



November 9, 2017

Comments of Google LLC re: Internet Communication Disclaimers

Google LLC (“Google”) appreciates the opportunity to provide the following comments on the Commission’s Advance Notice for Proposed Rulemaking on Internet Communication Disclaimers.

Google was founded with a mission to organize the world’s information and make it universally accessible and useful. That should include information that's used for electioneering. Americans have access online to a variety of political perspectives, but they're also interested in understanding what information they're getting and whom they're getting it from. Now more than ever, we must work together to improve transparency, enhance disclosures, and reduce foreign abuse and influence in U.S. elections.

That is why Google recently announced steps it has already started implementing on its platforms to increase advertising transparency, protect the integrity of elections, and combat misinformation. As related to advertising, these steps include:

- **Transparency Report.** In 2018, we’ll release a transparency report for election-related ads, which will share data about who is buying election-related ads on our platforms and how much money is being spent. We began publishing transparency reports at the start of the current decade. This is a good opportunity to make an additional contribution to public knowledge about how election advertising works online.
- **Creative Library.** We’ll also introduce a publicly accessible database of election ads purchased on AdWords and YouTube (with information about who bought each ad). That means people will not only be able to learn more about who’s buying election-related ads on our platforms; they’ll be able to see the ads themselves, regardless of to whom they were shown.
- **In-ad disclosures.** Going forward, we’ll identify the names of advertisers running election-related campaigns on Search, YouTube, and the Google Display Network via our “Why This Ad” icon.
- **Verification program.** U.S. law restricts entities outside the U.S. from running election-related ads. We’ll reinforce our existing protections by requiring that advertisers proactively identify who they are and where they are based before running any



election-related ads. As they do, we'll verify that they are permitted to run U.S. election campaigns through our own checks.¹

Google is committed to this effort, and looks forward to working with the Commission, Congress, others in the technology industry, and the NGO community to protect voters who use Google's platforms and strengthen protections around elections.

As part of its commitment, Google strongly supports the Commission's proposal to proceed with a rulemaking so that the Commission can provide the clarity that campaigns and other political advertisers need to determine what disclaimers they are required to include on the digital advertisements they purchase.

1) The Role of the Internet and Digital Advertising in Modern American Democracy

Elected officials and political candidates view communication over the Internet as “invaluable to communicate with our constituents and get our message out.”² The role that the Internet plays in Americans' ability to engage with elected officials and political candidates has never been more apparent than it is today. Nearly halfway through the 2018 election cycle, there are more candidates than ever running for Congress.³

Digital advertising offers a level playing field to connect these campaigns with potential supporters at a fraction of the cost of traditional advertising. Candidates with even limited funds can create and purchase sophisticated digital ad campaigns that reach key voters across a variety of platforms and technologies. Once a voter sees a campaign's digital ad, the voter can easily learn more about a candidate or campaign by clicking through the ad to a page that communicates additional information about the candidate's biography and positions on important issues.

Digital advertising is also more accessible than other forms of traditional advertising. Self-service ads make it easy for anyone to purchase targeted ads that have high rates of return on investment, even if the purchaser has little or no experience running online advertising campaigns.

¹ See Security and Disinformation in the U.S. 2016 Election: Our Work Going Forward, https://blog.google/documents/7/google_US2016election_work_going_forward.pdf (Exhibit A). A comprehensive discussion of these and other efforts that Google has taken following the U.S. election is available at <https://www.blog.google/topics/public-policy/security-and-disinformation-us-2016-election/>.

² Senator Lindsay Graham, Opening Statement, Hearing of the Senate Committee on the Judiciary - Subcommittee on Crime and Terrorism (Oct. 31, 2017).

³ Malbin, “Does the Opening Predict a Wave?”, <https://www.brookings.edu/blog/fixgov/2017/07/24/does-the-opening-predict-a-wave/>.



Just as the Internet and digital advertising play a key role in promoting a robust democratic debate, disclosure and accountability rules around digital communications protect other essential principles of American democracy. Requirements that political advertisers provide sufficient information regarding the sponsor of an ad help citizens “make informed decision in the political marketplace,”⁴ and prevent groups from running advertisements “while hiding behind dubious and misleading names.”⁵

Google therefore encourages the Commission to discuss disclaimer rules that (i) provide clarity to political advertisers; (ii) preserve the Internet’s role in the exchange of political ideas; and (iii) promote transparency and accountability.

2) How Political Advertisers Use Google’s Advertising Products

While traditional broadcast advertising remains a key tool for large campaigns and well-funded groups, political organizations of all sizes turn to digital advertising on a daily basis as a cost-effective way to level the playing field in politics. The types and varieties of digital advertisements that political advertisers create and place throughout the web has grown exponentially since 2011 when the Commission last considered how its disclaimer rules apply to digital communications. Today, the manner in which a given political advertisement reaches a voter is a function of the website or app on which the advertiser places an ad; the hardware that a voter is using when viewing the advertisement; and even the technology that advertisers opt-in to that can enable an ad to automatically appear in different configurations across different sites that have different advertising inventory for sale.

Political advertisers who use Google to place digital ads and engage with potential supporters on the Internet choose from among a range of ad types:

- **Search Ads** are Google’s original monetizable product, providing a way for ads to serve above or below Google search results at the optimal moment for advertisers: when users are searching for relevant products or services. Google only makes money when users interact with these ads, so our interest is in showing only useful ads. (In fact, we often don’t run ads on search queries at all.)
- **Display Ads** are an option for advertisers who pay Google to show ads on the participating websites of publishers, with whom the revenue is shared. Users may see these ads as images, videos, or other rich media.
- **YouTube Ads** are videos. There are different types of ads on YouTube. “Pre-roll” video ads appear before other videos on YouTube. Other ads on YouTube appear beside playing videos or in YouTube Search results.

⁴ *McConnell v. FEC*, 540 U.S. 93, 197 (2003).

⁵ *Id.*



- **In-App Ads** are a form of display advertising that differs from advertising on third-party websites. In this case, app-makers (and not websites) are the publishers, and the bidding for these ads takes place through Google’s mobile advertising platform.

A campaign advertiser choosing among these categories of advertising products does not simply create four versions of an ad and provide those fixed text strings, images, or videos to Google. Rather, there are currently over 3 million websites and apps – from popular news websites to the latest gaming apps – in Google’s Display Ads network alone. These 3 million sites offer inventory for Display Ads in innumerable sizes and configurations. To preserve their access to certain websites that reach key supporters, some advertisers choose to provide an advertising platform with the various stand-alone components of an ad (such as headlines, images, and logos) and place an order for “smart” ads that are automatically assembled out of the advertiser-provided creative components to fit in different advertising spaces on different apps and websites across the Internet. Thus, unlike broadcast advertising, which involves an advertiser providing a static advertisement to the broadcaster that is the same ad every time it airs, digital ads can be dynamic.

Voters’ technology preferences also affect the size and other characteristics of an advertisement. Political campaigns tend to place their ads to utilize the full range of desktop and mobile technology that voters utilize in 2017. In the United States, the rate of smartphone ownership is now on par with desktop ownership.⁶ Over the last half-dozen years, the percentage of U.S. adults who own a smartphone has more than doubled, while desktop ownership has stayed flat.

The trend toward mobile is even more pronounced in voters who live in rural and inner-city areas that have traditionally lower rates of broadband Internet access.⁷ This has led to a sea change in how voters access the Internet, and, in turn, on how campaigns reach voters through political advertising. In 2010, less than ten percent of Internet usage in the U.S. was conducted on mobile and tablet devices; today, a voter is equally likely to access the Internet – and therefore be served a political ad – on a mobile device as on a desktop computer.⁸ As consumers move toward virtual and augmented reality services, wearable technology, screenless assistants, and other emerging technologies, there is every reason to predict that advertisers will demand the ability to

⁶ Pew Research Center, Internet & Technology Mobile Fact Sheet, <http://www.pewinternet.org/fact-sheet/mobile/>.

⁷ Pew Research Center, Digital Gap Between Rural and Nonrural America Persists, <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>.

⁸ GlobalStats, <http://gs.statcounter.com/platform-market-share/desktop-mobile-tablet/united-states-of-america/#monthly-201101-201707>.



reach voters and customers on those technologies, and, in turn, new advertising configurations that have not yet been imagined will be developed.

Campaigns and political advertisers support transparency and accountability in the advertisements they place. A majority of advertisers placing election-related ads through Google's products already include some form of "paid for by" disclaimer where there is room for one, such as certain ads on YouTube and certain Display ads. Moreover, all advertisers must adhere to Google's existing advertising policy requiring that an ad state the name of the product, service, or entity that the advertisement is promoting, either on the face of the ad itself (such as by using a disclaimer or showing a logo) or on the linked website or landing page.

While Google has adopted and encourages such self-enforcement measures, it is equally important that the Commission also modernize its disclaimer rule so that political committees and other organizations have clear notice regarding the disclaimers they are required to include with their Internet communications.

3) Dynamic Disclaimer Rules to Meet the Challenge of Dynamic Advertisements

In order for any disclaimer rule to succeed at promoting transparency and accountability, advertisers need clarity around the rules they're required to follow and the disclaimers they're required to include on their Internet communications. While the majority of advertisers placing election-related ads on Google now self-impose some form of disclaimer on their ads, advertisers still lack the much needed regulatory framework that will let them know whether the disclaimers they're using on today's ads meet the Commission's requirements. The FEC has long recognized the challenges to traditional disclosure requirements in space-constrained format, yet the evolution of internet advertising may permit new and improved approaches to this problem.

While the digital advertising options available to campaigns continue to expand, the same is not always true of the size of the advertisements themselves. Google's text-based search ads remain subject to strict character limits: an advertiser is generally allowed no more than 30 characters in the headline, 30 characters in a second headline, and 80 characters in the body of the ad.⁹ As a result, advertisers placing election-related ads that are subject to these character limitations may face challenges in complying with disclaimer requirements. The advertising inventory that is available across the 3 million websites on the Google Display Network comes in all shapes and sizes; some ad spaces are large enough to include a full required disclaimer, while others are not.

However, these issues are not necessarily as new or unique as they may seem. Long before the Internet, campaigns had access to some advertising formats and sizes that easily accommodated a disclaimer, and other formats that did not. The Commission's regulations recognize this reality and provide flexible solutions so that political advertisers are not precluded from running certain

⁹ About Text Ads, <https://support.google.com/adwords/answer/1704389?hl=en>.



ads just because the size or other characteristics of those ads do not allow for a disclaimer. For example, if an ad is too small to include a disclaimer or it is impracticable to do so, advertisers are excused from the disclaimer requirement.¹⁰ Another flexible solution that already exists in Commission regulations is the “single communication” rule, which provides that a disclaimer “need not appear on the front of cover page of the communication as long as it appears within the communication...”¹¹ Thus, for example, a disclaimer can satisfy legal requirements by appearing on the back of a two-sided document, notwithstanding the fact that voters who only view the front of the document will never see the disclaimer or know who sponsored the communication.¹²

Google urges the Commission to explore similar solutions so that all digital advertisements are accompanied by some notice of who is responsible for the ad. In particular, the Commission should focus on crafting rules that achieve the goals of transparency and accountability without rendering smaller or innovative ad formats off limits to political advertisers.

4) Additional Measures to Increase Accountability in U.S. Elections

Advertisers need the guidance described above so they can comply with the disclaimer rules under federal campaign finance law. However, not all ads require a disclaimer, and no disclaimer requirement can eliminate the full range of election meddling that bad actors are willing to undertake. Accordingly, there are other transparency commitments, statutory amendments, and regulatory rulemakings worth considering to further uphold accountability in U.S. elections.

Why This Ad: As part of our own process of thinking through improvements to its advertising policies, Google has announced that all advertisers who place election-related advertisements will be required to identify themselves on Search, YouTube, and Display using Google’s “Why This Ad” icon. “Why This Ad” is a link or icon that Google places on ads across our platforms. When a viewer clicks the “Why This Ad” link, they are able to view information about why the ad was shown.¹³ Going forward, Google will require advertisers who purchase election-related advertisements on Search, YouTube, and Display to provide information about the sponsor of the ad, and that sponsor information will be included in the “Why This Ad” information screen. This solution establishes a level of consistency in transparency despite the array of advertising platforms that exist under the Google umbrella.

Solutions such as the “Why This Ad” icon provide voters with a reasonable click path to easily obtain information about the identity of the organization that is serving them an election-related

¹⁰ 11 C.F.R. § 110.11(f).

¹¹ *Id.* § 110.11(c)(2)(iv).

¹² Adv. Op. 2011-10 (POET, LLC).

¹³ Note, however, that as of today not every single ad utilizing a Google product contains the icon. An example of the Why This Ad functionality can be seen in the screen shots attached as Exhibit B.



advertisement.¹⁴ Because the icon can be adapted to advertisements of all types (whether text, image, or video) and sizes, the self-identification requirement will not preclude legitimate campaigns from utilizing any of Google's available ad products. Moreover, because the icon and its self-identifying information can appear as part of any ad of any size, this type of solution promotes accountability and ensures foreign nationals and other bad actors will have less ability to go unnoticed when interfering in U.S. elections or disseminating false information.

The Foreign National Ban: It would also be helpful for Congress, the Commission, and other federal regulators to clarify and strengthen existing laws to increase accountability and reduce foreign interference in future elections. One idea is to consider strengthening the ban on foreign national political activity as set forth in 52 U.S.C. § 30121 (the "Foreign National Ban"). The foreign national ban should be strengthened to more clearly prohibit a broader range of foreign national activity that is intended to influence U.S. elections. First, Congress should extend the definition of electioneering communication for purposes of the Foreign National Ban so that it applies to communications placed for a fee on another person's web site. This would ensure the Foreign National Ban clearly prohibits paid communications over the Internet that would already be illegal if distributed by means of broadcast, cable, or satellite. Second, Congress should foreclose any ambiguity around the scope of the term "expenditure" for purposes of the foreign national ban by clarifying that any disbursement by a foreign national for a communication that is intended to influence an election is prohibited, even if the communication does not contain express advocacy for or against a particular candidate.

The Foreign Agents Registration Act: Finally, there are opportunities for Congress and the Department of Justice to clarify and strengthen the Foreign Agents Registration Act ("FARA") to shine a light on foreign national activity intended to influence the U.S. public. For example, FARA requires every agent of a foreign principal to include labels or disclaimers on all "informational materials" that the foreign agent distributes in the U.S.¹⁵ FARA, however, is outdated. Under the current law, the labeling requirement applies to informational materials that are "transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce"¹⁶ Neither the law nor the Attorney General's regulations implementing the law specify whether information material transmitted over the Internet must carry a disclaimer. This ambiguity can be easily resolved with an amendment to FARA to require a disclaimer for informational material distributed over the Internet. The result would be that an agent of a foreign principal who purchases digital "issue ads" with the purpose of influencing the U.S. public on election or non-election matters would be required to identify themselves as part of the ad. Another possible amendment to strengthen FARA would be to clearly require any

¹⁴ See Adv. Op. 2010-19 (Google), Concurring Stmt. of Vice Chair Bauerly and Commissioners Walther and Weintraub at 3-4 (discussing the Commission's history of allowing disclaimers to be delivered in an alternative fashion where delivery of a required disclaimer would be unwieldy or unfeasible).

¹⁵ 22 U.S.C. § 614.

¹⁶ *Id.*



foreign principal, whether not acting through a registered agent in the U.S., to include a disclaimer identifying that the ad was distributed by or on behalf of the foreign principal to influence the U.S. public.

5) Conclusion

Google supports the Commission's efforts to identify solutions that promote transparency, preserve the Internet as a dynamic marketplace for political debate, and deter foreign meddling in U.S. elections. We thank the Commissioners for their leadership on this issue, and we express our appreciation to the Commission staff for tackling the important and challenging work ahead. We look forward to further assisting you as you move forward to the formal rulemaking stage.



Exhibit A

Security and disinformation in the U.S. 2016 election: Our work going forward

We are continuing to receive new information from investigators and other companies and we'll keep searching for evidence of abuse. We'll be working closely with lawmakers and the industry to improve transparency, accountability, and disclosures around election advertising. We're also taking new steps today on our own platforms.

Advertising

- **Transparency Report.** In 2018, we'll release a transparency report for election ads, which will share data about who is buying election-related ads on our platforms and how much money is being spent. We began publishing transparency reports at the start of the current decade. This is a good opportunity to make an additional contribution to public knowledge about how election advertising works online.
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Security

- **Information sharing.** We will continue to work with other companies in our industry to share information and best practices about state-backed efforts to manipulate our respective platforms.
- **Advanced Protection.** We recently introduced Advanced Protection, a new level of account protection designed for those with an elevated risk of attack. We're working to get this in the hands of all political campaigns and elected officials in the US, to minimize the risk of future election-related hacking attacks.
- **Protecting elections:** We've introduced a suite of digital tools designed to help election websites and political campaigns protect themselves from phishing, unauthorized account access, and other digital attacks. We've partnered with the National Cyber Security Alliance to fund and advise on security training programs that focus specifically on elected officials, campaigns, and staff members. We are also increasing our long-standing support for the



bipartisan Defending Digital Democracy Project at the Belfer Center for Science and International Affairs at Harvard Kennedy School

Highlighting quality content and combating misinformation:

Over the past 18 months, we've undertaken a broad effort to highlight authoritative sources and minimize the spread of misinformation on our platforms. We are continuing these efforts:

- Since the election we've made significant improvements to demote misleading and misrepresentative sites in search.
- In 2016 we also introduced the Fact Check Label to provide useful context for people as they explore information online, which is now available globally in search and Google News.
- We are also concerned with sites abusing our ads systems by impersonating news organizations so we introduced a new policy against misrepresentative content for AdSense and Ad Exchange publishers and have since taken action against hundreds of publishers.

We'll continue to build on these efforts. For example YouTube continues to consider ways to provide greater transparency around news sources, including disclosure of government funding.

Published October 30, 2017



Exhibit B

Google

All News Images Videos Shopping More Settings Tools

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Ralph Northam
Lieutenant Governor of Virginia

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Ralph Northam
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Ralph Shearer Northam is an American physician, politician, and U.S. Army veteran. He is the 40th and current Lieutenant Governor of the Commonwealth of Virginia. Northam is the Democratic Party nominee for Governor of Virginia in the 2017 election. [Wikipedia](#)

Born: September 13, 1959 (age 58), Nassawadox, VA

Party: Democratic Party