



November 1, 2017

Submitted Electronically ([www.fec.gov/netdisclaimers](http://www.fec.gov/netdisclaimers))

Federal Election Commission  
Attn: Neven F. Stipanovic  
999 E Street, N.W.  
Washington, D.C. 20463

**RE: Comments on Notice 2011-02, Internet Communication Disclaimers**

Dear Mr. Stipanovic:

Public Citizen and Free Speech for People respectfully submit these comments in response to the Commission's Advanced Notice of Proposed Rulemaking (ANPRM) 2011-02, the comment period of which has been re-opened due to recent developments. The ANPRM seeks comments on "whether to begin a rulemaking to revise its regulations concerning disclaimers on certain internet communications and, if so, what changes should be made to those rules." 82 Fed. Reg. 46937 (Oct. 10, 2017).

We urge the Commission to proceed with rulemaking to develop disclaimer requirements for campaign ads on the internet that both provides voters with useful information to judge the merits of such ads and makes full use of the internet's unique ability to facilitate communication.

The problem of disclosure for Internet political advertisements predates the 2016 presidential election, but as documentation mounts of recent foreign intervention in U.S. elections through social media, it is with utmost urgency that the Commission should re-evaluate its "restrained regulatory approach" to campaign advertising on the Internet, at least in terms of disclosure.<sup>1</sup> Under 52 U.S.C. 30121 and 11 C.F.R. 110.20, foreign nationals are prohibited from making any donation or disbursement in connection with any federal, state or local election in the United States. Yet, the integrity of the last federal election has been tainted by revelations of extensive Russian meddling through political advertisements on Facebook and other social media in violation of federal law.

Facebook has finally identified 470 inauthentic social media accounts that produced approximately 3,000 political ads at the cost of at least \$100,000 from June 2015 to May 2017 intended to effect the 2016 presidential election. The ad purchases and accounts originated from a Russian "troll farm" known as the Internet Research Agency that operates at the behest of the

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<sup>1</sup> Final Rule, Internet Communications, 71 Fed. Reg. 18589 (April 12, 2006).

Russian government. Another \$50,000 of political ads on Facebook also may have been sponsored by Russian sources.<sup>2</sup> The full extent of Russian intervention in the 2016 presidential election remains under investigation by Special Counsel Robert Mueller, the Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence and other federal investigative authorities.<sup>3</sup>

The Russian political intervention may well have had a significant impact on the outcome of the 2016 elections. A recent survey by the Pew Research Center found that a large majority of American adults – 67 percent – get news on social media and 20 percent do so often. Reddit, Facebook and Twitter social media platforms lead the pack of on-line news sources.<sup>4</sup> Yet, there is very little, if any, disclosure of the sources of this news by the social media platforms, largely removing an important means for recipients of this news to judge its merits. The lack of transparency and accountability allows anyone, including foreign sources, to widely distribute misleading or even false news stories and political ads. The apparent Russian efforts to generate “fake news” have been so pervasive that it has now become a term of art.

Even setting aside foreign-funded or deceptive political advertising, current campaign finance regulations fail to bring accountability to campaign advertising on the Internet. Despite statutory requirements for disclaimers and disclosure of the funding source behind campaign ads,<sup>5</sup> regulations promulgated by the Commission have largely exempted Internet communications from the disclosure and disclaimer requirements of federal law. The Commission has imposed only one disclosure requirement for campaign ads on the Internet – disclosure is required when a

<sup>2</sup> Scott Shane and Vindu Goel, “Fake Russian Facebook accounts bought \$100,000 in political ads,” New York Times (Sept. 6, 2017), available at: <https://www.nytimes.com/2017/09/06/technology/facebook-russian-political-ads.html>

<sup>3</sup> Manu Raju and Jeremy Herb, “Trump attorney Cohen to meet with Hill investigators this week,” CNN (Oct. 23, 2017), available at: <http://www.cnn.com/2017/10/23/politics/michael-cohen/index.html>

<sup>4</sup> Elisa Shearer and Jeffrey Gottfried, “News use across social media platforms 2017,” Pew Research Center (May 26, 2016), available at: <http://www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/>

<sup>5</sup> See, for example, 52 U.S.C. § 30120. Publication and distribution of statements and solicitations

(a) Identification of funding and authorizing sources.

Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication (as defined in section 30104(f)(3) of this title), such communication-

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or <sup>1</sup>

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

person places a paid advertisement on someone else's web page<sup>6</sup> – but it is not clear whether even this minimal disclosure regulation is being monitored and enforced.

The Commission's exemption of paid campaign advertisements on the Internet and social media from campaign finance transparency requirements has ballooned from an oversight prior to 2008 into a serious scandal today. While the Internet and social media platforms have been used for political dialogue since the 1990s, the 2008 presidential election witnessed a large growth in on-line political communications and campaign ads.<sup>7</sup> By 2012, political communications on the Internet and social media became so prevalent in the presidential campaign that it was recognized as the "first real social media campaign."<sup>8</sup> And by 2016, the Internet and social media platforms – even the character-limited twitter platform – have become staples of electioneering communications and political advertising by candidates, parties and outside groups. The Internet as a primary avenue of campaign advertising can no longer be ignored by the Commission.

Open and transparent communications are essential to the workings of democracy. When it comes to paid campaign advertising, open and transparent communications means disclosure of the funding sources behind the ads. True disclosure of the sponsors of campaign ads empowers voters to better understand the context and merits of the ads. Now that the Internet has become enshrined as a critical avenue of political communications, it is imperative that paid ads on the Internet and social media identify their sponsors.

Furthermore, as the Russian scandal of the 2016 elections bears witness, Internet communications are highly susceptible to manipulation and deception absent such disclosures. Disclaimers on paid on-line campaign ads will provide a tool for tracking the true sponsors of ads in order to help enforce the law against foreign intervention in U.S. elections.

Paid advertising on the Internet is constantly evolving in nature. Traditional ads, such as a web page or on-line video, are most common. There are also "promoted content" ads when a sponsor pays a social media platform to disseminate more frequently communications with a specified content. Bots, for example, are driven by algorithms rather than real people and distribute communications with a specific content on behalf of a paying user. One study found that during the 2016 presidential debates more than 400,000 accounts used for political discourse were likely bots.<sup>9</sup> Many of these paid messages can be very short and seamlessly integrated into social conversations. Absent disclaimers, such messages are not likely to be perceived as paid messages.

Given the unique medium of Internet communications, disclaimers on all forms of on-line paid campaign advertising are practical and pose little inconvenience to the sponsor or the recipient.

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<sup>6</sup> 11 C.F.R. 100.26. "Public Communication."

<sup>7</sup> Benjamin Burroughs, "Obama trolling: memes, salutes and agonistic politics in the 2012 presidential election," *Fibreculture Journal* (2013).

<sup>8</sup> *Id.*, at 259.

<sup>9</sup> Alessandro Bessi and Emilio Ferrara, "Social bots distort the 2016 U.S. presidential election online discussion," *First Monday* (Nov. 2016), available at: <http://firstmonday.org/ojs/index.php/fm/article/view/7090/5653>

Traditional forms of on-line paid ads can carry the same type of disclaimers applicable to television, radio or print ads. On-line campaign ads that have strict character limitations, such as on twitter, or are otherwise designed to use only a small amount of screen space, may easily carry a link to a full disclosure web site. One for-profit Internet company that submitted comments to this rulemaking explains how their product of Internet link software would accommodate such text-limited communications.<sup>10</sup> In the case of bots, social media platforms should at least be required to post the identification of the sponsors and the content of messages paid for, and perhaps develop a system of automatic links for bot-produced ads. The Internet is a medium that encourages such innovation. Indeed, given the availability of hyperlinks, it is likely easier to provide disclaimers on Internet advertisements than on traditional media.

As we urge the Commission to proceed with rulemaking for disclaimers of paid campaign ads on the Internet and social media contemplated in ANPRM 2011-02, we also encourage the Commission to revisit the Internet disclosure regime adopted more than a decade ago in 2006. The role of the Internet in the political environment has fundamentally changed since then and a more robust disclosure system needs to be put in place. Additionally, disclaimer and disclosure requirements only work as well as they are enforced. The Commission must carry through and monitor and enforce these transparency rules.

Rulemaking on disclaimers and disclosure should not be viewed in the partisan lens that has embroiled much of the Commission's work over the last several years. Knowing who is paying for which campaign ads is a principle cherished by Democrats, Republicans and Independents alike across the nation. According to a new Marist poll, more than three in four Americans want full disclosure of the funding source behind social media campaign ads – that includes 78 percent of Democrats, 80 percent of Republicans and 82 percent of Independents.<sup>11</sup> Transparency of the sponsors of campaign ads, even on the Internet, is not a partisan issue.

Public Citizen and Free Speech for People encourage the Commission to move ahead with rulemaking called for in ANPRM 2011-02 and to consider a more robust disclosure system for Internet campaign advertising.

Sincerely,

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<sup>10</sup> Comment of Tom Chernalk, CMPPLY, Inc., Notice 2011-02 (Nov. 14, 2011).

<sup>11</sup> Marist Poll (Oct. 15 – Oct. 17, 2017), available at: [http://maristpoll.marist.edu/wp-content/misc/usapolls/us171015\\_HBO/Marist%20Poll%20National%20Nature%20of%20the%20Sample%20and%20Tables\\_October%202017.pdf#page=3](http://maristpoll.marist.edu/wp-content/misc/usapolls/us171015_HBO/Marist%20Poll%20National%20Nature%20of%20the%20Sample%20and%20Tables_October%202017.pdf#page=3)