

GOOD PRACTICES IN DIGITAL FUNDRAISING



European Center for
Not-for-Profit Law

The document was prepared by Eszter Hartay, Ivana Rosenzweigova and Francesca Fanucci from the European Center for Not-for-Profit Law Stichting (ECNL), Usha Menon and Boris Strecansky.

This is a living document and we are happy to receive your feedback, including suggestions on what to add to the list, via email at eszter@ecnl.org or ivana@ecnl.org. The purpose of the Good Practices is not to give legal advice.



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INTRODUCTION

The digital revolution and the use of Artificial intelligence (AI) opened new horizons for philanthropy. Machine-learning algorithms - and automated decision-making in general help fundraisers to identify and reach out to potential donors, craft targeted messages, communicate through chat bots and run campaigns across borders. More and more organizations accept donations in cryptocurrencies. The spread of crowdfunding platforms decentralized and democratized philanthropy and offers new opportunities for smaller organizations who have limited resources. The COVID-19 pandemic further amplified the role of digital fundraising. On the other hand, whilst digital technologies make it easier to collect and match large quantities of data, they make it more complex and difficult for individuals to retain control over the way their information is processed, stored and re-used or shared with third parties. Intermediaries, such as online crowdfunding portals and social media platforms owners play an increasing role in designing algorithms, managing data and controlling content with their own ways of working and their values. Furthermore, digital fundraising also brought new types of dilemmas related to the potential impact on climate, profiling of individuals and concerns related to privacy, data protection and others. Beyond these, digital fundraising also raised a new challenge which is typical for interactions using digital as compared to in-person communication. Namely, how to avoid the superficiality of relationships facilitated by efficiency and seeming value-neutrality of digital technology when pursuing the universal desire to advance common good.

As digital fundraising is a relatively new and rapidly evolving area there is often lack of guidance on the use and regulation of such tools. Therefore, in the past year we launched a [research](#) and a series of expert discussions about the opportunities and risks of using digital technologies in fundraising. The present **Good Practices in Digital Fundraising** are an outcome of these discussions and aim to create some standards that CSOs and all stakeholders can consider and follow. They complement the [Fundraising Principles](#) that were launched in April 2020 and provide a global overview of current trends in fundraising regulation and self-regulation to support a more enabling environment for philanthropy. Some of the Good Practices are formulated based on already existing international and regional standards, especially those around right to privacy and data protection. The rest of the Good Practices are formulated based on the good practices we have observed through our work or discussions with other experts in digital fundraising. We divided them into two sections based on the stakeholders they are addressed to – **regulators**, meaning state authorities or decision makers and **practitioners** – professional fundraisers, CSOs performing their own fundraising and intermediaries, such as online crowdfunding portals and social media platforms owners.

The adoption of digital fundraising policies and the strengthening of donor rights will have implications for CSOs and fundraisers. They will need to reconsider how they do their supporter outreach, especially using digital means. On the other hand, this will create a more willing and engaged community, knowing that their data is protected and rights are respected.

GOOD PRACTICES IN DIGITAL FUNDRAISING

FOR THE REGULATORS:

1. Legislation allows for the use of new technologies in fundraising. Restrictions, if and where exist, are narrowly construed and justified.

Fundraising constantly evolves with new methods rapidly emerging. New, innovative tools, such as different mobile applications that facilitate easy and quick donations, can also help to boost philanthropy from new donors and broaden a CSO's donor base.

Laws and regulations on CSOs' solicitation of or access to donations, including online donations, can have a significant impact on freedom of association, which includes the ability to "seek, receive, and use resources." As such, states have an obligation to facilitate access to resources and must avoid restraining CSOs' ability to access resources. Freedom should be the rule, and restrictions the exception.¹

While in some countries there are lack of policies on the use of certain new technologies, in others governments are increasingly adopting legislation to regulate the use of these tools.

It is important that fundraisers can easily incorporate the use of new technologies into their fundraising strategies. Therefore, legislation should generally allow or should not preclude the use of new technologies in fundraising. Any restrictions should be limited to what is strictly necessary and proportionate to their purpose.

¹ OHCHR. 'Thematic Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association', A/HRC/23/39, para 8, 24 April 2013. Available at: [United Nations \(ohchr.org\)](https://www.ohchr.org/). In accordance with Principle 7 of the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association.

2. Laws do not require a permission to carry out a digital fundraising campaign.

With the digital technologies, fundraising campaigns moved to the online space and are carried out across borders. This made some of the existing structures redundant and hard to implement. For example, in some countries, organizers need to notify or get the permission of the respective authority to conduct public collections. Some of these laws do, while others don't apply to online collections. In some cases, it is unclear or hard to implement due to the lack of guidance for which methods it applies. Legislators across the world shift and revisit the laws to flexibly respond to this new norm. However, there are no clear international standards in this area yet. It is important to mention though that in 2020 the UN Special Rapporteurs issued a letter to the government of Turkey expressing concern about the new Law on Preventing Financing of Proliferation of Weapons of Mass Destruction which extended the permission requirement to launch online campaigns. According to the letter, the new rules appear to restrict fundraising and aid collection².

3. Laws do not unlimitedly inhibit/do allow in general anonymous donations.

CSOs have been traditionally using fundraising methods that allow for anonymous donations- such as the collection box. With the spread of digital technologies the scope of anonymous donations further increased. The recipient CSOs do not have access to the data of their donors who donate via SMS or some crowdfunding platforms that do not allow their identification. It should be permissible for donors to donate for a cause without disclosing their identity, unless further conditions are met to restrict such source of funding, in accordance with international standards. Among others, the International Covenant on Civil and Political Rights³ states that any limitation must not only pursue a legitimate interest but also be “necessary in a democratic society.”

The potential risk alone does not justify blanket measures and the disruption of legitimate CSO activity, including anonymous donations. Instead, according to the Best Practices on Combating the Abuse of Non-profit organizations (Recommendation 8) Terrorism financing, “*The best approach for NPOs to ensure that they are not abused for terrorist purposes is to put in place good governance and strong financial management, including having robust internal and financial controls*

² ECNL: UN Special Rapporteurs raise concerns about new counterterrorism law in Turkey. Available at: <https://ecnl.org/news/un-special-rapporteurs-raise-concerns-about-new-counterterrorism-law-turkey>

³ International Covenant on Civil and Political Rights. Available at: [OHCHR | International Covenant on Civil and Political Rights](https://www.ohchr.org/en/instruments-treaties)

and risk management procedures. In addition, carrying out proper due diligence on those individuals and organisations that give money to, receive money from or work closely with the NPO is also important. Proper due diligence is dependent upon the circumstances and context of each organisation and the environment in which it operates.”⁴

4. The state allows/does not limit the collection of donations in virtual currencies.

Virtual currency donation has been increasingly used by some CSOs (e.g. WWF, UNICEF). In environments that are restrictive to traditional foreign donation virtual currencies have emerged as an alternative. While there are no clear international standards in this area, states should not unnecessarily limit CSOs' access to funding. In order to do that, a clear regulatory framework supporting responsible innovation is needed for decentralized finance to expand into the mainstream.

5. The legislation provides for tax benefits after donations, including after donations provided via digital tools and/or using virtual currencies.

Tax benefits, including tax deductions and tax credits can be good stimulants for donors to engage in giving to good causes. Therefore, it is a good practice that states around the world provide meaningful tax benefits for donors that can be claimed through a simple, clear and quick procedure. At the same time, tax benefits should not be limited only to standard fundraising methods and should acknowledge the existence of digital fundraising. This means that regulators should enable donors to claim tax benefits on donations provided via digital tools as well as donations in virtual currencies.

⁴ FATF: Combating the Abuse of Non-Profit Organisations (Recommendation 8). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

FOR THE PRACTITIONERS:

6. Fundraisers and intermediaries clearly explain and communicate to the donors how their personal data will be processed in relation to the donation and collect their free, unambiguous and informed consent, unless there is other legitimate basis to carry out the processing laid down by law.

Donors and beneficiary CSOs have the right to privacy, from which the right to data protection also derives. The right to data protection is enshrined in various international and regional instruments, including the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data⁵, Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data⁶, Asia-Pacific Economic Cooperation (APEC) Privacy Framework⁷, Organization of American States Principles on Privacy and Personal Data Protection⁸, EU Charter of Fundamental Rights⁹, the EU General Data Protection Regulation (GDPR)¹⁰ and others. All these documents incorporate a principle of lawfulness of the processing. According to this principle, CSOs and third party intermediaries facilitating fundraising need consent from the supporters, which needs to remain valid throughout the supporters' journey and lifetime, unless other legal basis is available for the processing. CSOs and third party intermediaries have to also comply with the applicable data protection principles when raising funds from donors, especially the principles of lawfulness, fairness and transparency. This is even more relevant for digital fundraising, since the data processed through digital means can be shared and transferred easily to unauthorized parties, as well as used for other purposes, including profiling and tracking of beneficiaries and donors.

⁵ Organisation for Economic Co-operation and Development (OECD): Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. Available at: [OECD Privacy Guidelines - OECD](#)

⁶ Council of Europe (CoE): Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. Available at: [CETS 108 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data \(coe.int\)](#)

⁷ Asia-Pacific Economic Cooperation: APEC Privacy Framework. Available at: [APEC Privacy Framework](#)

⁸ Organization of American States: Principles on Privacy and Personal Data Protection. Available at: [:: Data Protection > Department of International Law > OAS ::](#)

⁹ European Union (EU) Charter of Fundamental Rights. Available at: [EUR-Lex - 12012P/TXT - EN - EUR-Lex \(europa.eu\)](#)

¹⁰ European Union (EU) General Data Protection Regulation (GDPR). Available at: [EUR-Lex - 32016R0679 - EN - EUR-Lex \(europa.eu\)](#)

7. Fundraisers and intermediaries minimize the scope of data collected on their beneficiaries and donors and limit its use to the primary purpose for which the data was collected, unless otherwise agreed by the individuals concerned.

Fundraisers and intermediaries shall minimize the scope of collected data and avoid collection of data that is not necessary for the purpose, especially sensitive information (e.g. religion, ethnicity etc). This protects the interest of the beneficiaries as well as of donors from the potential misuse of their data by the social media intermediaries and prevents potential abuse of the biometric data widely used in the digital world. Also, the use of data shall be limited to the purpose for which it was collected. There are numerous international and regional documents that introduced purpose limitation and data minimization principles, including all instruments listed above.

8. Fundraisers abide by the storage limitation principle and process the data on the beneficiaries and donors only for the period necessary to achieve the purpose.

The storage limitation principle entails that fundraisers cannot keep personal data for a longer period than they need it. This means, for example, that personal data on the donors and beneficiaries should be only kept for the period that is necessary to process the donation, provide a confirmation for tax or other related purposes and potentially for reporting on how the donation has been spent. Personal data may be stored for longer periods than for the purposes for which they are processed only when their conservation is necessary in the public interest, scientific or historical research or for statistical purposes.

Fundraisers have a clear policy outlining their standard retention purposes and justified time limits. The retention period should be established separately for each purpose of processing and scope of the data processed for such purpose. If some data is not anymore necessary for any legitimate purpose, it shall be securely disposed of.

Similarly as for other good practices mentioned above, the storage limitation principle is enshrined in all international and regional data protection instruments listed above.

9. Fundraisers and intermediaries should have a detailed Privacy Policy that covers digital fundraising.

Fundraisers and intermediaries should provide transparent information on the processing of personal data covering digital fundraising through a detailed Privacy Policy. Such Privacy Policy should contain privacy standards that are programmed into CSOs' or other intermediary fundraising platforms to maintain compliance and donor trust. Privacy Policies should, at the very minimum, provide the name of the controllers and recipients or categories of recipients of personal data, describe the scope of personal data collected and processed, purpose of the processing, legal basis for the processing, rights of the individuals involved and ways to exercise them, retention period and any information related to the potential transfer of personal data abroad. Similar transparency requirements are enshrined in all international and regional data protection instruments listed above.

10. Sharing of data between platforms, intermediaries and CSOs is transparent and performed only if allowed by the law.

Transparency around sharing of personal data is particularly important in cases where CSOs use third-party fundraising platforms and social media outreach tools. Not all fundraising platforms allow CSO recipients to access personal data on donors, which puts these CSOs into the dependency relationship to the platform that capitalizes on this asset in the form of data. Platforms with more levelled playing field in terms of rules and conditions, unconditionally provide the data to CSOs. The control over data, access, protection and sharing could be another area where fundraising platform standards and good practice could be enhanced by voluntary codes of conduct.¹¹ Some standards are already included in the international and regional data privacy standards, including the APEC (Asia-Pacific Economic Cooperation) Privacy Framework and GDPR.

¹¹ ECNL: The potential and risks of using digital technologies in fundraising: A comparative research. Available at: [Digital technologies in fundraising | ECNL](#)

11. Personal data of donors and other users of the digital fundraising tools should not be used for tracking and targeting marketing communication, unless expressly agreed by the individuals concerned.

Online platforms are using Google Analytics and other analytical and marketing tools to track activity and social media Pixel for re-targeting or geo-targeting their message. Fundraising intermediaries, such as social media platforms, may use the data collected on donors and beneficiaries for different purposes than for the initial purpose to target them and enrich their marketing activities. Such activities should be only allowed, if individuals concerned expressly consented to them.

12. CSOs and other fundraisers do not use 'cookie walls' which would force website visitors to enable collection of cookies. Platforms are transparent about the types of cookies used on the websites and provide clear opportunity for the visitors to disable their use.

Websites are creating 'cookie walls' that force the user to 'accept all' in order to access the website. Giving-portals are running nonessential tracking scripts or cookies. According to the current EU ePrivacy Directive and article 7 ("Conditions for consent") of the GDPR, consent should be given freely for using cookies and tracking technology other than strictly necessary. This means a website should be accessible for everyone and not merely for those who accept all (tracking) cookies.

Also, the latest draft of the EU ePrivacy Regulation establishes that "the use of processing and storage capabilities and the collection of information from end-user's terminal equipment should be allowed only with the end-user's consent and or for other specific and transparent purposes as laid down in this Regulation."

13. Fundraisers are transparent on their use of algorithm-based systems for fundraising efforts.

Artificial intelligence can help fundraisers to become more efficient: among others, AI applications have been designed to automatically craft personalized, donor-centric emails for fundraisers at CSOs. Algorithm-based systems can also be used to launch global fundraising campaigns that drive traffic to donors based on their

previous research history.¹² There are currently no specific standards that would guide use of algorithm-based systems for philanthropy. However, to protect donors' privacy and set up transparent procedures, when algorithms are used for fundraising efforts, the intermediaries should ideally provide transparent information on how these algorithms operate, process, analyse and assess data. On the other hand, CSOs resorting to such algorithm-based system in their publicly available privacy policy should inform their donors that such systems are used and disclose how personal data is collected and processed.

14. CSOs, fundraisers and intermediaries carry out a regular human rights impact assessment of the digital fundraising practices in consultation with civil society stakeholders.

Pillar two of the United Nations Guiding Principles on Business and Human Rights sets out companies' responsibility to conduct human rights due diligence in order to prevent or mitigate any adverse impacts on human rights of their activities, services, products and relationships. This process includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

When assessing the human rights impacts of its services and products, a company or State institution should consult with CSOs and affected groups. This engagement should be ongoing, transparent, and allow for meaningful participation of external stakeholders (including by providing resources and capacity building/training for participation).

15. CSOs include rules/protocol in their financial and governance policies on managing donations and other payments in cryptocurrencies.

Cryptocurrency may serve as an alternative tool to support a CSO. It is particularly useful for those organizations that operate in a restrictive environment and would otherwise not be allowed to accept donations from abroad. On the other hand, it is also important to recognize that the use of cryptocurrencies has negative implications on climate and it is important to consider this when a CSO designs its

¹² ECNL: Principles for Statutory Regulation and Self-Regulation of Fundraising. Available at: [Fundraising Principles | ECNL](#)

fundraising strategies. If the organization decides to accept cryptocurrency donations, it must be included in the CSOs' gift acceptance and investment policies. The necessary KYC (know your customer) policy needs to be in place for both fiat and crypto currency so as to comply with the Money Laundering and Terrorism (AML/CFT) regulations. Crypto currencies are held in digital wallets and accessible only through a password. The CSO needs to institute a rigorous protocol for password protection, maintenance and recovery. CSOs should, in discussion with its Board and financial advisers, be clear of the financial reporting requirements as donations of crypto is generally disclosed as non-cash contribution (like a gift-in-kind) and to document its value by a qualified appraiser.

**European Center for
Not-for-Profit Law Stichting**

**5 Riviervismarkt, 2513AM The Hague,
Netherlands**

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twitter.com/enablingNGOlaw**



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