THE POTENTIAL AND RISKS OF USING DIGITAL TECHNOLOGIES IN FUNDRAISING:
A COMPARATIVE RESEARCH

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I. INTRODUCTION

The digital revolution and the use of Artificial intelligence (AI) opened new horizons for philanthropy. Digital technologies are used throughout the lifecycle of fundraising: starting from promoting the beneficiary organization or cause, identifying the target groups, storing their data, reaching out to them and processing the donation. AI - intended as machine-learning algorithms - and automated decision-making in general can help fundraisers to identify and reach out to specific segment of audience, craft the messaging in a particular way pertinent to the audience, communicate through chat bots and run campaigns across borders in a cost-effective manner. The back end and Google Analytics allow us to monitor click through and open rates, customer reactions and choices and craft customized messages relevant to them. Fundraisers can utilize new digital platforms such as robo-advisories.[1] Hundreds of charities accept voice donation on Alexa.[2] Investor Dashboard can make a long-term impact and help to navigate the philanthropic journey.

New trends related to money have a major impact on fundraising, too. The decentralized finance[3,] such as the use of cryptocurrencies, eliminates financial intermediaries and facilitates peer-to-peer networks. Civil society organizations (CSOs) such as WWF and UNICEF[4], already accepts bitcoin donations. The COVID-19 pandemic further amplified the role of virtual money and online transfers.

The pandemic also forced CSOs to move offline fundraising to the online world. We have seen inspiring examples of organizing gala dinners and walkathons online.

Donation-based non-investment crowdfunding platforms or on-line giving and digital fundraising represent the monetary segment of the alternative fintech industry which utilizes digital technologies including the AI for social good. The size of the global donation-based crowdfunding market in 2018 is estimated at 639 mil. EUR[5]. Crowdfunding platforms besides mobilizing financial resources for social good contribute to greater transparency and connectedness of donors with beneficiaries by directly connecting backers of projects with social innovators

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1 Robo-advisors (also spelled robo-adviser or roboadvisor) are digital platforms that provide automated, algorithm-driven financial planning services with little to no human supervision.
https://www.investopedia.com/terms/r/roboadvisor-roboadviser.asp
2 https://pay.amazon.com/alexadonations
3 https://academy.binance.com/en/articles/the-complete-beginners-guide-to-decentralized-finance-defi
4 https://www.theguardian.com/global-development/2019/oct/09/unicef-now-accepting-donations-through-bitcoin-and-ether
5 https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/the-global-alternative-finance-market-benchmarking-report/

bypassing sometimes opaque or untransparent intermediaries and simplifying the access to funding. At the same time crowdfunding campaigns may create an illusion that non-profits or civic initiatives can go along without overheads, strategic planning or research, which the crowdfunding fundraising typically omits to include.

However, the application of digital technology for social good is not limited to giving and fundraising in monetary terms only. There is a growing realm of non-monetary giving using digital technology through crowdsourcing online platforms that leverage the monetary giving with the in-kind gifts, skilled or unskilled volunteering time, microvolunteering with simple tasks[6,] giving expertise, advice, engaging in problem solving, gathering of information or even formulating strategic direction. It is a part of the decentralized digital crowdsourcing landscape for social good which along to decentralized, platform-based resource mobilization systems uses also new organizational forms, collaborative approaches and innovative data management.[7]

The climate change has been raising new types of challenges and opportunities, too. Carbon offset and mission compensation has become increasingly popular tool to mitigate emissions and fight against climate change. It contributed to sustainable forestry[8] and other public benefit projects globally.

On the other hand, the spread of these new trends and technologies raises multiple questions. How can CSOs and fundraisers keep up and utilize these new technologies? Do the country laws and practices allow them to benefit from these new opportunities and protect from the potential risks they pose? Are there international and regional standards in place to safeguard this and the freedom of association and privacy?

Despite the rapid spread of digital fundraising there is limited knowledge on these topics. Therefore, the present research aims to map out the existing trends in the ecosystem and the field of fundraising. It attempts to raise awareness of the potential risks and challenges and provides an overview of the spectrum of global, regional and domestic policies that affect fundraising with new technologies. Based on these we formulated a set of recommendations to facilitate further discussions for a better environment for digital fundraising.

The research was developed by the European Center for Not-for-Profit Law Stichting (ECNL) based on desktop research and interviews with key experts and practitioners on the topic. The authors would like to express their appreciation to

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6 https://www.onlinevolunteering.org/en/opportunities
7 https://www.philanthropy.com/article/digital-dependence-has-obliterated-the-notion-of-nonprofit-independence
8 https://treesforall.nl/en/compensate-co2/

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We hope that the research will help CSOs, fundraisers and policymakers to think through how the environment can be further improved for digital fundraising in their countries. ECNL will support this process through organizing expert meetings and webinars and providing technical assistance support to legal initiatives.

II. TRENDS IN THE ECOSYSTEM AND THE FIELD OF FUNDRAISING

There are several trends and developments that dynamically shape the ecosystem of fundraising globally. The spread of electronic payment, the climate crisis, the closing civic space, the rise of misinformation, the digital divide and the recent COVID-19 pandemic all have an impact on fundraising practices. The following chapter provides an overview of such key trends and developments.

// Spread of electronic payments and decentralized finance:

Organizations are increasingly using electronic payment (e-payment) systems, including electronic fund transfers (EFTs), prepaid and smart cards, e-vouchers, and mobile money. It has multiple benefits, including improved security and transparency, reduction of leakage or waste, and improved cost and efficiencies[9]. Blockchain and its applications, such as Bitcoin, have gone through a cycle of high promise and setback and is considered as one of the most important inventions. At the time of writing the research the total value of all cryptocurrencies was over €412 billion and it is growing.[10] Financial technology (FinTech) started to fill some of the roles played by the large financial institutions and spurred a new wave of innovation. It reduces transaction costs, expands transaction scope, and empowers peer-to-peer transactions. On the other hand, decentralized finance faces

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9 https://www.usaid.gov/sites/default/files/documents/15396/USAID_NetHope_ePayment_Toolkit_2016.pdf
10 Interview with Anne Connelly: Using Bitcoin and Blockchain for fundraising – EFA | European Fundraising Association (efa-net.eu)

substantial regulatory uncertainty and scrutiny, which can deter entrepreneurship and innovation. Therefore, a clear regulatory framework supporting responsible innovation is needed for decentralized finance to expand into the mainstream.[11][OBJ] Virtual currency donation has already been used by some CSOs (e.g. WWF, UNICEF) though its volume is quite small compared to traditional cash donations.

// Closing the Digital Divide: Online fundraising and online giving are

dependent on the reach of the internet and thus, the platforms which host the funding pages or support them, through alliances with banks and other financial institutions. A perennial issue in this respect, is the availability of the internet itself. The lack of internet reach is called the "digital divide". There is broad recognition through several international documents and standards that the internet has become such an essential part of life that States should work to the extent possible to bringing the internet to all of its citizens.[12] In particular, in the pandemic-stricken world, the United Nations Secretary General has stated that "*The Internet is a powerful and essential global public good that requires the highest possible level of international cooperation.*"[13] Following from this, disruption of the internet in the form of shutdowns, filtering or blocking, amount to the blocking of the exercise of fundamental rights, such as association, of which fundraising is an essential component.

// COVID-19 pandemic: The COVID-19 pandemic has highlighted the necessity

to facilitate funding through online means due to the limited possibility to raise funds through person-to-person contacts.[14] For example, in Kyrgyzstan, Karakol Zoo, which relied entirely on entry fees as its source of stable income, was left without a livelihood during the nationwide quarantine in April 2020. The owner of the Zoo, the Public Foundation Bugu-Ene, launched an online campaign to save the

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11 https://sites.law.duke.edu/thefinregblog/2019/12/06/blockchain-disruption-and-decentralized-finance-the-rise-of-decentralized-business-models/
12 UN GA resolution of 27 June 2016 on the Promotion, protection and enjoyment of human rights on the Internet", A/HRC/32/L.20 ; Recommendation CM/Rec(2008)6 of the Committee of Ministers on measures to promote the respect for freedom of expression and information with regard to Internet filters; Recommendation CM/Rec(2007)16 of the Committee of Ministers on measures to promote the public service value of the Internet, the Declaration on freedom of communication on the Internet adopted by the Committee of Ministers on 28 May 2003, Recommendation 1586 (2002) of the Parliamentary Assembly on the digital divide and education, Recommendation No. R (2001) 8 of the Committee of Ministers on self-regulation concerning cyber content, Recommendation 1543 (2001) of the Parliamentary Assembly on racism and xenophobia in cyberspace, the Declaration on a European policy for new information technologies adopted by the Committee of Ministers on 7 May 1999, Recommendation No. R (99) 14 of the Committee of Ministers on universal community service concerning new communication and information services. See also, P Norris, "The Digital Divide: Civic Engagement, Information Poverty and the Internet Worldwide", Cambridge University Press, 2001.
13 "Digital Divide 'a Matter of Life and Death' amid COVID-19 Crisis, Secretary General Warns Virtual Meeting, Stressing Universal Connectivity Key for Health, Development"
 https://www.un.org/press/en/2020/sgsm20118.doc.htm
14 Why Covid has been our catalyst for change in face-to-face fundraising, October 29, 2020, Source: 101Fundrasing: https://101fundraising.org/2020/10/covid-catalyst-change-face-to-face-fundraising/

animals in the zoo and within a short time the money was collected[15]. In Singapore more than $1 million was raised at Dover Park Hospice's first virtual charity dinner that was attended by around 250 guests.[16] Unfortunately, the COVID-19 pandemic has also brought challenges to fundraising online through the use of bogus accounts and emails by cyber-criminals which impersonate authorities, such as the World Health Organization (WHO), in order to persuade victims to download software or donate to bogus causes. Google blocks.[17]

// Climate crisis: The climate crisis had an impact on the fundraising practices, too. The carbon offsetting became a popular method that encourages everyone, and especially those who take part in carbon-heavy practices like flying, to donate to various projects.[18] Projects like tree planting, clean water programs, and building and maintaining wind farms aim to neutralize the effects of these practices and reduce GHG emissions in the most cost-effective and economically-efficient manner.[19]

// Closing civil space: Shrinking space for civil society has been a global trend that has an impact on fundraising practices, with special regard to cross-border philanthropy. According to the latest ICNL tracker, at least 86 countries have proposed or enacted 221 initiatives that restrict civic space since 2015. 10% of the constraints affected foreign funding of CSOs. As an example, in 2020 three draft laws have been introduced in the Ukrainian Parliament which would impose limitations to the work of CSOs, including a special regime of registration and reporting for foreign-funded CSOs.[20]

// Rise of misinformation and fake news and smear campaign against

non-profits: In the online realm, misinformation and fake news has had a serious impact on several sectors, including the non-profit sector. The reputation of CSOs and thus their attractiveness to donors, can be targeted through smear campaigns, run online. These smear campaigns can be government sponsored, or they may be private individuals. The platform providers themselves can also be counter-productive through their system of take-down, based solely on the criteria provided in the terms of agreement with users, rather than international law

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15 "Digital Fundraising in Kyrgyzstan Legal Regulation of Noncommercial Organizations Fundraising via Electronic Means" – ICNL Report of September 2020: https://www.icnl.org/post/news/digital-fundraising-in-kyrgyzstan
16 https://www.straitstimes.com/singapore/dover-park-hospice-raises-1m-at-virtual-charity-dinner
17 "Google blocking 18m coronavirus scam emails every day" BBC Technology News, April 17, 2020:
 https://www.bbc.com/news/technology-52319093
18 https://www.carbonfootprint.com/offsetshop.html
19 https://www.carbonfootprint.com/carbonoffsetprojects.html
20 https://ecnl.org/news/friends-or-foes-are-csos-receiving-foreign-funding-enemies-ukraine

standards which would protect CSOs from an interference with their right to association, a pivotal component of which is the right to seek, raise and receive funds. A case in point is the take down of the fundraising accounts of right-wing militia groups in the US. On account of this take-down, PayPal decided it would also take down the accounts of anti-fascist groups (Antifa) which were established to counter fascist rhetoric, causing material and reputational damage to them.[21] Therefore, many European startups are fighting fake news and disinformation.[22]

// Spread of online platforms and crowdfunding:[23] The crowdfunding

services became easily accessible for individuals as well as to CSOs enabling them to receive and make donations to and from their community, friends, peers, friends or strangers. The donation-based non-investment crowdfunding and reward-based non-investment crowdfunding that covers the mainly charitable, creative and cultural fields has become a standard segment of a broader crowdfunding market that includes lending, insurance, equity and other types of assets. Non-profit and civic crowdfunding as one facet of online platform giving grows rapidly in terms of volume, reach, interest and geography[24]. Crowdfunding online platforms have mushroomed in last five years across continents, with significant rise in Asia, US and European markets. They operate nationally but also across multiple jurisdictions. They transcend national boundaries and open new opportunities for building new community connections between causes and organizations with their backers by establishing direct relationship between them and harnessing the power of the "network effect" via its spread through social networks. Civic crowdfunding brings to life more democratic, open access and transparent community engagement and offers new opportunities for smaller organizations who have limited resources for robust fundraising campaigns. As an example, the crowdfunding platform GoFundMe launched a new free fundraising platform for all U.S. 501(c)(3) nonprofits called GoFundMe Charity[25] in 2019. The new platform requires no upfront costs, contracts, or subscription fees to nonprofits. Nonprofits are able to track and measure donation data through a report center. This feature builds donor queries, shows data visualization graphs, and schedules reports. Charities are also able to receive reports on personal fundraisers who raise money for their organizations with the classic GoFundMe service.[26]

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21 https://www.theverge.com/2018/11/9/18079880/paypal-proud-boys-gavin-mcinnes-antifa

22 European startups fighting fake news and disinformation: https://www.eu-startups.com/2020/03/10-european-startups-fighting-fake-news-and-disinformation/

23 Crowdfunding has been one of the most rapidly growing on-line giving approaches from which benefited not only CSOs but also individuals and businesses.

24 Major players in global market include Kisckstarter, Indiegogo, Fundable, Patreon, Fundly, DonorsChoose, Fundable, Just-giving, Facebook, Crowdfunder, Goteo and many more.

25 Fundraising Website - Raise Money Online For Causes & Charities - GoFundMe Charity

26 https://blog.techsoup.org/posts/techsoups-nonprofit-tech-trends-for-2020

// Ongoing hybridization of civil society space:

Civil society organizations traditionally have been conceptualized as organizations that populated the space between the government, market and the family, but have been on the fringes of social and political spheres, rather than in the mainstream. Thus, the space also has been called a "third sector" to show its difference to market and public sector. Today many CSOs feature elements and characteristics that are typical either for public sector (care for the commons, public serving) or for private business (social innovation, social enterprises) which adds to the notion of civil society hybridity and blurring lines between for-profit and non-profit. That tendency is not unique to CSO space – also some in the corporate space move towards embracing the social dimension, focus on the triple bottom line, or move towards the B-corp concept. In the civil society space the hybridization has been also taking shape not only functionally, but also organizationally. Current conceptualizations of civil society thus include not only formal organizations (visible to statistics) but also informal organizations, that are not registered, led and run entirely by volunteers, fluid in their operations, temporality and existence[27]. These include community-based civic initiatives, grass-root activism, protest movements, ad-hoc coalitions of organizations without any formal structures, broader social movements and networks. The hybridization poses also new challenges from the regulatory perspective because the regulatory frameworks struggle with the complexity of new hybrid organizational forms. New technologies and online space create new avenues where the civil society's informal dynamics can play out and where citizens as individuals or as groups, networks or fluid collectives can act and organize for mutual or public benefit.

// Silent transformation of traditional fundraising to a distributed fundraising model harnessing the power of online social networking:

The fundraising field has been going through major changes in last 10-15 years which were empowered by using technology in business processes and the pervasive transformative power of the online social networks. The rise of crowdfunding has been also significantly nurtured by the symbiosis of online giving technology with online social networks that enabled it to reach new audiences in highly efficient ways. Also, a transformation occurred in the fundraising process where the traditional CSO fundraising asking for contributions from potential donors has been complemented by the distributed fundraising process conducted by CSOs followers individually for the causes promoted by CSOs. In recent years many professional fundraisers in CSOs have become managers of processes aimed at enabling active followers of CSOs to fundraise independently in their social networks on mass scale for the benefit of the CSO. In a similar vein,

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27 Salamon, Lester M., and S. Wojciech Sokolowski. 2017. "Explaining Civil Society Development II." In *Explaining Civil Society Development: A Social Origins Approach*. Baltimore: Johns Hopkins University Press.

social fundraising has got traction as well. Individuals organize fundraising campaigns for their personal causes at birthdays or other occasions. Facebook reports that since its launch in 2015 forty-five million people have donated $1 billion via the birthday fundraisers. In total $3 billion have been raised for personal and non-profit cause using the Facebook causes functionality. The recent developments enable live donations during online events and video streamings.[28]

III. BENEFITS OF USING TECHNOLOGY FOR FUNDRAISING

The use of digital technologies has various benefits for both the donor and the fundraising community. Digital technology in fundraising is closely linked to online giving domain as a broad space encompassing variety of tools, payment systems, platforms and applications using internet for soliciting and enabling contributions and donations.

Applications of machine learning improves the user experience of crowdfunding platforms in multiple ways, that have in common the higher efficiency of the giving process from both sides – the side of the donor and the side of the recipient. **Improving the donor experience** is facilitated by application of machine learning on crowdfunding sites (but also on donation sites of larger charities). It allows them to **optimize the donor journey for everyday donors by personalizing the communication and appeals (**chatbots powered by AI that serve as conversational interface between organizations and the public[29]) and **improve the charity (beneficiary) selection**, quickly identify and select causes and/or **recommend recipients** that best match their preferences and thus increase the likelihood of donating which becomes less transactional and more personal. Furthermore, some donation platforms **advise donors** to make gifts that yield highest impact by analysing data on past projects or offer advice to donors during their donor journey. Similarly, some sites use machine learning to **filter or rate beneficiaries** with "highest" value based on how much "good" they do (for example Charity Navigator, Candid) on a larger scale than before. What has been done before by humans is now shifted to machine-aided analysis because it is faster and on a larger scale.[30]

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28 https://about.fb.com/news/2019/09/2-billion-for-causes/
29 Allison Fine & Beth Kanter: Rehumanizing Fundraising with Artificial Intelligence. In: Stanford Social Innovation Review, Oct. 26, 2020
30 Kanter, Beth & Fine, Allison: AI4Giving. Unlocking Generosity with Artificial Intelligence: The Future of Giving, 2020, https://ai4giving.org/

From the side of beneficiaries, machine learning can facilitate development of **donor prediction models** and **automated stewardship workflows**, especially as far **major donors** are concerned. The automated workflows save time in internal reporting, administrative tasks and donor search and identification and allow nonprofits' staff to invest their capacity to other needs. Reporting and data analytics are in a lower level of potential benefits that technology can provide to non-profits in fundraising via crowdfunding systems. Granular analytic reports on past donor behaviour provide a powerful tool for decision-making on fundraising strategy and donor communication. Advanced solutions using machine learning work with thousands of donor related data points can identify potential donors (Gravyty). The fundraising campaign strategies become then more targeted. Machine learning is also used to evaluate effectiveness of narratives, emotions, images, calls-to-action, formatting and word positioning in fundraising campaign communications with the aim of achieving higher donor acquisition.[31] Indirectly, machine learning can be also used by non-profits to boost their understanding about the community needs or problems which they address through their programs. Being aware of what are the issues of a concern to their constituencies can help them design better and more effective programs which in turn bring in new resources, volunteers and donations. For example, using AI for social media listening can generate such intelligence.

However, the above benefits are not unconditional. They depend on the **quality, access and availability of data** that are used for training of the algorithms. In reality, however, data used are far from being perfect or large enough in many instances which is an objective obstacle to quality of outputs, i.e. decision-making. Furthermore, the uneven distribution and access to data, which is skewed towards the large charities and large platforms represents additional layer of challenges pertinent to digital inequity in this nascent field. Also, benefits depend on different **levels of adoption** among the organizations which also determines specific issues and challenges as well as benefits that the given level of adoption may offer. For example, in the first stage organizations hardly have AI on the radar and are in early stages of discussion. In the next level, organizations use AI for automation of tasks and work with the off-shelf models. In the third stage organizations use features integrated into the platform or tools that improve giving and help donors. In fourth stage, organizations use AI tools for meta-analysis across different platform datasets and generate insights to increase giving. [32]

The use of machine learning algorithms **enhances digital output in a cost-efficient way**. Facebook Ad Algorithms help to profile donors and do lookalike so that fundraisers can reach out to relevant segment of audience and don't waste resources on people who won't donate. It allows them to use geotargeting, identify

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31 ibid.
32 Fine, Allison & Kanter, Beth: AI for Philanthropy.

specific goals, customize messages in a targeted way and fundraise across borders. Therefore, tech companies and experts have a crucial role in digital fundraising. For example, the Singapore's online fundraising accelerator program Majulah! utilized collaboration with tech industry to use their technology to enhance communication.[33]

There are significant benefits for accepting or encouraging virtual currency donations (e.g. Bitcoin, Monero, Ethereum). The blockchain not only provides the prospect of more donations and greater speed but also the advantage of safe and censorship-resistant donations. For CSOs that operate in stable, open, and democratically elected countries or are not much concerned with donor privacy, the difference between accepting Mastercard or Bitcoin may not be huge. However, for CSOs that work in more closed or repressive countries, or for those who support sometimes controversial causes (e.g., human rights), being able to accept anonymous or pseudonymous donations and utilize them without being stymied by a local official can make a world of difference in terms of advocacy, safety, and security for charities and donors alike.[34] For example, in Belarus it helped people who were fired for showing their political stance or quit their government jobs in protest after the 2020 presidential election. Nigerian activists were also using bitcoin to battle police brutality as banks shut them out. They provided medical care, legal aid and funeral funding for those participating in the peaceful demonstrations.

IV. CONSIDERATIONS – POTENTIAL RISKS AND CHALLENGES

Although digital technology helps in advancing the growth of society, it also carries with itself certain risks. As AI is a by-product of human intelligence, such a product is subject to human biasedness. By its own nature the machine not only replicates but amplifies the bias, even the unconscious one. This chapter will map out the challenges and potential risks of using digital technologies, including AI, for fundraising. It aims to serve as a food for thought on how to improve the environment and fundraising practices rather than a justification restrict fundraising.

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33 Interview with Usha Menon, Usha Menon Management Consultancy
34 https://www.newamerica.org/digital-impact-governance-initiative/reports/virtual-currency-donations/

// Profiling and assumptions: Profiling of donors has always been practiced by fundraisers, even before the Internet, AI and other technologies came about. It was and remains logical that when possible, a charity will assess to a certain degree which target group it should address with its request for funding in order to be more likely to be successful. In the context of online giving platforms, the profiling can be flipped towards profiling of causes or recipient profiling which will have higher chance of being supported by donors and may lead to selection bias and skewness of donations to particular groups while leaving out others. For example, when platform curators subscribe to some archaic notions of who is deserving who is non-deserving they influence donor decision-making. This leads to a broader set of concerns about the motivations of platform owners, their profile and preferences, including biases, and transparency of their decision-making. Additional concerns that such profiling may raise when new technologies are employed to raise funds, is that the profiling may be done through the illegal obtainment or sharing of data, and that it may in this way violate the right to privacy and/or data protection (see section below).[35]

// Fraud: Supporting good causes through digital technologies such as online crowdfunding sites is increasingly popular. Almost anyone can set up a crowdfunding appeal to raise money for their cause and the vast majority of them are honest and well-intentioned. However, there could be also rare cases of misuse.[36] For example, most recently a woman who faked a cancer diagnosis to claim more than £45,000 in donations through a GoFundMe fundraising campaign has been convicted of fraud and jailed for 33 months in the UK[37]. Another recent example of fraud is from the Czech Republic where a professional foster care parent disseminated in the social media (Facebook) a fake story of three siblings who lost their parents in a car crash. 40,000 EUR were raised by 1,200 donors. The women has been charged with a fraud and faces a trial.[38]

// Anti-money laundering and counter terrorism financing: The cryptocurrencies provide a safe channel for donations in restrictive environments because of their anonymity. For the same reason, however, there are also some concerns about being used for money laundering and terrorism financing. Some

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35 https://ico.org.uk/your-data-matters/charity-fundraising-practices/

36 See, e.g., Douglas Cumming, Lars Hornuf, Moein Karami & Denis Schweizer, Disentangling Crowdfunding from Fraudfunding 3, 7 (2020) ("crowdfunding fraud is a rare event" based on a survey of media reports about Kickstarter campaigns from 2010 through 2015 in nine countries), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2828919. Source: Lloyd Hitoshi Mayer: Regulating charitable fundraising. Notre Dame Law School, 2021. SSRN-id3686612 (1).pdf

37 https://www.bbc.com/news/uk-england-kent-55021836

38 https://dennikn.sk/2294917/pripad-troch-vymyslenych-sirot-pestunka-vyhlasila-zbierku-peniaze-jej-poslalo-vyse-1200-ludi/?ref=list

countries used this argument to try to restrict the use of cryptocurrencies in their countries.

// Professionalism in a fast-changing environment: Digital fundraising is
a rapidly changing world. Fundraisers need to keep pace with it daily in order to demonstrate professionalism and ensure compliance with the rules. On the other, we have seen the democratization of fundraising: not only CSOs can collect funds by using new technologies, but also individuals, often in the name of a certain cause or for a certain charity. This of course has often worked in favour of charities. On the other hand, it can also bring a lower level of 'professionalism' in the field. Individuals, even those with the best intentions, may be oblivious to the legal and financial effects that their call for funding may result in, as a result of not having the requisite experience as would professional non-profits and charities. A recent example of how a well-intended fundraiser created legal confusion and in the end confusion amongst those donating and the charity receiving is the case of the well-known Australian comedian, Celeste Barber. She had a call to raise funds for the New South Wales Rural Fire Service & Brigades Donations Fund following the devastating 2019-2020 Australian bushfires that went viral and raised A$51 (approx. $33m). It soon became apparent that this was much more than the charity was able to process and that it was in fact restricted by both the PayPal agreement terms as well as its position as trustee under Australian law, on what it could in fact fund, which was not necessarily consistent with the wishes of those donating. Even so, it was found in a court ruling, when the charity turned to the courts for recommendations that the money collected could only be allocated to the strict purposes of the charity funds and not general purposes of helping with the consequences of the fires, for instance through passing on donations to other worthy charities.[39]

// Data protection and privacy: Data protection and privacy online are
protected by both international standards, regional regimes such as EU regulations and in the ECHR space, and domestic laws. In practice, privacy depends also on the platform providers. The right to privacy of donors and recipients is an essential feature of giving, and this must also hold true online. An example when the right to privacy was violated is the case of eleven premier charities that were fined by the UK's data watchdog for misusing information about millions of past donors to seek further funds. They were secretly collecting personal data such as lifestyle, property value and the like from different sources, analyzed them and used them for their fundraising purposes.[40]

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39 Supreme Court of New South Wales, in the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or [2020] NSWSC 604
https://www.caselaw.nsw.gov.au/decision/1723490a44616db38c818cbe
40 https://www.bbc.com/news/technology-39502258

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// Discrimination: Non-discrimination of digital platform users (beneficiaries), assessment mechanisms of eligibility, entry criteria, interface between online-automated procedures (algorithmic bias) and off-line interventions (changes in behavior of the recipient, procedures of quality control by the platform, etc.), risks to direct beneficiaries– racial and other types of bias, equal opportunities to access these services.

// Roles of intermediaries in designing algorithms, managing data and controlling content (operators of digital platforms): The proliferation of online fundraising platforms and crowdfunding created a tension that is called the platform neutrality paradox, which denotes the contradictory situation in which platform operators or owners exist. On one hand, the platform economy in charitable giving removed the traditional intermediaries that have played sometimes useful but sometimes opaque functions. The public and online platform donors enter into a direct relationship with the charity of their choice and there is nobody in between. However, who becomes eligible to be listed in the crowdfunding or online platform is a decision of people or algorithms reflecting preferences of people. The intermediary role is now played by platform operators and owners and their ways of working and on their values. There is no right or wrong approach. The aspiration of neutrality may seem correct, democratic and empowering, but it may also lead to skewed outcomes with bad taste prevailing or some other type of discrimination. On the other hand, higher engagement of platform operators may lead also to skewed results and various types of selection bias as a function of skewed preferences of platform owners.[41]

// Amplification of human bias: the reliance on historical or otherwise de-contextualized datasets often lead to replicate and amplify cultural, cognitive racial or other biases of society or even of programmers and algorithm designers. In fundraising context, this concerns also the design of processes leading to compilation of training data sets for the machine learning, their initial selection, classification and labelling which is done by humans with their potential bias. Transparency of access to the algorithm mechanism is often seen as helpful to offset bias; however, algorithmic transparency remains more a moral appeal, rather than a wide-spread practice, as the machine learning field is a highly competitive market and therefore relying on trade secrets and intellectual property rights.

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41 Davies, Rhodri: The ethics of platform philanthropy. Alliance, 17 September 2020.
https://www.alliancemagazine.org/blog/the-ethics-of-platform-philanthropy/

// Data ownership, equity and parity: AI in the form of machine learning needs huge data sets that are hard to obtain, especially for smaller or medium-sized organizations. Only large organizations may have access to reasonably large data sets which puts smaller organizations into a disadvantage. The data disparity leads to disproportionate effects in fundraising outcomes with larger organizations getting richer and smaller organizations stagnating.

V.   GLOBAL AND REGIONAL STANDARDS AND POLICIES THAT AFFECT DIGITAL FUNDRAISING

There are various global and regional policies and policy initiatives that affect the right to seek, receive and use funds generally and the use of digital technologies specifically.

International and Regional Standards on Freedom of Association and Access to Resources

Article 22 of the **International Covenant on Civil and Political Rights** (hereafter "ICCPR") protects the freedom of association and within fundraising activities, even though it does not do so in express terms. Supporting and interpretative documents have long acknowledged that the freedom to seek, secure and utilize resources is a key component of the exercise of the freedom of association as it is essential to the existence and operation of any association. In particular, the UN Special Rapporteur on Freedom of Association and Assembly, in his 2013 Report to the UN Human Rights Council stated that: "*The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.*"[42]
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Furthermore, the Report said; "*In communication No. 1274/2004, the Human Rights Committee observed that "the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...].*"3 *Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22. Other United Nations*

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42 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, to the UN Human Rights Council (funding of associations and right to peaceful assemblies) UN Doc A/HRC/23/39, 24 April 2013, par 8. Available at:
https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

treaty bodies have emphasized the obligation of States to allow civil society to seek, secure, and utilize resources, including from foreign sources."[43]

Also, the Human Rights Council adopted Resolution 32/31 on 20 July 2016 on Civil Society Space, which specifically addressed the issue of funding of CSO's by "*Recognizing that the ability to seek, secure and use resources is essential to the existence and sustainable operation of civil society actors, and that undue restrictions on funding to civil society actors undermine the right to freedom of association*"[44]. The Council called upon the States to "*….ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the ability to solicit, receive and utilize resources for their work.*"

Some regional standards have also developed regarding the funding of associations on the level of the Council of Europe and OSCE[45], such as the **Committee of Ministers recommendation of 2007 on the legal status of non-governmental organisations** which states that: "*NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.*"[46]

The Report of Committee on Legal Affairs and Human Rights of **Parliamentary Assembly of the Council of Europe (PACE) of January 2016** States that "*It should be pointed out in this context that the right to freedom of association includes NGOs' right to receive donations and other forms of funding*".[47]

Over the past decade there has been a growing trend to restrict the amount and manner in which CSOs may receive funds from abroad (international funding, which means both funding by foreign governments, legal persons and individuals, and funding by international organizations). This trend is continuing as evidenced by recent draft legislation[48] and limits fundraising through new technologies that

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43 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, to the UN Human Rights Council (funding of associations and right to peaceful assemblies) UN Doc A/HRC/23/39, 24 April 2013, par 16. Available at:
https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf
44 Resolution adopted by the Human Rights Council on 1 July 2016 32/31. Civil society space, A/HRC/RES/32/31, 20 July 2016.
45 OSCE ODIHR – Venice Commission Guidelines on Freedom of Association (2015)
46 CM (2007) 14, available at: https://www.coe.int/en/web/ingo/legal-standards-for-ngos
47 How to prevent inappropriate restrictions on NGO activities in Europe? Report of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, Doc. 13940 08 January 2016, Section 3.1, par 10
48 For example in Ukraine: https://csometer.info/updates/friends-or-foes-are-csos-receiving-foreign-funding-enemies-ukraine

allows for cross-border giving. There is a variety of international and regional standards that safeguard access to international funding.[49]

International and regional policies on new technologies potentially affecting fundraising

While not directly aimed at regulating fundraising through new technologies, several regional laws and policies can affect the sector.

// EU Digital Services Act: According to the existing EU regime, internet intermediaries (aka "internet service providers") hosting content posted by third-party users are deemed liable for such content if the latter is illegal only if it can be demonstrated that they had "actual knowledge" of such illegal content and they did not proceed to remove it "expeditiously". In a new proposal for a EU Digital Services Act tabled in December 2020, the EU fundamentally maintains this liability regime but introduces obligations for internet service providers to set up "notice-and-take-down" systems, i.e., online forms available for users to notify the provider of content that they consider illegal and request the provider to remove it. If the provider refuses to take down the flagged content and the user that denounced such content sues the provider, the latter will be considered civilly or criminally liable – depending on the alleged illegal nature of the content – in case the content posted is effectively found illegal. According to critiques of the EU proposal, this may lead internet providers to "err on the side of caution" and when in doubt, remove content even when it is not illegal, only to avoid the risk of liability. This may have negative consequences for organisations wishing to fundraise online if, or example, an online user asks the platform to remove their fundraiser for allegedly breaching government regulations.[50]

// The new EU's Regulation (ECSP Regulation) and a Directive on Crowdfunding Service providers entered into force in November 2020. It has a direct effect across the EU-27. It establishes a harmonised authorisation regime and permits crowdfunding platforms to offer services across the EU. However, it applies to European crowdfunding service providers (ECSPs) that offer investment-based and lending-based crowdfunding, not to non-investment donation-based platforms or reward-based platforms. Whether these platforms are subject to

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49 Read more in ECNL's Comparative Overview and Analysis "Enabling the flow of donations. International standards that safeguard cross-border giving to CSOs" at: https://ecnl.org/sites/default/files/files/Enabling-the-flow-of-donations.pdf

authorisation and regulation in the EU will be determined by each EU member state.[51]

// Policies on Artificial Intelligence (AI): Artificial Intelligence in the form of,

in particular, algorithm-driven processes employed by funding platform providers will affect funding of CSOs. Pof engagement through new technologies, in accordance with self-regulatory standards and user agreements. There are various global and regional policy processes stepping up to meet the challenge of AI and create frameworks to ensure legal standards on AI and tech. In February, 2020, the European Commission released a White Paper on AI that includes a common regulatory approach to promote trustworthy AI driven technologies. The White Paper calls for the opacity of systems based on algorithms to be addressed through transparency requirements. The White Paper of the EU also states that in order to ensure that AI is trustworthy, secure and in respect of European values and rules, the applicable legal requirements need to be complied with and effectively enforced both by competent national and European authorities and by affected parties. Competent authorities should be able to investigate individual cases, but also to assess the impact on society. In this way, proper redress may be ensured. On a regional level, the Council of Europe is working through its Ad Hoc Committee on AI on a proposal for elements of a potential regional regulatory framework for AI.

// Data Protection and the European Union Directive on Data

Protection: Donors and beneficiary CSOs have the right to privacy, from which

the right to data protection also derives. The right to privacy may be found in all major international treaties and regional documents, including Article 17 of the ICCPR, Article 8 of the European Convention on Human Rights, Article 11 of the American Convention on Human Rights[52] and Council of Europe Convention 108, on the Protection of Individuals With Regard to the Processing of Personal Data.[53] In the European Union the EU General Data Protection Regulation ("GDPR")[54] has come into force. The GDPR is based on the rule that data transfers are prohibited unless certain criteria (aka "legal bases") are met. In general, the GDPR strengthens the protection of personal data regime, however, Directive (EU)

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51 https://www.dentons.com/en/insights/articles/2020/december/22/eu-crowdfunding-regulation-and-directive-preparing-for-november-2021-and-2022

52 American Convention On Human Rights (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969) available at:
https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm

53 Adopted on 28 January 1991, CETS No 108 , available at: https://www.coe.int/en/web/data-protection/convention108-and-protocol

54 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). In force 25 May, 2018.

2016/680[55] permits the exception for collection of data and its request from intermediaries, where it is needed for "prevention, investigation and detection of criminal offences", with the preventative aspect of this exception leaving obvious room for discretion.[56] Based on Article 22 of the GDPR, the general rule is that "*The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her*". Therefore, the general rule that there is a need for express consent. However, consent may be bypassed if the decision is: 1) necessary to enter into a contract between the data subject and the data controller or to perform such contract; 2) authorised by EU or Member State law to which the data controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests. In any case, the data subject has a right to contest the decision and obtain a human review of the data controller and must be informed of such right. The Court of Justice of the European Union ("CJEU") has been at the forefront of ruling on the right to privacy and data protection, in particular, the *Schrems*[57] which invalidated the "Safe Agreement" signed by the European Commission on the transfer of data from Europe to the United States.[58]

// Forthcoming EU ePrivacy Regulation: The European Union is planning to

adopt *lex specialis* regulation to the GDPR, on privacy in electronic communications, in the specific. The regulation, is aimed to repeal and replace Directive 2002/58/EC (Regulation on Privacy and Electronic Communications).

// Cryptocurrency: In October 2018, the Financial Action Task Force (FATF)[59]

updated its Standards to clarify the application of the FATF Standards to Virtual Assets (VA) activities and Virtual Asset Service Providers (VASPs) to assist jurisdictions in mitigating the money laundering (ML) and terrorist financing (TF) risks associated with VA activities and in protecting the integrity of the global financial system. In June 2019, the FATF adopted an Interpretative Note to Recommendation 15 to further clarify the application of FATF requirements to VA

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55 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

56 Achler, M, PhD Dissertation: "New technologies and the right to freedom of peaceful assembly and association" https://cadmus.eui.eu/handle/1814/67031

57 *Maximillian Schrems v Data Protection Commissioner* Case C-362/14 of the Court of Justice of the European Union, of 6 October, 2015.

58 http://europa.eu/rapid/press-release_MEMO-15-6014_en.htm

59 The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

activities or operations and VASPs, including with respect to suspicious transaction reporting. In September 2020 FATF issued its report on Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing[60] which seeks to provide states with a practical toolbox of how to identify suspicious virtual assets transfer to organizations. The FATF recommendations and red-flag indicators cast a wide net onto financing of organizations. While it is understandably for the purpose of capturing VA's used to finance terrorist organizations or curb money laundering operations, requisite diligence must be applied, in order not to capture legitimate associations, collecting funding for their goals and activities, also from abroad, in accordance with the international and regional standards described above. At the level of the European Union the Commission launched a public consultation on an EU framework for markets in crypto-assets in December 2019.

VI. DOMESTIC REGULATION AND SELF-REGULATION AFFECTING THE USE OF DIGITAL TECHNOLOGIES

As the use of digital technologies becomes widespread states are increasingly adopting legislation and regulations that affect fundraising practices. Some of these laws reduce the ambiguity about the legality of using these new technologies, while others have effectively blocked them. Parallel or instead, civil society in some countries address this through co-regulation and self-regulation. This section highlights some of these examples globally. The chapter does not seek to suggest that regulation is the only option. On the contrary, self-regulation as a tool by the sector, and the use of a variety of ethics and rule-books by non-profits and intermediaries may suffice to address the new consideration connected to new technologies. As this field is still relatively new much careful consideration must be given whether introducing laws is necessary in order to enable rather that restrict private giving.

// Crowdfunding: As crowdfunding is gaining popularity some countries, regulators face the challenge whether and how to adjust or complement existing

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60 FATF (2020), Money Laundering and Terrorist Financing Red Flag Indicators Associated with Virtual Assets, FATF, Paris, France, www.fatf-gafi.org/publications/fatfrecommendations/documents/Virtual-Assets-Red-Flag-Indicators.html

laws without unduly inhibiting charitable crowdfunding. Existing laws relating to charitable solicitations and charities more generally have either uncertain or limited application to charitable crowdfunding.[61] Oftentimes there is uncertainty in the interpretation of the legal context and what laws apply to these transactions and what don't. For example, the public collection laws typically apply to off-line space and in on-line space they may be less applicable and relevant. Different jurisdictions have different ways looking at it. So regulating crowdfunding could provide clarity, tax incentives, and boost it in connection to policies aimed at strengthening social economy sector.

Several countries, including France, Finland, and Spain, decided to introduce new legal frameworks to regulate crowdfunding. Such regulations may or may not be applicable to charitable donations. Just recently Morocco adopted laws on crowdfunding. The law regulates the funding of projects by raising small amounts through loans, capital investment, or donations, from a large number of people, usually through the internet. A series of consultation were organized on the draft law and CSOs tried to assist MPs with recommendations. The majority of CSO recommendations were considered and incorporated into the draft law that was unanimously adopted by the House of Representatives (lower house of Parliament) in early February 2021.

In England and Wales, the Financial Conduct Authority, a regulatory body independent of the UK government, supervises crowdfunding practices to ensure that consumer protection rules are safeguarded. There are also examples of co-regulation. In Singapore the Minister of Culture launched a Code of Practice for Online Charitable Fundraising in 2018. It was developed in collaboration with 4 major crowdfunding platforms and they committed to adopt the code. They now have to assess the legitimacy of an appeal, give regular updates on funds raised and publicize the fees they charge and provide some other information. In Australia the Law Council of Australia released a Guidance for Australian legal practitioners on crowdfunding with the purpose to draw the relevant ethical and professional issues to the attention of practitioners, to improve understanding of this modern phenomenon and allow practitioners to undertake appropriate risk management. In Belgium donation crowdfunding does not need the permission of the [Financial Services and Markets Authority (FSAMA)](page 5) is neither regulated. The government has taken an active role in launching, operating and financing crowdfunding platforms. For example, the [CrowdfundingGent](#) is a platform launched by the city of Ghent to encourage mostly non-profit projects in the region of Ghent. For non-profits to be able to use this platform for their campaigns their project needs to be socially relevant, respecting equality etc. The [Growfunding](#) is a platform launched with the support of the Brussels government to assist crowdfunding for non-profits in the Brussels region.

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61 Lloyd Hitoshi Mayer: Regulating charitable fundraising. Notre Dame Law School, 2021. SSRN-id3686612 (1).pdf

// Ethical codes, self-regulation and transparency rules seem to be a promising instrument that could improve the overall workings in the crowdfunding ecosystem and serve as a prevention against possible overregulation, which under the pretext of donor protection or fraud prevention could complicate and shrink the space for private initiative for common good. On the other hand, the tendency on the side of some crowdfunding systems is to put the burden of responsibility completely to donors, which, considering the information asymmetry between the donor and the beneficiary is not fair. Especially, when recurrent payments are solicited and there is a regular charging of donors over longer periods of time during which the recipients/beneficiaries context, needs and activities may change, sometime significantly. Platform operators may even certify the quality of recipients who use the platform for fundraising at the entry to the platform but have limited options to do so over time. This aspect is particularly salient in case of fundraising of CSOs that raise funds as organizations for specific programs requiring ongoing general support. Crowdfunding for specific projects, with shorter duration and tangible outcomes are easier to evaluate.

Fundraising platforms, on the other hand, face another set of challenges that relate to the data ownership and privacy about the donors. Not all fundraising platforms share the data on donors to recipients, which puts the 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 data ownership, access, protection and sharing could be another area where fundraising platform standards and good practice could be enhanced by **voluntary codes of conduct.**

Another important aspect of crowdfunding which could be better explained to donors and the general public, but which also confuses sometimes the tax regulators as well is the non-differentiation between the fixed (funds raised not reaching the target amount are returned to a donor) and flexible system (funds raised not reaching the target amount may remain with the beneficiary) and reward and non-reward systems (when additional symbolic value is provided to donors, which sometime is the product, in support of the fundraising campaign was organized). The experience from the field suggests that regulation is not needed in general and that existing codes (civil or commercial) are sufficient to regulate relationships ensuing in these types of transactions, even if they include different types of accounting as well as contract regimes. Perhaps some form of **certification of donation crowdfunding models on the EU level** could improve the overall orientation in the many variants and modalities of crowdfunding systems that differ country to country.

In terms of organizational responses to the growth in online giving and fundraising, there is a clear connection between the capacity of larger CSOs to get engaged with data analysis and management and reap the benefits from the growing market and smaller organizations whose professional capacity is limited. Larger organizations today invest into human resources able to work with data to boost the analysis capability of fundraising campaigns via A/B testing of advertisement and communication, social media mapping and harvesting, enhancing the donor journey (DX – donor experience), or applying blockchain technology for donor tracking and enhancing transparency of online giving and fundraising. Under the assumption that algorithms in machine learning technology will not be made transparent and will remain undisclosed and proprietary, there is a need to experiment with new mechanisms that could fulfil similar function. For example, one possibility – conceptually – could be to **stimulate platform operators in designing additional layer of governance elements to their quality control that would be empowering responsible AI systems.** This could be done by embedding into fundraising platform systems the human feedback loops on the top of AI to correct for biases of automated systems (internally) and support technological watchdogs looking at the ethical performance of these systems from outside (externally).

// Virtual currency donation: The policy landscape related to cryptocurrencies

is still unfolding, and details, including regulatory development and risk management, are uncertain. In May 2020 the Blockchain Trust Accelerator at New America with the support of the International Center for Not-for-Profit Law released a report on Virtual Currency Donations based on the examples of 10 countries across five different continents (Australia, Bermuda, Canada, Denmark, Malta, Singapore, South Africa, Switzerland, United Kingdom, and the United States). In many of the surveyed countries, there were few or no regulations that apply specifically or in much detail to CSOs with regards to virtual currencies. The examined countries tended to take a hesitant approach to regulate this area, typically extending and applying existing CSO and tax laws to the donation and receipt of virtual currency donations. The report identified six types of broad regulatory trends that countries followed ranging from the "wait-and-see approach" that led to few or no regulations to other countries exploring the issuance of their own sovereign virtual currency. Best practices for donors and recipients alike—namely, "document, disclose, or decline"—are useful in the context of most non-cash contributions, whether that be artwork or Bitcoin. As a general rule of thumb, existing laws can and often do apply reasonably to virtual currency donations, even if they did not originally envision some of the unique technical and economic features of virtual currency.[62] The new Finnish Fundraising Act (entered into force on 1 March 2020), which regulates money collections,

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62 https://www.newamerica.org/digital-impact-governance-initiative/reports/virtual-currency-donations/

acknowledges the possibility of raising virtual currency. In many other countries, however, there is an implicit or absolute ban on cryprocurrencies. For example, the use of cryptocurrency is illegal in Algeria, Egypt, Morocco, Bolivia and Nepal,[63] which impede its use for philanthropy in these countries. Some large countries that banned virtual currency trading, such as India, have recently overturned those.[64]

// Donor profiling: The digital technologies made donor profiling more nuanced and professional. On the other hand, it may raise privacy and data protection concerns. As a response in the United Kingdom, the Institute of Fundraising has called for clarity on how donor profiling by charities will be treated under the General Data Protection Regulation. The Information Commissioner's Office published a consultation in April 2017 on how the new EU rules will affect the practice of automated profiling, where information on a person is gathered and analyzed by computer programs to establish whether they would be interested in or eligible for certain products.[65] The Information Commissioner's Office prepared a detailed guidance to help readers to apply the rules relating to automated decision-making and profiling in practice.[66] It also summarizes rights related to automated decision-making including profiling.[67]

// Fraud and money-laundering: The use of electronic payment systems in crowdfunding platforms and other forms of digital fundraising can reduce the risk of fraud and money laundering to a certain extent. The effective implementation of laws against money laundering in the country where the platforms are located can almost eliminate this risk.[68] The development of guides can also support responsible giving. For example, the *Guide to Donating through Crowdfunding sites* gives tips to donors on how to make sure that their donations really will help the people and causes they care about.[69]

// Public collection and online donation: Some countries require CSOs to notify the authorities (e.g., Czech Republic and Poland) or obtain a permit or license when publicly soliciting donations (e.g., Denmark, Sweden, Finland, the UK, France, Ireland and Turkey). The laws on public collections in Slovakia and Czech Republic do not apply to online collections. On the contrary, Turkey just extended the permission requirement for online collections by the Law on Preventing Financing of Proliferation of Weapons of Mass Destruction that came into force on

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63 https://www.loc.gov/law/help/cryptocurrency/map1.pdf
64 Virtual Currency Donations: Key Findings (newamerica.org)
65 https://www.thirdsector.co.uk/institute-fundraising-wants-clarity-donor-profiling/special-report/article/1433845
66 Automated decision-making and profiling | ICO
67 Rights related to automated decision making including profiling | ICO
68 https://sanctionscanner.com/blog/crowdfunding-fraud-and-money-laundering-risks-139
69 https://www.fraudadvisorypanel.org/wp-content/uploads/2017/10/Giving-Safely-Crowdfunding-WEB-Oct17.pdf

December 31, 2020 after a speedy parliamentary procedure. The Law mandated changes in 6 separate laws, including the Law on Collection of Aid and Law on Associations. By amending the Law on Collection of Aid the new law require a government permission to launch online aid campaigns and impose heavy penalties for violation of the law (double the administrative fines for unauthorized offline money collection campaigns). It also obliges all natural persons and legal entities, including banks to provide any requested information by the responsible authorities.[70] The UN Special Rapporteurs raised their concerns about the adoption of the law and that it appears to restrict fundraising and aid collection.[71] Overall, the applicability of public collection rules for online donation is still a rather unchartered terrain and requires further expert discussion whether it facilitates or rather hinders fundraising efforts.

VII. CONCLUSIONS AND RECOMMENDATIONS

As the presented international standards and country practices show digital fundraising and its broader environment is dynamically changing and it raises various new legal and ethical issues and dilemmas. As the discussions are still unfolding there are more questions than answers. Therefore, it is important to continue the dialogue on how regulation, co-regulation and self-regulation can support a better environment for digital fundraising. To facilitate this, we formulated some initial recommendation for policy-makers, donors and fundraisers and will continue the research and expert discussion on this topic.

// Recommendations for policy-makers:

- The right of access to the internet shall be recognized in international documents and country laws.
- A clear regulatory framework supporting responsible innovation is needed for decentralized finance to expand into the mainstream.
- The states should refrain from unnecessarily and disproportionately restricting digital fundraising under the pretext of laws to prevent money laundering and terrorism financing.
- The states should engage CSOs in meaningful consultations for the development, monitoring and assessment of laws and policies that affect digital fundraising, including national policies or strategies on AI.

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70 https://ecnl.org/news/turkey-law-amendments-stifle-philanthropy
71 https://ecnl.org/news/un-special-rapporteurs-raise-concerns-about-new-counterterrorism-law-turkey

// Recommendations for donors and fundraisers:

- CSOs need to increase their capacity of using digital technologies for fundraising. Trainings such as bootcamps can be efficient tools for learning by doing. It is important to reconsider corporate sponsorships and bring digital partners to enhance online ability.
- It would be important to change the perspective from data extraction perspective to data empowerment perspective which involves and supports people in the responsible collection and use of data and creating maps of multiple data ecosystems.[72]
- CSOs shall be aware of the value of data (data as assets) that they generate and/or possess and explore ways how to collaboratively use the data for mutual benefit via mechanisms such as data collaboratives, data commons, civic data trusts or open collectives whereby they can use the data safely and effectively for the social change purposes and for leveraging their power vis-a-vis other dominant actors on the digital market – corporations and the government. [73]

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72 Eirini Mailariaki: What is the "AI" for Social Good? https://eirinimalliaraki.medium.com/what-is-this-ai-for-social-good-f37ad7ad7e91, September 2019

73 Lucy Bernholz: Digital Dependence Has Obliterated the Notion of Nonprofit Endependence, September 15, 2020, The Chronicle for Philanthropy

European Center for
Not-for-Profit Law

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