



Electronic Media Advertisements

FPPC DIGITAL TRANSPARENCY TASK FORCE 2020



Advertisement

- ▶ Any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing candidates for elective office or ballot measures.

Two Disclosure Schemes for Electronic Ads Under the Act

Traditional Electronic Media Advertisement

- ▶ Online Videos (directly on video)
- ▶ Websites (directly on website)
- ▶ Emails (directly in email)
- ▶ Mass Text Messages (in text or linked)
- ▶ Online images/graphics that an online platform hosting the advertisement allows to link to internet website paid for by a committee (link to disclosures)
- ▶ Social Media (landing page only)

Online Platform Disclosed Advertisement

- ▶ Online images/graphics that an online platform hosting the advertisement does not allow to link to internet website paid for by a committee
 - ▶ Online platform places required disclosures on ad
 - ▶ Committee supplies online platform with relevant information about its identity
 - ▶ Online platform creates publicly accessible database of ad information

Social Media “Influencers”

- ▶ Individuals that have large social media followings called “Influencers” are paid to use their social media account to influence their followers.
 - ▶ May write their own posts, but they are being paid to do so and supervised by the primarily formed committee in this activity.
- ▶ We previously advised these ads are required to have disclosures on the individual post or can link to the committee’s webpage/Instagram profile that contains full disclosures.
- ▶ Under new 2020 amendments unclear what rules apply to influencers.

Online Platform Disclosed Ads

- ▶ Online platforms that sell “online platform disclosed advertisements” are required to have disclosures or links to disclosures on advertisements containing information about who paid for the advertisement
- ▶ Applies to an online platform that sells advertisements that are a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement **does not allow** to hyperlink to an Internet website containing ad disclosures. It also **does not** apply to video, audio or email advertisements. Instead, those follow traditional ad rules discussed earlier.
- ▶ Online platforms that display even one “online platform disclosed advertisement” are required to maintain a separate database that provides the public with detailed information about any paid political advertisements on the platform.

Online Platform Records Database

- ▶ The Online Platform must make available online the following:
 - Digital copy of the advertisement
 - Approximate number of impressions generated from the advertisement
 - Date and time that the advertisement was first and last displayed
 - Information regarding the amount charged for and spent on the advertisement
 - Identifying information about the candidate or the ballot measure referred to
 - The name and identification number of the paying committee

- ▶ The online platform must display a prominent link to the information above with the text “View Ads” on a page that contains information about the committee that paid for an advertisement such as a link from a committee’s landing page on the platform.

Online Platforms Disclosed (Other Requirements)

The online platform is also required to:

- Make the records available as soon as possible and retain those records for no less than four years.
- Requires the linked page to show information for any advertisement purchased by the committee on the platform.

A committee that disseminates an advertisement on an online platform is required to provide the platform with the information it needs to comply with this law.

Uncompensated Internet Activity Contribution Exception

- ▶ When an individual or a group (alone or in coordination with a committee) engages in Internet activities for the purpose of supporting or opposing a candidate or measure, neither of the following is a contribution or an expenditure:
 - ▶ The individual's uncompensated (volunteer) personal services related to such Internet activities
 - ▶ The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.
- ▶ The exemption does not apply to an individual blogger who receives a majority of his or her advertisement revenue from a single candidate or committee, because he or she is not considered to be providing uncompensated personal services.

Paid Online Communication – Reporting an Expenditure

- ▶ When a recipient committee makes an expenditure in the form of payments to a person to provide favorable or unfavorable content about a candidate or ballot measure on a website other than the committee's own, there are additional expenditure reporting requirements.
- ▶ The committee must specifically describe amounts the committee paid to provide favorable or unfavorable content on a candidate or ballot measure when:
 - ▶ Providing such content for or posting on a web site or a web log ("blog"), whether one's own or another's.
 - ▶ Providing such content for or posting on a social media platform or service.
 - ▶ Providing such video content for posting online.
- ▶ This extra reporting is not required when:
 - ▶ The content is purchased at regularly published rates,
 - ▶ The content is produced solely for the committees own website or social media accounts, or
 - ▶ Each instance of posted content clearly states that the campaign has paid for the content.

New York Democracy Protection Act

- ▶ New York – 2018 Democracy Protection Act.
 - ▶ Updated NY campaign finance laws to bring internet political ads under existing transparency rules that apply to broadcast communications like TV and radio.
 - ▶ Updated the definition of election communications to include digital advertisements
 - ▶ Requires television, satellite, cable, radio stations, and providers, as well as online platforms—to verify advertiser registration with the New York State Board of Elections.
 - ▶ Creates a state-hosted online archive of digital political advertisements.

Washington Commercial Advertisers

- ▶ “Commercial advertisers” are required to provide access to records related to political advertisements they sell w/in 24 hours and keep records for 5 years after the election
- ▶ Commercial advertisers include those who sell all types of ads including print, television, online or other means of mass communication.
- ▶ Examples of information required to be maintained by commercial advertisers:
 - ▶ Name of candidate, committee or ballot measure
 - ▶ Total cost of ads
 - ▶ Dates services rendered
 - ▶ The communication itself
 - ▶ Number sent, air time and number of spots
 - ▶ For digital communication platforms: A description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement of communication.

Maryland Online Electioneering Transparency and Accountability Act

- ▶ Online platforms must provide the following information about purchased political ads on their websites within 48 hours of purchase and maintain the information online for one year thereafter:
 - ▶ Ad purchaser's name and contact information
 - ▶ Identity of the treasurer of the political committee or the individuals exercising control over the ad purchaser
 - ▶ Total amount paid for the ad
- ▶ The online platform has to maintain the following information for a year after the election and make it available to state authorities upon request:
 - ▶ Name of candidate or ballot measure that is the subject of the ad and whether the ad supports or opposes the candidate/measure
 - ▶ Dates and times that the ad was first disseminated and last disseminated
 - ▶ Digital copy of the Ad
 - ▶ An approximate description of the geographic locations where the ad was disseminated
 - ▶ An approximate description of the audience that received or was targeted to receive the ad
 - ▶ Total number of impressions generated by the ad

Washington Post v. McManus

- ▶ Decided December 6, 2019 in US Appellate Court (4th District)
- ▶ A collection of newspaper outlets challenged Maryland's new Online Electioneering Transparency and Accountability Act under the First Amendment
- ▶ On review of the lower courts grant of preliminary injunction, the court struck down the law as being too burdensome to satisfy constitutional scrutiny
- ▶ Decision is applied only to the particular plaintiffs and not all social media.

Washington Post v. McManus

- ▶ Extending ad disclosure requirements to neutral third-party advertisers is problematic.
- ▶ What Maryland was seeking to accomplish through the Act, could have been accomplished through better fitting means such as applying the requirements to ad purchasers directly.
- ▶ Law is too narrow in some ways and too broad in others. Decision to include the press and quite small platforms problematic. State not able to identify a single foreign placed ad that ran on a news site in 2016 or any other time.