

BEFORE THE
SUBCOMMITTEE ON INFORMATION TECHNOLOGY
OF THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

HEARING ON
OVERSIGHT OF FEDERAL POLITICAL ADVERTISEMENT LAWS AND
REGULATIONS

OCTOBER 24, 2017

TESTIMONY OF
RANDALL ROTHENBERG
PRESIDENT AND CEO
INTERACTIVE ADVERTISING BUREAU

Chairman Hurd, Ranking Member Kelly, and Members of the subcommittee, thank you for the opportunity to testify today. I would like to get straight to the point: Throughout my 11-year tenure, the Interactive Advertising Bureau has always stood for greater transparency and disclosure in the digital advertising supply chain, regardless of whether the ads are political or commercial, because we believe transparency and disclosure are necessary for consumer safety and brand safety. Today's hearing focuses on a specific area where such transparency and disclosure is essential: our elections. The problems of undisclosed foreign influence in our last election demonstrate the need for greater transparency and disclosure in digital advertising, and we strongly support efforts by this Congress and the Federal Election Commission to clarify, reconcile, and strengthen the disclosures required of political parties, candidates, and campaigns.

But as a representative of the economy's fastest-growing, most innovative, and most dynamic sector, IAB also believes that our industry itself can take more responsibility and go even further to implement supply-chain protections that would fortify the trustworthiness of digital advertising and media, in political advertising and non-political advertising alike.

IAB has a proven track record of taking responsibility and implementing it across our 650-plus member companies. Together with our partner associations the Association of National Advertisers, the American Association of Advertising Agencies, the Data & Marketing Association, and the Council of Better Business Bureaus, we have created some of the media industry's strongest self-regulatory mechanisms – programs that have been lauded by the White House, the Commerce Department, and the Federal Trade Commission. Through the Digital Advertising Alliance's YourAdChoices privacy program and the Trustworthy Accountability Group's anti-fraud registry and auditing program, we have provided consumers more insight into and control over their personal data flows in digital advertising environments, and we have worked closely with U.S. and overseas law enforcement bodies to root fraud and other criminal activity from ad-supported digital media. Another coalition in which we are a partner, the Advertising Self-Regulatory Council, provides strong oversight of advertising content, particularly in children's advertising, retail advertising, and e-commerce.

Our long experience with the vast, diverse, innovative, and untidy world of advertising and media persuades us that in this industry, as in many others, there is a role for Government regulation to assure the safety and security of consumers and the economy alike. But Government alone will not create greater transparency and safety in digital advertising environments. Real reform, durable reform, can only happen when the digital advertising community adopts tougher, tighter controls for who is putting what on – and underneath – its sites.

Ten months ago, I stood in front of 1,200 of my industry's most senior executives. With talk of "fake news" swirling around the room, I opened my comments with this admonition:

“There’s a linear connection between fake news and those trolls of digital marketing and media: click fraud, fraudulent non-human traffic, and the sources of ad-blocking. Each represents the failure of our supply chain – the same kind of supply chain failure we at IAB and our members have dealt with repeatedly and successfully over the years.”

“If you do not seek to address fake news and the systems, processes, technologies, transactions, and relationships that allow it to flourish, then you are consciously abdicating responsibility for its outcome – the depletion of the truth and trust that undergird democratic capitalism.”

I urged our member companies and other stakeholders in the marketing-media ecosystem to use common sense, technology systems, human oversight, and cross-industry self-regulation to police their own precincts – and their suppliers’ trustworthiness.

“You wouldn’t want your daughter to ride in a car made with faulty tires.” I said. “You wouldn’t want your son to breakfast on a cereal sourced from bacteria-riddled grains. Then you shouldn’t abet the creation, distribution, or monetization of untruthful, dangerous falsehoods to other people’s sons and daughters.”

Ten months later, we welcome the Congress’s recognition of this same problem. But I want to urge you to think about it as broadly as we do. For the question is not merely how we get rid of illicit foreign influence in paid campaign advertising. It is how we create conditions for greater transparency, safety, and trust for all citizens for whom the advertising-supported internet is a necessary instrument in their daily lives.

Today’s hearing looks specifically at the FEC and how it has dealt with online advertising. It is occurring in the context of understanding foreign influence in the last election. From what we know today – and I want to be clear that IAB only knows what we have been reading in the newspapers – much of what apparently occurred was not what anyone would consider traditional political advertising. There were not a bunch of secretive Russian moles purchasing “Vote for Trump” banner ads on carefully chosen web sites, nor pseudonymous Kazakh cells buying “Hillary for President” pre-rolls on digital video platforms. Rather, there were sophisticated posts about social and political issues, some of which were made more widely available because the operators paid for their posts to be more prominently featured in peoples’ social media feeds.

This is important because it illustrates the opportunities for FEC reform, as well as the limitations. The FEC’s rules apply only to certain kinds of communications. Since its passage in

1971, the Federal Election Campaign Act has mandated disclaimers on all political advertising that expressly advocates the election or defeat of a candidate.

If you pay for an ad online that expressly advocates for candidates in this way, that ad is supposed to have a disclaimer on it saying who paid for it. There have been questions about how certain small ads are treated in the past, and this is part of what the FEC is considering in its rulemaking. We fully support modernizing, clarifying, and reconciling any contradictions in these rules – as many states have already done with respect to their electoral advertising rules – to require click-through, hover over, and similar types of disclosure. Enhancing the existing framework by clarifying the responsibility of publishers, platforms, and advertisers in making available these disclosures to the public would create greater legal certainty across the industry and provide valuable information for FEC investigations.

But the “fake news” and “fake ads” at the center of the current storm did not engage in such overt candidate support. So they were not, and based on current Supreme Court jurisprudence will not, be regulated under the Federal Election Campaign Act. Some of the compromised, controversial communication was indeed paid for, but inasmuch as it contained commentary, and even outright falsehoods, about social conditions and political debates, such “social influence advertising” falls well outside the scope of Federal campaign disclosure rules.

And some of the scandalous messaging was not even placed for payment. The FEC has taken a measured approach to this sort of unpaid online activity, because it recognizes the First Amendment rights of Americans to shout on street corners, put signs on their lawns, send letters to the editor, write blogs, post on social media, and email their friends and family without registering as a political committee or reporting how much they spend on postage, plasterboard, megaphones, computers or smart phones. Political speech is the most protected form of speech, because the founders considered robust dialogue among different parties and factions central to our representative democracy. The courts, up to and including the Supreme Court, have accorded ever-stronger protections to political speech over the years. The Supreme Court has limited the scope of the Federal Election Campaign Act to express advocacy. As much as we might dislike it, propaganda is protected speech – because from Tom Paine to Martin Luther King, we have understood that one American’s propaganda is another American’s principled faith.

There is one more complex challenge in extending current disclosure rules to the internet. The traditional regulations from the FEC and the FCC require disclosure by campaigns, and by the media running the ads – for these are the media receiving the insertion orders and payments for those ads. In that world, the media are in full control. They sell the ads, vet the ads, and run the ads; indeed, no programming of any sort runs in a magazine or on a television network that hasn’t been reviewed and approved by those companies.

In the digital world, every page is cobbled together from multiple sources, and assembled on the fly inside a user's internet browser. Articles, videos, audio, advertising, sponsored links, native ads, social commentary, and branded content can come together from scores of server computers; underneath the visible page, scores of other suppliers may be contributing measurement, ad verification, optimization, and auction pricing services. Only a small portion of the advertising is directly sold by publishers. The greater portion is sold and distributed by third-party technology companies, which do their work via automated systems – “programmatically,” in industry parlance. Legislative proposals that would require web sites to field expensive disclosure mechanisms create expensive burdens on struggling news organizations, yet would barely capture the bulk of the illicit political advertising, which is placed programmatically.

In short, while we support greater transparency in paid political and issue advertising online, we believe that legislation alone will be unable to address the underlying need for greater transparency in the digital advertising industry without falling afoul of two centuries of First Amendment history and court decisions. Robust political speech – no matter who is paying for it, no matter how controversial it is, no matter who may be offering it – is the essence of American democracy, and must not be stifled.

Yet at the same time, we must offer consumers and our economy protection from bad actors. The digital advertising industry doesn't just want to prevent bad ads from ending up on good sites; we also want to prevent good advertisers from ending up adjacent to (and inadvertently providing financial sustenance for) Isis recruiting videos. This is why we would like the Congress's support for strengthening the self-regulatory mechanisms we already have built – and continue to build – by which digital media companies will police their supply chains for bad actors, and provide greater transparency into who is putting what into their sites. We can monitor the financing chain, whether the paid support takes the form of conventional advertising, or whether it shows up in more contemporary or unfamiliar forms and formats, such as native advertising and branded content.

Certainly, all industry participants must work with the U.S. government in its mission to enforce existing laws relating to political advertising, such as those that prohibit foreign interference in U.S. elections. But our industry standards can be tough, encompassing speech that may be legally permitted, but nonetheless offensive to common-sense norms. Our disclosure mechanisms can follow the money closely and carefully and attack the problem at its roots.

Our self-regulatory approach already works to assign responsibility across the supply chain, as no one party in the ecosystem is capable of addressing this problem alone. Advertisers must have the responsibility of providing accurate disclosures. Publishers and platforms must disclose

information provided by advertisers. And all must work together to patrol the infrastructure of internet advertising, and make sure that bad ads don't end up on good sites, and good ads don't end up on bad sites.

As Congress considers its involvement in this area, it should examine closely the digital advertising industry's successful implementation of consumer transparency and choice mechanisms that have helped inform consumers of the origin of the ads they see, while protecting our constitutional right to free speech and enabling continued innovation in the internet ecosystem.

Thank you for the opportunity to appear before you today. I am committed to working with this Committee and all members of the online ecosystem to solve the pressing challenges we are discussing, and assure that our democratic institutions can flourish unimpeded.