

The 2016 election has demonstrated that it remains crucial to provide the electorate with facts so that they can become informed and better evaluate candidates. Though Internet disclaimers might not resolve the issue of misinformation, see Kate Rogers & Jonah Engel Bromwich, *The Hoaxes, Fake News and Misinformation We Saw on Election Day*, N.Y. Times, Nov. 8, 2016, <http://www.nytimes.com/2016/11/09/us/politics/debunk-fake-news-election-day.html>, those disclaimers would allow voters to measure communications for bias. Candidates communication has moved sharply into the Internet and social media. Voters increasingly receive their information from sources like Facebook and Twitter. The rules on communication disclaimers ought to reflect that shift.

Making Disclosures in Character-Limited Communications Clear and Conspicuous

To respond to recent changes in technology and how the electorate receives information, the Commission should broaden the clear and conspicuous requirement at 110 C.F.R. 110.11(c)(1). As the Advance Notice of Proposed Rulemaking recognized, character-limited communications make it difficult to comply with the rule and remain within the limit. While a requirement that a rollover or hovering feature has been suggested, see 76 F.R. 63569, such a feature would not meet the spirit of the rule of giving the voter adequate notice. The user would have to rest their cursor over the communication for a short time; if the user did not know to await the hidden notice, it would be useless. Instead, when the communication involves character-limited text, there should be an embedded hyperlink to the creators website, which would contain a more complete disclaimer. Rather than be hidden, the hyperlink should be clear and conspicuous clearly indicating that the text is hyperlinked, perhaps through a different font color and being underlined. The link alone would provide insufficient information to meet the formal disclaimer requirements, but the website to which the user is directed would provide a complete disclaimer.

Ensuring the Rules Flexibility

Since technology rapidly changes, and therefore the methods by which candidates communicate with the electorate change, the Commissions rules should reflect a more flexible approach. The hyperlink suggestion above may not cover future technologies. The rules should stress the adequate notice rationale and provide that, where a full disclaimer is impracticable, the Internet communication must sufficiently put the user on notice and direct the user to a complete disclaimer. This approach gives the industry itself the latitude to find solutions while ensuring that disclaimer requirements are met.

Comments provided by :
Peters, Jesse