

**AGENDA DOCUMENT NO. 10-61-B**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**AGENDA ITEM**

September 23, 2010

For Meeting of 9-23-10

**MEMORANDUM**

**SUBMITTED LATE**

TO: The Commission

FROM: Christopher Hughey *CH (rcs)*  
Acting General Counsel

Rosemary C. Smith *RC5*  
Associate General Counsel

Robert M. Knop *RMK (rcs)*  
Assistant General Counsel

Tony Buckley *TB*  
Attorney

Subject: Draft AO 2010-19 (Google) — Draft C

Attached is Draft C of the subject advisory opinion. We have been asked to place this draft on the agenda for September 23, 2010.

Attachment

1 ADVISORY OPINION 2010-19

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Marc E. Elias, Esq.  
Jonathan S. Berkon, Esq.  
Perkins Coie LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2003

**DRAFT C**

9 Dear Messrs. Elias and Berkon:

10 We are responding to your advisory opinion request on behalf of Google, Inc.  
11 concerning the application of the Federal Election Campaign Act of 1971, as amended (the  
12 “Act”), and Commission regulations to Google, Inc.’s proposal to sell text ads to candidates,  
13 their authorized committees, and other political committees. Google, Inc. asks whether  
14 disclaimers are required on text ads generated when Internet users use Google’s search engine  
15 to perform searches. The Commission concludes that disclaimers are not required to be  
16 appended to text ads on behalf of candidates or political committees generated through  
17 Google’s AdWords program.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on  
20 August 5, 2010.

21 Google, Inc. is a corporation that creates programs and applications that allow persons  
22 to search for and collect information on the Internet. Google, Inc.’s AdWords program  
23 generates text ads in conjunction with keywords chosen by the advertiser. Text ads have a  
24 headline which can consist of up to 25 characters, and two lines of text and a display Uniform  
25 Resource Locator (“URL”) which can consist of up to 70 characters. This format applies to  
26 all advertisers, regardless of whether they are political committees. When a user enters search  
27 terms that coincide with the chosen keywords into the Google, Inc. Internet search engine,

1 AdWords generates text ads that appear alongside the search results. Additionally, Google,  
2 Inc. has partnered with other websites to participate in Google, Inc.'s AdWords program.  
3 Using the chosen keywords, Google, Inc. can match an advertiser's ads to websites in Google,  
4 Inc.'s partner network that are most relevant to the advertiser's message.

5 The primary purpose of a text ad is to attract customers to an advertiser's web page or  
6 "landing page" so that customers may learn more about what the advertiser has to offer.  
7 Accordingly, advertisers pay Google, Inc. for a text ad based upon the number of times a user  
8 clicks on the ad and is taken to the advertiser's website. Advertisers do not pay Google, Inc.  
9 based on the number of times a text ad appears on a search page. Google, Inc. wishes to sell  
10 text ads to candidates, their authorized committees, and other political committees under the  
11 AdWords program. These text ads would not display a disclaimer indicating who authorized  
12 or paid for the ad; rather, a full disclaimer would appear on the landing page that appears  
13 when a user "clicks through" a text ad.

14 ***Questions Presented***

- 15 1. *Do text ads on behalf of candidates and political committees generated through*  
16 *Google, Inc.'s AdWords program qualify for the "small items" exception at 11 CFR*  
17 *110.11(f)(1)(i)?*
- 18 2. *If text ads on behalf of candidates and political committees generated through Google,*  
19 *Inc.'s AdWords program require a disclaimer, is the requirement satisfied if the text ad*  
20 *displays the URL of the committee sponsor's website in the text ad and the landing page*  
21 *contains a full disclaimer?*

1 ***Conclusion***

2           The Commission could not reach a response to the questions presented by the required  
3 four affirmative votes. 2 U.S.C. 437c(c) and 11 CFR 112.4(a). Nonetheless, the Commission  
4 concludes that under the circumstances described in the request, the alternative proposed by  
5 the requester (where the text ad displays the URL of the committee sponsor's website in the  
6 text ad and the landing page contains a full disclaimer meeting the requirements of 11 CFR  
7 110.11), is permissible under the Act and Commission regulations.

8           The Commission expresses no opinion regarding the application of State law or the  
9 Internal Revenue Code to the proposed activities, because those questions are not within the  
10 Commission's jurisdiction.

11           This response constitutes an advisory opinion concerning the application of the Act  
12 and Commission regulations to the specific transaction or activity set forth in your request.  
13 *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts  
14 or assumptions presented and such facts or assumptions are material to a conclusion presented  
15 in this advisory opinion, then the requester may not rely on that conclusion as support for its  
16 proposed activity. Any person involved in any specific transaction or activity which is  
17 indistinguishable in all its material aspects from the transaction or activity with respect to  
18 which this advisory opinion is rendered may rely on this advisory opinion. Please note that

1 the conclusion in this advisory opinion may be affected by subsequent developments in the  
2 law including, but not limited to, statutes, regulations, advisory opinions and case law.

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On behalf of the Commission,

Matthew S. Petersen  
Chairman