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September 4, 2015

Federal Elections Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Pursuant to 52 U.S.C. § 30108, Ethiq[®], Inc. ("Ethiq"), a Delaware for profit corporation, requests an advisory opinion on the permissibility of Ethiq's proposed business plan under the Federal Campaign Election Act of 1971 (the "Act").

I. BACKGROUND

Ethiq is a non-partisan news organization/media company available via a mobile platform that enables its users to make more educated voting and purchasing decisions. Users download Ethiq's application and submit their responses to a variety of questions relating to, *inter alia*, politics, social issues, current events, and breaking news. This information is used to create a profile specific to an individual user that captures the user's views on a variety of political, social and economic issues.

Once a user's profile is created, Ethiq provides a customized score for various candidates and businesses specific to that user. The "score" is Ethiq's attempt to determine what score a user would give a particular candidate based upon the extent to which the user and a candidate agree or disagree on a variety of issues. For a business, the score is based in significant part upon the business' political activity, including the extent to which the business directly (via an independent expenditure) or indirectly (via PACs or its high level executives) supports particular candidates or causes.

A high score indicates that, based upon a user's responses, a particular candidate, based upon the candidates voting record and publicly taken positions, has views that are largely compatible with that user. A low score, conversely, indicates that a particular candidate and a particular user hold generally incompatible views.

For example, a user who is a liberal Democrat and who takes liberal positions on a variety of political, social and economic issues would likely see a relatively high score for a liberal presidential candidate and a relatively low score for a staunchly conservative one. Conversely, a socially and politically conservative Republican user would tend to see a relatively high score for a staunchly conservative candidate and a relatively low score for a liberal one.

Additionally, a user who does not fall squarely within the two camps would see results commensurate with their views.

Similarly, businesses would be given scores based upon the candidates they contribute to, either through PACs or through their high level executives (in the aggregate). Consequently, a business that contributes heavily through PACs and independent expenditure committees to liberals might receive a high score when viewed by the liberal Democrat user and a very low score when viewed by the conservative Republican user. This would allow a user to make purchasing decisions cognizant of whether a particular business is supporting or opposing candidates and positions that user favors.

As a non-partisan platform, Ethiq will also track the political behavior of unions. If a particular user has a very positive or very negative view of unions, that opinion will be reflected in the score for a particular candidate if that candidate receives substantial support or opposition from unions.

Ethiq does not support any particular candidate, political party, organization, or political cause. Rather, Ethiq's goal is to provide users with useful information regarding politicians and companies in light of *the users'* beliefs. Ethiq is designed to foster transparency in business and government, promote consumer and civic awareness, and to encourage informed voting.

Ethiq respects the privacy of individual contributors. It is not designed to allow users to solicit contributions from companies or individuals. Ethiq does not provide contact information for any contributors. Moreover, Ethiq does not display contribution data for individuals at all. To the contrary, for businesses, it only shows the contribution data for their high level executives in the aggregate thereby protecting the privacy of the individual contributors.

More information about specific features of Ethiq's platform is provided below.

1. Candidate Information.

In order to score candidates for individual users, Ethiq will compile factual information about the candidates, including the candidate's voting records, on-the-record positions and statements, and financial contribution information from their campaigns and designated political action committees. Once users are matched with particular candidates, they are given access to the data Ethiq used to determine that a particular candidate for a particular office was the best match for that user. All candidate information provided to Ethiq's users will be given as unbiased statements of fact. Ethiq is neutral and does not take any stance on any particular candidate, party, organization, or cause.

2. Creating Scores for Candidates and Corporations that Share a User's Individual Values.

As explained above, Ethiq will compile factual information about candidates. Similarly Ethiq will compile factual information about corporations to be used in the scoring process.

This factual information will include political contributions and/or independent expenditures by corporations or their top executives (in the aggregate) to candidates or PACs supporting various candidates. This campaign finance data will come primarily from the FEC's website and will include public records of contributions and/or expenditures made by a corporation's PAC or by a corporation's top executives. Ethiq will not use the contact information of any contributor for any other purpose nor will Ethiq provide such contact information to its users. Moreover, Ethiq will not use or give to users any information regarding particular private citizens. Even contributions by corporate executives will be compiled and given to users in the aggregate. For example, Ethiq might inform a user that "Executives at Corporation X donated \$20,000 to Candidate A," but it would not tell the user which executives made contributions.

When an Ethiq user first signs up, he or she will be presented with a number of prompts. These prompts will be short statements concerning an issue, position, or news headline from a variety of topics including politics, current events, sports, social issues, and breaking news. The user will then be able to respond to the prompt, by indicating that the user supports, opposes, or does not have strong feelings about the statement. The user will also be given the option to learn more about the issue, position, or news event prior to responding.

After the user has responded to a sufficient number of prompts, Ethiq will create a profile specific to that user containing the user's preferences on particular issues based on the user's responses. The user may at any time choose to answer more of Ethiq's continuously updating prompts in order to update their profile and improve the accuracy of their matches.

Once the user has a profile, Ethiq's proprietary algorithm will match the user with corporations and candidates based upon the compatibility of their positions on a wide range of issues. The end result will be an individualized scoring of candidates and corporations that will show users which candidates and corporations most closely match a user's individual values. These scorings will also provide a list of reasons as to why a particular candidate or corporation received a high or low score. For example, if the user was curious about why Candidate A received a high score, he would learn that Candidate A sponsored (or opposed) or voted for (or against) particular legislation in a manner that is consistent with that user's particular views. Conversely, Candidate B might have a very low score if he or she took different positions from the user on various pieces of legislation. Similarly if the user was curious about why Corporation X received a high score, he or she would learn that "Corporation X's political action committee donated \$20,000 to Candidate A" and that "Corporation X sponsors a cancer research center."

Consequently, Ethiq's users will learn whether candidates and corporations have supported or opposed issues in a manner consistent with the user's preferences. With this knowledge, Ethiq's users can make more informed voting choices and can choose to make purchasing decisions, such as which car rental company to frequent or which fast food restaurant to go to for lunch, with an understanding of which car rental company or fast food restaurant most closely matches their individual values. In this way Ethiq will enable their users to make more informed voting and purchasing decisions.

3. Ethiq's Monetization Strategies.

Ethiq will offer third parties the opportunity to purchase advertisements on Ethiq, including candidates and political action committees. Advertising space sold to candidates and political action committees will be sold at the usual and normal charge. No preference or discount of any kind will be given to any candidate or political action committee. Purchasing advertising space will not affect a candidate or company's ranking on Ethiq in any way.

Ethiq will also allow generate revenue by allowing companies to conduct market research and/or by licensing Ethiq's proprietary algorithm and/or dataset. Ethiq will not, however, distribute, sell, or license data identifying individual contributors.

II. QUESTIONS PRESENTED

- 1. May Ethiq provide factual information about candidates to its users?**
- 2. May Ethiq use Federal Election Commission data pertaining to candidate finance information, such as campaign contributions and/or independent expenditures by unions, corporations and/or their executives (in the aggregate) to a candidate or PAC, to match users with candidates and/or corporations that share their individual values?**
- 3. May Ethiq license its dataset provided it does not distribute, sell, or license data identifying contact information for individual contributors?**
- 4. May Ethiq sell advertising space to candidates and/or PACs at the "usual and normal charge?"**
- 5. Under the proposed plan, is Ethiq required to file any reports with the Federal Election Commission?**

III. DISCUSSION

- 1. May Ethiq provide factual information about candidates to its users?**

Ethiq should be permitted to provide factual information about candidates, such as such as voting records and on-the-record positions and statements, to its users.

In Advisory Opinion 2012-22 (skimmerhat), the Commission ruled that skimmerhat was allowed to provide factual information about candidates. Skimmerhat proposed using information from candidates' websites and public records. Skimmerhat proposed using this information in order to "enable users to identify candidates by geographic location, through a candidate matching survey, and by their positions on issues." Advisory Opinion 2012-22 (skimmerhat) at 7. The Commission recognized that this request was similar to the granted request in Advisory Opinion 2011-19 (GivingSphere) "in which a corporation wished to provide

basic factual information about candidates to its customers for their use in determining to whom to make contributions through the corporation's web platform." *Id.* The Commission granted GivingSphere's request recognizing that "the provision of factual information to customers appeared to be a corollary of creating a web platform through which users could identify political committees and transmit contributions." *Id.*

Similar to skimmerhat and GivingSphere, Ethiq seeks to provide factual information about candidates, such as voting records and on-the-record positions and statements, in order to provide information to users about which candidates share their views on a variety of issues. Similar to GivingSphere, the provision of this information is a corollary to creating a platform through which users can educate themselves about candidates. Therefore Ethiq should be permitted to provide factual information about candidates to its users.

2. May Ethiq use Federal Election Commission data pertaining to candidate finance information, such as campaign contributions from unions, corporations and their top executives (only in the aggregate), to provide users with information relating to the extent to which candidates and corporations support or oppose positions (or candidates) the user cares about?

Ethiq believes that it should be able to use Federal Election Commission data pertaining to candidate finance information, such as campaign contributions from corporations and their top executives in the aggregate ("FEC Data") to rank candidates and corporations users with corporations with whom they share individual values. Ethiq will not use any data relating to "individual contributors." As explained below, Ethiq's usage is entirely consistent with the Commission's prior precedents.

The Act provides that "any information copied from [FEC] reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. 438(a)(4); *see also* 11 CFR 104.15(a).

The Commission has explained:

The prohibition on the use of information in Commission filings serves to prevent information about *individual contributors* from being sold or used for commercial purposes. The prohibition is a "broad prophylactic measure intended to protect the privacy of the contributors about whom information is disclosed in FEC public records." The Commission has allowed the sale or use of the name and address of political committees for commercial purposes. For example, in Advisory Opinion 1980-101 (Weinberger), the Commission approved the publication and sale of a "directory of comprehensive information concerning [political committees]" so long as the directory did not "identify individuals who made contributions to the [political committees.]" *See also* Advisory Opinion

1989-19 (Johnson) (approving a proposal to sell portions of political committee reports that “did not contain the names of individual contributors”).

AO 2012-22 (*skimmerhat*) (most citations omitted).

As explained above, Ethiq intends to provide scores for corporations based upon a corporation’s contributions to PACs and/or independent expenditures and based upon the contributions of a corporation’s top executives in the aggregate. Ethiq will also have information on the extent to which unions have indirectly contributed to candidates via PACs and/or independent expenditures. Ethiq will not have any data from individual contributors. All contribution data from individuals would be provided, if at all, in the aggregate. Ethiq will also not even identify, much less provide, contact information for individual contributors.

3. May Ethiq license its dataset provided it does not distribute, sell, or license data identifying contact information for individual contributors?

As stated above, Ethiq will not provide contribution data or contact information for individual contributors. Consequently, and for the reasons stated above in connection with #2, Ethiq believes Ethiq should be permitted to license its dataset provided it does not distribute, sell, or license data identifying contact information for individual contributors.

4. May Ethiq sell advertising space to Federal political committees as well as candidates at the “usual and normal charge?”

Ethiq should be permitted to sell advertising space to political action committees as well as candidates at the “usual and normal charge.”

In Advisory Opinion 2011-19 (*GivingSphere*) the Committee stated that the sale of advertising space to candidates and political committees at the “usual and normal charge” does not constitute a “contribution” and therefore was acceptable.

Similar to *GivingSphere*, Ethiq proposes to sell advertising space to Federal political committees as well as candidates at the “usual and normal charge.” Therefore, Ethiq should be permitted to sell advertising space to Federal political committees as well as candidates at the “usual and normal charge.”

5. Under the proposed plan, is Ethiq required to file any reports with the Federal Election Commission?

Ethiq believes that its proposed plan does not trigger the reporting requirements outlined in the Act.

The Commission in *skimmerhat* recognized that a “treasurer of a political committee shall file reports of receipts and disbursements.” Advisory Opinion 2012-22 at 9 (citing 2 U.S.C. 434(a)(1) (later transferred to 52 U.S.C. § 30104(a)(1)); 11 C.F.R. 104.1. The Commission also

stated that “[p]ersons who spend above threshold amounts on independent expenditures or electioneering communications must file reports with the Commission.” *Id.* (citing 2 U.S.C. 434(c), (f) (later transferred to 52 U.S.C. § 30104(c), (f)); 11 C.F.R. 104.20, 109.10). The Commission held that skimmerhat was not subject to either of these reporting requirements because skimmerhat was not a political committee and was not engaging in express advocacy. *Id.*

Ethiq is not a political committee. Additionally, Ethiq is non-partisan and will not engage in express advocacy for any candidate, organization, or issue. “Moreover, given that all relevant communications will take place on the Internet,” Ethiq’s proposal should not implicate the reporting requirements for persons making electioneering communications. *Id.* at 9. For these reasons Ethiq believes that its proposed plan does not trigger the reporting requirements outlined in the Act.

IV. CONCLUSION

For the foregoing reasons, Ethiq believes that its proposed activities should be deemed permissible.

Please do not hesitate to contact the undersigned if you have any questions.



Nathan Lowenstein
Counsel for Ethiq, LLC
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RE: Ethiq Advisory Opinion Request
Nathan Lowenstein to: SLevor@fec.gov
Cc: "JSelinkoff@fec.gov", "rknop@fec.gov"

09/29/2015 01:37 PM

Mr. Levor,

Your email accurately characterizes Ethiq's plans.

Thank you,

Nathan Lowenstein | Lowenstein & Weatherwax LLP
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Office: 310.307.4502

From: SLevor@fec.gov [mailto:SLevor@fec.gov]
Sent: Tuesday, September 29, 2015 7:49 AM
To: Nathan Lowenstein
Cc: JSelinkoff@fec.gov; rknop@fec.gov
Subject: Ethiq Advisory Opinion Request

Dear Mr. Lowenstein,

In telephone conversations, you provided us with additional information regarding Ethiq's request for an advisory opinion. We have set out below our understanding of certain points that you made during those conversations. Please review the statements below and either confirm their accuracy or correct any misstatements.

1. Ethiq will not charge users for Ethiq's services.
2. Ethiq will sell advertising space to both political committees and other advertisers at the same market rate.
3. Ethiq will choose which candidates and committees to display based on objective, business criteria.
4. If Ethiq chooses to link to candidates' and committees' web pages, it will link to homepages only and not contribution pages.
5. Ethiq will not convey the number of persons in the "top executive" class used to calculate corporate contributions to any third party, including, but not limited to, users, licensees, or advertisers.

We would appreciate your response by email. Thank you very much for your cooperation.

Sincerely,
Sam Levor

Sam Levor
Federal Election Commission

AOR008

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