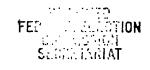
<u>AGENDA DOCUMENT NO. 10-6|-D</u>



FEDERAL ELECTION COMMISSION Washington, DC 20463



1.010 OCT -7 A 9 30

AGENDA ITEM

October 7, 2010

For Meeting of 10-7-10

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM:

Christopher Hughey $CH_{(Res)}$ Acting General Counsel

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Rosemary C. Smith RS Associate General Counsel

Robert M. Knop RMK (RCS) Assistant General Counsel

Anthony Buckley Attorney

Subject:

Draft AO 2010-19 (Google) – Revised Draft C

Attached is proposed Revised Draft C of the subject advisory opinion. We have been asked to place this draft on the agenda for October 7, 2010.

Attachment

1 2	ADVISORY OPINION 2010-19
3 4 5 6 7	Marc E. Elias, Esq. REVISED DRAFT C Jonathan S. Betkon, Esq.Perkins Coie LLP607 Fourteenth Street, N.W.Washington, D.C. 20005-2003
8 9	Dear Messrs. Elias and Berkon:
10	We are responding to your advisory opinion request on behalf of Google, Inc.
11	("Google") concerning the application of the Pederal Election Campaign Act of 1971, as
12	amended (the "Act"), and Commission regulations to Google's proposal to sell text ads to
13	candidates, their authorized committees, and other political committees. Google, Inc. asks
14	whether disclaimers are required on text ads generated when Internet users use Google's
15	search engine to perform searches.
16	Background
17	The facts presented in this advisory opinion are based on your letter received on
18	August 5, 2010.
⁻ 19	Google, Inc. is a corporation that creates programs and applications that allow persons
20	to search for and collect information on the Internet. Google's AdWords program generates
21	text ads in conjunction with keywords chosen by the adversiser. Text ads have a headline
22	which can connist of up to 25 characters, and two lines of text and a display Uniform
23	Resource Locator ("URL") which can consist of up to 70 characters. This format applies to
24	all advertisers, regardless of whether they are political committees. When a user enters search
25	terms that coincide with the chosen keywords into the Google Internet search engine,
26	AdWords generates text ads that appear alongside the search results. Additionally, Google
27	has partnered with other websites to participate in Google's AdWords program. Using the

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AO 2010-19 Revised Draft C Page 2

1 chosen keywords, Google can match an advertiser's ads to websites in Google's partner

2 network that are most relevant to the advertiser's message.

The primary purpose of a text ad is to attract customers to an advertiser's web page or 3 "anding page" so that customers may learn more about what the advertiser has to offer. 4 Accordingly, advertisers pay Google, Inc. for a text ad based upon the number of times a user 5 clicks on the ad and is taken to the advertiser's website. Advertisers do not pay Google, Inc. 6 based on the number of times a text ad uppears on a search page. Google wishes to sell text 7 ads to candidates, their authorized committees, and other political committees under the 8 9 AdWords program. These text ads would not display a disclaimer indicating who authorized or paid for the ad; rather, a full disclaimer would appear on the landing page that appears 10 when a user "clicks through" a text ad. 11 **Ouestions Presented** 12 Google seeks confirmation that "text ads" generated by Google's AdWords program 13 1. are exempt from the disclaimer requirements of 11 CFR 110.11, under the "small items" 14 exception. 15

16 2. If a disclaimer is required, Google seeks confirmation that displaying the URL of the 17 ad sponsor's website in the text ad and requiring the sponsor's website to include a full

18 110.11 disclaimer satisfies the requirement.

19 Conclusion

The Commission could not reach a response to the questions presented by the required four affirmative votes. 2 U.S.C. 437c(c) and 11 CFR 112.4(a). Nonetheless, the Commission is able to confirm that under the circumstances described in the request (including a hyperlink to the ad sponsor's website in the text ad and the sponsor's website includes a full 110.11 AO 2010-19 Revised Draft C Page 3

disclaimer) does not violate the Act or Commission regulations. Further explanation is
 provided in the Commissioners' concurring opinions.

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

This response constitutes an advisory opinion concerning the application of the Act 6 and Commission regulations to the specific transaction or activity set forth in your request. 7 8 See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented 9 in this advisory opinion, then the requester may not rely on that conclusion as support for its 10 proposed activity. Any person involved in any specific transaction or activity which is 11 indistinguishable in all its material aspects from the transaction or activity with respect to 12 which this advisory opinion is rendered may rely on this advisory opinion. Please note that 13 the conclusion in this advisory opinion may be affected by subsequent developments in the 14 law including, but not limited to, statutes, regulations, advisory opinions and case law. 15 On behalf of the Commission, 16

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20 Matthew S. Petersen
21 Chairman