

BMore Indivisible

November 9, 2017

U. S. Federal Elections Commission
Submitted electronically through www.regulations.gov

Re: Internet Communication Disclaimers; Reopening of Comment Period

FEC-2017-0067-0001

BMore Indivisible is a group of more than 70 residents of Baltimore City, Maryland. BMore Indivisible seeks to ensure that the federal government acts in ways that benefit our community rather than harm it. Our members include scientists, environmentalists, business people, teachers, doctors, lawyers, and families with small children.

We strongly support the beginning of a rulemaking process by the Federal Election Commission to revise its regulations concerning disclaimers on certain internet communications.

Specifically, for internet advertising which advocates the election or defeat of a federal political candidate or causes, disseminated or accessed on web sites, through an app, or sent by email, by text message, by Twitter, or by similar mass electronic media, we strongly support inclusion of a disclaimer disclosing the:

- Identity of the person, organization or group who paid for the advertisement
- Where applicable, whether the advertisement was authorized by the candidate

In addition, for internet advertising which solicits contributions for federal candidates or causes, accessed or disseminated on web sites, by apps, by email, by text messages, by Twitter, or by similar mass electronic media, we strongly support inclusion of a disclaimer disclosing the:

- Identity of the person, organization or group who paid for the advertisement
- Where applicable, whether the advertisement was authorized by the candidate

Americans increasingly receive their information about political issues and candidates online. Changes in digital communications have far outpaced FEC regulations. While only 18 percent of Americans cited the internet as their primary news source in the 2004 election, 65 percent of Americans identified the internet as their leading source of information in 2016, according to Pew Research. The FEC has required television and radio ads to include disclaimers for decades, but its transparency rules are extremely outdated—the agency still has rules related to telegrams and typewriters.

Now is the time to update FEC regulations to apply political advertising disclaimer rules to:

- Web sites and content
- Apps
- Email
- Text Messages
- Tweets/Twitter
- Instagram
- Reddit
- Online Chat
- Message Boards
- And other related internet advertising

Further, the FEC must write its new regulations in anticipation of evolving technologies.

The 2016 presidential election demonstrated an urgent need for updated FEC rules for disclaimers in online electronic advertising. First, an unprecedented amount was spent by legitimate candidates for office and their associated PACs. Approximately \$1 billion was spent on digital advertising in the 2016 election cycle. Facebook emerged as a major source of campaign spending; the Trump campaign “embraced Facebook as a key advertising channel in a way that no presidential campaign has before,” to cite just two examples. American voters were completely uninformed about the sponsorship of this advertising. In future elections, the use of internet and app advertising will only increase.

<http://www.campaignlegalcenter.org/news/press-releases/federal-election-commission-must-update-rules-reflect-today-s-internet-use>

In an unprecedented crisis for US democracy, Russian actors placed social media advertisements on Facebook, Google, Reddit, Instagram—even exploiting Pokémon Go—to manipulate American voters. As disclosed in Congressional hearings, this propaganda effort reached at least 150 million Americans directly and then was magnified through countless re-postings and re-Tweets. The Russian effort successfully pitted our citizens of different political views against one another, all without their knowledge. Why? Because no advertising disclosures and disclaimers were required as is routine under FEC rules for conventional media: TV, radio, and newspapers.

<https://www.nytimes.com/2017/10/30/technology/facebook-google-russia.html>

In the past, technology and social media companies have argued that it is not feasible to implement political advertising disclaimers, particularly for “small items.” This was, likely not the case in the past, and is certainly no longer the case. One company, Twitter, which faces the particular challenge of making disclaimers on “small items,” has recently announced its innovative approach.

Twitter will begin to provide more complete information about political advertisements that run on the its platform, including who is funding them and whom they are aimed at.

The company will launch its “transparency center,” which will include details on the ads. "In the coming weeks, we will launch an industry-leading transparency center that will offer everyone visibility into who is advertising on Twitter, details behind those ads and tools to share your feedback with us," the company said announced to its users.

According to Twitter, election advertisements will have a uniform look, and Twitter will provide information on the advertiser, including the audience being targeted, and the total money being spent on the media platform. To make it clear when the viewer is seeing or engaging with an electioneering advertisement, the company will require that electioneering advertisers identify their campaigns as such.

In its company blog post, Twitter said, “Electioneering ads are those that refer to a clearly identified candidate (or party associated with that candidate) for any elected office. To make it clear when you are seeing or engaging with an electioneering ad, we will now require that electioneering advertisers identify their campaigns as such. We will also change the look and feel of these ads and include a visual political ad indicator.”

Twitter committed to a similar approach for political issues advertisements.

These steps by Twitter are significant, not just for a single company, but because they demonstrate one solution to the challenge of “small item” disclaimers. Others exist. American voters need the FEC to require “small item” disclaimers for all political advertising on the internet, as well as for apps.

<https://www.cbsnews.com/news/twitter-to-label-political-ads-and-create-transparency-center/>

https://blog.twitter.com/official/en_us/topics/product/2017/New-Transparency-For-Ads-on-Twitter.html

In addition to consideration of advertising disclaimers on “small items,” the FEC must also apply the same disclaimers rules to both web advertising and apps. This is a key evolution in technology that effects FEC rules.

Digital political ads are increasingly viewed on apps rather than a browser window: \$1 billion was spent on digital advertising in the 2016 election cycle, about half of which went towards mobile and social ads. As noted, in 2016 Facebook emerged as a major source of campaign advertising with one national political committee increasing its presence on the medium by 1,500 percent. Almost 60 percent of Facebook users access the social network exclusively from the Facebook app. The FEC has the opportunity to make clear that political advertising disclaimers are required on apps.

<http://www.campaignlegalcenter.org/news/press-releases/federal-election-commission-must-update-rules-reflect-today-s-internet-use>

Although Google has taken its steps toward political advertising disclaimers without FEC regulation, neither the American people, nor the FEC cannot rely on all technology and social media companies to do the same. Consider the history.

Google successfully gained agreement with the FEC for the “small item” exemption in 2010. In 2011, Facebook took the exception a step further, arguing that small online election ads should not even be required to include a link to a landing page with a disclaimer. Then, Facebook assumed it would face no penalties for running ads without links to disclaimers, which the company did—only to be exposed as the conduit for Russian advertising in the 2016 presidential elections with some of the ads paid for in rubles! CEO Mark Zuckerberg has announced that the company will begin to require disclaimers on political advertising voluntarily. So, Facebook has said that it would regulate itself, nullifying any need for the FEC to update its dated online election advertising rules.

Trevor Potter, a former Republican FEC commissioner, has reminded the FEC and all Americans that Facebook must not be allowed to dictate the parameters of the federal rules that are supposed to regulate the company. “For years, Facebook has pressured the FEC not to extend existing disclaimer requirements to online political ads, which helped create the secrecy that gave rise to foreign interference in the 2016 elections,” said Potter, who is now president of the Campaign Legal Center, a group that advocates for campaign finance reform, in a statement issued after Zuckerberg shared Facebook’s plan for self-regulation.

<https://www.bloomberg.com/news/articles/2017-10-04/facebook-fought-for-years-to-avoid-political-ad-disclosure-rules>

http://www.slate.com/articles/technology/future_tense/2017/10/the_fec_wants_your_opinion_on_transparency_for_online_political_ads.html

Americans are outraged over Russian interference in the democratic process of our 2016 presidential election which has undermined the confidence of our citizens in this fundamental function of our government. They are even more outraged that several social media companies realized that Russia was manipulating our free and fair election process—but did not quickly come forward and publicly announce this. Then, the companies had to be compelled to give forthcoming and complete Congressional testimony about Russian political advertising, revising their testimonies several times. (See the Facebook-Twitter-Russia Timeline below.)

Although Congress is considering several bills to require political advertising disclosures and disclaimers, the bill pending in the Senate would only cover ads bought by an entity that spends more than \$10,000 on online ads. In September, Facebook said that of the \$100,000 likely Kremlin-backed political ads it ran last year, 50 percent cost the advertiser less than \$3, and for

99 percent of the ads, less than \$1,000 was spent. This means that many small groups would still be able to buy a substantial number of ads without adequate scrutiny.

Given the history of technology and social media companies—and their nearly total reliance on advertising for corporate profits—the American people and the FEC cannot rely on them to regulate themselves when it comes to disclosing the source of political advertisements. Legislative action is uncertain and may be incomplete. The FEC must act to fully regulate internet political advertising disclaimers.

<https://www.nbcnews.com/news/us-news/google-facebook-twitter-russia-timeline-16-election-n816036>

Candidates and political organizations are also motivated to take advantage of every possible internet advertising loophole. For example, campaign finance attorney Robert Kelner told the Washington Post earlier this year that “it would arguably be political malpractice” not to advise clients that they may push the legal envelope. Candidates and campaigns, as well, must have the regulatory guidance and restraint of the FEC with respect to advertising disclosure on the internet.

Knowledge of the sponsorship and funding of internet political advertising is essential to American citizens in making informed evaluations of its content and reliability. Providing disclaimers of internet and app advertising is an extension of the role the FEC has historically performed for traditional media. Online media advertising transparency is increasingly essential as Americans turn to the internet as their primary source of information.

The consequences on the 2016 presidential election of the undisclosed internet political advertising internet by Russian directed organizations is being investigated and is still not fully understood. The disruption and divisiveness caused by the actions of America’s principle enemy are increasingly clear—and demonstrates the enormous risks to our democracy. As a country, America must not tolerate these risks to its democratic system in future elections. Its citizens must have a clear understanding of who is sponsoring internet political advertising, whether a political candidate, national political party, PAC, corporation, union, trade association—or foreign government.

The FEC, consistent with its mission to provide transparency in elections, must provide consistent implementation of political advertising disclaimers on the internet.

In sum, BMore Indivisible strongly urges the Federal Elections Commission to begin a rulemaking process to revise its regulations concerning disclaimers on certain internet communications for advertising which advocates the election or defeat of a federal political candidate or cause to include a disclaimer disclosing the: identity of the person, organization or group who paid for the advertisement and, where applicable, whether the advertisement was authorized by the candidate. Further, we strongly urge the Federal Elections Commission to begin a rulemaking process to revise its regulations concerning disclaimers on certain internet advertising which solicits contributions for federal candidates or causes to include a disclaimer

disclosing the identity of the person, organization or group who paid for the advertisement and, where applicable, whether the advertisement was authorized by the candidate. Specifically, the disclaimer should disclose the identity of the person, organization or group who paid for the advertisement and, where applicable, whether the advertisement was authorized by the candidate. Our democracy and our citizens will benefit greatly from the thoughtful and prudent actions of the FEC.