



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Commission Secretary's Office *see*

**DATE:** July 13, 2016

**SUBJECT:** Comments on Draft AO 2016-06  
(Internet Association and Internet Association  
Political Action Committee)

Attached are timely submitted comments received from Ronald M. Jacobs on behalf of the Internet Association and the Internet Association Political Action Committee. This matter is on the July 14, 2016 Open Meeting Agenda.

Attachment

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July 13, 2016

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**Re: Comments on AO 2016-06 Drafts A and B**

Dear Mr. Petalas:

I am writing on behalf of the Internet Association (“IA”) and the Internet Association Political Action Committee (“IAPAC”) to provide comments on Draft A and Draft B of Advisory Opinion 2016-06. IA and IAPAC are pleased that both drafts conclude that IAPAC’s unique and forward looking way of conducting online fundraisers are permissible. We believe that Draft B contains the appropriate analysis that the events are not contributions to the candidates based on longstanding FEC regulations regarding Internet activity.

**Whether the Events are Contributions**

Draft A takes the position that the events would be considered to be contributions to the candidates (Draft A, pages 5-8). The language in this section takes the position that the events should be treated like any other fundraising event in the offline world. That simply is not the way the FEC’s internet regulations work. IAPAC is not hosting an event offline and streaming it to the world. It is conducting an event that occurs entirely online. There is no van rental for a trip to a polling place or a rally for people to attend in person, nor is there a traditional fundraiser being held in a conference room or restaurant. Rather, the event exists solely online. Whether MUR 6552 (Ohio State Medical Association) is relevant is not clear—there are no offline events being posted online in this case.

Draft B’s analysis is much more on point and reconciles the existing AOs in a much more coherent way. Nothing in Draft B would open the door to paying for live events and then transforming them into non-contributions by showing them online. Rather, Draft B would allow an organization to create Internet-only communications, as is permissible under the existing regulations, and not treat them as contributions to candidates. Such a conclusion is consistent with past AOs where the Commission has concluded that communications featuring a federal

Daniel A. Petalas, Esq.  
July 13, 2016  
Page 2

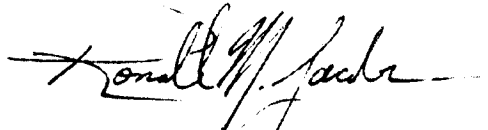
candidate that do not meet the coordinated communication definition are not treated as contributions.<sup>1</sup>

The Commission's Internet Communications rulemaking explained that internet communications would be treated as a whole and even addressed the question of production costs. The Commission explained that where non-federal funds (such as corporate funds) were used to produce and distribute a solicitation over the internet, that such a communication (including production costs) would need to be paid for with federally permissible funds, *but only if* the communication was a paid advertisement on another's website.<sup>2</sup> The Commission did not extend such restrictions to other internet activities. Thus, the Commission should not adopt Draft A because it does not adhere to a principle articulated over 10 years ago, i.e., that the production costs of an internet communication are inseparable from the communication itself.

### **The Appropriate Charge**

Draft A makes the point on page 12 "that its regulations do not mandate any particular method of apportionment or calculation, as long as IAPAC pays IA at the 'usual and normal charge,' ... for IAPAC's use of the software for the proposed webcasts...." We believe this would be applicable to Draft B's conclusion that IAPAC must pay IA for certain costs associated with the events, and request that it be included in Draft B as well.

Respectfully submitted,



Ronald M. Jacobs

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<sup>1</sup> Advisory Op. 2003-25 at 5-6 (Weinzapfel) (concluding that a communication that featured federal candidate who endorsed state candidates would not be an in-kind contribution to the federal candidate because it did not meet the then-coordinated communication definition); *see also* 11 C.F.R. § 109.21(g)(1) (codifying endorsement safeharbor enunciated in Weinzapfel Advisory Opinion).

<sup>2</sup> Internet Communications: Explanation and Justification 71 Fed. Reg. 18589, 18597 (Apr. 12, 2006) ("a State party committee that pays to produce a video that PASOs a Federal candidate will have to use Federal funds when the party committee pays to place the video on a Web site operated by another person. . . . In such circumstances, the party committee must pay the costs of producing and distributing the video entirely with Federal funds.")