

FEC Issues Advance Notice of Proposed Rulemaking on Internet Communication Disclaimers

November 2011

On October 6, 2011, the Federal Election Commission (FEC) issued an Advance Notice of Proposed Rulemaking (ANPRM) on Internet Communication Disclaimers.

FEC regulations require that a "public communication" like a television commercial or newspaper advertisement include disclaimers providing information on the person or entity paying for the communication. There are exemptions for small items such as bumper stickers, pins and items on which including a disclaimer would be impracticable (e.g., apparel). The regulations also exempt most communications made over the Internet from the definition of a public communication, which effectively exempts these communications from the disclaimer requirements as well. The rules treat communications placed on another person's website for a fee as public communications that are subject to the disclaimer requirements.

Two recent advisory opinion requests sought guidance from the Commission on required disclaimers for small Internet advertisements with character limitations. In Advisory Opinion Request 2010-19, Google sought confirmation that 95-character online text ads were exempt from disclaimer requirements. The Commission concluded that Google's proposed ads would not violate the law but could not reach agreement on the reason for its decision.

In Advisory Opinion Request 2011-09, Facebook sought confirmation that its online advertisements, which were limited to 160 characters, were exempt from disclaimer requirements. The Commission could

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not reach a conclusion and did not issue an opinion (despite having done so for Google's request).

As a result of these outcomes and a separate request that the Commission open a rulemaking, the Commission issued the Internet-related ANPRM. Among other things, the ANPRM seeks comment on:

- The ways that campaigns and political committees use the Internet and new technology;
- Possible modifications to current disclaimer requirements, including technological alternatives or abbreviated disclaimers;
- Whether an exception from disclaimer requirements for small or limited-character online advertisements is appropriate;
- Whether an online provider's business model should be considered when determining whether disclaimer requirements should apply; and
- Whether any new regulations can be written in a way that minimizes the need for further regulatory revisions as newer technology is developed.

The ANPRM is available [here](#). Comments on the ANPRM were due on November 14, 2011.