direct conversation with Javier Milei’s electorate and militancy—in the same content, there is also representation of the Argentine football team’s shirt, one of the main symbols of the country, as well as happy faces that indicate approval for the fortuitous alliance. Despite this, both pieces of legislation considered here do not make it clear whether they could consider Figure 3 as a political ad, which could escape what is mentioned in the legislative texts. As Europe’s own AI Law understands, there is no way to measure whether the image of an affectionate exchange of affection between a lion and a duck can cause damage to the point of considering the platform that generated this image as being “high risk”.

Figure 3. Image posted on October 25, 2023 on Javier Milei’s account



Source: X account, @JMilei.

4.2. *Milei is here, but he was never there.*

Another point to be considered is the use of deepfake, considered by the Brazilian TSE Resolution as a criminal practice and classified by the European AI Law as a high-risk production. Sergio Massa's electoral ad made extensive use of the practice of introducing the face of then candidate Javier Milei into scenes and contexts that the current Argentine president has never experienced.

The Brazilian TSE Resolution explicitly prohibited the use of deepfake, regardless of whether its use is to cause harm or favor, with the authorization or not of a living, dead or fictitious person. Therefore, videos like the one broadcast by Massa's campaign on November 15, 2023 would be prohibited and subject to sanctions by the Brazilian electoral court. In turn, European legislation indicates that circulation is not prohibited, but only indicates that the material would have a high risk of impacting debates on the electoral election.

The material produced by Massa and his activism had three main aspects. Firstly, the use of scenes from notorious films that could associate Milei's image with that of figures popularly known for harmful behaviors, such as the introduction of Milei's face into characters from cinematographic works, such as *Joker*, from the 2019 *Joker* production and Alex DeLarge, from *A Clockwork Orange* from 1971. A second general scenario is also the insertion of Milei's face in videos and images generated completely synthetically in the production of frames that associate the election of the then candidate with the death of Argentina's democracy, as can be seen in the frame indicated in Figure 4.

Figure 4. Video frame broadcast by Sergio Massa's campaign.



Source: Poder 360.

Finally, face implants are also used in digitally generated characters that represent Milei's allies in contexts understandable to the Argentine public. In this list, there are sequences such as the one that brings Karina Milei—current General Secretary of the Presidency and the president's sister—amid a group of five dogs that alludes to Javier Milei's pet canines (Figure 5), and that of vice-president Victoria Villarruel dressed in a Nazi uniform, with a dinosaur (tyrannosaurus rex) behind. Villarruel is known as an ultra-conservative politician, who founded the Centro de Estudios Legales sobre el Terrorismo y sus Víctimas

(CELTYV), a civil institution linked to the military sector accused of denying the violence perpetrated by the military during Argentina's dictatorship between 1976 and 1983 (Noguera, 2019). She is the daughter of Lieutenant Colonel Eduardo Villarruel, who was active in an uprising against the government of Raul Alfonsín, the first president of the democratic era (1983–1989).

Figure 5. Montage of frames from the video broadcast by Sergio Massa's electoral campaign



Source: Poder 360.

Although European legislation does not show any greater fear from this type of production, Brazil's TSE makes it clear its position to combat this type of content, which is more likely to cause misinformation and disrupt electoral processes. Deepfake is more difficult to classify as misleading material but its highly likely to circulate, being the ability of a product to seek the motivation and facilitation of efforts by fervent consumers to circulate the media. The material can create visually appealing scenarios and contexts that may contain a political figure, who never actually performed the action presented, was inserted in the exposed context or visited a scenario revealed in audiovisual content.

5. Final considerations

In an environment established by the processes and consequences of mediatization, digital objects constitute elements that engender and, simultaneously, are engendered on the horizon of human experience. Sociability and community life begin to be structured by digital flows, and this gives rise to new problems, especially if we think about the impact in relation to the legal issues that arise, such as regulations on the use of synthetic content produced by AI.

As demonstrated in an analysis of material collected of the 2023 Argentina's presidential election process, the most recent legislation on the subject still remains vague and may not be able to address the true risk or nullify the spread of malicious use of artificial intelligence technology on digital social networks. The difficulty in framing synthetically generated images and videos and, mainly, the impossibility of verifying the real impact and damage that one of these materials can cause in the electoral process, make possible punishments for their producers unfeasible.

Possible sanctions may also be prevented in material such as the post that had more than 28 million views, many of them also with material generated by GAI. The subject of disinformation will not always be the producer of the material, but it may just be the one who gave notoriety to the content, with the appropriation of memetic logics that engender the process of affective impact that, by generating identification or repulsion, trying to acquire circulation capacity being clear and exposure of ideological perspectives. In the case of the aforementioned publication, the original image was generated by the owner of the account @bitbaronbtc, which got a little more than 13 thousand views, not coming close to the reach provided by Milei to the same material. If it were a harmful object and subject to legal punishment, would Milei be punished, would @bitbaronbtc be punished or would the GAI platform that remixed several images to generate the object in question be punished?

European Union legislation also states that these materials generated by GAI are only punishable when proven to pose a risk to electoral campaigns. But how can the risk of a meme, increasingly used in political communication, according to Chagas (2014), be measured? Is every political communication strategy that uses memes generated by GAI a risk? Or is it only memetic content that does not have a humorous narrative? How can we legislate on what is funny and what is not? Even if it is found that the humorous tone of a meme serves only to hide an attacking discourse, how can we verify the true intentions of the author of the meme or who shared it, giving new meaning to its content? Given the complexity of the topic, as this work focuses on the analysis of content produced synthetically by GAI, it is worth further research in the future focused solely on the issues of memes.

At first glance, it seems that many of the problems found in Brazilian and European legislation could be better addressed based on better understandings of political communication in contemporary electoral times, in addition to the necessary conceptual review of disinformation, memetics and types of productions with GAI. If the debates for the sanction on both laws were extensive in the political field, it would therefore be through academic contributions that these concepts and theorems could be more exhaustively worked on, so that certain aspects brought up in the analysis recorded here can be better understood. In this way, democratic processes can occur with better quality, going against the political agenda outlined by Empoli (2019) to disqualify political debate, bringing disinformation, conspiracy-based narratives, irrelevant content and promoting political spectacles.

Even though the legislation approved by Brazil and Europe were in different contexts from Argentina, the case can be used for a discussion about functionality or not in future electoral elections in Brazilian and European scenarios. For this work, the points that specifically deal with production with AI would not cover the content produced as they present some framing aspects that prove to be vague, when we consider the material that circulated during Argentina's electoral process. But we hope that, looking at future cases, the points presented here can be a guide for situations that will arise in other democratic elections.

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