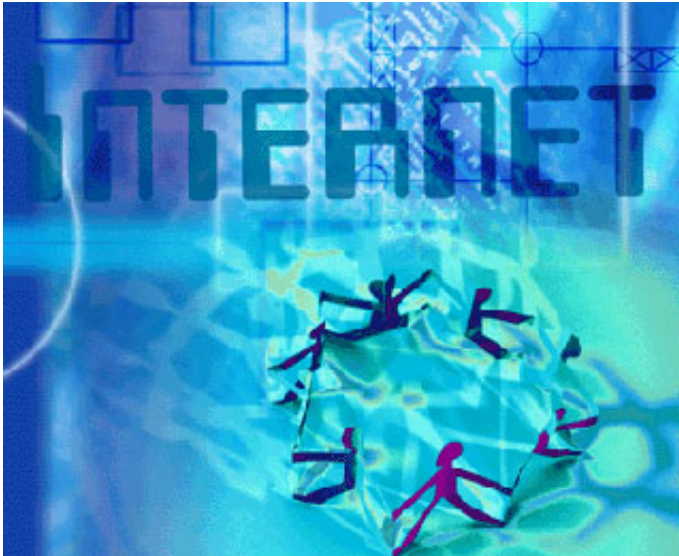


FEC approves new Internet rules

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The Federal Election Commission approved Monday new rules that would specifically deal with paid Internet political ads on Web sites, but excepting most Internet communications including blogging.

It was approved unanimously in a 6-0 vote after a 96-page proposal was released on Friday.

FEC's decision to review the Internet and public communications was prompted by the United States District Court for the District of Columbia in *Shays v. Federal Election Commission*.

The Internet has become an increasing political landscape since the 2004 election cycle, according to the FEC, which saw the number of Americans using the Internet as a source of campaign news grow from 30 million to 63 million from 2000 to 2004.

Moreover, the FEC cited that about 11 million people relying on politically oriented blogs as a primary source of information during the 2004 presidential campaign.

Under the new set of rules, it would alter the current definition of "public communication," which in the past excluded the Internet, to include paid Internet advertising placed on another person's Web site.

Paid Internet advertising placed on Web sites includes banner advertisements, streaming video, pop-up advertisements, and directed search results and is differentiated from blogging and personal Web sites by cost.

Internet advertising revenue has been increasing, the FEC said, citing that it grew 33.9 percent between third quarter of 2004 and third quarter of 2005, reaching \$3.1 billion for the third quarter of 2005.

But as far as the rules go, no minimum threshold was established by the Commission.

Blogs on the other hand was considered low-cost, and the FCC was warned that peer-to-peer podcasts could replace blogs in the low-cost Internet debate, more reason for broad rules.

"These final rules are intended to ensure that political committees properly finance and disclose their Internet communications without impeding individual citizens from using the Internet to speak freely regarding candidates and elections," the FEC wrote in its draft.

The FEC also would re-promulgate the definition of "generic campaign activity," revise scope of its disclaimer regulations, and add an exception for uncompensated individual Internet activities.

In addition, it revises media exemption and adds a new provision for the use of corporate and labor organization computers and other equipment for Internet activities by certain individuals.

The media exemption in particular applies to those covering or carrying news stories and editorials online as if it were print or television news program by adding Web site to the exemption.

Reactions from bloggers are positive, and many are saying this is a win for their cause.

According to Loyola Law School Professor Rick Hasen's on his blog Election Law last week, the FEC broad rules would be welcomed by the Internet political community.

"On the whole, I think these are very good rules in preserving robust political speech on the Internet that takes place without much danger of the corruption of candidates," he wrote. "My one personal disappointment is the FEC draft's decision not to require disclaimers on blogs where the bloggers have been paid by campaigns."

"I am also concerned with some language in the explanation, page 62, allowing for campaigns and committees to reimburse bloggers for certain expenses without it counting as "compensation" under the rules," he added.

Meanwhile, Bob Bauer of the "More Soft Money Hard Law" blog wrote that the FEC's contribution, although limited by its statutory scheme under which it must operate, is "commendably constructive."

"These are still rules, built around specific terms and assumptions, and so there will be argument, in the future, about what they mean and whether the meaning should change with changed circumstances and technology," he wrote. "The Internet community cannot escape this fact -- that this is a rulemaking, for the first time, devoted to Internet politics, and there may be another."

"Before new rules, there will come complaints, such as arguments about whether individual activity is sufficiently 'uncompensated' to qualify for the exemption," he also wrote, adding that "there may even be litigation over these rules, if various reform organizations so choose; or the litigation may come later, if complaints are directed toward particular activity and the complainants, meeting with no success at the FEC, challenge the agency in court."

And, despite the many legislative proposals floating around Congress, many say congressional legislations proposed on the same issue are now irrelevant.

"Congress is set to reconsider HR 1606, the Online Freedom of Speech Act, this week," wrote Adam Bonin of the Daily Kos Monday.

"Honestly? I don't believe it's necessary now. These FEC regulations give as strong a set of legal protections as we could reasonably expect, and the best thing Congress can do now would be to find ways in the Record to simply affirm that the FEC approach reflects their beliefs, and that the regulations should be interpreted with a bent towards freedom."

John Morris, Staff Counsel of the Center of Democracy and Technology, too says it incorporates many of those proposals on the Hill.

The CDT had proposed an alternative amendment to the Online Freedom of Speech Act from Rep. Jeb Hensarling, R-Texas.

"We think the FEC did a very good job in crafting the rules given the constraints," Morris said. "The Internet will continue to be an amazing and growing source of political commentating."

However, Morris did note that the CDT would have like to see more exemptions including for low-cost advertisements.

And Scott E. Thomas, former FEC Chairman and now of counsel with Dickstein Shapiro Morin & Oshinsky LLP, applauded the approved rules.

"I think the Commission finally got it close to right," Thomas said. "Earlier regulations were truly problematic and the Court properly noted that. But now, the Commission has balanced things out with plenty of flexibility for individuals and bloggers while touching on the right sphere of regulation to get involved with - paid Internet ads."

According to Thomas, although the rules should have been decided on much sooner, it comes just in time providing guidance for the 2006 mid-elections.

"I truly hope that those on Capitol Hill will (accept this) better resolution than the legislation being considered," he said.

Yet, there are some who feel that Hensarling proposal should still be passed.

"There remains precious little reason to think that Congress really intended for the McCain-Feingold law to regulate the web," wrote Brian Smith on the Republican community blog Red State.

Smith is a former chairman, vice chairman, and commissioner at the FEC, now a professor at the Capital University Law School.

"It is also clear that the FEC would be keeping it's blanket exemption from the statutory definition of "public communication' for the internet, absent the ruling of a single federal judge that it must regulate the web," he wrote, adding "it is clear that none of the horror stories spread by so-called "reform" groups about HR 1606 have come true in the last four years, when the position that HR 1606 would enact has, in fact, been the law pursuant to FEC rules."

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