



November 10, 2017

Via electronic filing: www.fec.gov/netdisclaimers

Federal Election Commission
Attn: Neven F. Stipanovic
Acting Assistant General Counsel
999 E Street, NW
Washington, D.C. 20463

Re: FEC RULEMAKING 2011-02: Internet Communication Disclaimers

Dear Mr. Stipanovic:

The Interactive Advertising Bureau (“IAB”) appreciates the opportunity to provide comments on the Federal Election Commission’s (“FEC” or “Commission”) Advanced Notice of Proposed Rulemaking on Internet Disclaimers (“Rulemaking”).¹ The IAB and its member companies are firmly committed to a transparent, web-based advertising ecosystem. In furtherance of this commitment, the IAB urges the Commission to update its internet disclaimer requirements to account for advances in modern technology. The IAB also welcomes the opportunity to work closely with the FEC and our member companies to improve disclosures for election advertising across the digital advertising industry.

I. THE INTERACTIVE ADVERTISING BUREAU

Founded in 1996, the IAB empowers the media and marketing industries to thrive in the digital economy. The IAB’s members include more than 650 leading media and technology companies involved in all aspects of digital advertising or marketing campaigns. Together, the IAB members collectively account for 86 percent of U.S. online advertising.

The IAB educates policymakers, consumers, marketers, agencies, media companies and the wider business community about the value of interactive advertising. Working with its member companies, the IAB evaluates and recommends standards and practices and fields critical research on interactive advertising. In addition, the IAB fosters self-regulatory approaches to critical issues facing participants in today’s internet marketplace.

¹ Internet Communication Disclaimers: Reopening of Comment Period, 82 Fed. Reg. 46937 (Oct. 10, 2017).

II. THE FEC SHOULD UPDATE ITS REGULATIONS TO INCORPORATE TECHNOLOGICAL ADVANCES FOR ALTERNATIVE DISCLAIMERS

The Commission asks whether there have been technological advances since the 2006 Internet Regulations that would make the use of a disclaimer easier. There have been significant technological advances since 2006, and compliance with FEC disclaimer rules can be made much easier if the Commission enables the use of technological alternatives to deliver disclaimers. Other means of advertising, such as print, newspaper, and radio, essentially deliver content in the same format today as when the FECA was passed in 1971. But internet advertising is different. Its format is constantly reinvented as technology is harnessed to deliver content in new ways. FEC regulations regarding disclaimers should recognize this difference and be written in a way that makes compliance easy, no matter what form new online advertising may take.

As the Commission notes, states like California have provided for other methods of displaying a disclaimer than on the ad itself. The two most common methods used are rollovers that display the required disclaimer and a click-path which leads to a landing page that displays a compliant disclaimer.

In limited circumstances, such as when the Commission concluded that an online advertisement fell within the “small ads” exception, the FEC has recognized that alternative internet disclaimers using technological advances complied with FEC disclaimer requirements. For example, the FEC’s Google Advisory Opinion (2010-19) allowed for the use of a click-path to a landing page with the appropriate disclaimer.²

The *ad hoc* use of Advisory Opinions to approve or disapprove of the use of internet disclaimers has proven to be inefficient. A rulemaking is better suited for identifying the different technological advances that can be used to create alternative disclaimers that are deemed to be in compliance with the disclaimer requirements. The FEC should use this rulemaking to recognize any known alternative means of displaying a disclaimer as compliant with FEC requirements.

These alternative means of displaying a disclaimer do not change its content, but rather utilize technology to adapt a disclaimer’s delivery method to comport with a viewer’s modern-

² But later Advisory Opinions, like the 2011 Facebook (2011-09) and 2013 Revolution Messaging (2013-18), lacked four votes to approve use of alternative disclaimer where FEC could not agree on small ad exception.

day expectations in the digital marketplace. These alternative disclaimers have been used by multiple campaign finance regulators in some form and include:

1. Roll-over displays of the disclaimer;³
2. Click-paths to a landing page that includes a compliant disclaimer;⁴
3. Display of a disclaimer on social media homepages for paid posts from those accounts;⁵ and
4. Other technological advances that incorporate “paid for by” language in internet advertising.⁶

The FEC should also retain flexibility in how a disclaimer is delivered for formats that are character limited, including online advertising formats that are, by their nature, character limited and that link to a website or page that contains a complete and accurate disclaimer.⁷

Adopting regulations that recognize known alternative means of displaying a disclaimer in compliance with FEC requirements would bring the FEC’s internet disclaimers up to speed with today’s technological advances in online advertising.

III. INDUSTRY SHOULD TAKE NEW STEPS TO PROMOTE TRANSPARENCY

The Commission asks whether the internet should be categorically exempt from disclaimer requirements. Such a broad exemption would not likely survive judicial challenge, given the *Shays* litigation that preceded the 2006 Internet Regulations required some regulation of the internet.⁸

The IAB has long supported industry self-regulation as an important means to promote responsible online advertising practices, while allowing the free flow of communication to

³ California and Washington both provide for rollover disclaimers under state law.

⁴ This was approved in Advisory Opinion 2010-19 (Google).

⁵ This was proposed as an alternative by the Democratic Commissioners in the Facebook Advisory Opinion proceeding and in an enforcement matter involving a disclaimer on a Twitter account (MUR 6911).

⁶ Facebook’s proposal of October 27, 2017 includes such a disclaimer, *available at* <https://www.facebook.com/facebook/videos/10156659531526729/>.

⁷ This would include character-limited advertisements, such as Google’s AdWords that was at issue in FEC Advisory Opinion 2010-19. Other character limited online advertisements, such as those on Taboola (limited to 75 characters total for title and text) and Outbrain (limited to 100 characters for title).

⁸ *Shays v. FEC*, 337 F. Supp. 28, 65 (D. D.C. 2004) (concluding that some internet communications could be regulated by the FEC as “general public political advertising,” but that it was for the FEC to determine what types of internet communications fell within that category).

provide valuable, ad-supported products and services to consumers. As the internet advertising industry has demonstrated with programs run by such entities as the Digital Advertising Alliance (“DAA”) and the Trustworthy Accountability Group (“TAG”), self-regulation is another effective means to help promote transparency. The IAB recommends that the Commission look toward the success of the DAA and TAG in the field of online advertising as an example of how government can empower the internet industry to develop and implement a successful self-regulatory model for online advertising.

A. Industry should build on the already proactive efforts by social media companies

Online advertisers understand the importance of protecting the integrity of the supply chain of their advertising product. For example, Facebook, Twitter and Google have recently announced initiatives to improve multiple aspects of their political advertising programs, including enhanced disclaimers. The FEC should encourage similar initiatives by other internet companies and by the online advertising industry as a whole.

i. Facebook

On October 27, 2017, Facebook announced its proposed advertising transparency initiative.⁹ This initiative would require disclaimers and disclosure requirements beyond what is currently required by the FEC disclaimer rules. For example, Facebook’s proposal would now require a “Paid for by” disclaimer on all “election-related” advertising on the platform.¹⁰ And Facebook plans to implement the initiative by the summer of 2018 so that it can be in effect for U.S. midterm elections.

ii. Twitter

On October 24, 2017, Twitter set forth a similar proposal that adopts one of the disclaimer provisions proposed in the Honest Ads Act.¹¹ Twitter’s new initiative would require identification of “political accounts” that clearly identify a candidate (or party) within 30 days of a primary, 60 days of a general election. This mirrors the current electioneering communication requirement for broadcast advertisements and would cover more online

⁹ The Facebook proposal can be found at <https://newsroom.fb.com/news/2017/10/update-on-our-advertising-transparency-and-authenticity-efforts/>.

¹⁰ Although “election-related” was not defined in the proposal, it appears that it would include advertisements beyond those by federal candidates or political committees, as well as those by non-candidate/non-party entities that included express advocacy. Thus, Facebook would require disclaimers on more advertising than is currently required under FEC rules. See 11 C.F.R. § 110.11(a).

¹¹ The Twitter proposal can be found at https://blog.twitter.com/official/en_us/topics/product/2017/New-Transparency-For-Ads-on-Twitter.html.

advertising than the FEC's regulations currently require. It plans to address "issue ads," but notes that there is no clear industry standard with respect to that term, although it plans to work with other stakeholders to develop a clear industry definition.¹²

iii. Google

On October 30, 2017, Google announced a series of efforts to combat abuse of its platforms and improve transparency, accountability, and disclosures around election advertising.¹³ Google's initiative will share the names of advertisers running election-related campaigns across its platforms via the "Why This Ad" icon. It will also introduce a publicly accessible database of election ads purchased on AdWords and YouTube with information about who purchased each ad. Google will also reinforce existing verification programs by requiring that advertisers identify who they are and where they are based before running election-related ads. Google also announced a series of security measures to reduce the risk of digital attacks and combat misinformation.

B. All actors of the internet ecosystem share the responsibility of compliance with disclaimer requirements

The Commission also asks to what extent should internet platforms (*i.e.*, the "broadcasters") bear the cost of compliance, as opposed to the ad purchasers. The analogy to "broadcasters" is not an accurate one, as the internet platforms at issue here have borne the cost of developing their technology from the start, whereas broadcasters are entrusted with the use of the public's airwaves.

It is incumbent on all actors in the industry to work together to ensure a transparent supply chain of advertising on internet platforms. Ad purchasers must be responsible for providing information to internet platforms about the advertiser's identity; the cost of that compliance obligation must be borne by them. Internet platforms must be part of the solution by helping to provide a transparent supply chain, disclosing information about political ads purchased on their platform, and building a trustworthy and positive experience for consumers. Costs associated with ensuring this experience for consumers are borne by platforms.

¹² Twitter also plans to develop a Transparency Center for political ads, which will show: (1) all ads by a political entity currently run on Twitter; and (2) disclosure of spending, identity of advertiser, targeting information, and historical ads.

¹³ Google's proposal is available at https://blog.google/documents/7/google_US2016election_work_going_forward.pdf.

C. Conclusion

The IAB and its member companies are committed to enhancing transparency and accountability in online political advertising. We support the FEC issuing a NPRM to update the FEC's current disclaimer rules. We would also support additional measures such as updating the Foreign National Ban and Foreign Agents Registration Act that would help enhance transparency and trust.

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The IAB appreciates the opportunity to provide comments on the Commission's Internet Disclaimer rulemaking. The IAB and its member companies are committed to transparency in online political advertising, and we look forward to working with the Commission on this important issue. Please contact me at 202-800-0771 with any questions.

Sincerely,

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