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Defending the Right to Know: The Foreign Agent Registration Act and the Fight Against Disinformation

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The Foreign Agent Registration Act (FARA) was adopted in 1938 to reveal sources of foreign propaganda and defend the right of the U.S. public to know the origin of information provided through the media. Using a critical political economic approach, this article examines the history of FARA, its recent application to Russia's media agents, and the FCC's attempt to regulate media transparency. As demonstrated by the analysis, the law and the proposed regulation protect the interests of the industry rather than the interests of the public.

Keywords: Foreign Agent Registration Act, political economy, media transparency, propaganda

In November 2017, a company representing Russian television channel RT America (former Russia Today) in the United States was advised to register under the Foreign Agent Registration Act (FARA). This action, initiated by the U.S. Department of Justice, received an indignant response from the RT management and Russian leaders. Margarita Simonyan, RT Editor-in-Chief, sarcastically retorted with "congratulations to the US freedom of speech and all those who still believe in it" (Chappell, 2017, para. 3). The answer to the question of what caused this fiery reaction lies in the history of the Act, the role and function of propaganda, and the modern international climate.

The basis of FARA lies in the assumption that it is the U.S. government's responsibility to protect the public's right to know the sources behind the information provided through the media in order to counter foreign propaganda. FARA simultaneously grants the federal government the authority to decide who has to register

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as a foreign agent and when that registration will occur. As will be shown, an analysis of the history of FARA and the Federal Communications Commission's (FCC) 2020 Notice of Proposed Rulemaking demonstrates that grounds for making such decisions about what organizations are required to register and why are ambiguous and have been historically motivated by political economic reasons rather than the stated goal of transparency. In this article, we argue that disclosing the origin of information to enable people to make informed decisions is important and should be applied equally to all nations and sources of information, including inside the United States. However, as will be discussed, FARA was disingenuous from the start, and a shift in FARA's focus from propaganda to economic concerns reveals that the revised act was not about disclosure; it was about protecting U.S. political economic interests. Further, the FCC's proposal "to amend its sponsorship identification rules to require disclosure when certain foreign programming is broadcast" (Kirby, Reed, & Dickerson, 2020, para. 1) relies on FARA. This perpetuates the ambiguity and other problems associated with FARA in the name of transparency and the struggle to counter disinformation campaigns from foreign agents that have affected U.S. elections since at least 2016. However, what is not noted in the FCC's proposal to identify the source of programming is that the 2016 and 2020 influencers were largely sending messages through the Internet and social media, not broadcasting.

This article begins with a discussion of critical political economy as the theoretical framework for our analysis of communication regulation and factors affecting government policies. We then describe the history of FARA and the act's original and current functions. We also examine the current registration of foreign media agents under FARA and address the reasons for and implications of the act. We further discuss the FCC's 2020 proposal to counter disinformation in broadcasting by using current sponsorship identification regulations. We conclude by highlighting implications for the current media environment.

Political Economy Theory

Analysis of any law, regulation, or policy related to the media should take into consideration the place media hold in the global economy. Media serve as a source of information for the public; shape perceptions of the world particularly related to politics,

economics, and social issues; and are an important sector of the capitalist economy (Harvey, 2004; McChesney, 2004; Mosco, 2009; Picard, 2011, 2014; Pickard, 2015). It is appropriate therefore to choose a theoretical framework that would accommodate all of these aspects. Such an approach is offered by theory that provides a critical perspective on political economic possibilities in the media. As Hardy (2014) states, "Critical political economy of media examines how the political and economic organisation ('political economy') of media industries affects the production and circulation of meaning, and connects to the distribution of symbolic and material resources that enable people to understand, communicate and act in the world" (p. 9). In particular, one of the factors examined by political economists is "how the policies and actions of governments and other organisations influence and affect media behavior and content" (p. 9).

Political economic theory reveals a network of interests behind media policy making. Addressing the areas under examination in a political economic analysis of a media policy, Picard (2011) lists "preexisting policies, market conditions, economic and social history and business strategy, and ... the important roles those played in setting the conditions under which policy was made" (p. 45). In the analysis of the FARA, consideration of the statute's history as well as the surrounding political economic conditions is critical to understanding its present application. These considerations also inform potential new FCC rulemaking that supports FARA.

Analysis of media regulation in the United States is often concerned with the balance between freedom of speech and government control over communication. According to scholars of critical political economic theory, historically, the U.S. federal government has been heavily involved in the regulation of mass communication industry (McChesney, 2004; Mosco, 2009; Pickard, 2015, 2020a). Mosco (2009) argues that the reason for government intervention is that "unlike many other economic sectors, the communication industry was owned outright by the state or ... was closely integrated into wider state functions through processes of budgetary allocation, policy oversight, and regulation" (p. 166). Thus, government economic interests have been deeply invested and embedded in media structure and practices due to their global reach and influence.

What makes media services a unique industry is the connection to information. Horwitz (1989) writes that communication is a "particularly interesting infrastructure

because it not only is crucial for commerce, but also constitutes the public realm of ideas and discussion, and hence implicates the range of issues surrounding freedom of speech" (p. 8). For example, as Pickard (2020a) states, the post office, "the country's first major communications network," was created based on "[t]he belief that Americans must have access to reliable and diverse information—and that the government had an affirmative duty to help provide it" (p. 16). Thus, regulation of communication networks acquires political importance because of the meaning attached to the idea of free speech.

Freedom of speech and freedom of the press are guaranteed by the First Amendment to the U.S. Constitution. This provision prohibits the government from controlling the content carried in media networks based in the Enlightenment ideal that the public should make informed decisions using freely supplied information. Highlighting the significance of freedom of speech as a fundamental principle of democracy, McChesney (2004) noted: "virtually all theories of self-government are premised on having an informed citizenry, and the creation of such an informed citizenry is the media's province" (p. 17). Consequently, media are critical in ensuring that democratic principles and normative ideals are met and that the public has access to information, which is one reason why radio and later television broadcasters were given free licenses with the promise to serve the public interest.

Limitations on government interference in the media established by the First Amendment and government involvement in the media industry "raise fundamental questions about the extent to which the state has obligations to protect economic interests, to ensure informational needs of society are met, and to seek an optimal balance of those responsibilities" (Picard, 2014, p. 101). The issue of balance between governmental economic and political interests and the informational needs of the public is at the heart of the discussion of FARA. The history of the FARA legislation reflects a complex relationship between protection of the federal government's political and economic interests and the guarantee of citizens' freedom of speech.

Another issue related to the current regulatory climate is the problem of whose interests the government is protecting with this communication statute. Political economy scholars criticize federal regulators for putting the interests of large business corporations above the First Amendment's goal of allowing diverse information to be made available

to the public. For example, Harvey (2005) posits that lobbyists are able to persuade legislators to "write legislation and to determine public policies in such a way as to advantage themselves" (p. 26). Favoring business interests in regulation is problematic because it leads to increased media concentration, resulting in reduced diversity and localism of the media and weakened competition (see for example, Bettig & Hall, 2012; Hardy, 2014; McChesney, 2004; Pickard 2020a). Currently, within the United States, six media conglomerates control the majority of all media networks (Pickard, 2020b). Political economy scholars see the root of the problem in the neoliberal state associated with the existing U.S. economic system and the values it protects and promotes (Hardy, 2014; Hathaway, 2020; McChesney, 2001).

Neoliberalism affects media structure and companies internationally in a number of ways. This includes politicians who support conditions that allow transnational corporations to place business interests over societal well-being and who advance legislation that promotes individualism, freedom of choice, and personal responsibility (Artz, 2017; Bettig & Hall, 2012; Hardy, 2014; Harvey, 2005; Pozen, 2018). Harvey (2005) argues that in a neoliberal state, "[w]hile the virtues of competition are placed up front[,] the reality is [that this perspective increases the] . . . consolidation of monopoly power within a few centralized multinational corporations" (p. 28). Media corporations seek to extend beyond national borders while keeping foreign competition at bay. As noted by Artz (2017), a trend toward transnational capitalist partnerships, acquisitions, and mergers is driven by "accumulation through dispossession" (p. 95), or privatizing public resources such as land or state funded media to centralize corporate power and wealth. According to Artz (2017), international acquisitions are often used to bypass foreign ownership laws. He further argues that U.S. media companies seek to dominate the global market and offers the example of transnational conglomerates including the Associated Press, Time Warner, and Liberty Media. For example, in 2019, Walt Disney Company's $71.3 billion purchase of 21st Century Fox assets gave Disney control of Star, "a fast-growing television-service provider in India" and its streaming service Hotstar (Barnes, 2019, para. 4). In late 2020, Disney announced that Star, "Disney's international answer to Hulu, [would] roll out in certain European countries, Canada, and New Zealand" as a "free tier within Disney Plus" and would introduce a new streaming service

called Star Plus, which would also include ESPN and ESPN+ content, to Latin American subscribers (Alexander, 2020, paras. 1, 2). In response to the globalization of U.S. media, other national markets have responded by becoming transnational "out of necessity" (p. 98). In other words, globalization of media corporations becomes a means of accumulating capital and overcoming international competition. Transparency laws, such as the FARA law and the FCC's limitation of foreign ownership discussed below, control foreign media companies' presence in the U.S. market. At the same time, the FCC is proposing to relax media market regulations to allow for the growth of U.S. media corporations (Harvey, 2005).

Columbia Law School Professor David E. Pozen (2018) also addresses the connection between neoliberalism, elimination of competition, relaxed regulation, and transparency requirements. Answering the question regarding who benefits from transparency laws, Pozen wrote, "American transparency law largely leaves the answer to the market.... Many firms have a strong, steady motivation to learn what their regulators and competitors are up to" (p. 156). He asserted that beginning in the 1970s and 1980s, transparency laws started to serve "as a means to minimize government interference with the market, such 'disclosure schemes blossomed in the 1980s under the Reagan administration as part of a trend to inform and educate rather than regulate'" (p. 136). That approach was considered to "interfere less with individual choice and with the operation of the markets" (p. 136). Thus, in a neoliberal state, disclosure leads to the availability of competitors' data, limited market regulation, and reliance on individual interpretation rather than journalism.

Indeed, another way legislators who work to advance neoliberal values affect the media is through prioritizing business interests and putting them ahead of democratic principles and social well-being. Owners of media outlets operating in a democracy such as the United States should advance knowledge and discovery of truth; however, global media companies often have to compete for audiences and advertisers at the expense of the content quality. Bettig and Hall (2012) discuss how getting "stories on a predictable timetable and at low cost" becomes a solution for broadcasters, because "...searching out stories that are not advertised or announced, requires time and effort" (Kindle location 179). Prioritization of business interests by the federal government and media

corporations undermines the ability to protect the right of the public to have access to competing perspectives on information. The interplay of political and economic factors, as well as governmental and business interests, is reflected in the history of the Foreign Agent Registration Act, which is important to explore to understand current transparency proposals.

History of FARA

At the time of its adoption in 1938, FARA was used to control sources of foreign propaganda and had a distinct anti-Nazi and anti-communist orientation (Lawson, 1996; Zhang, 2005; Robinson, 2020). The law was supposed to keep the U.S. public informed about the origin of information contained in non-American media. After a number of amendments over the years, FARA is now aimed at "agents of foreign principals,"[2] i.e., organizations that receive at least 80% of their funding from a foreign country and that participate on behalf of their country in disseminating informational materials mostly by means of lobbying, advertising, public relations, and fundraising for their foreign sponsors.

Although "with the end of the Cold War, the old political ideologies no longer provided a viable rationale for public communication" (Zhang, 2005, p. 48), FARA remains in place as a measure to control lobbying intended to advance foreign economic interests in the United States. The term "propaganda" was dropped from the text of the law in 1995, but FARA continues to be associated with the adverse influence of foreign agents.

Government regulation of media companies as an infrastructure industry was designed with the purpose of providing the citizens of the United States with access to information (McChesney, 2004; Pickard, 2015). However, these laws have only been applied to domestic media. For foreign media companies, the federal government exercises control by regulating direct investments by foreign companies in the U.S. media

[2] "Foreign principal" is defined by FARA as: "(1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

or by overseeing indirect foreign involvement in the U.S. media system. The FCC controls foreign ownership through its licensing process. For example, Section 310(a) of the Communications Act of 1934, as amended, "prohibits a foreign government or its representative from holding any radio license." Section 310(b)(4) "establishes a twenty-five percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee" ("Foreign Ownership," 2013, para. 2). Thus, foreign ownership of U.S. media companies is very limited as the U.S. government protects the economic interests of domestic media companies, and, presumably, protects citizens from foreign propaganda. In addition to direct investments in the U.S. media, foreign countries can pay local U.S. companies to get access to the media and the public. The Foreign Agent Registration Act of 1938 (FARA) was adopted to control this mechanism of access.

Both the FCC's Communications Act and the Foreign Agent Registration Act were enacted in the 1930s. FARA was related to the growth of the totalitarian Hitler and Stalin regimes in Europe. Lawson (1996) notes that "[c]oncern within the country had been mounting over the activities of foreign propagandists, particularly Nazi, fascist, and communist, and FARA sought to unmask these agents and provide for official and public surveillance of their activities" (p. 1156). Attorney General Francis Biddle filed a report with the U.S. Congress in 1944 on the administration of FARA stating that FARA was necessary to reveal concealed propaganda activities identified as "many persons who, under foreign inspiration, were seeking to obtain support for political concepts and systems prevailing in other countries, or to influence our domestic and foreign policies, not uncommonly with respect to political developments abroad" ("Report," 1944, p. 6). By defining attempts to influence political views of the U.S. public as political propaganda, FARA sought to protect the political interests of the federal government and condemn attempts to adversely impact those interests.

Attorney General Biddle's report addressed a possible concern regarding the impairment of First Amendment rights. Biddle argued that FARA, in fact, facilitated the right of Americans to obtain information by introducing "a disclosure system designed to reveal to the American public the identity and activities of persons acting on behalf of

foreign governments, foreign political parties, and other foreign entities pursuing political objectives in the United States" ("Report," 1944, p. 7). The purpose of the FARA Act, amended by the U.S. Congress in 1942, was "to protect the national defense, internal security, and foreign relations of the United States" and allow the government and the U.S. public to make informed decisions about the nature of information available to them ("Report," 1944, p. 6). In other words, Biddle argued that the law would increase transparency of media ownership, which would in turn help the general public make more informed decisions about the source of information. However, the rules were not applied or enforced evenly for domestic and international owners of media companies.

Identification of propaganda was accomplished by Department of Justice officials upon their determination that specific information had been supplied by foreign agents. Although this information was not banned from dissemination by the media, FARA was supposed to automatically alert customers about its adversarial nature. As noted in the 1944 report by Attorney General Biddle, propaganda materials emanated from the "areas in which the fundamental freedoms of speech, press, and worship has been destroyed, conflicted sharply with our traditions and institutions" ("Report," 1944, p. 3). Robinson (2020) posits that at the time that FARA was passed by the U.S. Congress, FARA was considered a more "democratic" method than criminalization of subversive speech, but the Act still provided "the Justice Department an effective and low-profile means for eliminating unwanted political ideas from the U.S. scene without drawing critical attention to its work" (p. 1095). Thus, the transparency requirement was intended by the state to protect the political system from destabilizing foreign influence.

In the 1930s, when the FCC's Communications Act and the Foreign Agent Registration Act were enacted, the objectives and implications of FARA could be justified by the international climate; however, the law raised concerns about compliance with the First Amendment, and U.S. allies were exempt from some of the requirements. Therefore, FARA's provisions did not cover all foreign agents equally. While one can rationalize that in times of war or competing ideologies, political measures to stop what is seen as foreign propaganda are necessary to protect national security, FARA remained in force after the end of World War II and the failure of European communist regimes, suggesting that retaining the law was not about safeguarding the public from political

subversion but about protecting the federal government and its economic interests from foreign competition.

Over time, the reasons for FARA's application changed from political to economic, leading to the modification of some of the law's provisions and definitions. The Foreign Agent Registration Act has been amended ten times by Congress (USCODE-2009, 2009). Scholars (Baker, 1990; Lawson, 1996; Lynn, 1988; Robinson, 2020) argue that the most significant changes were made in 1966. According to Attorney General Ramsey Clark's 1966 report to Congress, the purpose of the changes to the law was "to place primary emphasis on protecting the integrity of the decision-making process of our Government and the public's right to know the source of the foreign propaganda to which they are subjected" (p. 7). Therefore, according to Clark, both the public and the U.S. government needed to be protected. Robinson (2020) asserted the shift was "shedding light on lobbyists and others attempting to influence U.S. government decision-making for foreign interests, particularly on economic matters" (p. 1096). Baker (1990) noted that lobbyists and PR companies were routinely used to advance foreign economic interests by influencing politicians to create legislation favorable to market forces and international trade; for example, foreign governments lobbied to protect and raise their sugar quotas in 1962. Subsequently, the definition of "political activities" in the 1966 amendments to FARA was extended to include lobbying. In Baker's opinion, "[f]oreign agents now lobby almost exclusively to promote foreign economic interests rather than to promote political subversion" (p. 25). When international competition threatened the U.S. market, FARA appeared to be the right mechanism to address this new challenge.

The term "propaganda" remained in the law's text after the 1966 amendment, which eventually became a problem because of the term's association with subversive espionage activities. Lynn (1988) criticized the use of the term "political propaganda" in FARA as "a pejorative characterization" (p. 373). He discussed a 1982 case, in which FARA required the New York branch of the National Film Board of Canada, which disseminated three films in the United States, to register. The films addressed the threat of acid rain resulting from the burning of fossil fuels and called for the audience to contact political leaders about clean air legislation. In other words, the films challenged the

economic interests of U.S. energy companies. According to the *Washington Post*, in 1980-1982, the Justice Department classified eleven foreign films as political propaganda, including:

> "Crisis in the Rain." A documentary by the Ontario Ministry of the Environment, the film attempted to enlist public support for the battle against acid rain in Ontario and the United States.
>
> "Acid from Heaven." Produced by the National Film Board of Canada, the movie provided a case study of a person whose income was cut off because of acid rain. The film encourages viewers to contact political leaders about acid rain.
>
> "If You Love This Planet." Also produced by the Canadian film board, the film chronicled a lecture by Dr. Helen Caldicott, a nuclear freeze advocate. ("Justice Classified," 1983, paras. 12, 13, 15)

The article stated, "A film classified as propaganda cannot be distributed without a disclaimer stating that the views expressed in it are those of the distributor and that registration does not indicate the approval of the U.S. government" (para. 7). It is not surprising, then, that after the requirement was satisfied, potential buyers refused to acquire the Canadian films due to their association with "political propaganda" (Lynn, 1988). The government's actions shaped the reaction of the local buyers and resulted in direct consequences for the foreign media. The term "political propaganda" remained in the language of the law until 1995, when it was replaced by "political activities" (USCODE-2009, 2009, p. 257), a term that is more ambiguous, incorporating any number of possible ways and forms of influence, thus broadening the scope of the Law's application and dropping the explicitly stigmatizing language of propaganda. However, the ambiguity and broadness of FARA policies were not eliminated. Robinson (2020) criticizes the problematic nature of definitions and provisions employed by FARA: "Given the broad definitions of foreign principal, covered activities, and who is an 'agent' under FARA, it would seem that an almost endless number of persons and entities would need to register" (p. 1104). Robinson (2020) and Honda (2016) provided examples of the selective use of the law, such as the 1950 case of W.E.B. DuBois, a well-known civil

rights activist.[3] In a more recent 2018 case, the House Natural Resources Committee called for enforcing the law in relation to a prominent environmental nonprofit organization, the Natural Resources Defense Council (NRDC). The organization was accused of acting in the interests of the Chinese government.[4] NRDC had to invest significant resources to defend against these charges (Robinson, 2020).

As the history of the law demonstrates, politics, economics, and ideology combined in the creation of and subsequent changes to FARA, which aimed to control access to U.S. media, policymakers, and, eventually, the public. Even when openly accused of inhibiting "the public's right to acquire politically relevant material," the federal government continued to use FARA to control information coming from foreign sources (Lynn, 1988, p. 355). Protecting the U.S. political economic system from unwanted foreign influence became the new purpose of FARA. The law's shift to a focus on public relations seemed to completely move FARA into the realm of law and lobbying; nevertheless, the case discussed below shows that the origins of FARA as a counter to foreign propaganda are not forgotten and can be invoked by the U.S. government when politically expedient.

Registration of Foreign Agents under FARA

Robinson (2020) noted a renewed interest in FARA with the investigation of foreign meddling in the 2016 U.S. presidential election, specifically by Russian media. Following Special Counsel Robert Mueller's report, in November 2017, "at the request of the Justice Department, RT TV America and Sputnik, both of which are media organizations funded by the Russian government that operate in the U.S., registered as 'foreign agents' under the Act" (Robinson, 2020, pp. 1078-1079). According to Robinson, FARA is now being used again as a mechanism against disinformation in addition to foreign lobbying and electioneering.

[3] In 1950, W.E.B. Du Bois created the Peace Information Center in the United States that promoted the ideas of the Stockholm Peace Appeal. The Stockholm Peace Appeal, signed by an international group, criticized atomic bombings and the following arms race. Du Bois's activities were condemned by the State Department as "un-American." He was accused of working in the interests of the Soviet Union and subsequently prosecuted for failure to register as a foreign agent (Honda, 2016).

[4] https://republicans-naturalresources.house.gov/uploadedfiles/bishop-westerman_to_nrdc_06.05.18.pdf

But as the example of registered Russian media agents show, the struggle with disinformation is difficult because Russia used a combination of broadcast and social media and masked the identity of its sources. In addition, commercialization of the media can put business interests above the social and political implications associated with information supplied by a foreign government.

The 2019 Report of the Attorney General, signed by Assistant Attorney General Stephen Boyd, listed four media organizations acting as foreign agents for Russia: Reston Translator, LLC which sold radio broadcasting time to a Russian state news agency Rossiya Segodnya;[5] RIA Global LLC, which produced news, broadcast, and website content on behalf of Rossiya Segodnya; RM Broadcasting LLC, which broadcasted Radio Sputnik in Washington, D.C. and Kansas City; and T&R Productions LLC, which produced news and entertainment content for ANO TV-Novosti (Report, 2019, pp. 221-222). None of these registrants admitted their ties to the Russian government, although Rossiya Segodnya is identified in the 2019 Report to Congress as a federal state enterprise (Report, 2019, p. 221). T&R Productions stated that it represented "*ANO TV-Novosti,*[6] an NGO organized under Russian Federation law" (6485-Exhibit-AB, 2017, p. 1). In fact, according to its official Russian-language website, *ANO TV-Novosti* is also known as *Russia Today* or *RT*.[7] In January 2017, an Intelligence Community Assessment (ICA) report prepared by the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the National Security Agency (NSA), named Russian TV channel RT and radio broadcast station Sputnik "a part of the Russia's state-run propaganda machine... serving as a platform for Kremlin messaging to Russian and international audiences" ("Background," 2017, p. 4). The report further stated, "RT America TV, a Kremlin-financed channel operated from within the United States, has substantially expanded its repertoire of programming that highlights criticism of alleged US shortcomings in democracy and civil liberties" (p. 6).

A study conducted by Elswah and Howard (2020) found that as early as 2008, after Russia's conflict with Georgia, Russia Today (RT) took deliberative steps to disguise

[5] Its listed full name is Federal State Unitary Enterprise "Rossiya Segodnya."
[6] Autonomous Nonprofit Organization "TV-Novosti."
[7] https://russian.rt.com/

its identity in hopes "that its audience would overlook its Russian origins," and for the first time, "produced disinformation" (pp. 628-629). The Center for Responsive Politics noted, "FARA data is [sic] only as reliable as the registrant filling out the forms. Sometimes FARA documents are incomplete or incorrect, and sometimes foreign agents don't register at all" ("Foreign Lobby," n.d., para. 15). Thus, considering that Russia intentionally provided misleading information and that the Justice Department relied on the diligence of foreign agents, it is difficult to expect that FARA is effective in disclosing subversive foreign government campaigns. In fact, RT, a channel broadcasting on Dish Network, DirecTV, GlobeCastWorldTV, Verizon FiOS, Cox Communications, and RCN Cable, went unnoticed for three years by the authorities in charge of foreign agent registration, and it took a public scandal for Justice Department officials to demand that RT register under FARA. Broadcasters did not question the origin or the nature of information they were distributing as long as it was bringing them revenue. Thus, the provisions of FARA were not immediately implemented for the Russian media agents, demonstrating the uneven, political economic nature of the enforcement of the law (see also Robinson, 2020).

Further, the Russian information campaign was not limited to broadcasting but also commonly involved online social media and their business interests. The 2017 report by the Senate Select Committee on Intelligence stated, "YouTube continues to be the propaganda vehicle of choice for Russia's state sponsored news organization, RT (formerly Russia Today)" ("(U) Report," 2017, p. 59). This is supported by Orttung and Nelson (2019), who found that "RT videos registered over 4 billion views across all of its channels from its founding on 28 March 2007 through January 2017, according to numbers on RT's YouTube website" (p. 84). After Mueller's investigation, social media corporations, like Facebook and Twitter, came under scrutiny of the U.S. Congress ("Social Media," 2017). For example, Facebook profited from Russian ads, but the identified amount of $100,000 only pertained to known Russian-controlled accounts (Wagner, 2017). That is, T&R Productions did not have to register until there was a political scandal and public backlash that could affect U.S. government and commercial interests, particularly that of social media platforms like Facebook.

Implications of FARA

FARA's goal of "protecting the United States from covert foreign influence" (FARA Brochure, n.d.) may be tarnished by the commercial interests of media companies. For example, Reston Translator LLC was registered under FARA for selling radio broadcast time to Rossiya Segodnya, Russia's state news agency. In its statement, the company argued,

> In a more general sense, each of the terms "supervised", "directed", "controlled", "financed", and "subsidized" suggest either a respondent-superior relationship such as a master-servant, employer-employee, or debtor-creditor relationship. The relationship between Reston Translator LLC and Rossiya Segodnya is rather a seller-buyer relationship of radio broadcast time. ("Registration Statement," 2017, p. 7)

The company further noted that it fulfilled a sponsorship identification requirement by the FCC; the content identified itself as Sputnik; and any person could listen to and critique the content. The broadcaster acknowledged that the Department of Justice and its "National Security Division may have significant questions as to the activities of Rossiya Segodnya in our United States" (p. 8). In other words, when media content is treated as commodity that can be bought and sold at minimal cost, transparency requirements are not going to protect the public from subversive influence.

Russia also used a strategy often used by many transnational companies to enter the global market. As discussed by Artz (2017), national markets often respond to the globalization of American media by becoming transnational, and international acquisitions are used to bypass restrictions on foreign ownership. In fact, in its statement, T&R Productions wrote that its "principal has primary responsibility for creating a TV network that will be competitive with other TV networks operating around the world" (6485-Exhibit-AB, 2017, p. 2). This reflects the tendency for globalization in neoliberal markets.

However, the problem with the information supplied by Russian government-controlled media is not its origin or critical nature but its intentionally misleading and often plainly false content. Consequently, as demonstrated by the example of Russia's media agents registered under FARA, commercial interests of media companies and the inconsistent politicized application of registration requirements make the law ineffective

in protecting the public against adverse foreign influence. These political economic factors will likely continue to impact other regulations that exercise a similar approach to combatting disinformation in the media. The applications of FARA demonstrate that instead of the declared intent of defending the right of the public to know the origin of information, the federal government can use foreign agent registration to the benefit of its political economic goals. Use of FARA as a denunciation mechanism can undermine the competition of the media available for public consideration. The FCC's proposed rulemaking regarding an extension of its sponsorship identification based on FARA furthers the problems with FARA's definitions and applications.

FCC Proposal to Use Sponsorship Identification Regulations

The *New York Times* noted in September 2020 that, in relation to the 2020 U.S. presidential elections, "Intelligence agencies have warned for months that Russia and other countries were actively trying to disrupt the November election, and that Russian intelligence agencies were feeding conspiracy theories designed to alienate Americans by laundering them through fringe sites and social media" (Frenkel & Barnes, 2020, para. 3). As a way for the Commission to address the mis- and disinformation campaigns waged by foreign agents, the FCC issued a Notice of Proposed Rulemaking, titled, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, in October 2020 that is based on the "principle that the public has a right to know the identity of those that solicit their support is a fundamental and long-standing tenet of broadcast regulation" (Federal Communications Commission, 2020b, p. 1). The Commission argued that the public has a right to know "when a foreign government has paid for programming, or furnished it for free, so that viewers and listeners can better evaluate the value and accuracy of such programming" (p. 2).

The proposal is based in the FCC's sponsorship identification rules, which are codified in section 317 of the Communications Act of 1934, as amended, and would "require a specific disclosure at the time of broadcast if a foreign governmental entity has paid a radio or television station, directly or indirectly, to air material, or if the programming was provided to the station free of charge by such an entity as an inducement to broadcast the material" (p. 2). It would also "provide standardized

disclosure language for stations to use in such instances to specifically identify the foreign government involved" (p. 2). The rule would be implemented based on FARA:

> Our proposed rule would be triggered if the sponsor of the content falls into one of the following categories: 1) a "government of a foreign country" as defined by the Foreign Agents Registration Act (FARA); 2) a "foreign political party" as defined by FARA; 3) an entity or individual registered as an "agent of a foreign principal" under FARA, whose "foreign principal" has the meaning given such term in section 611(b)(1) of FARA and that is acting in its capacity as an agent of such "foreign principal"; 4) an entity designated as a "foreign mission" under the Foreign Missions Act;[8] or 5) any entity meeting the definition of a "U.S.- based foreign media outlet" pursuant to section 722 of the Act that has filed a report with the Commission. (p. 8)

If we agree that FARA is ambiguous, chills speech, and is not enforced equitably (see also Robinson, 2020), the proposed FCC rule would inherit and once again codify these same concerns.

In response to the FCC's NPRM, noncommercial media such as National Public Radio (NPR) as well as Public Broadcasting Service (PBS) and the America's Public Television Stations (together known as PTV), and Minnesota Public Radio (MPR) raised concerns about the unintended consequences of the ambiguous and overbroad nature of the rules. These public broadcasters proposed that noncommercial media be excluded from the rules based on: their educational role; the disclosure mechanisms they already have in place; and the cost of adherence to the proposed policies. MPR, for example, was concerned that BBC programming would fall under these rules, and the disclosures alone would be "burdensome," leading to non-commercial educational FM radio stations to drop this programming so that they do not have to air "intrusive disclosure announcements" for programming that is clearly not propaganda ("Reply Comments of Minnesota Public Radio," 2021, p. 5). PTV raised concerns about the nature of mislabeling "a nature program that includes B-roll footage from a foreign

[8] In the final Report and Order, the FCC determined, based on feedback from commenters, that "reliance on the Foreign Missions Act" is "inappropriate and unnecessary for its intended purpose" ("Sponsorship Identification," 2021, p. 32225).

tourism board…as propaganda that is 'paid for or furnished by' a foreign government," unintended consequences that would chill speech and mislead rather than inform the public ("Comments of," 2020, p. i).

For both public and private broadcasters, the economic issues associated with the rules outweigh any benefit. For public broadcasters, footage used in documentaries or funding for said documentaries that may come from entities on the FARA list would need to be labeled propaganda or simply not be used. The loss of that funding and footage could be devastating for public broadcasting due to the nature of its economic model. PTV argued that if the FCC does not exempt noncommercial broadcasting, the FCC should focus on the following:

> First, the heightened disclosure should be triggered only when the program material is funded or provided by a country or entity subject to U.S. sanctions by the Office of Foreign Assets Control within the Department of the Treasury. Second, the Commission should deem a program to be sponsored or furnished by a foreign governmental entity only if the program is provided in whole by that entity, or at least only if a majority of the content is attributable to that entity. Third, the rule should apply only where the content in question concerns political broadcast matter or involves the discussion of a controversial issue of public importance…Fourth, the Commission should take steps to mitigate the compliance burden on noncommercial licensees as detailed herein, such as by establishing a safe harbor for repeats and in the days preceding broadcast, and by exempting them from interrupting programming "every sixty minutes" with the enhanced sponsorship identification announcement. ("Comments of," 2020, pp. iii-iv)

The National Association of Broadcasters (NAB) agreed, but it also noted that the disclosure requirements are duplicative of the requirements of FARA. It also noted the problematic nature of requiring broadcasters to disclose this information but not other platforms, such as cable, print, Internet, and social media, leaving commercial broadcasters at a competitive disadvantage as advertisers could spend their money elsewhere. It noted that "the proposed rule changes would add a layer of regulation that could affect broadcasters' relationships with advertisers and program suppliers and add

countless hours of unnecessary compliance work," rules that are not fairly implemented and enforced across all forms of media ("Comments of the National Association of Broadcasters," 2020, p. 3). Respondents also noted that there are only a few real threats—Russia, China, and Cuba—so the implementation of the rules should be narrowly tailored to the countries that are a real threat or have authoritarian state run media (e.g., see "Comments of REC Networks," 2020).

One of the most compelling arguments presented by the NAB relates to the idea that broadcasting is singled out by the FCC even though it is clear that much of the mis- and disinformation related to U.S. elections is found online and through social media. Rather than regulate sponsorship identification for online entities as well, the proposal focuses on broadcasting, perhaps because adding foreign sponsorship to the already codified sponsorship identification rules seemed least invasive. However, if countering disinformation is the real goal, then focusing on broadcasting will do little to fix the problem and benefits social media outlets who spend much money lobbying for self-regulation rather than government regulation. For example, Facebook spent more than any other tech company in 2020, increasing its lobbying expenditures by nearly 18% more than in 2019, for a total of $19.68 million (Feiner, 2021), largely due to threats of antitrust enforcement. In response to criticism about Russian meddling in elections, Facebook announced a disclosure initiative for political ads and issues, but there are "significant systematic flaws" in the monitoring and enforcement of their rules, according to New York University researchers (Lyons, 2020, para. 1). They found that approximately $37 million worth of ads from May 2018-June 2019 "did not accurately disclose who was paying for them" (para. 2).

The FCC's final Report and Order, published in the *Federal Register* in June 2021, considered the comments of the public broadcasters and subsequently narrowed the scope of the regulation to "leasing agreements with [broadcast] stations...to minimize the burden of compliance on licensees" ("Sponsorship Identification," 2021, p. 32223). Further, the Commission narrowed the circumstances under which identification would be necessary from "all programming arrangements" to "those areas that raise important issues of public concern" (p. 32229). While these changes to the FCC's original proposal may satisfy some of the concerns raised by public broadcasters, the ruling still relied

fundamentally on FARA definitions. Nonetheless, what the responses to the FCC's proposal demonstrated is, according to the media entities that responded, the economic interests of media—both noncommercial and commercial—should outweigh the interest of the state to counter propaganda that influences democratic institutions. At the same time, the chilling effect of disclosures, similar to the FARA arguments, would have had serious implications if the U.S. government could pick and choose when to enforce or not enforce the rules for political and/or economic reasons. Further, the final ruling will do little to counter disinformation as the focus remains on broadcasting only.

Conclusion

As this study has shown, the Foreign Agent Registration Act is one of the regulations that control the flow of information from abroad to the U.S. public through the media. The definition of "political activities" in the law includes perceived influence on "any section of the public within the United States" through "advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise" (USCODE, 2009, p. 257). At its adoption in the late 1930s, FARA targeted propagandists of Nazi and communist ideology. However, the law was not enforced equally from the start as it only applied to those whose activities the government determined as propaganda based on an ambiguous definition.

The purpose of FARA has changed over time to address political activities rooted in economic interests of foreign countries. As this shift in foreign goals occurred, the law's content has been amended to remove the word "propaganda" from the text and extend the coverage to some commercial activities. Instead of defending the "right of the public to know," the law was adjusted to protect U.S. politicians from lobbyists and PR companies who represented damaging foreign competition. The stigma of propaganda associated with the law led to criticism from legal and academic communities and concerns among foreign media companies required to register under FARA.

Until recently, the law had been applied almost entirely in the realm of public relations and lobbying, unnoticed by mainstream media and the public. However, investigation of the Russian meddling in the 2016 U.S. Presidential elections put FARA in the spotlight because of its relation to subversive foreign influence. In November 2017, the registration of T&R Productions, which represented a Russian media company in the

United States, became one of the first notable events at the start of the meddling scandal. The TV channel Russia Today (RT), distributed by its U.S. agent, appeared to be a tool of the Russian information machine sponsored by the Kremlin. Unfortunately, the information provided by T&R Productions in its registration form was so evasive that RT ties to the Russian government were not clear. This blurred transparency undermines the purpose of the law designed to disclose sources of propaganda.

Problems with FARA's application to the media include its vague definitions, unequal application, the stigma of propaganda, and limited effectiveness in identifying sources of foreign influence. Information campaigns originating abroad with the goal of impacting the U.S. political and economic climate, like the one led by Russia Today, point to the need for stringent and clear requirements for information transparency. Former State Department official Richard Stengel (2019) asserted: "I came to see firsthand that government was not the answer to fighting disinformation. It's too big, too slow, too siloed and just too averse to creating content itself. It's also not government's job to censor content.... But that doesn't mean government has no role" (p. 39). And because the FCC's 2020 proposal as well as its final decision published in June 2021 are based on FARA definitions and requirements, the same ambiguity remains, and the focus on broadcasting ignores the reality of propaganda in the information age.

The federal government has always been involved in communication regulation, and it should use its power to protect the public's right to receive full, transparent information. However, FARA and the FCC's Sponsorship Identification Requirements for Foreign Government-Provided Programming cannot effectively fight foreign information campaigns. For example, RT does not have a large television audience, but it does have an extensive online presence (see for example, Ennis, 2015; Orttung & Nelson, 2019; Snegovaya, 2015). Zhang (2005) noted that the availability of the Internet makes the physical presence of foreign agents in the country unnecessary, but foreign-sponsored information can still flow into the country. With the abundance of online information in the global economy, a much faster and more effective mechanism is needed to ensure transparency of the origin of information and facilitate informed decision-making. Unfortunately, FARA has been associated with propaganda for so long that it evokes the negative stigma every time it is used. Lynn (1988), arguing against the

use of "propaganda" in the text of FARA, wrote: "The modern world is globally interdependent. To explore how others live, to be exposed to a foreign perspective, to see the world through another's eyes enhances understanding and encourages harmonious co-existence" (p. 364). The use of the law historically tied to the notion of adverse foreign influence makes its registrants look suspicious, especially when the application is selective. A legal mechanism for ensuring media transparency should apply equally to foreign and domestic media. One option, as suggested by Robinson (2020) would be to exempt from FARA media organizations that are not owned or controlled by foreign governments.

In 2019, FCC officials spoke at the Broadcast Education Association annual convention and noted that the agency was considering opening the U.S. market to foreign media by lifting the current ownership restrictions. If foreign media are licensed through the FCC, they will be subject to the Public Inspection File requirement. Among other things, this file includes ownership reports and a political file disclosing "all requests for specific schedules of advertising time by candidates and certain issue advertisers, as well as the final dispositions or 'deals' agreed to by the broadcaster and the advertiser in response to any requests" (Federal Communications Commission, 2020a, para. 11). By transferring foreign media to the domain of FCC requirements and regulation, they would be relieved of the "propaganda" stigma but would still need to provide information about their ownership and financial resources. It would also relieve U.S. broadcasters from the burdensome responsibility of identifying content originated from foreign agents as discussed above and address the First Amendment concerns raised by FARA. This process would help to ensure the right of the American public to know the origins of the information provided by broadcast outlets and keep up with the modern world.

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