Stanford | Internet Observatory
Cyber Policy Center

October 16, 2023

Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Artificial Intelligence in Campaign Ads (REG 2023–02)

Chair Dara S. Lindenbaum and Commissioners,

The Stanford Internet Observatory (SIO) is a cross-disciplinary program of research, teaching, and policy engagement for the study of abuse in current information technologies, with a focus on social media and emerging technology, such as generative AI. We welcome this opportunity to provide technical and research analysis on the petition for rulemaking to amend Federal Election Commission (FEC) regulations for "fraudulent misrepresentations" at 11 CFR §110.16 to clarify that the statutory prohibition applies to deliberately deceptive artificial intelligence (AI) in campaign ads.

Generative AI tools and technologies are increasingly accessible and powerful, and there are many free or inexpensive tools available online, or integrated into existing media editing software, that allow users to easily develop customized media outputs with few restrictions.[1, 2] This is not a future set of capabilities, or a future concern; it is already here.

SIO research finds that existing AI tools and technology can generate photorealistic images,[3, 4] or text that is persuasive,[5] difficult to distinguish from content written by a human,[6] and that can be widely published with limited resources.[7] Generative AI content is increasingly realistic and increasingly difficult to detect. While

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[1] Chilson, N. (2023, September 27). The Integral Role of AI Tools in Modern Political Discourse [Testimony Before the United States Senate Committee on Rules and Administration]. In *Hearing: AI and the Future of our Elections*. https://www.rules.senate.gov/hearings/ai-and-the-future-of-our-elections

[2] Thiel, D., Stroebel, M., & Portnoff, R. (2023, June 24). *Generative ML and CSAM: Implications and Mitigations*. Stanford Digital Repository. https://purl.stanford.edu/jv206yg3793

[3] Thiel, D., Stroebel, M., & Portnoff, R. (2023, June 24). *Generative ML and CSAM: Implications and Mitigations*. Stanford Digital Repository. https://purl.stanford.edu/jv206yg3793

[4] Goldstein, J. A., & DiResta, R. (2022, September 15). Research note: This salesperson does not exist: How tactics from political influence operations on social media are deployed for commercial lead generation. *Harvard Kennedy School (HKS) Misinformation Review*. https://doi.org/10.37016/mr-2020-104

[5] Goldstein, J. A., Chao, J., Grossman, S., Stamos, A., & Tomz, M. (2023, April 8). Can AI Write Persuasive Propaganda?. https://doi.org/10.31235/osf.io/fp87b

[6] Jakesch, M., Hancock, J. T., & Naaman, M. (2023, March 7). Human heuristics for AI-generated language are flawed. *PNAS*, 120(11). https://doi.org/10.1073/pnas.2208839120

[7] Goldstein, J. A., Sastry, G., Musser, M., DiResta, R., Gentzel, M., & Sedova, K. (2023, January 10). *Generative Language Models and Automated Influence Operations: Emerging Threats and Potential Mitigations*. https://doi.org/10.48550/arXiv.2301.04246

technical tools and measures are being developed by industry to track or disclose the origin and manipulation of digital media, these standards are limited by voluntary adoption.[8, 9, 10]

In light of this, we support the FEC clarifying that the "fraudulent misrepresentations" rules should apply to deliberately deceptive AI-generated campaign ad content. Requiring voluntary disclosure of generative AI content by candidates or their agents is a worthwhile update to the rule.

However, it will be difficult to tell whether deception is intentional or deliberate, so we wish to provide an important alternative concept, "inherently false content," which refers to the use of AI-generated content to create false beliefs in consumers of that content.[11] This concept differentiates the AI's creation of false content from the requirement of intentionality for human deception.

We also wish to articulate two concerns for the FEC's consideration in rulemaking regarding intentionality. First, the frequent use of AI in creative productions may result in unclear standards for reporting, therefore, nonspecific disclosures may provide little context or meaning to viewers. Second, the detection or disclosure of AI-generated content in advertisements is not necessarily an indication of intentional deception — there are many legitimate uses for this technology in the creative process — including audio enhancement, background object removal, caption text generation, stock photo creation, or other common video production processes.[12]

Potential rules should also consider complaints that attempt to leverage a concept known as the "liar's dividend," where political candidates and officials abuse a lack of trust in media technology and content to claim something real is actually digitally manipulated fake content, with the goal of having it removed or discredited.[13] A clear and expedient complaints process that is resistant to manipulation is paramount.

The challenge of harnessing the innovation of generative AI and protecting free expression while protecting against inherent risk goes far beyond FEC jurisdiction, but the application of existing regulation is an important first step. Current regulations — such as the FEC's "prohibitions on fraudulent misrepresentations" or rules against deceptive, unfair, or unjust practices — should be applied regardless of the tools or technology used to develop potentially violative content or products.

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[8] Content Authenticity Initiative. https://contentauthenticity.org

[9] Coalition for Content Provenance and Authenticity (C2PA). https://c2pa.org

[10] *AI & Media Integrity*. Partnership on AI. https://partnershiponai.org/program/ai-media-integrity

[11] Markowitz, D. M., Hancock, J. T., & Bailenson, J. N. (2023). Linguistic Markers of Inherently False AI Communication and Intentionally False Human Communication: Evidence From Hotel Reviews. *Journal of Language and Social Psychology*. https://doi.org/10.1177/0261927X231200201

[12] Chilson, N. (2023, September 27). The Integral Role of AI Tools in Modern Political Discourse [Testimony Before the United States Senate Committee on Rules and Administration]. In *Hearing: AI and the Future of our Elections*. https://www.rules.senate.gov/hearings/ai-and-the-future-of-our-elections

[13] Chesney, R., & Citron, D. K. (2019, December). Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security. *California Law Review*, 107(1753). https://dx.doi.org/10.2139/ssrn.3213954

Sincerely,

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