

FEC Internet Rulemaking - Background and FAQ

by Vice Chairman Robert D. Lenhard and Commissioner Ellen L. Weintraub

On Monday, March 27, 2006, the Federal Election Commission (FEC) will vote on new regulations regarding communications over the Internet. The following is a brief background on the issue, as well as a description of the regulatory framework Vice Chairman Lenhard and Commissioner Weintraub intend to support at Monday's meeting.

In 2002, Congress passed the Bipartisan Campaign Reform Act, or McCain-Feingold law. The new law placed restrictions on certain "public communications." A "public communication" was defined in the law as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, *or any other form of general public political advertising.*"

In 2002, the FEC drafted regulations implementing these provisions. Because the Internet was not specifically mentioned in the statutory definition, the Commission said communications on the Internet were not "public communications." Congressmen Shays and Meehan sued the FEC because of this exclusion. In 2004, a District Court found that the Commission could not exclude the entire Internet from its definition, but instead, had to craft a regulation to include that aspect of the Internet that is "general public political advertising."

The new rule responds to the Court's ruling by narrowly expanding the definition of public communication to cover Internet advertisements. In recognition of the growing use and importance of the Internet for political activity, the FEC has amended other rules to make clear that most Internet activity is exempt from FEC regulation.

What Internet activity is covered by the new public communication definition?

The new definition of "public communication" continues to exclude communications over the Internet, except for advertisements placed on another person's website. Paid advertisements are the only Internet activity covered by the new definition. (§ 100.26)

What is the impact of the new definition?

The definition is only relevant to the few entities whose activities are already covered in the statute or regulation by the definition of "public communication." Individuals are not generally regulated by this definition, except in those unusual circumstances where they place paid political advertising on the websites of third parties. The entities that are currently regulated by the term "public communication" are state, district, and local party committees, FEC registered political committees (such as Federal candidate committees, national party committees, and PACs), and state or local candidates that run ads promoting or attacking a Federal candidate.

How do the new rules affect Internet political activity by individuals?

The new rules explicitly exempt from regulation the Internet activities of unpaid individuals or groups of individuals. An individual or group of individual's ability to develop webpages, send electronic messages, provide hyperlinks, forward material that has been cut and pasted from political websites, or otherwise use computer or Internet resources for political activity are all exempt from regulation. (§ 100.94 and § 100.155)

How do the new rules affect the media?

Under the FEC's existing media exemption, news stories, commentaries, and editorials (including endorsements) are exempt from regulation unless the media facility is owned or controlled by a candidate, political party, or FEC registered political committee. The new rules make clear that the media exemption applies to Internet-only media, as well as to the online components of traditional media. (§ 100.73 and § 100.132)

How do the new rules affect bloggers?

Bloggers will not be regulated under the new rules. Uncompensated blogging, whether done by an individual or a group of individuals, is exempt from regulation under the new individual Internet exemptions. (§ 100.94 and § 100.155). These exemptions are extended to incorporated blogs that are wholly owned by an individual or individuals, are engaged primarily in Internet activities, and derive a substantial portion of their income from their Internet activities. Additionally, a blogger or blog may qualify for the media exemption. (§ 100.73 and § 100.132)

What about bloggers who receive compensation from campaigns?

Under the new rules, a blogger who receives compensation is not required to disclose such payments. However, campaigns must continue to report such disbursements on their FEC filings.

Do I need a disclaimer on my website?

Regardless of the content that appears on an individual or group's website, a disclaimer is not required unless the individual or group is a FEC registered political committee. FEC registered political committees must place disclaimers on all of their websites that are available to the general public. (§ 110.11)

Do I need a disclaimer on my Internet advertisement?

Because Internet advertisements are public communications, an individual or group must include a disclaimer on any Internet advertisement that expressly advocates the election or defeat of a clearly identified Federal candidate, or on any Internet advertisement that solicits contributions. FEC registered political committees must place disclaimers on any Internet advertisements they pay for, regardless of content. (§ 110.11)

Do I need a disclaimer on my email?

Regardless of content, an individual or group does not need to put a disclaimer on its email unless the individual or group is a FEC registered political committee. FEC registered political committees must place disclaimers on all emails of more than 500 substantially similar communications. (§ 110.11)

Can I use my work computer for political Internet activities?

The FEC's long-standing rules allow for the "occasional, isolated, or incidental use" of work facilities by employees for political activities. The new rules specify that this exemption allows employees to use work computers both at and away from the workplace for volunteer political activity, as long as they do so on their own time. The rules reiterate that corporations and unions are prohibited from coercing employees to participate in political activities. Additionally, a corporation may not condition the availability of its space and computers on their being used for political activity, or on support for or opposition to any particular candidate or political party. (§ 114.9)