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COMM 4291

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May 8, 2018

Political Advertising Disclosure Regulations on Facebook

**Introduction**

Mr. Robot (TV Series, 2015 - ) follows Elliot Alderson, a socially awkward millennial “vigilante hacker” in his quest to make the world a better place. In episode one of the series entitled “hellofriend.mov”, Elliot is shown to work for a company called Allsafe which provides information security services to E. Corp (or Evil Corp, as Elliot calls it). E. Corp is a massive technology conglomerate with its hands in nearly every industry, and it controls the data of millions of people. Initially upon viewing the show, viewers think of E. Corp as your classic large TV show corporation, that isn’t good for society but is completely fictional and doesn’t actually exist in the real world. In fact, E. Corp isn’t so far from the truth after all. Evil Corp, in fact, closely resembles many companies which are household names in the U.S., one of which being Facebook. With the power to control what people see on a daily basis, much like E. Corp Facebook has become a massive technology company with hands in nearly every industry and millions of users accessing the site on a daily basis. Given its reach, it has become a target for foreign governments to interfere with, especially in the case of the 2016 U.S. presidential election.

The U.S. presidential election of 2016 has been a widely debated topic among both conservative and progressive pundits. The reasoning behind this is the question of what extent the Russian government interfered in the election. Views on this topic range from one extreme, with proponents claiming there was no involvement by the Russian government in the election, to another extreme with those proponents stating that President Trump has been a puppet of the Russian government. While debating the validity of these claims is beyond the scope of this

paper, in this essay, I will discuss the importance of the role that political advertisements, through the social media platform, Facebook, played during the election. While political advertising on television in the United States is regulated, in that political advertisers must disclose the party or parties paying for the ads, similar regulations do not currently exist for social media platforms and other internet resources that have become widely viewed by the American public ("52 U.S. Code § 30120 - Publication and distribution of statements and solicitations."). In this essay, I argue that political advertising on social media sites should be regulated in the same way as televised political advertisements. By examining examples shown on Facebook in the 2016 presidential race, as well as contextualizing those examples within current U.S. law for political advertising, I will provide suggestions for implementations of new regulations pertaining to Facebook, arguing that the nation can better secure future U.S. elections through appropriate legislation and policies for political advertising on social media. This is of high importance to the U.S. democratic system of government because without disclosures of those paying for political advertisements, the general public cannot be sure which organizations (specifically governments, in the case of the 2016 presidential election) are controlling the messages which they are receiving.

The question of why these laws matter has been brought up by multiple parties, and many Facebook users have seen some type of argument regarding these laws in the last couple years in their Facebook feed. These laws matter and are something that should be enacted, because U.S. intelligence agencies have proof that Russia was able to interfere in the 2016 United States presidential election by paying for advertisements on the site, without disclosing the party which

was financing them (Howard & Gorwa, 2017, Shane, 2017, & Miller, Jaffe, & Rucker, 2017). The Russian government's ability to do this and to slide under the radar of everyday Facebook users was due to a loophole in the Federal Election Commission's regulations around political advertising which state that:

Any public communication made by a political committee [must include a disclaimer as to who is paying for and approved the ad]... including communications made using the following media: Broadcast, cable or satellite; Newspaper or magazine; Outdoor advertising facility; Mass mailing; Phone bank; Communications placed for a fee on another person's website ("Advertising and disclaimers").



This wording is problematic because Facebook and similar social media sites are not qualified as “another person’s website” but instead a social platform, being that it is used in both web and mobile applications. This allowed individuals with ties to the Russian government to create and post advertisements targeted to visitors likely to be interested in pages like “Blacktivists” (example at left prioritizing a more conservative viewpoint for a smaller government to an

African-American audience within the United States)<sup>1</sup> and “Back the Badge” that targeted voters who had expressed concern with police activity in their area. Similar accounts were created and posted advertisements relating to border security and religion (Kang, Fandos, & Isaac, 2017).

<sup>1</sup> Image courtesy of Shane, 2017.

This was further worsened by the fact that Facebook took “months to acknowledge Russia’s interference on their sites” (Kang et. al, 2017). This was, of course, well after the election had taken place. While we don’t know if these advertisements completely changed the course of the election, we do know that according to Facebook, over one-hundred and fifty million users were exposed to these advertisements directly on Facebook, or on its subsidiary company, Instagram (Kang et. al, 2017). These advertisements also displayed appeals to voter’s emotional expression including pain, loss, joy, and anger, to name a few, which have been linked to the ability to change the mind of undecided voters to lean one way versus another way (Schill & Kirk, 2017). While Facebook has said that it will increase security and put policies in place to police itself, this is not enough. It is not enough to take the word of a company which influences millions of people on a daily basis, yet is not held accountable similar to governments. With an audience of hundreds of millions of individuals, we must hold Facebook accountable, by law, for its actions.

As mentioned, we do not know how big of a role these advertisements played in the outcome of the 2016 U.S. presidential election. We do know, however, that a 2013 study by Dowling & Wichowsky found participants to be more supportive of candidates who were attacked in a particular ad after viewing the information that disclosed donors including information about the financial interests of the organization sponsoring the message. This same study implied that as of 2013, “congressional efforts to require greater disclosure of campaign finance donors” were unsatisfactory in that many voters were still unclear on the origins and interests in the ad after viewing required disclosures (Dowling & Wichowsky, 2013). While this

study was targeted toward reactions of individuals seeing an attack ad paid for by a large corporation versus an ad paid for by a family who were negatively affected by a politician's stance on issues, it is reasonable to say that this same concept is applicable with the issue of a foreign entity paying for a political advertisement.



Furthermore, these non-approved advertisements can prove detrimental for a candidate in some circumstances. This was seen in the 2012 U.S. presidential election cycle. A study by Baumgartner, which has been replicated by Hopp & Vargo, found that negative political advertisements trend toward having a backlash effect on the candidate for which they are attempting to support (Baumgartner, 2013 & Hopp, &

Vargo., 2017). The image above<sup>2</sup> was discovered to have been posted by a Russian account posing as an U.S. citizen. While most of the Russian advertisements were found to have been for Trump, this one against him was likely created to use the results of Baumgartner's study (or similar ideology) to turn voters who were swaying toward the side of Trump, being that it would be widely assumed that this image was posted by a Clinton supporter. Political advertisements in general have also been found to "stimulate citizens to engage in active communication activities" (Cho, 2008). Similar to advertisements put forward by candidates, the Russians took advantage of the technique of mobilizing citizens by relating the issues at stake in a given election to cause "widespread anxiety or anger" (Cho, 2008).

<sup>2</sup> Image courtesy of Shane, 2017.

These advertisements also do more damage than just a simple surface-level view count. A 2008 study by Cho found that while some citizens do become influenced by seeing an advertisement firsthand, many times those who avoid political advertisements are still exposed to the message of political advertisements (whether truthful or otherwise) by social mobilization (Cho, 2008). This can be explained in two ways. The first is that Facebook users' viewing histories often shape the ad content which they see (Wilson, 2014) and therefore those same advertisements shape the users' viewpoints. Those users are then likely to share content in agreement with their own ethics, causing their Facebook friends to see such content. Method two involved the way that Facebook shows users' advertisements. By examining not only the user's likes and dislikes, but that user's friends' likes and dislikes, Facebook is able to cater content which is most likely to please a given user (Wilson, 2014). Since the user who avoids political advertisements continues to use Facebook, it is almost certain that they will be exposed to multiple politically motivated advertisements or content which was brought about in part by those advertisements. Similarly, being exposed to repetitive political advertising has been found to cause stronger interests in election cycles, as well as causing those exposed to many advertisements to share the viewpoints expressed in said advertisements and vote accordingly (Cho, 2008). Using Facebook's advertising targeting tools, it would be very simple to target advertisements from outside entities toward audiences whom are more likely to engage with and share viewpoints of political content. The people to whom these advertisements were targeted and participated in spreading a message from a foreign government were most likely not aware that they were furthering an outside agenda as well. A 2013 study by Wei & Golan found that, in

general, users of Facebook exposed to advertisements indicated that they believed advertisements had more of an effect on others than themselves, while if they indicated agreement with the content of an ad, the given ad had a much larger influence on their viewpoint than they had previously believed (Wei & Golan, 2013).

### **Current Regulations**

As stated earlier there are regulations for political advertising on legacy media (television, newspapers or other print publications, outdoor advertisements, mass mailings, phone banks, personal and campaign websites, and email marketing). The rules for disclosures on these materials are widely the same. While most of the rules about to be discussed apply largely to all forms of communication, in this section I continue my focus on political advertising appearing on television and social media platforms.

Before getting further into current regulations surrounding political advertisements, it is important to note that there is a significant loophole in current political advertising law for legacy media. This is because of the Supreme Court's Citizens United ruling on campaign contributions. While the ruling did include a stipulation that financial disclosure must be made in advertisements, there is an exception in the case of a paying organization being registered as a 501(c)(4) organization. These organizations can be registered if the group is organized exclusively for social welfare. The issue with this is that the way the law is currently written, "exclusively" means more "primarily". The extent of this loophole is explained best in the words of IRS Commissioner John Koskinen, "If you spend at this point less than 49% of your money on politics, you can be a (c)(4)" ("Loopholes in political spending laws keep voters in the dark").

Provided that an organization is not registered as a 501(c)(4), political advertising regulations apply.

Disclaimers must be displayed on television advertisements. If a given ad is both authorized and paid for by a candidate, the ad must state that as well as show a video or still image of a candidate while they say that they have approved the ad. If an ad is authorized by a candidate, but not financed directly by their campaign, the communication must disclose the person or organization who is paying for the ad, and that it was authorized by the candidate's campaign. If the ad was not authorized or financed by a candidate, the candidate must be aware that the ad is being used, and the organization approving and funding the ad must state that the ad was not authorized by any candidate. These advertisements must also show one form of contact for the payer of the ad, as well as state the sponsoring organization. If a political party produces an ad, it must state that it was paid for by the given party. If a party candidate has been nominated at the time of the ad showing, it must also be added that the ad was approved by said candidate. When any campaign ad plays on television, a disclosure with the above information must be clearly shown occupying "at least 4% of the vertical picture height, and it must be shown for a period of four seconds" or greater ("Advertising and disclaimers"). These laws apply to candidates for federal elections, as well as state elections, unless the given state has specific changes to these laws in place.

While many candidates using social media platforms like Facebook choose to follow these regulations regarding their advertisements, it is not required by law at this time ("52 U.S. Code § 30120 - Publication and distribution of statements and solicitations."). This means that

users of Facebook do not have an easy way of identifying the person or organization who paid for an ad on the platform, and these advertisements could potentially name a fictitious organization. This allows social media advertisements on Facebook to easily slip by users without the users having any ability to check the sourcing of a given ad.

### **Proposed Regulations**

While banning political advertisements on Facebook altogether may appear to be a viable option for some to remedy this problem, there are other regulations to consider. Before delving into my proposed solution, it is important to first go over why social media platforms like Facebook are essential in campaigning and why simply banning them is not a viable option.

Facebook has approximately 185 million daily active users in the U.S., making it one of the country's largest advertising markets (Constine, 2017). Because of this, candidates and approved candidate's or political action committees (with which the 2016 Russian advertisements were not affiliated) can easily find Facebook to be a complete "game changer" during yearly election cycles (Xenos, Macafee, & Pole, 2015). User responses on posts and advertisements are both helpful resources for candidates and as Williams & Gulati found in a 2008 study, user response and engagement on these posts is "an important additional indicator of candidate viability." This equates social media interaction with a candidate's realistic ability to win an election. Additionally, many new voters use online media exclusively (McGlynn, 2010), making reaching these voters nearly impossible without the use of social media platforms. Candidates for office cannot be expected to completely shut out such an enormous audience, nor is this a realistic fix. Other options will need to be considered.

These alternate methods of regulation are two-fold. First, political advertisements on Facebook and the pages associated with them must go through a confirmation process. This is similar to what is done on Facebook with celebrities and other public figures (a grey check mark next to a page on Facebook means they have confirmed their identities). This would require organizations wishing to advertise on Facebook to create a page and input factual contact information, which would then be publicly listed. This contact information would be verified by Facebook using a bank statement, postcard, employer ID, or non-profit ID number, before the page would be allowed to post advertisements. This option, in and of itself, very well could have prevented many of the Russian advertisements for the 2016 Election, but because of what is at stake, we need to go one step further.

Part two of this regulation would state that Facebook pages publishing advertisements must have the same amount of disclosure as TV or print advertisements do according to the Federal Election Commission. This equates to listing all, or some combination of, the financing organization, political party, specific candidate approval and contact information of the financing organization as discussed earlier in this essay. My requirements would state that these be provided as text within a given ad or a link to a “ad disclosure” section within that Facebook organization page paying for the ad. This would significantly affect the content of advertisements as organizations could then be held accountable for their content for or against a particular candidate or general party.

Finally, the earlier mentioned loophole of 501(c)(4) organizations (organizations who focus “exclusively” on social welfare) needs to be closed. This is because of the general ease in

creating a 501(c)(4) organization and the lack of accountability when it comes to political financing by those organizations. This loophole is easily taken care of by simply requiring all organizations, including 501(c)(4)s to disclose themselves upon financing a political advertisement.

The implementation of these regulations would not only be beneficial for U.S. democracy, but would also restore trust in political advertisements found online. These laws would allow citizens to connect with their candidates (and even the opposition) in more transparent ways, as well as holding organizations responsible for content they post. Had these regulations been in place during the 2016 election cycle, it is very likely that Russian interference on social media platforms would not have reached the level it did.. With the 2018 election cycle closely approaching and laws still not in place, it is more important than ever to begin adopting these regulations.

**References**

52 U.S. Code § 30120 - Publication and distribution of statements and solicitations. (n.d.).

Retrieved from <https://www.law.cornell.edu/uscode/text/52/30120>

Advertising and disclaimers. (n.d.). Retrieved March 11, 2018, from

<https://www.fec.gov/help-candidates-and-committees/making-disbursements/advertising/>

Baumgartner, J. (2013). Internet Political Ads in 2012. *Social Science Computer Review*, 31(5), 601-613.

Cho, J. (2008). Political Ads and Citizen Communication. *Communication Research*, 35(4), 423-451.

Constine, J. (2018, February 06). Facebook's U.S. user count declines as it prioritizes well-being.

Retrieved March 11, 2018, from <https://techcrunch.com/2018/01/31/facebook-time-spent/>

Dowling, C., & Wichowsky, A. (2013). Does It Matter Who's Behind the Curtain? Anonymity in Political Advertising and the Effects of Campaign Finance Disclosure. *American Politics Research*, 41(6), 965-996.

Hopp, & Vargo. (2017). Does negative campaign advertising stimulate uncivil communication on social media? Measuring audience response using big data. *Computers in Human Behavior*, 68, 368-377.

Howard, P. N., & Gorwa, R. (2017, May 20). Facebook could tell us how Russia interfered in our elections. Why won't it? Retrieved from

[https://www.washingtonpost.com/opinions/facebook-could-tell-us-how-russia-interfered-in-our-elections-why-wont-it/2017/05/19/c061a606-3b21-11e7-8854-21f359183e8c\\_story.html?noredirect=on&utm\\_term=.25e4700f3c44](https://www.washingtonpost.com/opinions/facebook-could-tell-us-how-russia-interfered-in-our-elections-why-wont-it/2017/05/19/c061a606-3b21-11e7-8854-21f359183e8c_story.html?noredirect=on&utm_term=.25e4700f3c44)

- Kang, C., Fandos, N., & Isaac, M. (2017, November 01). Russia-Financed Ad Linked Clinton and Satan. Retrieved March 11, 2018, from <https://www.nytimes.com/2017/11/01/us/politics/facebook-google-twitter-russian-interference-hearings.html>
- Loopholes in political spending laws keep voters in the dark. (2015, April 12). Retrieved from <http://www.latimes.com/opinion/editorials/la-ed-dark-money-20150412-story.html>  
Published by the LA Times Editorial Board.
- McGlynn, A. (2010). Millennials - the "Always Connected" Generation. *The Hispanic Outlook in Higher Education*, 20(22), 14-16.
- Miller, G., Jaffe, G., & Rucker, P. (2017, December 14). How Trump's skepticism of U.S. intelligence on Russia left an election threat unchecked. Retrieved from [https://www.washingtonpost.com/graphics/2017/world/national-security/donald-trump-pursues-vladimir-putin-russian-election-hacking/?utm\\_term=.6f8b45c45d60](https://www.washingtonpost.com/graphics/2017/world/national-security/donald-trump-pursues-vladimir-putin-russian-election-hacking/?utm_term=.6f8b45c45d60)
- Oplev, N. A. (Director), & Esmail, S. (Writer). (2015, May 27). *Hellofriend.mov*[Video file]. Retrieved from <https://www.amazon.com/Mr-Robot-Season-1/dp/B00YBX664Q>
- Schill, D. & Kirk, R. (2017). Angry, Passionate, and Divided: Undecided Voters and the 2016 Presidential Election. *American Behavioral Scientist*, 61(9), 1056-1076.
- Shane, S. (2017, November 01). These Are the Ads Russia Bought on Facebook in 2016. Retrieved March 11, 2018, from <https://www.nytimes.com/2017/11/01/us/politics/russia-2016-election-facebook.html>
- Wei, R., & Golan, G. (2013). Political Advertising on Social Media in the 2012 presidential election. *Electronic News*, 7(4), 223-242.

Williams, C. B., & Gulati, G. J. (2012). Social networks in political campaigns: Facebook and the congressional elections of 2006 and 2008. *New Media & Society*, 15(1), 52-71.

Willson, M. (2014). The politics of social filtering. *Convergence*, 20(2), 218-232.

Xenos, M. A., Macafee, T., & Pole, A. (2015). Understanding variations in user response to social media campaigns: A study of Facebook posts in the 2010 U.S. elections. *New Media & Society*, 19(6), 826-842.