

New Rule Expands FCC Jurisdiction Related To Foreign Media

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On Sept. 4, 2018, the [Federal Communications Commission](#) issued a new rule requiring foreign media outlets to submit reports to the FCC disclosing their relationships with foreign principals. The notice was issued pursuant to the 2019 National Defense Authorization Act.ⁱ

Who must report?

Media outlets that (1) produce or distribute video for U.S. consumers via multichannel video programming distributors (which would include cable operators and satellite broadcasters) and (2) would be an “agent of a foreign principal” under the Foreign Agents Registration Act, but for the exemption for news services contained in [FARA Section 611\(d\)](#).

A foreign agent under FARA is any individual or entity, that in the United States is:

- Acting as an agent, representative, employee or servant of a foreign principal, under the direction of a foreign principal or holding himself or herself out to be acting on behalf of a foreign principal; and is
- Engaging in “political activities” for or in the interest of the foreign principal; acting as a foreign principal’s publicity agent, political consultant or in the interests of the foreign principal; conducting fundraising and disbursement activities for the foreign principal; or representing a foreign principal before any U.S. government agency or U.S. public official.

FARA currently exempts, among others, any news organization that is organized under U.S. law, that may receive foreign funding for advertising, subscriptions or other compensation, as long as such organization is 80 percent owned by, and its officers and directors are, U.S. citizens and as long as it is “not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal” or a foreign agent.

Traditionally, we think of FARA as covering foreign lobbyists and political operatives acting in the interests of foreign entities. But the new FCC rule for the first time requires reporting by media outlets.

What must be reported?

The report must include the name of the outlet and the relationship of the outlet to its foreign principal, including the legal structure and information about the outlet's financing by the foreign principal. Importantly, the reporting requirements do not limit the outlet's activities in any way or require any reports related to content. It is merely a disclosure requirement about, essentially, the outlet's identity.

When?

The deadline for outlets to submit their first reports is Oct. 12, 2018. Reports must be submitted every 6 months thereafter.

Where?

Outlets should submit their reports to ndaareport@fcc.gov, with the subject line referencing the NDAA reporting requirement. The FCC will provide a summary of the reports to Congress and make those reports available to the public.

Why?

So here's the million dollar question. The public notice is the latest in a recent series of events scrutinizing foreign influence in U.S. media. Most of that activity has arisen under the scope of FARA. FARA was enacted in 1938 in response to concerns about Nazi and Communist propaganda. It requires agents of foreign principals, including of foreign governments, to register with the U.S. government to ensure that the American people and U.S. government understand the true source of information; i.e. who is actually "attempting to influence public opinion, policy, and laws."

In the last two years, we have seen a resurgence of FARA enforcement, focusing on individuals linked to Russia and potential Russian interference in the 2016 presidential election. We have also seen lawmakers' attempts to require more government scrutiny on media linked to foreign governments — acknowledging that this new era of political propaganda is much more complicated and can infiltrate our civic and democratic processes in new ways; gone are the days of published pamphlets. For example, in March of last year, bipartisan legislation was introduced to allow for the investigation into RT America, the U.S. television channel affiliated with the RT network, based in Moscow and funded by the Russian government. While that legislation stalled in Congress, a U.S. production company that disclosed itself as an agent of ANO TV-Novosti, the Russian government entity that administers global broadcasts of the RT Network, did, in fact, register under FARA in November of last year.

In March of this year, a group of lawmakers sent Attorney General Jeff Sessions a letter asking the [U.S. Department of Justice](#) to investigate Al-Jazeera's connections to the Qatari government. "American citizens deserve to know whether the information and news media they consume is impartial, or if it is deceptive propaganda pushed by foreign nations," the letter said. And according to media reports just this week, the DOJ

ordered Xinhua News Agency and China Global Television Network (known as CGTN now and earlier as CCTV), two state-run media organizations, to register under FARA.

Thus, the FCC reporting requirement comes amidst national security concerns raised on both sides of the aisle about foreign interference in our civic discourse and in our elections, including the upcoming November midterms.

Parts of the FCC requirement are redundant with FARA. The only extension applies to news outlets that are 80 percent or more owned by U.S. citizens and are not controlled or directed by foreign principals. That would seem to be a narrow subset of foreign media organizations. But what this public notice does signal is more scrutiny on media influenced by foreign actors, and gives another U.S. agency some authority to review foreign ties. Nothing in the FCC's notice states that if an entity is registered under FARA, it need not report to the FCC. What we do not know yet is whether this reporting requirement is the beginning of expanded jurisdiction for the FCC related to foreign media.

As of now, media outlets in the United States that are affiliated with non-U.S. entities should take note of their obligations under FARA and the FCC rule.

ⁱ See FCC Announces Disclosure Requirements For United States-Based Foreign Media Outlets, Public Notice, DA 18-911 (rel. Sept. 4, 2018).