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Via Electronic Submission

Before the
Federal Election Commission
Washington, D.C.

Technological Modernization REG 2013-01

We appreciate the opportunity to aid the Federal Election Commission’s further consideration of appropriate rules to govern the disclosure of political advertising on digital platforms. This comment is the product of the Technology Policy Clinic at Princeton’s Center for Information Technology Policy.¹

We recommend that the Commission clarify that the disclosure rules that apply to “internet political communications” include the paid promotion of political communications. As the Commission identifies, there are at least three forms of promotional activity that could be covered by the rules: (1) a person is paid to republish political content; (2) a service or platform is paid to “boost” the circulation or prominence of political content; or (3) a person is paid to create or generate political content. As we discuss below, there is considerable evidence that

¹ The Technology Policy Clinic provides nonpartisan research, analysis, and commentary to policy makers, industry participants, journalists, and the public. The Comment reflects the independent views of the undersigned scholars.

campaigns are increasingly paying third parties such as influencers to republish political content, or to generate political content that is distributed to their followers. Platforms also offer services that allow advertisers to boost certain posts that, without adequate disclosure, may disguise that it is sponsored content.

The Growing Role of Social Media Influencers in Political Campaigns

Campaigns increasingly use social media influencers to promote political content. As a new generation of potential voters turn to social media for their news and entertainment, the role of these third parties to promote commercial and political content has grown in significance.² Influencers are described by the Federal Trade Commission as endorsers with a “material connection” - that is a financial relationship - to a brand or organization.³

Campaigns spent millions of dollars to pay social media influencers in the 2022 election cycle.⁴ But under the current regulations, there is no specific requirement to break down digital media spend by campaigns, so it is difficult to

² Heleen Dekoninck & Desiree Schmuck (2022) The Mobilizing Power of Influencers for Pro-Environmental Behavior Intentions and Political Participation, *Environmental Communication*, 16:4, 458-472, DOI: 10.1080/17524032.2022.2027801

³ *Disclosures 101 for social media influencers*. (2019, October 24). Federal Trade Commission. <https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers>

⁴ Lai, S. (2022, November 2). Campaigns pay influencers to carry their messages, skirting political ad rules. *The New York Times*. <https://www.nytimes.com/2022/11/02/us/elections/influencers-political-ads-tiktok-instagram.html>

document how that money was spent. Several news reports, however, document the campaign strategy to use and pay influencers. For example, the New York Times reports that the Democratic Majority Action PAC, offered influencers between \$300 and \$500 per post to target potential voters in battleground states.⁵ The campaigns identified in the New York Times said that they require influencers to post that they are engaged in promotional activity, but those campaigns also acknowledge that their decision to publicly identify sponsored content was a voluntary choice and not compelled by current disclosure rules.

A University of Texas, Austin report described how a conservative PAC, Turning Point USA, enlisted users for a paid, coordinated effort to disseminate false COVID and early voting information.⁶ The Wall Street Journal wrote about how NextGen American, a PAC focused on youth political outreach, developed a strategy to reach nearly 277,000 people via 19 Instagram accounts. That PAC was willing to pay \$750 per post with no requirement for disclosure.⁷

⁵ *Id.*

⁶ *Social media influencers and the 2020 U.S. Election: Paying 'regular people' for digital campaign communication - center for media engagement - center for media engagement.* (n.d.). Retrieved January 9, 2023, from <https://mediaengagement.org/research/social-media-influencers-and-the-2020-election/>

⁷ Wells, E. G. and G. (n.d.). *Political campaigns turn to social-media influencers to reach voters.* WSJ. Retrieved January 9, 2023, from <https://www.wsj.com/articles/political-campaigns-turn-to-social-media-influencers-to-reach-voters-11569251450>

In a peer-reviewed study we published in 2022, we analyzed the role of social media platforms in the 2020 election cycle.⁸ One part of our paper analyzed the distribution of political content on TikTok, which had recently been introduced to the American market. We captured data about how 30 influencers who had connections to political entities, despite political advertising being banned on TikTok, were able to produce content that generated millions of impressions.⁹ Similarly, a 2021 study by the Mozilla Foundation, documented how influencers operate on TikTok in more detail.¹⁰ The study highlights how influencers sidestepped the platform’s self-disclosure rules to disseminate political messaging.

In the commercial context, disclosures about sponsored content are required. The FTC has extensive guidance for when and how influencers should disclose that they are engaged in sponsored activity.¹¹ By contrast, the

⁸ Papakyrakopoulos, O., Tesson, C., Narayanan, A., & Kshirsagar, M. (2022). How algorithms shape the distribution of political advertising: Case studies of Facebook, Google, and Tiktok. *Proceedings of the 2022 AAAI/ACM Conference on AI, Ethics, and Society*, 532–546. <https://doi.org/10.1145/3514094.3534166>

⁹ *Id.*

¹⁰ *These are “Not” Political Ads.* (n.d.). Mozilla. <https://foundation.mozilla.org/en/campaigns/tiktok-political-ads/executive-summary/>

¹¹ FTC Disclosures 101 for Social Media Influencers

Commission's rules are not as clear about the rules for influencers in political advertising.

The Commission's current definition of public communication only includes internet ads to the extent that they are "placed for a fee on another person's or entity's website."¹² Arguably, this definition might be read to cover payments to influencers who republish political messages or generate sponsored content on their social media accounts. But it is helpful to clarify that the promotion for a fee is covered by the disclosure rules.

Moreover, requiring disclaimers for paid promotions by influencers is fully consistent with the rationale underlying the disclosure requirements for internet public communications. The public needs to understand who is behind political messages and how campaigns aim to influence prospective voters.

Whether sponsored content is generated in whole or merely reshared, the Commission should implement expanded disclosure requirements about influencers' sources of funding. Doing so ensures a comprehensive and standardized baseline across platforms.

¹² *Public communications*. (n.d.). FEC.Gov. Retrieved January 9, 2023, from <https://www.fec.gov/press/resources-journalists/public-communications/>

Platforms Offer Services to Boost Sponsored Content

Internet platforms such as YouTube or Facebook, are paid by campaigns to distribute their political messages and this activity is covered by the Commission's revised disclaimer rule. That rule should apply to any paid promotion of content generated by a campaign. As the Commission observes, some platforms offer tools that give advertisers the ability to "boost" the distribution of specific content that they have previously created.¹³ This activity fits squarely within the rule's requirement to include disclaimers with paid content.

One potential gray area is whether the rule covers the paid promotion of content produced by third parties. Certain platforms such as TikTok offer a service called "spark ads" that gives advertisers the option to boost the distribution of organic content created by third parties (with their permission).¹⁴ While we are not aware of any evidence that campaigns are using such a service, it would be helpful for the Commission to clarify that paying to promote third party content is also covered by the rule.

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¹³ See, e.g., <https://www.facebook.com/business/help/240208966080581?id=352109282177656>

¹⁴ *Spark ads creation guide / tiktok ads manager*. (n.d.). Retrieved January 9, 2023, from <https://ads.tiktok.com/help/article/spark-ads-creation-guide?lang=en>

In closing, we recommend the Commission expand the definition of internet public communications to include activities that are “promoted for a fee.” We appreciate the opportunity to provide these comments.

Respectfully submitted,

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