



MEMORANDUM

FOREIGN SPONSORSHIP IDENTIFICATION RULES

Date: April 2022

The Commission's sponsorship identification rules traditionally require broadcasters to disclose only the names of individuals or entities paying for or furnishing paid programming such as advertising. The FCC recently expanded the sponsorship identification rules to require broadcasters to disclose sponsorship of programming aired pursuant to a lease agreement as well as political programs or programs discussing a controversial political issue if the programming is sponsored, paid for, or furnished by a foreign governmental entity. The disclosure must tell the listener or viewer that the material has been sponsored, paid for, or furnished by a foreign governmental entity and the foreign country involved. A summary of the disclosure must be placed in the broadcast station's online public inspection file ("OPIF"). The Commission's goal is to increase transparency and ensure the public is aware when a foreign government or its representatives are seeking to persuade the American public.

Executive Summary

The new sponsorship identification rules apply when a broadcaster leases time on one of its broadcast stations to or broadcast political programs or programs discussing a controversial issue provided by a foreign governmental entity. The term "foreign governmental entity" is defined as governments of foreign countries, foreign political parties, agents of foreign principals, and United-States based foreign media outlets. The sponsorship identification rules apply to full power radio and television stations as well as TV translator, lower power TV and TV booster stations.

If a broadcaster does not lease time or receive programs from another party, the broadcaster need take no further action, and we recommend placing a statement to that effect in your station's OPIF for recordkeeping purposes. If on the other hand a broadcaster does lease time to or receive programming from another party who states they are a foreign governmental entity, the broadcaster must broadcast an on-air disclosure that the programming was sponsored by a foreign governmental entity on behalf of a foreign country. The broadcaster must also include a summation of the programming, disclosure of the foreign governmental entity sponsoring the programming, the number of times the program aired on the station, and the text of the

disclosure broadcast in the station's OPIF. If the broadcaster leases time to or receives programming from another party and that party states it is not a foreign governmental entity, the broadcaster must undertake its own due diligence to confirm the programmer is not a foreign governmental entity. This includes conducting a search in certain government databases to confirm the entity is not listed as a foreign governmental entity. After completing their due diligence, the broadcaster should prepare a document describing the type of programming and steps taken to confirm whether the programmer is or is not a foreign governmental entity. If at the completion of this due diligence the broadcaster is confident the new sponsorship rules do not apply, the broadcaster must document this fact and retain the document for the duration of the station's license renewal term. Do not place a copy of the documentation in the station's OPIF. If on the other hand the conclusion is the programmer is a foreign governmental entity, then the standard disclosure requirements and placement of documentation in the station's OPIF apply.

The burden for complying with the new rules falls on the broadcaster. The broadcaster must be objective when conducting their due diligence; relying upon subjective reasons for believing the programmer is not a foreign governmental entity will be insufficient. Broadcasters should retain records of their due diligence efforts, even if uploading the documentation to a broadcast station's OPIF is not required.

Broadcasters should include language in their programming agreements requiring programmers to state affirmatively that neither they nor any of their employees, third party vendors or anyone involved in the production of the programming is a foreign governmental entity, that the programmer will advise the broadcaster of any changes in the programmer's status, and the parties will review the programmer's status on the anniversary of renewal of the programming agreement.

The new sponsorship requirements apply not only to new but existing programming agreements. Broadcasters must vet existing agreements by September 15, 2022.

New Foreign Sponsorship Identification Rules.

Parties subject to the new rules. The new rules require broadcasters to insert a sponsorship identification in programming aired on their station pursuant to a lease of airtime if the provider of the programming qualifies as a "foreign governmental entity." The FCC defines a foreign governmental entity as:

- A "government of a foreign country" as defined by the Foreign Agents Registration Act ("FARA");
- A "foreign political party" as defined by FARA;

- An individual or entity registered as an “agent of a foreign principal” under Section 611(c) of FARA, whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or by a “foreign political party” as defined by FARA, and that is acting in its capacity as an agent of such “foreign principal.”
- An entity meeting the definition of a “U.S. based foreign media outlet” pursuant to Section 722 of the Communications Act that has filed a report with the Commission.

Sponsorship Identification. Sponsorship identification is required when a broadcaster leases time on their station for programming that is sponsored, paid for, or, in the case of a political program or any program involving the discussion of a controversial issue, furnished for free as an inducement to air, by a foreign governmental entity. Leasing agreements include any arrangement in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation, such as a local marketing agreement or time brokerage agreement. The lease for time could be as short as 5 minutes. Traditional advertising will not be considered a lease but would be subject to the FCC’s established sponsorship identification requirements. The Commission’s focus is on agreements by which a third-party controls and programs a discrete block of time on a broadcast station.

Parties involved in the production, preparation, or supply of a program or program material that is intended to be aired on a broadcast station have an obligation to disclose to their employer or to the party for whom the programming is produced or to the station licensee, if they have accepted or agreed to accept, or paid or agree to pay, any money or valuable consideration for inclusion of any program or material.

Broadcast Licensee Due Diligence. The broadcast licensee ultimately is responsible for compliance with the new sponsorship identification rules. The broadcast licensee must exercise reasonable due diligence to determine if an entity or individual that is purchasing time on the station or providing a political program or any program involving the discussion of a controversial issue free of charge as an inducement to broadcast such material is a foreign governmental entity, thereby requiring disclosure under the foreign sponsorship identification rules. The licensee must at a minimum:

- Inform the programmer at the time of the agreement and at renewal of the foreign sponsorship disclosure requirement;

- Inquire of the programmer at the time of the agreement and at renewal whether it falls into any of the categories that qualify it as a “foreign governmental entity”;
- Inquire of the programmer at the time of the agreement and at renewal whether the programmer knows if anyone in the chain of producing/distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
- Independently confirm the programmer’s status, at the time of agreement and at renewal by consulting the Department of Justice’s FARA website and the Commission’s semi-annual U.S.-based foreign media outlets reports for the programmer’s name. This requirement does not apply if the programmer has already disclosed that it is a foreign governmental entity and states that there is no separate need for a disclosure because no one in the chain of producing/transmitting the programming is a foreign governmental entity; and
- Memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue.

The licensee must conduct certain searches of the programmer even if the programmer claims it is not a foreign governmental entity. For example, the licensee must check to see if the programmer appears on the Department of Justice’s most recent FARA list as an agent that is acting on behalf of a foreign principal that is either a “government or a foreign country” or a “foreign political party” as defined by FARA. The licensee should also check if the programmer appears on the FARA list as an agent whose principal is either directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by a “government of a foreign country,” or a “foreign political party” as defined by FARA. Finally, the licensee should check if the programmer’s name appears in the Commission’s semi-annual reports of U.S.-based foreign media outlets. The licensee should document its inquiries to track compliance and create a record in the event of any future Commission inquiry.

As part of its inquiries, the licensee should also inquire whether the programmer is aware of anyone in the chain of producing/transmitting the programming who might qualify as a foreign governmental entity and has provided some form of consideration as an inducement to air the programming. If the programmer confirms that anyone in the chain is a foreign governmental entity, no other investigation on the part of the licensee is necessary beyond ensuring that the disclosures specified by the Commission’s rules continue to be made. If the programmer subsequently indicates that it is no longer a

foreign governmental entity, then programming disclosures are no longer required after the licensee independently verifies that this is the case. The FCC requires reasonable diligence to be conducted not only upon commencement of the programming agreement, but also at renewal time.

Documenting Compliance. The FCC requires broadcasters to memorialize the results of their diligence and maintain this documentation for the remainder of the then-current license term or one year, whichever is longer. The licensee must have the necessary documentation should the Commission inquire about a particular lease agreement or programming that aired on the licensee's station pursuant to a lease agreement.

Licensees should include a provision in their lease agreements requiring the programmer to notify the licensee about any change in the programmer's status that would trigger the foreign sponsorship identification rules. The inclusion of such a provision will impress upon the programmer the importance of the new rules and demonstrate the licensee's commitment to complying with the new rules.

Programmer's Obligations. The programmer must let the licensee know whether a sponsorship identification is required. The programmer must inform the licensee if it is aware of any payments (or other valuable consideration) associated with the programming that would trigger disclosure. These requirements apply not only to those entities or individuals who have entered into lease agreements with the licensee but any person in the chain of producing/distributing the programming. These non-licensees must disclose to their employer, the person for which such program is being produced (e.g., the next individual involved in the chain of transmitting the programming to the licensee), or the licensee itself, their knowledge of any payment or "valuable consideration" provided or accepted by a foreign governmental entity.

On-Air Disclosure. The FCC allows licensees the flexibility to use any of three terms (sponsored, paid for, or furnished) in an on-air foreign sponsorship disclosure statement, rather than mandate the use of "paid for, or furnished" as proposed, in order to conform the new requirement more closely to existing sponsorship identification requirements. The sponsorship identification should incorporate the following language:

"The [following/preceding] programming was [sponsored, paid for, or furnished,] either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country]."

The disclosure statement must be broadcast in the primary language of the programming.

The disclosure must be broadcast at the beginning and conclusion of the programming. For any broadcast of 5 minutes duration or less, only one such announcement must be made at either the beginning or conclusion of the program. For

programming of greater than sixty minutes in duration, an announcement must be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes. These disclosure requirements apply equally to any programming transmitted on a broadcast station's multicast streams.

Public File. Stations airing programming subject to the proposed disclosure requirement must place copies of the disclosures in their OPIFs, in a standalone folder marked as "Foreign Government-Provided Programming Disclosures" so that the material is readily identifiable to the public. For broadcast stations that do not have obligations to maintain OPIFs, such stations should retain a record of their disclosures in their station files.

Licensees must place in their OPIFs the text of the disclosure, the name of the program, and the date and time the program aired. If there are repeat airings of the program, then those additional dates and times should be disclosed. Broadcasters must upload the disclosure statements to the station's OPIF at the end of each quarter, at the same time when broadcasters upload their Quarterly Issues/Programs Lists. Any disclosures in the OPIF must be retained for two years. If the foreign programming consists of "a political matter or matter involving the discussion of a controversial issue of public importance," licensees must obtain and disclose in their OPIFs a list of the persons operating the entity providing the programming.

Section 325 broadcasts. The foreign sponsorship identification rules apply to any programming broadcast pursuant to a section 325(c) permit. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S. licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the foreign station with a sufficient transmission power or from a geographic location that enables the material to be received consistently in the United States.

Please contact David O'Neil at doneil@rinioneil.com if you have any questions regarding this matter.