

FEC Exempts Uncompensated Internet Activity by Individuals

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In a move widely praised in all quarters, the Federal Election Commission (FEC) unanimously approved a regulation to deregulate unpaid use of the Internet by individuals.

The campaign finance laws generally regulate political activity only if it constitutes a "contribution" or an "expenditure." In its new regulations, effective May 12, 2006, the FEC specifically exempted "uncompensated Internet activity by individuals" from the definitions of "contribution" and "expenditure."

The new regulatory exemption is broad in its coverage, stating:

When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is a [contribution or expenditure] by that individual or group of individuals: (1) The individual's uncompensated personal services related to such Internet activities; (2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

For the purposes of this section, the term "Internet activities" includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's Web site; blogging; creating, maintaining or hosting a Web site; paying a nominal fee for the use of another person's Web site; and any other form of communication distributed over the Internet.

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For the purposes of this section, the term "equipment and services" includes, but is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

Paid Internet activity will, nonetheless, be regulated by the campaign finance laws and could be subject to contribution and expenditure limits and prohibitions as well as coordination and disclaimer requirements.

Nonetheless, the FEC further amended its regulations to specifically exempt two areas from regulation where compensation may be paid, either directly or indirectly, for Internet activity. First, the FEC amended the so-called "media exemption" so that it would apply to persons or entities that meet the preexisting conditions for the exemption, but distribute their new stories, commentaries, or editorials over the Internet. The amended regulation states:

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a [contribution or expenditure] unless the facility is owned or controlled by any political party, political committee, or candidate

Second, the FEC amended its regulations that permit "occasional, isolated, or incidental use" of corporate resources and time to specifically account for Internet activity. The amended regulation states:

[T]he following shall be considered occasional, isolated, or incidental use of corporate facilities:

Any such activity that constitutes voluntary individual Internet activity (as defined above), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

- (A) ... [T]he activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;
- (B) The activity does not increase the overhead or operating costs of the corporation; and
- (C) The activity is not performed under coercion.

The FEC also exempted from the definition of "public communication" Internet communications that are not made "for a fee on another person's Web site." The term "public communication" is most notably used in the FEC's regulations to define the reach of the coordination provisions. Thus, only Internet communications that are made "for a fee on another person's Web site" may be subject to regulation as a coordinated communication.

These new regulations are a significant first step by the FEC to clearly remove from regulation uncompensated individual Internet activity. This is not likely the last word on the issue. Stay tuned for updates on Internet regulation issued by the FEC in subsequent advisory opinions or perhaps even more rulemaking proceedings.

A new FEC brochure on Internet activities can be found at www.fec.gov/pages/brochures/internetcomm.shtml.