



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

February 16, 2021

Via Email

[Redacted]

Re: [U.S. Company]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Redacted]:

We write in response to your letter of October 21, 2020, and your e-mail communication of January 26, 2021,¹ in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of your client, [U.S. Company], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Included in your submission was a letter from your client, [U.S. Company] (“Client Letter”) and a copy of a “[Name of Document]” entered into by [U.S. Company] and the [Foreign Principal] (“Contract”). Based upon the representations made in the submissions, we have determined that [U.S. Company] is acting as “an agent of a Foreign Principal” pursuant to Section 611(c) of the Act in connection with the publication and dissemination of a tourism guide magazine and promotional calendar for the [Foreign Principal], an agency of the [Government of Foreign Country].

According to the Client Letter, [U.S. Company] is a global custom media company headquartered in [U.S. City], which entered into a contract with [Foreign Principal], effective October 8, 2020, to design, publish, and copy a promotional magazine entitled “[name of country] Travel Guide” (2020-2021 edition) and promotional calendars, for distribution by [Foreign Principal].² According to the Client Letter, the Travel Guide was to be published in multiple languages, including English, for audiences in the U.S. and abroad. The calendar was to be published in English and Spanish, again for both a U.S. and foreign audience. The bulk of both publications, as noted in the Contract, were to be distributed in the United States. [U.S. Company] coordinates with a print vendor to ensure that the Travel Guides are printed and delivered to [Foreign Principal]. [Foreign Principal] retains responsibility for further disseminating the physical publications. However, [U.S. Company] also creates a digital edition of the Travel Guide that [U.S. Company] itself publishes online at www.issuu.com for further

¹ Your e-mail communication included supplemental information about your client’s activities provided by an officer of [U.S. Company].

² Client Letter at 1. The Contract contains conforming language, charging [U.S. Company] with responsibility for the “creation, development, design, editing and layout” of the two publications. Contract at 1.

dissemination.³

[U.S. Company] describes its activities as “limited to creating, publishing, and copying the tourist guide and calendars,” stating it is not responsible for distribution or dissemination once the physical materials are delivered to [Foreign Principal]. [U.S. Company] asserts that because [Foreign Principal]’s logo appears on the materials and [U.S. Company]’s activities under the contract are purportedly limited, it does not have a registration obligation under FARA.

We do not agree.

As a preliminary matter, 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 and within the United States, “engages in political activities” or “acts . . . as a publicity agent [or] information-service employee . . . for or in the interests of such Foreign Principal.” 22 U.S.C. § 611(c)(1)(i) and (ii).

Under FARA, the term “information-service employee” includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States. 22 U.S.C. § 611(i).

The term “publicity agent” includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise. 22 U.S.C. § 611(h).

As noted in the Client Letter, [Foreign Principal] is an agency of the Government of [Foreign Country], which is clearly a foreign principal under FARA. 22 U.S.C. § 611(b)(1). [U.S. Company] concedes that it operates subject to the direction and control of [Foreign Principal] in the Client Letter,⁴ which is also reflected in the terms of the Contract, establishing the necessary relationship required by FARA.⁵ [U.S. Company] itself directly publishes the Travel Guide for dissemination on an Internet website, establishing itself as a “publicity agent” under FARA, the definition of which includes “any person who engages *directly* or *indirectly* in the publication or dissemination” for or on behalf of a foreign principal of the type of materials under consideration here. 22 U.S.C. § 611(c)(1)(ii) (emphasis added) and (h). Further, in “disseminating, or publishing accounts, descriptions, information, or data with respect to the

³ January 26, 2021, e-mail.

⁴ Among other indicators of direction and control, the Client Letter notes that “[U.S. Company] will update existing [Foreign Principal] marketing materials as directed by the client.” Client Letter at 1.

⁵ As used in the Act, the term “control” or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise. 28 C.F.R. § 5.100(b).

political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States,” namely [Foreign Country], [U.S. Company] also falls within the definition of an information-service employee under the Act. *Id.* § 611(i). Accordingly, [U.S. Company] has a registration obligation for its work on behalf of [Foreign Principal].⁶

Please effect [U.S. Company]’s registration within 30 days of the date of this letter. Useful information and forms may be found on our website at <http://www.fara.gov>.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by telephone at 202-233-0776, or by e-mail to FARA.Public@usdoj.gov, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit

⁶ [Foreign Principal] itself is registered under FARA at Registration Number [], available at <https://efile.fara.gov/>.