



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 16, 2020

By E-mail

[Addressee deleted]

Re: Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

We write in response to your letter of June 26, 2020 (“the June 26 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligation of your client, the [company] to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). In response to our request for more information, you sent additional materials on August 3, 2020 (“the August 3 Letter”). Based upon your representations, we have determined that the [company] would be obligated to register as “an agent of a foreign principal” under the Act should it undertake the new activities described in your letters at the request of any foreign principal.

According to the June 26 Letter, the [company] is a wholly-owned subsidiary of [Parent company], an online and print media company owned by [name deleted] and [deleted] family, all of whom are U.S. citizens. You describe the [company] Journal as a leading provider of news, intelligence, and tools to government affairs professionals and policymakers, through its offering of several products, including daily briefings, presentations, social/political network analyses, and political elections trackers.

In the June 26 Letter, you request an advisory opinion concerning two new services that the [company] proposes to offer entitled [Service A] and [Service A+]. In [Service A], the [company] will offer subscribers detailed information about and analysis of policymakers and influencers at the state and federal level. The website of the [Service A] suggests that subscribers use this service to “prepare for meetings with policy makers and influencers, engage with the best people to move your strategic plan forward, [and] convene the right influencers and voices at your events.” Under [Service A], the [company] will continue to exercise editorial control in determining which policymakers and influencers to cover. Each subscriber will receive the same information, as chosen by the [company] staff.

In [Service A+], subscribers can request that a specific topic be covered or that previously published content be refreshed or revised. You state that the [company] will give weight to requests from [Service A+] subscribers, but retains editorial control regarding whether and when to produce content requested in this fashion. The [company] intends to offer these services broadly within the Washington, DC community, including foreign embassies. The August 3 Letter includes such a proposed agreement with the [Embassy of a foreign country].

FARA seeks “to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are

political in nature or border on the political.”¹ Generally speaking, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States, in relevant part:

- (i) engages in political activities² for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant³ for or in the interests of such foreign principal;

See 22 U.S.C. § 611(c)(1).⁴

With respect to the [Service A], the [company] is intending to provide its subscribers, including foreign entities, detailed political intelligence concerning topics [company] has selected, and over which it exercises editorial control. If the [Service A] is thus limited, there would not exist sufficient agency under FARA to require registration since [company] would not be operating at the “order, request, or . . . direction or control” of a foreign principal.

Our conclusion is different with respect to the [Service A+] service. For that service, the subscriber’s ability to request coverage of a specific topic, coupled with the [company] agreeing to act upon such a request, would establish an agency relationship between the [company] and any requesting foreign subscriber. The [Service A+] would constitute activities of a “political consultant” because the [company] acknowledges that it would be providing subscribers with intelligence about politics and policy.⁵ This intelligence constitutes providing information and advice concerning the domestic and foreign policies of the United States, and is intended to be used in furthering the political activity of subscribers that are foreign principals. Accordingly, the [company] would be obligated to register as an agent of a foreign principal should it agree to

¹ H.Rep 89-1470, at 2 (1966).

² The Act defines “political activity” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country.” 22 U.S.C. § 611(o).

³ The Act defines a “political consultant,” as “any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611(p).

⁴ Although you assert that [company] falls within the media exception described at 22 U.S.C. § 611(d), [company] is not a “news or press service” under FARA and the activities in question are not in the nature of “bona fide news or journalistic activities.” Accordingly, the media exception does not apply here.

⁵ *See*, The [company] website, About page, available at [deleted].

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produce the [Service A+] at the request of the [Embassy of foreign country] or any other foreign principal.⁶

Please effectuate the registration of the [company] within ten days (10) days of performing the [Service A+] for any foreign principal. Useful information on how to register may be found on our website at <https://www.fara.gov>. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name deleted] at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Brandon L. Van Grack

Brandon L. Van Grack
Chief, FARA Unit

⁶ Whether this political intelligence would be made available to all other “subscribers” is not pertinent to our analysis.