



November 9th, 2017

Submitted Electronically (<http://www.fec.gov/fosers>)

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

RE: Comments on Notice 2017-12, Internet Communications Disclaimers

Dear Mr. Stipanovic:

The Center for American Progress commends the Federal Election Commission for reopening discussion on disclaimers for online political advertising in the Advanced Notice of Proposed Rulemaking (AMPRM) 2017-12, published at 86 Fed. Reg. 46937 (Oct. 10, 2017). CAP supports a rulemaking which would help prevent foreign influence, make funding behind political messages more transparent, and extend requirements that are already in place for advertisements on television, radio, and most other media.¹

I. The shift from traditional media

The political advertising landscape has changed significantly in the past decade. In the 2012 U.S. election, only 1.7 percent of funds for political advertising were spent on advertisements online.² By 2016, that percentage increased almost eight times to 14.4 percent.³ Furthermore, total spending on digital media rose from \$22 million in 2008⁴ to nearly \$1.5 billion during the 2016 election cycle⁵—a 68-fold increase. Disclaimer rules were written in a media landscape dominated by television, but we may soon be in a media environment where most political advertising is online.⁶

II. The increased risk of foreign influence and misinformation online

As the number of online political ads has increased, however, disclosure and disclaimer requirements have lagged behind—creating a vulnerability which was exploited in the last U.S.

¹ 52 U.S.C. § 30101(22).

² Borrell Associates, “What Happened to Political Advertising in 2016 (and Forever)” (2017), available at <https://www.borrellassociates.com/shop/the-final-analysis-political-advertising-in-2016-detail>.

³ Ibid.

⁴ Cotton Delo, “Super PACs Could Drive Total 2012 Election Spending to \$9.8 Billion,” *Ad Age*, March 7, 2012, available at <http://adage.com/article/campaign-trail/total-2012-election-spending-hit-9-8b/233155/>.

⁵ Borrell Associates, “What Happened to Political Advertising in 2016.”

⁶ Colin Stretch, Testimony before the U.S. Senate Select Committee on Intelligence, “Open Hearing: Social Media Influence in the 2016 U.S. Elections,” November 1, 2017, available at <https://www.intelligence.senate.gov/sites/default/files/documents/os-cstretch-110117.pdf>.

election. The Russian government placed ads on a range of online platforms, ads whose origin technology giants like Facebook, Google and Twitter all failed to detect. This September, Facebook admitted that a Kremlin-linked group purchased \$100,000 of political ads on its platform—3,000 ads total, reaching 11.4 million users.⁷ Google also found evidence of tens of thousands of dollars of Russian ad buys on sites such as YouTube, Gmail and Google search.⁸ Twitter disclosed that it had found 2,752 suspicious Russian accounts in addition to Russian ads targeted at U.S. audiences.⁹ Senator Mark Warner, the Vice Chairman of the U.S. Senate Select Committee on Intelligence, believes there are likely to be many more.¹⁰

While it is true that these advertisements were only one part of the Russian interference effort, it is now clear that the ads, posted anonymously, were used to promote divisive content and to attempt to influence the outcome of the election.¹¹ Facebook General Counsel, Colin Stretch, acknowledged that on their platforms alone, 80,000 posts were seen by approximately 150 million American users.¹² As the Chairman of the Intelligence Committee, Senator Richard Burr stated, “this is about national security … [and a] deliberate and multifaceted manipulation of the American people by agents of a hostile foreign power.”¹³

III. The benefits of FEC action

Unfortunately, the absence of clear guidance regarding disclaimer requirements for online advertisements has provided a haven for well-funded interests, including foreign governments, to anonymously influence elections. Fortunately, the FEC has ample authority to issue clear guidance requiring disclaimers on online ads.¹⁴ And voices on both sides of the political spectrum, and even in the technology industry itself, have acknowledged a need for that change. In last week’s hearing, Chairman Burr stated in closing that exemptions argued for by Google and Facebook to the Commission in 2010 and 2011 respectively should no longer stand,¹⁵ and representatives of Facebook, Google and Twitter seemed to agree.¹⁶

To some extent, these companies have already taken steps toward proving more transparency for online political ads. While we commend those efforts, they are no substitute for action by the FEC. Such efforts vary from one company to another, with no consistent

⁷ Jacob Kastrenakes, “Facebook Showed Russia’s Election Ads to 10 Million People,” *The Verge*, October 2, 2017, available at <https://www.theverge.com/2017/10/2/16405974/facebook-russian-election-ads-10-million-viewers>.

⁸ Elizabeth Dwoskin, Adam Entous, Craig Timberg, “Google Uncovers Russian-bought Ads on YouTube, Gmail and Other Platforms,” *The Washington Post*, October 9, 2017, available at https://www.washingtonpost.com/news/the-switch/wp/2017/10/09/google-uncovers-russian-bought-ads-on-youtube-gmail-and-other-platforms/?utm_term=.6a6dff4904e6.

⁹ Sean Edgett, Testimony before the U.S. Senate Select Committee on Intelligence, “Open Hearing: Social Media Influence in the 2016 U.S. Elections,” November 1, 2017, available at <https://www.intelligence.senate.gov/sites/default/files/documents/os-sedgett-110117.pdf>.

¹⁰ U.S. Senate Select Committee on Intelligence, *Open Hearing: Social Media Influence in the 2016 U.S. Elections*, 115th Cong., 1st sess., 2017, available at <https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections>, at 00:31:42 – 00:34:56.

¹¹ Ibid.

¹² Ibid. at 01:12:30.

¹³ Ibid. at 00:23:15 – 0:24:37.

¹⁴ 11 C.F.R. § 110.11.

¹⁵ U.S. Senate Select Committee on Intelligence, *Open Hearing: Social Media Influence in the 2016 U.S. Elections*, at 03:05:22.

¹⁶ Ibid. at 01:58:17.

mechanism for enforcement and no meaningful guidance for new entrants. Clear and consistent rules should be in place for all technology companies, to ensure adequate transparency both now and in the future.

The FEC's rulemaking cannot address all aspects of this problem. For example, many of the Russian ads contained divisive-issue based messages without reference to a candidate or political party, and such ads would likely need to be addressed in new legislation. However, the Commission has an important role to play, one which it cannot defer to Congress. It is the Commission's responsibility to ensure that the campaign finance laws already in place are adequately implemented and enforced, and that includes the critical rules that provide for disclaimers on political ads.

IV. Conclusion

Efforts to influence elections will increasingly be fought online. Disclaimers, both on traditional media and on the internet, are a critical tool to help the American people know who is attempting to sway their vote. By taking action, the Commission can not only help to protect our elections from foreign adversaries, it can enhance the openness of our political debate. Voters have a right to know who is paying to influence their political decisions. Therefore, we strongly encourage the Commission to begin a rulemaking to revise its regulations concerning online disclaimers, and to require such disclaimers for online communications.

We appreciate the opportunity to submit these comments.

Sincerely,

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