These comments are filed on behalf of CMPLY, Inc. with regard to a rulemaking for REG 2011-02 Internet Communication Disclaimers. Please substitute this version for the one previously submitted, which was missing a footnote.

Thank you for your attention to this matter.

Comments provided by :
Chernaik, Tom

CMPLY, Inc.
1216 Broadway
Second Floor
New York, NY 10001
www.cmp.ly

November 9, 2017

Submitted electronically via the Commission's website at www.fec.gov/netdisclaimers

Neven F. Stipanovic
Acting Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Comments on REG 2011-02 "Internet Communication Disclaimers"

Dear Mr. Stipanovic:

CMPLY, INC., files these comments today with regard to the Advanced Notice of Proposed Rulemaking for Internet Communication Disclaimers (82 Fed. Reg. 46937) dated October 10, 2017. CMP.LY submits these comments to share insights and experience in including disclosure in short-form communications, as well as to highlight some significant challenges that are presented by new, emerging and rapidly evolving digital channels that are having a profound impact on political and personal communications. CMP.LY originally submitted comments in 2011 on these issues, and we wish to submit these additional comments in which we recap our earlier comments and we highlight some of the significant developments in this area since our last comments were filed.

CMP.LY reiterates our recommendation from 2011 that the Commission begin a rulemaking to review and revise its regulations at 11 CFR 110.11 concerning Internet communications. Between 2011 and 2017, there has been an exponential increase in the use of social media and Internet communications for political and issue based advertising and the concerns that were voiced in 2011 have been amplified by the increasing role that these new forms of communication have had on our society. Furthermore, we have seen significant evidence of the paid promotion and dissemination of political and issue based content using advanced publishing and targeting tools on these platforms by both domestic and foreign groups without disclosure that has become the focus of Congressional investigations and media attention for a lack of transparency in the months following the 2016 election. Should the Commission hold hearings on these issues, CMP.LY requests the opportunity to testify at such hearings.

CMP.LY offers third parties a number of purpose-built regulatory compliance solutions including the ability to create and document required disclosures in short form across social media, internet and text advertisements, as outlined below. The solutions include free tools for individual bloggers and influencers, as well as paid commercial tools for advertisers to document and monitor disclosure policies and activities.

Advertisers face significant challenges complying with disclosure requirements, including providing the fine print and context in messages which flow between individual social media platforms in a manner which can be easily documented and monitored. CMP.LY provides advertisers the ability to communicate directly with their consumers on social networks, and other short form communications, while including required disclosures, providing documentation, audit trails and automated monitoring for compliance with a given disclosure policy. Since the filing of our last comments on these matters, we have expanded our technology solutions in response to increased regulator focus on these issues and market demands, which we will discuss below.

Given the rapid adoption of social platforms, as well as the increasing trend toward communication platforms with character constraints, open syndication of content to multiple platforms, reliance on advertising revenue models, and, in particular, advertising, marketing and sponsorship efforts which are meant to integrate seamlessly into social networks and intended to spread virally within those networks, we believe that it is vital that the Commission issue clear guidance with respect to the continued importance and use of disclosures within political communications. This was an issue that we highlighted in 2011, and is a pressing issue, which has proven to be a significant concern since then. In the recent 2016 election cycle, these became known as "native advertising" and "fake news" and have been the subject of increased focus by Congress, the news media and individual consumers and constituents. Disclaimers and disclosures of the nature of sponsored or promoted content as well as the source of the funding would provide clear indications that would have helped in identifying foreign influence at work in these forms of paid media.

In the 2011 request for an Advisory Opinon, Facebook sought "confirmation that its small, character-limited ads qualify for the 'small items' and 'impracticable' exceptions, and do not require a disclaimer under the Federal Election Campaign Act (the "Act") or Commission regulations." The Office of the General Counsel presented the Commission three draft advisory opinions, each of which came to a different conclusion regarding Facebook's request for an exception to the disclaimer rules.

CMPLY urged the Commission not to foreclose on the use of a disclaimer in the body of Facebook Standard Ads, Sponsored Stories, or other short-form platforms merely because of the brevity of the text. We proposed that granting an exemption from the disclaimer requirements would have a far-reaching and long-term impact on the development and use of new and innovative platforms. Back in 2011, social networks had proven to be a remarkably effective method to disseminate information and news, but they were still a relatively new form of communication and the tools, specifications and uses of the platforms have continued to change rapidly. In recent months in 2016 and 2017, we have seen this become an issue of international significance and one that has been referred to in last week's Congressional hearings as an issue of National Security as well. There is great potential for harm if the transparency of the disclaimers required in 11 C.F.R. §110.11 are not applied to Facebook and other social media and Internet channels with regard to ads and promoted content.

Regulatory requirements have been addressed in similar contexts for marketing, financial and pharmaceutical, without those regulators exempting disclosures in social media channels. Simple disclosure solutions exist specifically for short-form disclosure notices, are not "impracticable" and, in fact, are in regular use for similar regulatory disclosures within character-limited social media platforms. Furthermore, these existing technologies can provide significant improvements to the modified disclosures that were referenced in Draft A in 2011.

Note that while some of the comments filed in 2011 and, more recently in 2017, have called for "roll over" or "hover" disclosures to be implemented, but please note that these technologies have significant limitations in social media platforms and that they do not function within the user interfaces of mobile devices, where the majority of social media engagement takes place and where we have seen the largest increases in Internet and broadband usage. On the other hand, there are solutions that can be implemented that will work across all known devices and platforms, that enable the clear and conspicuous placement of disclosure notices and of the accompanying disclosure information that is required by other regulations that we will highlight below.

Disclosures are vital to provide context and reference to political marketing messages that are disseminated to inform and influence voters, and provide valuable insights with reference to the origin and source of a given message. Within social channels, communications are intentionally and seamlessly integrated into conversation requiring higher, not lower, standards for transparent marketing.

Furthermore, what is in question here is commercial speech that is amplified with paid promotion or advertising tools. Disclosure requirements should not affect individual rights to free speech or to share personal viewpoints within social networks. However, when paid promotional tools are used, disclosure can provide the only distinction between organic individual content and commercial speech. With proper transparency, disclosure tools can indicate not only that certain content is part of a paid promotional effort, but can also provide indications of who is paying to promote those messages more broadly or, more importantly, to specific target audiences.

Why This is Significant

The unprecedented growth of social media channels as communication tools has fundamentally changed the media landscape. Social networks have enabled users to connect and share information and are new sources of news, influence and advertising that leverage the power of "Word of Mouth Marketing" in ways that could not have been imagined just a few years ago when the Commission first explored these issues.[1]

Advertisers have responded and embraced social marketing channels to connect directly with consumers in novel ways and advertisers have increasingly adopted advertising platforms designed to be less intrusive than traditional ad units and are more deeply integrated into social networks and conversations. The market has seen broad adoption of more integrated tools that result in content that is less distinguished from regular news feed content, but that can be promoted and targeted to specific audiences with alarming accuracy and effectiveness.

The ability to connect directly with consumers has forced regulators, including the Federal Trade Commission (the "FTC"), the Food and Drug Administration (the "FDA"), the Securities Exchange Commission (the "SEC") and the Financial Industry Regulatory Authority ("FINRA") to revisit their marketing and disclosure requirements to effectively respond to the communication within social media networks.

[1] https://www.theatlantic.com/technology/archive/2017/10/what-facebook-did/542502/

Significantly, while these regulators have struggled with the challenges of disclosure and transparent marketing in emerging social media channels, none of them has exempted their constituents from required statements, regardless of social media platform space-constraints.

- The FTC has actively addressed the need for disclosure and transparent marketing practices within social media platforms. In October 2009[2], the FTC updated its "Guides for Endorsements and Testimonials" to extend and apply to social and digital channels. The Guidelines specifically require clear and conspicuous disclosures in blog posts, Tweets and Facebook Status Updates.

- The FDA issued a number of warning letters in March 2009 to marketers of pharmaceuticals within social media channels. Furthermore, the FDA held hearings in November 2009[3] to discuss the use of social media channels for medical products.

- The SEC has recognized corporate blogs and potentially other forms of social media as a form of meeting public disclosure requirements under Regulation FD (Fair Disclosure) – in some cases[4].

- FINRA issued Regulatory Notice 10-06[5] in January 2010 to address the use of social media channels to market financial service products. FINRA issued updated guidance on these issues with Regulatory Notice 11-39[6], providing further clarification concerning application of the rules to new technologies. It is not intended to alter the principles or the guidance provided in Regulatory Notice 10-06.

- In June 2010, the White House Office of Management and Budget issued a Memorandum of Disclosure and Simplification as Regulatory Tools[7]. This document outlines guidance and key principles to inform the use of disclosure and simplification in the regulatory process.

- In August 2011 The Federal Reserve Board released a report entitled "Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing" indicating that the Board has studied ways to improve the information and materials — including required disclosures — that consumers draw on when they purchase and use financial products and services.

- NEW – In March of 2013, the FTC issued an update to its Dot Com Disclosures guide[8], first issued in May 2000. The revised guide takes into account the expanding use of smartphones with small screens and the rise of social media marketing. In this guidance, the FTC set forth a set of key principles for marketers:
    - The same consumer protection laws that apply to commercial activities in other media apply online and in the mobile marketplace.
    - Required disclosures must be clear and conspicuous and examples are provided in the document. For instance, when a space-constrained ad requires a disclosure, the disclosure should be incorporated into the ad whenever possible.
    - Finally, if a disclosure is necessary to prevent an advertisement from being deceptive, unfair, or otherwise in violation of a commission rule, and it's not possible to make the disclosure clearly and conspicuously, then the ad shouldn't be disseminated.

- NEW – In June 2014, the FDA issued initial guidance for the use of social media[9] - Internet/Social Media Platforms with Character Space Limitations— Presenting Risk and Benefit Information for Prescription Drugs and Medical Devices

- NEW – In December 2015, the FTC issued Native Advertising: A Guide for Businesses[10] as initial guidance on this topic that is growing quickly in the market. The first part of this Guide summarizes the consumer protection principles that serve as the foundation for the Enforcement Policy Statement. The second part

[2] www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf
[3] http://www.fda.gov/aboutfda/centersoffices/cder/ucm184250.htm
[4] http://sec.gov/news/press/2008/2008-158.htm
[5] http://www.finra.org/Industry/Regulation/Notices/2010/P120779
[6] http://www.finra.org/industry/regulation/notices/2011/p124187
[7] http://www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm
[8] FTC, .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013), available at http://www.ftc.gov/os/2013/03/130312dotcomdisclosures.pdf.
[9] https://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm397791.htm; https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM401087.pdf
[10] https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses

includes examples to explain how effective disclosure can help prevent deception. The third part features staff guidance on how to make clear and conspicuous disclosures within the format of native advertising.

The Importance of Disclosures in Communications Today

The Internet has evolved far beyond an ecosystem where people visit web pages and receive electronic mail to obtain information about products and services. In 2000, less than half of Americans were online and at the time the only way to access the Internet was through a computer terminal. In 2011, consumers across the US and around the world had instant broadband access to the Internet, and not only through computer terminals but built into portable devices such as smartphones, tablets, netbooks and notebooks and in 2017 we see people interconnected via social platforms and devices throughout our daily lives. Furthermore, Internet communications are truly global in nature, blurring international borders online and requiring that we revisit regulations that govern those communications.

Disclosures must be relevant, clear and conspicuous within the context of these new channels of communication and the devices that we use to access them. The artificial limitations of social communication platforms, like the number of characters that may be used, as well as the screen size and capabilities of portable devices present certain challenges for disclosures to be clearly visible or, in some cases, to be included in messages at all.

Openness and transparency are of even greater importance when such content is integrated with social channels, or transmitted to mobile devices using geo-location information. The Commission should not limit the requirements that advertisers and marketers make required disclosures merely as a result of limitations of third party platforms. Restrictions on space, the design of certain social media tools or the size of a given advertisement space should not, on their own, exempt advertisers from disclosure requirements on those platforms.

In addition to the Commission, we have seen other regulators in the US and abroad look at disclosure requirements in social media in the context of advertising and marketing consumer goods, financial services, healthcare products and more. In each of these areas, the challenges have been similar, the need for disclosures has been significant and the disclosures have been required in a manner similar to disclosures that are required in other media and formats.

Without clear guidelines, standards for disclosures and established best practices, we will continue to see confusion and a wide variety in the approaches to compliance with disclosure requirements. The commission has the opportunity to provide clear guidance for existing and future tools, in light of the significant changes that have occurred in recent years and in context of today's social web.

Evolution of the Internet, Social and Mobile Communication

In 2000, approximately forty percent (40%) of homes in America had Internet access, only ten percent (10%) of which was high speed connection through either Cable or Digital Subscriber Lines ("DSL").[11] In 2010, seventy one percent (71%) of homes in America had Internet access of which sixty eight percent (68%) connected through high-speed broadband. According to recent Pew Research Group reports[12], as of 2016, 88% of the United States uses the internet (up 52% since 2000 when they started tracking internet usage) and while 73% of homes in America have broadband internet access, U.S. smartphone ownership has increased from 35% in 2011, when Pew first began tracking data, to 77% as of last November.

In 2000 access to the Internet over mobile devices was non-existent while in 2010 the Pew Internet and American Life Project found that one in four Americans regularly access the Internet over their "smartphones"[13] Between 2010 and 2017 we have seen the mainstream proliferation of "smartphones" and other connected devices. Just 3 percent of Americans reported owning some type of tablet for Pew's 2010 survey. That had risen to 51 percent as of November 2016. These changes have not only been significant, but have also been transformative in our daily lives and our interactions with friends, family and the media.

Similarly in 2000 text messaging using Short Message Service over mobile telephony networks was rare. According to the CTIA 14.4 Million texts were transmitted monthly. However, in 2010 nearly 188 million texts per month were

[11] "Falling Through The Net: Toward Digital Inclusion" October 2000 US Department of Commerce, National Telecommunications & Information Administration, Economic and Statistics Administration retrieved on July 31, 2011 from http://search.ntia.doc.gov/pdf/fttn00.pdf

[12] http://www.pewresearch.org/fact-tank/2017/01/12/evolution-of-technology/

[13] http://www.pewinternet.org/Reports/2011/Smartphones/Summary.aspx

transmitted with an estimated 2.2 Trillion texts transmitted annually.[14] In June 2017, the 781 million texts per month were transmitted, with an estimated 9.4 Trillion texts transmitted annually.

In 2000 social networking was still primarily done in person. As the first online social networks launched, relationships and connections online brought users together with friends, family and business contacts. Since then, social networks have fundamentally changed the ways in which communications occur on the Internet. Online social networks enable content to be shared and syndicated across devices, platforms and channels seamlessly and without requiring any technological expertise of users.

Just 5 percent of Americans used social media when Pew began tracking usage in 2005. That had risen to 69 percent last November 2016. As has been well documented, social media usage is highest among young adults (18-29), 86 percent of whom use it. A large majority of those 30-49 (80%) and 50-64 (64%) use social media as well. Only about one-third (34%) of Americans 65 and older do so, but that's up from around 1 in 10 as recently as 2010. With this increased use, we have seen a fundamental transformation of the ways in which we communicate, gather and process news about the world around us.

It is important to note that the World Wide Web has been available to the public for 27 years (since August 6, 1991). In those 27 years we have seen dramatic changes occur in communication overall and in our methods of interacting, learning and influencing each other. We have seen a marked increase in the significance of these changes in recent months, in particular in the 2016 election cycle, and the pace of this innovation is unprecedented in recorded human history.

2016 Election Cycle

The 2016 election cycle has demonstrated that many of the concerns that we highlighted in 2011, along with other commenters from Democracy 21 and Campaign Legal Center, with regard to the need for transparency in political advertising on social media platforms were well founded. The issues surrounding disclosure, transparency and the growing power of social media communications have become a primary focus of the national (and international) media[15], as well as the focus of recent Congressional hearings[16] when, on two consecutive days last week, executives of Facebook, Twitter and Google testified on the topic of disclosures as a result of evidence that has come to light of Russian interference with our electoral process via both paid promotions (both advertising and content sponsorships) on these platforms and through the use of fake accounts to disseminate information (often disparaging) about individual candidates as well as about key divisive issues, intended to mislead and inflame tensions in in our society during, and even after the end of, our election.[17]

We are still learning more about the specifics of how social media and Internet communications were used to spread political content and advertising in increasingly targeted ways to specific audiences, often disguised as news or legitimate content. The media and government investigations are documenting the many ways that foreign and domestic entities were using social media and Internet communications in 2016. As these investigations continue, we learn more about the advertisements and messages that were used, the tools that were used to disseminate them and the parties who were responsible for funding what was clearly a highly organized and incredibly cost-efficient way to reach large audiences and to influence their beliefs.[18] What has become clear is that a lack of disclosure made it more difficult to identify sponsored content, and almost impossible to track the sources of the promotional funding that drove these efforts.

In addition to concerns of foreign influence, there have been a number of reports in the media covering the use of social media and Internet communications by the campaigns themselves. Most notably, the efforts of what became known as "Project Alamo" which combined the power of messages and "dark posts" that could be targeted specific users with messages that were only visible to those users and not to the larger public. Since October 2016, much more information has become known about how "Project Alamo" used the tools offered by social media platforms and how the platforms themselves offered hands-on support in the targeting of audiences and in the optimization of the use of their platforms.[19]

---

[14] http://www.ctia.org/consumer_info/service/index.cfm/AID/10323
[15] http://www.businessinsider.com/why-political-ads-should-be-regulated-online-2017-9
[16] https://www.c-span.org/video/?436454-1/facebook-google-twitter-executives-testify-russia-election-ads; https://www.c-span.org/video/?436360-1/facebook-google-twitter-executives-testify-russias-influence-2016-election; https://www.c-span.org/video/?436362-1/facebook-google-twitter-executives-testify-russias-influence-2016-election
[17] How Russia Harvested American Rage to Reshape U.S. Politics https://nyti.ms/2yUe43Y
[18] https://medium.com/marketing-and-entrepreneurship/facebook-ads-fake-news-and-the-shockingly-low-cost-of-influencing-an-election-data-ca7a086fa01c
http://www.thedailybeast.com/russias-facebook-fake-news-could-have-reached-70-million-americans
[19] http://www.bbc.com/news/av/magazine-40852227/the-digital-guru-who-helped-donald-trump-to-the-presidency

"Project Alamo" has been credited by many to give Donald Trump the edge he needed in winning the 2016 election. It is clear that enormous efforts were focused on leveraging the data that was collected by the campaign directly, via the RNC and through data partnerships with companies like Cambridge Analytica as well as with the platforms themselves present messages to those identified audiences. There have also been many concerns that these resources were used to engage in voter suppression efforts[20] or to support efforts to discredit competing candidates with misinformation and misleading content.[21]

Much of the effort that went into "Project Alamo" went unnoticed during the majority of the campaign cycle, but the size, scope and focus of those efforts, and the significance of social media and Internet communications in those efforts has become clearer in the year since. CBS News "60 Minutes" covered this story in detail in an interview with Brad Parscale who led the "Project Alamo" effort.[22]

In large part, the secrecy of the "Alamo Project" and its large scale advertising efforts was maintained due to a lack of disclosure requirements. Had disclosures been required in these ads across Facebook, Twitter and other social networks, it would have been easier for voters, journalists, watchdog or other groups to understand the context and source of paid promotional content presented to them.

Emerging Platforms are Increasingly Influential in Politics

Social networking has fundamentally changed the manner in which people communicate. Innovations in social networking focus on real-time, mobile and interactive communication, much of which is in short-form. The rapid and widespread adoption of social media is unprecedented in American history. The impact social networking on the upcoming elections in 2012, and on all future election cycles, cannot be anticipated.

Facebook and Twitter are only two of the platforms in the social media space. The 2011 launch of Google+ resulted in unprecedented growth of a new player in the social media space. While it took both Twitter and Facebook more than two years to reach the milestone of 10 million users, Google+ has been reported to have passed that milestone in a mere 16 days from public launch and then to have doubled that number again in the following 8 days.[23] Since 2011, we have seen a number of new platforms created that have reached into the hundreds of millions of active users, most notably Instagram and Snapchat. Not one of these social media platforms existed in 2000 and we continue to see new platforms and technologies developed on an ongoing basis.

Consider the following growth figures for just Twitter and Facebook and then add Instagram and Snapchat:

Twitter	**Facebook**
Nov 2004 - Did not exist	Nov 2004 - Fewer than 1 Million users on a closed platform
Nov 2008 - approximately 4 Million users	Nov 2008- approximately 120 Million Users
May 2011 - approximately 300 Million users	May 2011- approximately 750 Million Users
2017 – approximately 328 Million active users	2017 – approximately 1.8 Billion Users
Instagram	**Snapchat**
Nov 2008 – Did not exist	Nov 2008- Did not exist
May 2011 - approximately 10 Million users	July 2011- Launched 1st iOS app
2017 – approximately 700 Million active users	2017 – approximately 166 Million Active Users

---

http://www.nybooks.com/articles/2017/06/08/how-trump-used-facebook-to-win/
https://medium.com/startup-grind/how-the-trump-campaign-built-an-identity-database-and-used-facebook-ads-to-win-the-election-4ff7d24269ac

[20] https://www.salon.com/2016/10/27/donald-trumps-campaign-is-powering-a-massive-negative-campaigning-voter-suppression-effort/
http://www.esquire.com/news-politics/politics/news/a50049/behind-the-scenes-trump-campaign/;
https://www.bloomberg.com/news/articles/2016-10-27/inside-the-trump-bunker-with-12-days-to-go

[21] https://www.washingtonpost.com/news/politics/wp/2017/07/12/the-investigation-goes-digital-did-someone-point-russia-to-specific-online-targets/

[22] https://www.cbsnews.com/news/facebook-embeds-russia-and-the-trump-campaigns-secret-weapon/

[23] http://goo.gl/S7rNf

While Twitter and Facebook were both active in 2008, neither had been widely adopted for more than personal use. In the following three years leading up to 2011, the role of Twitter and Facebook in politics had drastically expanded. In the United States candidates and political organizations flocked to the platforms: Candidates from both parties in 2011 announced their candidacies for President on social networks, Newt Gingrich on Twitter and Barack Obama on Twitter and Facebook. Based on those trends, it was clear in 2011 that social media would play a prominent role in 2012 elections and even more so in the 2016 elections as we have now seen firsthand.

In addition, social media platforms break news stories in real time in a manner that mainstream media cannot, due to the users direct interaction with the platform, and with each other. For example in 2011 the first reports of the attack against Osama Bin Laden were made on Twitter's platform. Furthermore, back in 2011, social media platforms played a significant role in political uprisings in the Middle East, in particular in Egypt and Libya. We have only seen an increase in the power that social networks have on the dissemination of news and information in our society today.

While social media ads present challenges to candidates and other regulated entities, they are fundamentally different than buttons and bumper stickers. Both Facebook and Twitter actively market advertising and sponsorship programs to potential political advertisers. In fact in the 2016 election cycle it has become clear that the platforms offered and provided direct support to candidates and their teams to help them better target and leverage their advertising products.

Sponsored Stories, a feature that launched on Facebook in 2011, allows organizations and individuals to promote a statement or an action (such as pushing the like button) to friends and followers. In exchange for paying Facebook, the sponsor's messages are persistently in a high position of the news feed. Facebook argued, in the 2011 Advisory Opinion, that due to the amount of the text it allows in Sponsored Stories and Standard Ads that its users should not be required to include disclaimers. However, the disclaimers allow consumers to have a complete understanding of the context of an ad regardless of how they encounter it. Exempting short form text advertisements from the disclaimer rules may result in consumers not being aware of the source of the advertisements, or the method in which they are being promoted. Standard Ads have 160 characters included in the body of the message, and clear disclosure methods have been developed for, and proven in, environments of 140 characters or less.

In 2011, Standard Ads made up the majority of ads on the Facebook platform, but Facebook continues to innovate to incorporate advertising and sponsorship of messaging into the fabric of the user experience. While marketers have found Standard Ads on the platform to be incredibly effective, the types of advertising that are available on Facebook are constantly evolving.

Sponsored Stories launched as an option for advertisers in 2011, carrying premium pricing, exclusive access and premium features. The Sponsored Stories platform allows an organization to promote a statement (a selected status update) or an action (such as pushing the like button) to the friends and followers of a particular user account and, with such paid placement, enables the message to be persistent in a top position in the news feed with minimal, if any, disclosure. Promoted or sponsored tweets similarly allow an organization to promote messages within a user's network in a prominent position.

In 2015, Facebook had 2 Million advertisers. In March 2016, Facebook announced that they had passed 3 Million advertisers on their platform and seven months later, in September 2016 that number had grown to 4 Million advertisers.

Similarly, Twitter has turned to advertising as a source of revenue. In June 2011, Twitter announced an increase in number of advertiser clients from 6 to 600 – 600% – during the previous year[24]. In late 2011, Twitter announced that they currently had 1600 advertisers[25] using their direct platform to engage advertisers, an increase of 1,000 more advertisers in just 4 months time. In 2011, Twitter formally announced plans to sell sponsored tweets and advertisements to political campaigns.[26] By 2016, Twitter announced that they had 130,000 advertisers on their platform.

Throughout all of these advertising channels, including traditional ads, advertiser disclosures are key to a complete understanding of context and are vital to maintain open and transparent communications. With an exemption from disclosure rules in these formats, we run a significant risk of confusion and/or obfuscation of the source of content

[24] http://www.mediabistro.com/alltwitter/promoted-tweets-went-from-6-to-over-600-advertisers-in-one-year_b9911
[25] http://techcrunch.com/2011/10/04/twitter-now-has-1600-advertisers/
[26] http://www.politico.com/news/stories/0911/63985.html

within social media and a strong likelihood that important material connections between the promoters of such content and its original source being hidden from public view.

There is no doubt we will continue to see these forms of advertising develop further as the platforms mature. Disclosures and disclaimers will be even more important as these messages become shorter in length and more seamlessly integrated into social conversations.

Emerging Platforms are Increasingly Influential in Marketing and Advertising

Advertisers are also embracing social marketing channels to connect directly with consumers in novel ways. Marketing messages within social networks and applications are more deeply integrated into social networks and designed to be both more targeted and less intrusive than traditional ad units. The ability to encounter marketing out of context in social media channels in many ways increases the importance of meaningful disclosures.

The unprecedented growth of digital communication has fundamentally changed the way in which companies market and advertise their goods and services. According to a 2011 survey, 72 percent (72%) of companies in the United States had a social media marketing strategy.[27] Social networks have enabled users to connect and share information, and have emerged as sources of news, influence and advertising that leverage the power of "Word of Mouth Marketing" in ways that could not have been imagined just a few years ago.[28]

Social networks have, in a few short years, emerged as a leading media channel. In addition to Word of Mouth efforts, leading social networks have become the dominant player in display advertising as well. According to ComScore, in the first quarter of 2011, Facebook led all online publishers in number of display ad impressions accounting for 346 billion impressions. This was nearly double the number that Facebook delivered in the first quarter of 2010 and accounted for 31.2% (nearly one-third) of all display ad impressions served by online publishers overall in the quarter.[29]

Social networks and communications have proven highly effective for advertisers who rely increasingly on social media to connect with consumers and influencers.[30] This has proven particularly challenging in the context of advertising and marketing initiatives where disclosure requirements for endorsements and testimonials or other terms and fine print are required. The Federal Trade Commission has revised the Guides for Testimonials and Endorsements as a result of these changes to include social media and Internet channels specifically and they have provided additional guidance for disclosures specifically, in the Dot Com Disclosures report and for the growing area of Native Advertising as well.

Across social media channels (blogs, web sites, platforms and apps) advertisers have been finding ways to leverage the users who are most influential in the demographic audiences that they are looking to reach. By reaching out to these influencers, directly and indirectly, advertisers are engaging influential advocates with goods, services and payments, to review and promote their products, contests and special offers. Much of the concern raised in the revised guides was with regard to sponsored and incentivized content that is promoted in this manner.

Both Twitter and Facebook allow companies to directly market to consumers in a variety of ways. Facebook offers companies pages on its platform for free on which they can connect directly with consumers. Additionally, Facebook sells advertising space to companies that may appear in a variety of sponsored forms. Twitter offers a similar two-tiered system for companies to communicate with its users. Companies may communicate with followers through a Twitter account, or they may pay Twitter sponsorship fees to promote campaigns, brands or individual messages.

In 2011, Standard Ads make up the majority of ads on the Facebook platform, but Facebook continues to innovate to incorporate advertising and sponsorship of messaging into the fabric of the user experience. While marketers have found standard ads on the platform to be incredibly effective, the types of advertising that are available on Facebook are constantly evolving.

Both Facebook, Twitter, Instagram, Snapchat and other platforms offer corporate users the ability to pay to promote certain messages and profiles within the platform and within a user's network in a prominent position. In addition, a number of third parties offer sponsored Tweets with opportunities to leverage the networks of celebrities and other influencers. These messages are sometimes sponsored through companies acting as agents for Twitter influencers.

[27] http://www.kingfishmedia.com/Portals/51063/pdf/kfm-social-media-usage-2010.pdf
[28] http://pewresearch.org/pubs/2025/social-impact-social-networking-sites-technology-facebook-twitter-linkedin-myspace
[29] http://www.comscore.com/Press_Events/Press_Releases/2011/5/U.S._Online_Display_Advertising_Market_Delivers_1.1_Trillion_Impressions_in_Q1_2011
[30] https://www.borrellassociates.com/reports?page=shop product_details&flypage=garden_flypage.tpl&product_id=885&category_id=6

Most of these require Tweets to be sent through a proprietary dashboard and they rely on a number of ad hoc disclosure solutions including hashtags and [ad] or {spon}.

Companies are also beginning to bypass the Internet to communicate directly with consumers through the use of Apps or mobile applications. An App is a dedicated program that resides on smartphones, tablets, mobile devices and/or computers that are able to connect with the Internet directly without the use of a web browser. With increased adoption of smartphones and tablets, consumers are increasingly reading, watching and sharing content within App environments. Within Apps, there are a number of questions that are raised with regard to small screen sizes, access by minors, privacy and location that are all likely to increase with importance in correlation with mass-market adoption and continued development of these technologies.

As social media and networking platforms mature, additional novel forms of advertising will surely emerge. Disclosures and disclaimers will be even more important as these messages become shorter, are more seamlessly integrated into social conversations, and appear less like traditional advertising. Across advertising channels, including traditional ads, advertiser disclosures are key to a complete understanding of context and are vital to maintain open and transparent communications. Without disclosures, we run a significant risk of confusion and/or obfuscation of the source of content within social media networks and a strong likelihood that important material connections between the promoters of such content and the original source will be hidden from public view.

Technological Feasibility

Disclosure is possible in short-form without complexity or inconvenience to the advertiser or the consumer. Bloggers and Twitter influencers have been adopting ad hoc methods such as “hashtags” to simply disclose FTC material connections in short-form. While “hashtags” would not provide a “paid for by” disclosure statement, there are alternatives that can make a clear statement in 140 characters or less.

CMP.LY introduced a more structured, standardized solution not long after the issuance of the updated FTC endorsement guidelines that can be used in just this manner. CMP.LY has further announced the development of solutions addressing disclosure requirements for regulated industries including financial services (under SEC and FINRA) and healthcare/pharma (under FDA) as well as for other applications of legal, disclosure or disclaimer language that needs to be included in regulated content.

We have developed a universally standardized and simple solution, which provides detailed and documented disclosures in the space constrained environments of Twitter, Facebook, Foursquare, SMS Text and other social media platforms, and is an emerging standard for the disclosure of any required information or fine print related to content. Across the multiple applications for CMP.LY technology, a CMP.LY link or icon always indicates, and is directly linked to, a complete disclosure or inclusion of legal language.

In 2012, CMP.LY expanded our disclosure codes with a framework of “plain language” disclosures that rely on a large number of disclosure URLs that we own including leg.al, rul.es, ter.ms, disclosur.es, and many other specific base URLs that can be used to incorporate the notice of a disclosure directly into the body of a social media post, and then link to the full length disclosure that cannot fit within the body of a 140 character message.

While the issue of disclosure in short-form seems at first to be a complex problem to solve, with the proper framework in place, such statements are easily included in the body of content and can provide for tracking and reporting to ensure compliance. In addition, our solution employs a linking structure that enables a clear and prominent disclosure to be documented and displayed to the user whenever the CMP.LY disclosure link is clicked.

Iconic Compliance, our solution, uses a standardized coding framework enables influencers to include a concise short-form disclosure that is readable on its face in the body of their content and links directly to a complete disclosure and, in certain cases, content with a clear disclosure associated with that content. These iconic disclosures can be represented as a coded URL, a plain language URL or a standardized visual icon badge, which is uniquely identified and can be monitored for compliance reporting.

Within character-limited platforms and ads, a simple coded URL provides a universally identifiable notice to indicate that a relationship or required disclosure of a certain type exists. It also provides clear, documented and trackable methods for including disclosures clearly and conspicuously, making sure to clearly highlight full text of disclosures - even in environments of 140 characters or fewer. This codified link can be displayed clearly and prominently with the content that is the subject of the post and in relatively few characters (10-15% of overall message content in the 140 or 160 character platforms) while providing clear and conspicuous disclosure.

Aside from shortening the length of a given link to content, CMP.LY codes carry specific meanings. Unlike standard URL shorteners, which are generic in nature and may refer to any form of content, CMP.LY URLs always refer a user to content that includes some form of legal disclaimer or disclosure. Furthermore, CMP.LY codes and plain language disclosures indicate to a user, before clicking the link, that disclosure or legal language applies, with the full text of the disclosure or legal language available behind the link.

We added the ability to frame a given page of content and ensure that the disclosure is prominently displayed on-screen whenever the user follows a CMP.LY link to a designated page of content. Those reading the communication can then click through the link to view a page that includes a full disclosure along with the full content from any source (including Facebook pages, web sites, blogs, social media profiles or pages).

Visual icon badges have also used to indicate disclosures and add context to a particular disclosure in blog formats, but cannot be used in social media platforms without integration by the individual platforms. These icons are embedded as visual elements in a page, using our URL coding system to uniquely identify users, programs and polices from monitoring and reporting functions. These badges are immediately recognizable and highly visible, with contrasting colors, clear text and readable and coded representations of the disclosure type that pertains to that use. The badges can be used and displayed in any environment that displays images (blogs, web sites, apps) and we hope to integrate them into text-based environments in the future.

Significant to the requirements under 11 C.F.R. § 110.11, we have added the ability to frame a given page of content and ensure that the disclosure is prominently displayed on-screen whenever the user follows a CMP.LY link to a designated page of content. Those reading the communication can then click through the link to view a page that includes a full disclosure along with the full content from any source (including Facebook pages, web sites, blogs, social media profiles or pages which might be owned, operated or controlled by the person paying for the Facebook ad, or by any 3rd party).

To describe this more explicitly, a user who clicked on a given sponsored political message, campaign ad or "Sponsored Story" would be delivered to the candidate's web site (or other designated destination) with FEC specified "paid for by" disclaimer language featured clearly and prominently along with context of the referral. The user still has unfettered access to the designated content and can close out the display of the disclosure content, after it has been served and viewed. This is a significant improvement over the modified disclaimer, which has been discussed in Draft A and ensures that, without additional complexity, the full text of a disclosure can be included when promoting messages in short-form content.

Note: Example for documentation purposes only

The only alternative solution that we are aware of for FTC disclosures is the ad hoc use of "hashtags" to disclose material connections. "Hashtags" are commonly used in social media channels (in particular in Twitter) where individual messages can be filtered in search based upon the inclusion of a hash mark (#) immediately followed by a word used for further qualification or classification. For example, in general terms a "hashtag" such as #FEC could be used to identify messages of relevance to the Federal Election Commission, enabling users to follow conversations or monitor communications on a particular topic. In the FTC disclosure context specifically, #AD (for advertising content), #SPON (for sponsored content) and #ENDORSE (for endorsements) have been used to make simple disclosure statements in short form. These would likely not be sufficient for FEC disclosures and note that these are nowhere near as comprehensive, documented or trackable as the system that CMP.LY has developed.

In 2011, Nancy Scola of The Atlantic identified the growing use of hashtags as a emerging form of political communication.[31] In "How the Hashtag Became a Campaign Battleground," she writes that the use of hashtags was meant to tie conversations together but have evolved into a means for individuals to define debates or express opinions. According to Ms. Scola the use of hashtags allows "political types, the opportunity… to give the conventional wisdom a little nudge in the rear. And to do it for free."

While there are currently no other commercial solutions providing short-form compliance tools for advertisers, it is likely that other solutions will develop and a standard will emerge from the free market to address the numerous regulatory disclosure requirements that exist today, as well as those that are defined in the future. The combination of innovation and structure that is required exists today and will continue to evolve as the needs of the marketplace grow.

There are many other similar situations where complex concepts have been simplified to visual and readable shortened codes. Examples include the movie ratings system, the video game ratings system, road signs and highway safety placards.

Using the highway safety placard example, when you see a red flammable sign displayed on the back of a truck it is immediately clear what the context is. The casual user understands that there is a hazard and to keep clear. A safety official can readily identify a vehicle's safety class upon visual verification of the required placard. Further, a fireman can read the specific numbered code on the badge and understand the detailed information about the specific contents and requirements for the treatment of a hazardous condition.

In each situation, a concise visual statement is immediately recognizable and provides enough information for the casual user to act upon without reliance on language, reading skill or additional training. In addition, with the same immediacy, the exact same visual cue can be used to make much more complex assessments from the additional codes on the placard. With standardization of these placards, trucks can travel the highways across all 50 states, and even internationally, with a universal understanding of their meaning.

Proposed solutions have focused on individual platforms or have looked to modify existing platforms in some way (for example enabling rollover or other unique implementations. All of these require modification of a platform and would

[31] http://www.theatlantic.com/politics/archive/2011/11/how-the-hashtag-became-a-campaign-battleground/247488/

be dependent upon standardization across these platforms in order to ensure that disclosure appeared as intended to the readers of that content. Furthermore, these technologies do not function in mobile or on tablets, where we have seen the most significant growth in Internet and broadband adoption since 2011. We urge the commission to consider the feasibility of such requirements, given the rapid growth and evolution of these platforms and to focus on solutions that are not dependent on modifications or on individual platforms in order to function correctly. CMP.LY has been designed specifically with this in mind, providing a uniform application across all platforms regardless of message length, delivery method or syndication of those messages.

Our solutions have been available since 2010 and they have been used on Twitter, Facebook, Instagram and other platforms in the past 7 years. We have always provided the ability for individuals to create their own basic personal disclosures at no cost (used for influencer campaigns under FTC guidance) and we have provided a number of paid solutions for commercial applications. We have worked with many of the world's leading brands and their agencies to ensure transparency in their communications. We have invested millions of dollars in research and development of our unique solutions and we have been issued two US patents to date on our current offerings with additional patents pending for additional solutions. We continue to innovate in the areas of transparency and disclosure and we have developed technologies to monitor for content that would require disclosures as well as to further monitor that content for either the inclusion or, more importantly, the omission of a required disclosure. In addition, we are developing additional tools that can track disclosure use across enterprise applications, ensuring that uses can be tracked and tied back to individual advertising and marketing campaigns and connected back to the entities and/or people who provided the funding for that paid promotional content.

Conclusion

We strongly urge the Commission to consider the significance of this decision before exempting an emerging communication category from disclosure requirements or considering a revision to existing guidelines. Openness and transparency are of even greater importance when sponsored content is integrated with social channels and the means to disclose clearly and prominently are simple to use and not "impracticable" for use by individuals or organizations of all sizes. Furthermore, we urge the commission to review the content that has come to light following the 2016 election cycle and consider that much of the paid promotional content that appears on social media and Internet communications today does not appear as traditional ads or in traditional ad formats. Much of this content is integrated directly in with non-promotional content in ways that make it difficult for event the trained eye to distinguish paid content from organic content.

As we have outlined in 2011 and again today, granting an exemption from the disclaimer requirements would have a far-reaching and long-term impact on the development and use of new and innovative platforms. Furthermore, we believe that the Commission should hold a rulemaking on this important issue. Social networks have proven to be an effective method to disseminate information and news, but they are a relatively new form of communication and the tools, specifications and uses of the platforms are changing rapidly. With the increasing level of integration of innovative ad units within social content, the need for disclosures is greater. There is significant potential for harm if the transparency of the disclaimers required in 11 C.F.R. §110.11 are not applied to Facebook and other platforms in their ads and promoted content.

Disclosures are vital to provide context and reference to political marketing messages that are disseminated to inform and influence voters, and provide valuable insights with reference to the origin and source of a given message. Regulatory requirements have been addressed in similar contexts for marketing, financial and pharmaceutical, without those regulators exempting disclosures in social media channels. Furthermore, simple disclosure solutions exist specifically for short-form disclosure notices, are not "impracticable" and, in fact, are in regular use for similar regulatory disclosures within character-limited social media platforms. Many examples are available in resources that have been referenced through this document from the FTC, FDA, SEC, Finra and others, as well as from trade organizations such as The Word of Mouth Marketing Association (WOMMA) where I served as the Co-Chair of the Ethics Committee when we published guidance relevant to social media and Internet disclosures in the marketing context[32].

Given the rapid adoption of social platforms in news and political discourse, as well as the increasing trend toward communication platforms with significant character constraints and reliance on advertising revenue models, we believe that it is vital that the Commission review regulations and issue clear guidance with respect to whether the disclaimer specifications at 11 C.F.R. § 110.11 are appropriate in the context of character-limited Internet communications and, if so, to establish specifications for such disclaimers. Disclaimers should be formatted in such a way that they work across multiple platforms (Facebook, Twitter, Google, Ad Formats, etc.) and should convey more

[32] https://wommaorg.wufoo.com/forms/mqvpcy01k3q6go/;
http://womma.org/wp-content/uploads/2017/05/WOMMA-Social-Media-Disclosure-Guidelines-2017.pdf

than a mere Hashtag indicator, so that the consumer can see an indication of the paid promotional nature of the content and can be directly presented with the identity of the group that has been responsible for paying for the promotion of that content, similar to the "Paid for by ____" format that is used in other media in the body of the message, or immediately upon reaching the destination page that is linked from the message or the ad.

We believe that social media and Internet disclaimers should not be a partisan issue. Open and transparent communications are essential to the workings of our democracy. This requires that paid advertising and sponsored or promoted content disclose the funding sources behind those promotional efforts. We support the rights of individuals to speak freely and to share their opinions publicly, but once paid promotion is applied to those efforts we believe that, as commercial speech, disclosures of the sponsors of those messages should be made clearly and conspicuously, so that voters can better understand the merits and context of the advertising content that is presented to them within a paid promotional campaign.

We appreciate the opportunity to provide these comments to you and we would be happy to answer any questions that you might have. We would welcome the opportunity to submit additional comments, testify or provide additional information about the challenges of disclosure in short form and related issues.

Sincerely,

/s/ Tom Chernaik

Tom Chernaik
CMPLY, Inc.

Copy to: Each Commissioner