



sers@nictusa.com  
11/14/2011 11:31 PM

To SERS@fec.gov, sersnotify  
cc  
bcc  
Subject New comment on REG 2011-02 submitted by Chernaik, Tom

Please find attached the contents for the new comment submitted on Mon Nov 14 23:31:11 EST 2011.

User uploaded 1 file(s) as attachment to the comment. Please find them attached to this email.

You will also find a Comment.txt file attached, which has the text comments entered by the user.

You may review the comment in FRAPS system. An approval action from FRAPS is required to send this comment event to the CMS. Thanks.



REG\_2011\_02\_Chernaik\_Tom\_11\_14\_2011\_23\_31\_11\_CMPLY FEC Comment 111311.pdf



REG\_2011\_02\_Chernaik\_Tom\_11\_14\_2011\_23\_31\_11\_CommentText.txt

REG\_2011\_02\_Chernai k\_Tom\_11\_14\_2011\_23\_31\_11\_CommentText.txt

Please see the comment attached from CPLY, Inc. We appreciate the opportunity to comment on these important issues and we would welcome the opportunity to testify should the Commission hold hearings on the matter.

Comments provided by :  
Chernai k, Tom



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November 14, 2011

**Via Facsimile and Email**

Ms. Amy L. Rothstein  
Assistant General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463  
Fax (202) 208-3333

**Re: Comments on Advanced Notice of Proposed Rulemaking for Internet Communication Disclaimers**

Dear Ms. Rothstein:

CMP.LY, INC., files these comments today with regard to the Advanced Notice of Proposed Rulemaking for Internet Communication Disclaimers. 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 recommends that the Commission begin a rulemaking to review and revise its regulations at 11 CFR 110.11 concerning Internet communications. 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.

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.

In a recent request for an Advisory Opinion, Facebook "seeks 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.

CMP.LY urges 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. 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. Social networks have proven to be a remarkably 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. 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.

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.

### **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.

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 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.

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<sup>1</sup>, 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<sup>2</sup> to discuss the use of social media channels for medical products. Currently, the FDA is seeking comments on the issue.
- 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<sup>3</sup>.
- FINRA issued Regulatory Notice 10-06<sup>4</sup> 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<sup>5</sup>, 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<sup>6</sup>. 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.

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<sup>1</sup> [www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf](http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf)

<sup>2</sup> <http://www.fda.gov/aboutfda/centersoffices/cder/ucm184250.htm>

<sup>3</sup> <http://sec.gov/news/press/2008/2008-158.htm>

<sup>4</sup> <http://www.finra.org/Industry/Regulation/Notices/2010/P120779>

<sup>5</sup> <http://www.finra.org/industry/regulation/notices/2011/p124187>

<sup>6</sup> <http://www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm>

## **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 have instant broadband access to the Internet, and not only through computer terminals but built into portable devices such as smartphones, tablets, netbooks and notebooks.

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 and the need for disclosures has been significant.

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").<sup>7</sup> In 2010, seventy one percent (71%) of homes in America had Internet access of which sixty eight percent (68%) connected through high-speed broadband.

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"<sup>8</sup>

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 transmitted with an estimated 2.2 Trillion texts transmitted annually.<sup>9</sup>

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.

It is important to note that the World Wide Web has been available to the public for 20 years (since August 6, 1991). In those 20 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 these changes in recent months and the pace of innovation is unprecedented in recorded human history.

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<sup>7</sup> "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/ftn00.pdf>

<sup>8</sup> <http://www.pewinternet.org/Reports/2011/Smartphones/Summary.aspx>

<sup>9</sup> [http://www.ctia.org/consumer\\_info/service/index.cfm/AID/10323](http://www.ctia.org/consumer_info/service/index.cfm/AID/10323)

## 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 recent announcement of Google+ has resulted 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.<sup>10</sup> Not one of these 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:

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

While Twitter and Facebook were both active in 2008, neither had been widely adopted for more than personal use. In the past three years, the role of Twitter and Facebook in politics has drastically expanded. In the United States candidates and political organizations are flocking to the platforms: Candidates from both parties have recently announced their candidacies for President on social networks, Newt Gingrich on Twitter and Barack Obama on Twitter and Facebook. Based on current trends, it is clear that social media will play a prominent role in 2012 elections and beyond.

In addition, social media platforms are breaking news stories in real time in a manner mainstream media cannot due to the users direct interaction with the platform, and each other. For example the first reports of the attack against Osama Bin Laden were made on Twitter's platform. Furthermore, in recent months, social media platforms have played a significant role in political uprisings in the Middle East, in particular in Egypt and Libya.

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 have actively begun marketing advertising and sponsorship programs to potential political advertisers.

Sponsored Stories on Facebook 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 argues, in a recent 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.

Today, 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.

According to a May 2011 report by ComScore, Facebook accounted for approximately 31.2% of overall US ad impressions (346.4 billion impressions) in the first quarter of 2011, an increase from up from 25.9% in the fourth quarter of 2010 and 15.6% in Q1 2010. Facebook has been projected to exceed 1 trillion impressions served in the year.

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<sup>10</sup> <http://goo.gl/S7rNf>

The Facebook “Like” button has been incorporated into the Facebook experience and across third-party sites as a means to further engage and leverage the power of social networks to influence increasingly large groups within social groups.

Sponsored Stories only recently launched as an option for advertisers, 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.

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<sup>11</sup>. Twitter recently announced that they currently have 1600 advertisers<sup>12</sup> using their direct platform to engage advertisers, an increase of 1,000 more advertisers in just 4 months time. In recent weeks, Twitter has formally announced plans to sell sponsored tweets and advertisements to political campaigns.<sup>13</sup> Research indicates that political campaigns are a boon to broadcasters.<sup>14</sup> The same should be expected for Twitter.

Not to be out-done Google has launched Google+, a social network based on the Google network. In the first month the network attracted 20 million users.<sup>15</sup> Initially the network was open only to individuals. However, Google has just launched Google+ Pages for corporations, brands, organizations and other entities.<sup>16</sup> Entities supporting candidates are beginning to establish presences on the site.<sup>17</sup>

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 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 recent survey, 72 percent (72%) of companies in the United States have a social media marketing strategy.<sup>18</sup> 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.<sup>19</sup>

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

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<sup>11</sup> [http://www.mediabistro.com/alltwitter/promoted-tweets-went-from-6-to-over-600-advertisers-in-one-year\\_b9911](http://www.mediabistro.com/alltwitter/promoted-tweets-went-from-6-to-over-600-advertisers-in-one-year_b9911)

<sup>12</sup> <http://techcrunch.com/2011/10/04/twitter-now-has-1600-advertisers/>

<sup>13</sup> <http://www.politico.com/news/stories/0911/63985.html>

<sup>14</sup> <http://www.hollywoodreporter.com/news/moodys-predicts-record-political-ad-203711>

<sup>15</sup> <http://www.mashable.com/2011/07/22/google-plus-numbers/>

<sup>16</sup> [http://www.readwriteweb.com/archives/google\\_leaks\\_its\\_own\\_brand\\_page\\_now\\_unavailable\\_sc.php](http://www.readwriteweb.com/archives/google_leaks_its_own_brand_page_now_unavailable_sc.php)

<sup>17</sup> <https://plus.google.com/100261968802862189375/posts>

<sup>18</sup> <http://www.kingfishmedia.com/Portals/51063/pdf/kfm-social-media-usage-2010.pdf>

<sup>19</sup> <http://pewresearch.org/pubs/2025/social-impact-social-networking-sites-technology-facebook-twitter-linkedin-myspace>

quarter of 2010 and accounted for 31.2% (nearly one-third) of all display ad impressions served by online publishers overall in the quarter.<sup>20</sup>

Social networks and communications have proven highly effective for advertisers who rely increasingly on social media to connect with consumers and influencers.<sup>21</sup> 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 Commission has revised the Guides for Testimonials and Endorsements as a result of these changes to include social media and Internet channels specifically.

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. Plans for the release of Google+ for advertisers are about to be released and other platforms are sure to follow.

Today, 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.

The Facebook “Like” button and Google+1 features have been incorporated not only into the interactive experience on their respective web sites, but also across third-party sites as a means to further engage and leverage the power of social networks to influence increasingly large groups within social groups. Currently, for a user with a material connection, there is no provision to indicate that connection within the related posts, news feeds that contain the message that the user “likes” the brand or in third party sites where the message is syndicated.

Similarly, both Facebook and Twitter 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. 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.

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<sup>20</sup> [http://www.comscore.com/Press\\_Events/Press\\_Releases/2011/5/U.S.\\_Online\\_Display\\_Advertising\\_Market\\_Delivers\\_1.1\\_Trillion\\_Impressions\\_in\\_Q1\\_2011](http://www.comscore.com/Press_Events/Press_Releases/2011/5/U.S._Online_Display_Advertising_Market_Delivers_1.1_Trillion_Impressions_in_Q1_2011)

<sup>21</sup> [https://www.borrellassociates.com/reports?page=shop.product\\_details&flypage=garden\\_flypage.tpl&product\\_id=885&category\\_id=6](https://www.borrellassociates.com/reports?page=shop.product_details&flypage=garden_flypage.tpl&product_id=885&category_id=6)



## 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. More recently, CMP.LY has announced the development of solutions addressing disclosure requirements for regulated industries including financial services (under SEC and FINRA) and healthcare/pharma (under FDA).

We have developed a universally standardized and simple solution, which provides detailed and documented disclosures in the space constrained environments of Twitter, Facebook, Fourquare, 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.

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, 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 indicate to a user, before clicking the link, that disclosure or legal language applies, in addition to the type of disclosure that is referenced, by a standardized framework of designated numbers and letters.

We recently 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 are also used to indicate disclosures and add context to a particular disclosure. These icons are embedded as visual elements in a page, using our URL coding system to uniquely identify users, programs and policies 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.

Recently, Nancy Scola of The Atlantic identified the growing use of hashtags as a emerging form of political communication.<sup>22</sup> 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.”

<sup>22</sup> <http://www.theatlantic.com/politics/archive/2011/11/how-the-hashtag-became-a-campaign-battleground/247488/>

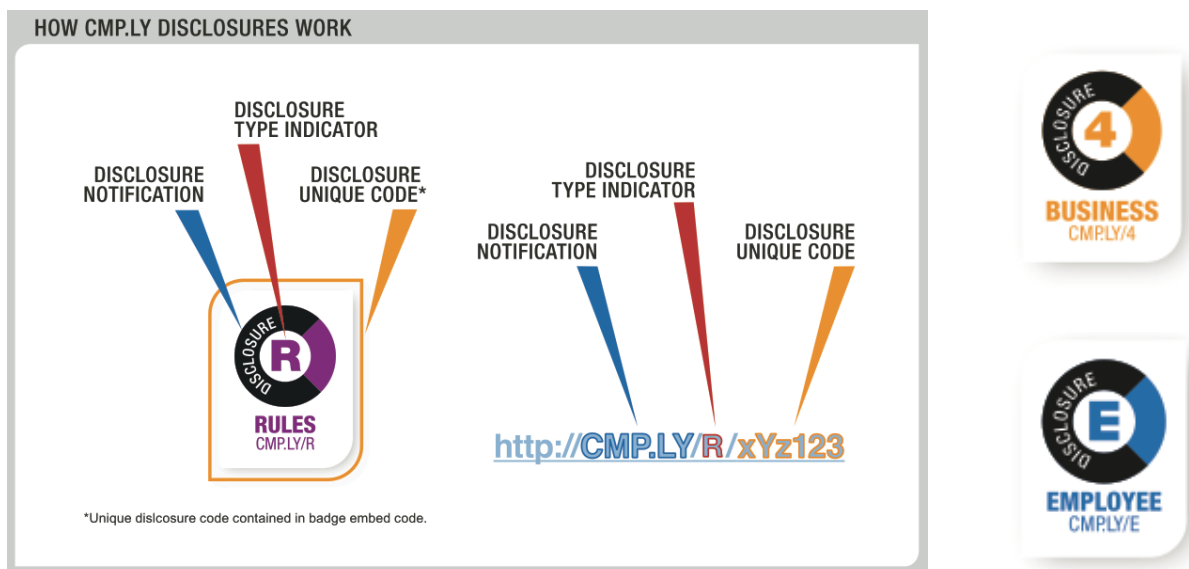
While there are currently no other commercial solutions providing short-form compliance tools for advertisers, it is likely that other solutions will develop and a standard will emerge from the free market to address the numerous regulatory disclosure requirements that exist today, as well as those that 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 be dependent upon standardization across these platforms in order to ensure that disclosure appeared as intended to the readers of that content. 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.

## **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.

As we have outlined, 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. 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.

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.

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: Christopher Hughley, Acting General Counsel  
Each Commissioner