



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 13, 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2015-12

Nathan Lowenstein, Esq.  
Lowenstein & Weatherwax LLP  
1880 Century Park East, Suite 815  
Los Angeles, CA 90067

Dear Mr. Lowenstein:

We are responding to your advisory opinion request on behalf of Ethiq, Inc. concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (the “Act”), and Commission regulations to Ethiq’s proposed mobile application. The Commission concludes that the proposal as described in the request is permissible under the Act and Commission regulations.

***Background***

The facts presented in this advisory opinion are based on your letter, received on September 14, 2015, and your email, received on September 29, 2015 (collectively, “Advisory Opinion Request” or “AOR”).

Ethiq is a non-partisan, for-profit, news organization and media company incorporated in Delaware. In order to “enable[] its users to make more educated voting and purchasing decisions,” Ethiq has developed a free, downloadable mobile application (the “App”) that will help users identify candidates and corporations that align with their views on a variety of political, social, and economic issues. AOR at AOR001.

Users will create a personal profile on the App by answering a series of questions relating to current events, sports, social issues, politics, and breaking news, among other topics. To match users with candidates, Ethiq will compile factual information, including voting records, positions and statements, and financial contribution information from reports filed with the Commission. To match users with corporations, Ethiq will compile information such as

independent expenditure reports, contributions and expenditures made by corporations' separate segregated funds, and contributions and expenditures made by corporations' "top executives." On the basis of the users' answers and the information Ethiq will compile about candidates and corporations, Ethiq's algorithm will assign an individualized score to corporations and candidates based on their match with the user's individual values. The user will also be able to view a list of reasons why a particular candidate or corporation received a low or high score. Ethiq also plans to provide links to the home pages of candidates' and committees' websites.

Ethiq represents that its decisions about which candidates to include in the App will be based on objective, business criteria. Ethiq also represents that it does not support any candidate, party, organization, or cause, and will not engage in express advocacy for or against any candidate, in its presentation of information on the App.

Ethiq plans to generate income in two ways. First, Ethiq will sell digital advertising space on the App to third parties, including candidates and political committees. Advertising space will be sold to all advertisers at the same rate — which will be the market rate for such advertising — and purchasing advertising space will not affect a candidate's or corporation's scoring on the App. Second, Ethiq will license its proprietary algorithm and dataset (as described below) to companies conducting market research.

Ethiq will not provide its licensees or users with any contributor's individualized contact information taken from records filed with the Commission. Ethiq will convey contribution data about individuals only by presenting that information in the aggregate so as not to identify any individual contributor. And in the App, "Ethiq [will] not display contribution data for individuals at all." AOR002. All contribution information regarding "top executives" at corporations will be displayed in the aggregate.

### ***Questions Presented***

1. *May Ethiq provide factual information about candidates to its users?*
2. *May Ethiq use Commission data to match users to 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 committees and candidates at the "usual and normal charge?"*
5. *Under the proposed plan, is Ethiq required to file any reports with the Commission?*

***Legal Analysis***

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

Yes, Ethiq may provide factual information about candidates to its users as proposed.

The Act and Commission regulations prohibit corporations from making contributions to candidates in connection with a federal election. *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1). A “contribution” includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any [federal] election.” 52 U.S.C. § 30118(b)(2); *see also* 52 U.S.C. § 30101(8) and 11 C.F.R. § 100.52(a). “Anything of value” includes all in-kind contributions, including the provision of goods or services without charge or at less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1).

The Commission has recognized several situations where corporations may distribute factual information about candidates to the general public without disbursements for such distributions constituting contributions. For example, absent coordination with a candidate, a corporation’s disbursements for voter guides distributed to the general public would not ordinarily be contributions. *See* 11 C.F.R. § 114.4(c)(5). And in a number of recent advisory opinions, the Commission has approved the display of candidate information and contribution data as part of web-based candidate-matching programs designed to help users make and process contributions. *See* Advisory Opinion 2014-07 (Crowdpac) (approving algorithm that matched users to like-minded candidates based on users’ political views); Advisory Opinion 2012-22 (skimmerhat) (same); *see also* Advisory Opinion 2011-19 (GivingSphere) (approving proposal to provide users with searchable database of candidates, including their positions and contributor information); *cf.* Advisory Opinion 1999-25 (DNet) (concluding tax-exempt organization under 26 U.S.C. § 501(c)(3) could lawfully operate website that compiled and displayed information about candidates’ positions and statements and linked to “reports of official campaign contribution data”).

Like both traditional voter guides and the web-based proposals discussed above, Ethiq will compile factual information about candidates and list their positions on the issues based on their voting records and public statements. Ethiq’s matching algorithm strongly resembles that proposed in Crowdpac, designed to “enable[] its users to make more educated . . . decisions” about which candidates and corporations to support. AOR001.

Based on the facts presented, the Commission concludes that Ethiq’s proposed display of information regarding candidates’ voting records, statements, and campaign finance information is permissible.

2. *May Ethiq use Commission data to match users to candidates and/or corporations that share their individual values?*

Yes, Ethiq may use Commission data to match users to candidates and corporations, as proposed.

The Act requires each political committee to report the name, mailing address, occupation, and employer name of any individual who contributes more than \$200 to the committee in a calendar year. *See* 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A); *see also* 11 C.F.R. §§ 100.12, 104.8(a). The Act also requires the Commission make these reports available for public inspection and copying. *See* 52 U.S.C. § 30111(a)(4); *see also* 52 U.S.C. § 30112 (requiring Commission to make all reports publicly available online). In enacting these requirements, Congress was concerned about “protect[ing] the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.” 117 Cong. Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon). Accordingly, the Act prohibits any information copied from Commission reports from being “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.” 52 U.S.C. § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

Aggregated data and data that does not contain individual contributors’ contact information does not implicate the privacy concerns at the heart of section 30111(a)(4). *See* Advisory Opinion 2014-07 (Crowdpac); *see also* *FEC v. Political Contributions Data*, 943 F.2d 190, 197-98 (2d Cir. 1991) (holding that section 30111(a)(4) prohibits uses that “could infringe on the contributors’ privacy interests”). Thus, the Commission has repeatedly approved the use of non-individualized contribution data obtained from reports filed with the Commission, both for display to users and for internal analysis, so long as the data is not used to solicit contributions and cannot be so used by third parties to whom that data is provided. *See* Advisory Opinion 2013-16 (PoliticalRefund.org) (approving display of aggregate number of donors requesting refunds); Advisory Opinion 2014-07 (Crowdpac) (approving display of total number of contributors and total amount of contributions); *see also* Advisory Opinion 2009-19 (Club for Growth) (approving use of Commission data to inform contributors of their right to request refund).

Ethiq represents that it will use Commission data to match users with candidates or corporations but that in doing it so will not provide to its users the contact information of any individual contributor; it will provide only aggregated data. AOR003. For the reasons explained in the authorities cited above, the provision of aggregated, non-personally identifiable data does not violate the sale and use restrictions of the Act and Commission regulations.<sup>1</sup> Accordingly, Ethiq may use data derived from reports filed with the Commission as described above.

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<sup>1</sup> To the extent that Ethiq intends to present its users with information about contributions that a committee makes to another committee (such as from a separate segregated fund to a candidate), such information is not within the scope of the sale and use prohibition. Advisory Opinion 1989-19 (Johnson) (concluding that section 104.15(a) does not prohibit sale of Commission data showing contributions from one committee to another because such data does not include names of individual contributors).

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

Yes, Ethiq may license its dataset as described in the request. As discussed above, the Act and Commission regulations are concerned with the sale and use of individual contributor information for political or commercial solicitations. *See* 52 U.S.C. § 30111(a)(4); 11 C.F.R. § 104.15(a); Advisory Opinion 2009-19 (Club for Growth). Sale and use of Commission data that does not contain “sufficient information to generate solicitations” to individual contributors is therefore permissible. Advisory Opinion 1995-09 (NewtWatch); *see also Political Contributions Data*, 943 F.2d at 198 (finding sale of contributor lists that did not include addresses or phone numbers permissible). Because the dataset that Ethiq intends to license will include only aggregated contributor information (that is, it will not provide data or contact information for individual contributors) that dataset cannot be used for solicitations as contemplated by section 104.15. Thus, the Act and Commission regulations permit Ethiq to license its dataset as described.

4. *May Ethiq sell advertising space to committees and candidates at the “usual and normal charge?”*

Yes, Ethiq may sell advertising space as proposed.

As discussed above, the Act and Commission regulations prohibit corporations from making contributions to candidates, including by providing goods or services without charge or at less than the usual and normal charge. *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 100.52(d)(1). The Commission has long recognized that advertising space provided to candidates and political committees is provided at the “usual and normal charge” if the services are provided on the same terms and conditions to other advertisers. Advisory Opinion 1986-22 (WREX-TV); Advisory Opinion 2005-07 (Mayberry). Accordingly, the Commission has previously concluded that a website operator may sell advertising space, at the usual and normal charge, to committees about which that website also provides information. *See* Advisory Opinion 2011-19 (GivingSphere) at 10-11 (“[T]he sale of advertising space would not constitute a contribution to the political committee advertisers, so long as [the website] makes advertising space available to political candidates and committees on the same terms and conditions as other advertisers.”).

Ethiq plans to charge political committees wishing to advertise on the App the “usual and normal charge” — *i.e.*, the “market rate” — that Ethiq will also charge other advertisers. AOR008. Thus, the Commission concludes that the sale of advertising space as proposed would not constitute a contribution to the political committee advertisers.

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

No, Ethiq will not be required to file any reports with the Commission as a result of the activities described in the request because the request does not indicate that Ethiq will make contributions or engage in any other activities that would subject it to the reporting requirements of the Act or Commission regulations.

The Act and Commission regulations require certain persons to file reports with the Commission. For example, political committees must “file reports of receipts and disbursements,” *see* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1, and persons who spend above threshold amounts on independent expenditures or electioneering communications must file reports with the Commission, *see* 52 U.S.C. § 30104(c), (f); 11 C.F.R. §§ 104.20, 109.10.

Ethiq represents that it will not engage in express advocacy, so it will not be subject to the reporting requirements for persons making independent expenditures. *See* 52 U.S.C. § 30101(17) (defining “independent expenditure” as a communication “expressly advocating the election or defeat of a clearly identified candidate”); *see also* 11 C.F.R. § 100.16. Second, there is no indication in the advisory opinion request that Ethiq will meet the definition of “political committee,” and therefore it is not subject to the reporting requirements for political committees. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1. Finally, the request does not indicate that Ethiq will make electioneering communications under 52 U.S.C. § 30104(f)(3), or engage in any other activities that would subject it to the reporting requirements of the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in this advisory opinion request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for her proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,

A handwritten signature in blue ink that reads "Ann M. Ravel". The signature is written in a cursive, flowing style.

Ann M. Ravel  
Chair