

## Elections Canada Releases Guidance on New Digital Registry Requirements for Regulated Political Advertising

April 25, 2019

As part of sweeping amendments to the *Canada Elections Act* introduced last year by Bill C-76, operators of online platforms (including apps) whose user traffic exceeds certain thresholds, will be required to keep a digital registry of all regulated political advertising that appears on their platforms during regulated pre-election and election periods.

On April 24, 2019, Elections Canada released its first guidance on how these new provisions will be interpreted when they come into effect in June of this year.

Some of the key takeaways from the newly released guidance regarding digital advertising registries are that:

- only paid advertising will need to be included in the digital registries
- it does not matter if an online platform directly sells advertising space or displays ads sold by others, it must maintain a digital registry of all regulated advertising that is displayed on its platform
- online platforms are required to keep their digital registries constantly up to date; ads need to be included in the registry on the first day they appear on the platform
- organizations that have multiple websites and/or apps can use a single registry for the ads that have been displayed on all their platforms, provided that a link to the centralized registry is easily available and identifiable on each of those websites and/or apps

The guidance from Elections Canada also contains statements regarding more general interpretations of what will be considered regulated advertising, including that:

- text messages, email messages, and user-generated content posted for free on social media will not be considered regulated advertising
- videos posted by political parties for free on websites such as YouTube will not be considered regulated advertising

The guidance statement from Elections Canada that could have the biggest unforeseen impact in the upcoming federal election is regarding issues advertising (advertising that does not advocate for any candidate or political party but takes a position on an issue during an election period). Elections Canada has indicated that advertising on virtually any issue could be deemed to be political advertising (whether that is the advertiser's intent or not) if any candidate happens to associate themselves with that issue in any way

before or after the ad is displayed, including during debates or in social media posts:

“... Determining whether a particular message promotes or opposes an issue with which a candidate or registered party is associated is largely done based on the facts. An issue ad transmitted during the election could at some point become associated with a candidate or registered party. It is, therefore, important to be mindful that any political ad for or against an issue transmitted on a platform during an election may be regulated.”

The regulation of online platforms and the requirement to maintain digital advertising registries is just one of many new provisions in the *Canada Elections Act* that will come into force in June 2019. If you or your organization require advice regarding how these amendments may impact you, please contact Laurie Livingstone or Arthur Hamilton.

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