



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ADVISORY OPINION 2016-06 (INTERNET ASSOCIATION PAC)

**CONCURRING STATEMENT OF
CHAIRMAN MATTHEW S. PETERSEN AND
COMMISSIONERS LEE E. GOODMAN AND CAROLINE C. HUNTER**

This advisory opinion provides the Internet Association Political Action Committee (“IAPAC”) and the Internet Association assurance that IAPAC can lawfully webcast its discussions of issues with candidates while providing a link on its website that allows viewers to contribute to those candidates. It acknowledges they may do so without a Commission determination that such webcasts constitute in-kind contributions.¹ While this is a positive outcome for IAPAC, we note with concern that some of our colleagues continue to stifle innovation by applying outdated regulatory paradigms to political speech on the Internet.

The Commission routinely analyzes candidate appearances in audiovisual media, from television ads to YouTube videos, as *communications* subject to the Commission’s relevant regulations.² The Commission applies the regulation specifically titled “Coordinated Communications” to determine whether such *communications* are *coordinated* with a candidate and, therefore, may constitute contributions to that candidate.³ In 2006, the Commission unanimously made a policy judgment that “the Internet [i]s a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach,” recognizing that the “Internet’s accessibility, low cost, and interactive features make it a popular choice for sending and receiving information.”⁴ The Commission determined that communications published through an organization’s own website are not “public communications” and, therefore, are not “coordinated communications” subject to Commission regulation as in-kind contributions.⁵ The Commission expressly included

¹ Advisory Opinion 2016-06 (Internet Association PAC) at n. 1 (“The Commission could not agree on whether the activity would result in in-kind contributions to the participating candidates.”).

² See, e.g., Advisory Opinion 2003-25 (Weinzapfel Committee) (candidate’s appearance in television ad analyzed using the coordinated *communications* test in 11 CFR 109.21); Advisory Opinion 2004-1 (Bush Cheney Committee) (same); MUR 5517 (Stork for Congress) (same); see also Factual and Legal Analysis, MUR 6722/6723 (House Majority PAC, *et al.*) (candidate appearances in super PAC’s internet videos analyzed under the coordinated communications regulation).

³ See 11 C.F.R. § 109.21.

⁴ Internet Communications, 71 Fed. Reg. 18,589 (Apr. 12, 2006).

⁵ *Id.* at 18,593-18,594. The Commission explained that communications placed on one’s own website are not analogous to television and radio advertisements; indeed, they are not advertisements at all and therefore not within the Act’s definition of a public communication. *Id.* at 18,594. The Commission thus amended its regulation defining a “public communication” to plainly exclude “communications over the Internet, except for communications placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26. The Commission understood that its amendment of the definition of a public communication would impact the coordinated communications regulation. See Internet Communications, 71 Fed. Reg. at 18,594 (new Internet communications rule should be read together with existing coordinated communication rule). Through the coordinated communications regulation, “electioneering communications” and “public communications” paid for by one person are deemed in-kind

webcasts on a person's own website as exempted Internet communications.⁶ Indeed, the Commission stated "'public communication' does not encompass any content . . . that a person places on his or her own website."⁷

IAPAC's proposed webcasts are communications like every other video featuring a candidate that the Commission has considered, including online videos the Commission has concluded are not public communications.⁸ Accordingly, the plain letter of the law and longstanding Commission policy compelled the analysis and conclusion in Draft B that IAPAC's webcasts of candidate interviews are not coordinated communications to be treated as in-kind contributions to those candidates. Given these considerations, no free Internet video on a group's own website featuring a candidate interview could be regulated like a ticketed ballroom event, rather than as a communication.

By their votes in this matter, three of our colleagues have shown that they would retrench the scope of the Commission's established Internet communications exemption.⁹ Legislators, bloggers, advocacy organizations, trade associations, and all Americans should understand the implications for free speech on the Internet.

contributions to a candidate if certain conduct occurs. 11 C.F.R. § 109.21(c). But "electioneering communications" are limited to those "publicly distributed by a television station, radio station, cable television system, or satellite system" and, therefore, do not include Internet communications. *See* 11 C.F.R. § 100.29(b). Accordingly, unless Internet communications are placed for a fee on another person's website, they are not "public communications" and cannot be coordinated communications.

⁶ Internet Communications, 71 Fed. Reg. 18,589, 18,596 (Apr. 12, 2006) (including streaming video and podcasting as examples of Internet communications); *see also id.* at 18,608, n. 52 (in the context of the press exemption's scope, describing websites and Internet publications to include chat groups, Internet radio, Web video, Web cams, and social networking platforms); *id.* at 18,600 (discussing hyperlinks, including links for donations to candidates).

⁷ *Id.* at 18,600.

⁸ The Commission previously opined that a separate segregated fund may use its website to solicit contributions to a candidate. *See* Advisory Opinion 2011-14 (Utah Bankers). Consistent with the analysis here and in Draft B, the Commission concluded in AO 2011-14 that solicitations by Utah Bankers PAC for contributions to candidates, placed on its own website, were Internet communications, not public communications, and therefore not subject to regulation as in-kind contributions to the candidates. *Id.*

⁹ This is not the first time that our views have differed from those of our colleagues regarding faithful adherence to the Commission's regulations exempting political speech on the Internet from regulation. *See* Statement of Reasons of Commissioners Lee E. Goodman and Caroline C. Hunter at 4-5, MUR 6795 (Citizens for Responsibility and Ethics in Washington) (proposal to recognize CREW's rights under the Internet exemption defeated by a vote of 3 to 3); *compare* Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen, MUR 6729 (Checks and Balances for Economic Growth) *with* Statement of Reasons of Vice Chair Ann Ravel, MUR 6729 (Checks and Balances for Economic Growth).