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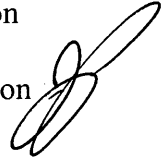
March 17, 2004


## AGENDA ITEM


For Meeting of: 3-25-04


### MEMORANDUM


TO: The Commission


THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence H. Norton   
General Counsel

James A. Kahl   
Deputy General Counsel

Rosemary C. Smith   
Associate General Counsel

John C. Vergelli   
Acting Assistant General Counsel

Richard Ewell   
Staff Attorney

Subject: Draft AO 2004-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 25, 2004.

Attachment

1 ADVISORY OPINION 2004-6

2

3 Marc E. Elias, Esq.

4 Brian G. Svoboda, Esq.

5 Perkins Coie, LLP

6 607 Fourteenth Street, NW

7 Washington, DC 20005-2011

8

9 Dear Mssrs. Elias and Svoboda;

**DRAFT**

10 This refers to your letters dated October 7, 2003, and January 12, 2004, and your

11 subsequent electronic mail message of February 1, 2004, on behalf of Meetup, Inc.

12 (“Meetup”) concerning the application of the Federal Election Campaign Act of 1971, as

13 amended (“the Act”), and Commission regulations to Meetup’s provision of its Web-based

14 event planning services to Federal candidates. As explained below, the Commission

15 concludes that Meetup may provide both its free and fee-based services to Federal

16 candidates, political committees, and their supporters so long as it does so on the same

17 terms and conditions available to all similarly situated persons in the general public.

18

19 ***Background***

20 ***Free Basic Services***

21 Meetup offers a commercial, Web-based platform for arranging local gatherings on

22 more than 1,840 topics suggested by users. Meetup lists the suggested topics for the local

23 gatherings on Meetup.com and its Web-based software enables interested persons to

24 register to meet up with others at a physical location to discuss the specified topic. Users

25 typically “host” the “meetups” and bear all the costs associated with each event. You

26 explain that Meetup “does not supervise or arrange the events, other than to provide a

1 platform for its users.” There is no charge for Meetup’s “basic services,” which consist of  
2 listing a topic on Meetup.com and enabling a user to sign-up to attend a meetup.

3

#### 4 *Premium Services*

5         You state that Meetup derives its revenue from two sources: from establishments  
6 that pay to be listed as possible event venues, and from payment for “premium services to  
7 individuals and organizations.” You explain that, for various levels of fees, Meetup permits  
8 entities to “sponsor” meetups on particular subjects.<sup>1</sup> Meetup also lists several meetups at a  
9 given time in its “Featured Meetups” section. As a condition of sponsorship, each  
10 sponsored meetup is listed in this prominent “Featured Meetups” section for a fixed period  
11 of time, depending on the fee level of the sponsorship. You further explain that, in  
12 exchange for a separate fee, Meetup permits sponsors to control the text in the section of  
13 the Meetup page where the description of a meetup is located (the “What” section). The  
14 sponsors are limited to 20 words and 2 hyperlinks in this space. Also for a fee, sponsors  
15 can control the text that appears in e-mails sent to members of the sponsored meetup. This  
16 text is limited to 500 characters and 2 links per e-mail, and each member receives 3-5 e-  
17 mails per month. Additionally, for a fee, sponsors can choose to set the top agenda item on  
18 their meetup Web page (this is a suggested discussion topic for the actual meetup). Meetup  
19 also provides the sponsor with the names and other data of users who indicate that they will  
20 attend the sponsored Meetup and grant Meetup permission to share their information.

21

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<sup>1</sup> Although your request refers to both “sponsors” and “partners,” you have clarified by telephone that the two terms are synonymous for the purposes of your request.

1 *Proposed Activities Relating to Federal Candidates and Political Committees*

2 Meetup includes a wide variety of topical issues and subjects in its list of “meetup  
3 topics,” which are searchable and also organized into general category groupings. Some of  
4 the meetup topics include the names of candidates for Federal office and/or Federal  
5 political committees or elections, although a cursory review of Meetup’s web site reveals  
6 that the Federal candidate topics comprise only a small percentage of the topic listings.  
7 You indicate that Meetup does not favor or disadvantage political topics in relation to non-  
8 political topics. You state that Meetup's communications department regularly posts  
9 “Featured Meetups” about interesting or timely topics, and you indicate that Meetup will  
10 only feature candidate or political committee meetup events if that candidate or committee  
11 is a paid sponsor.

12 By telephone you advised that Meetup intends to charge different fees to different  
13 classes of sponsors. For example, all U.S. Senate candidates will be charged one set of fees  
14 while all candidates for the U.S. House of Representatives will pay a smaller fee for the  
15 same type of services. You explained, however, that Meetup’s overall fee structure is based  
16 on a fixed set of criteria consisting of the volume of users, the geographic reach of the  
17 meetup, and how much the services would tax Meetup’s resources. Thus, Meetup will  
18 provide the same services for the same fees and on the same terms and conditions to all  
19 individuals or entities who are similarly situated in accordance with Meetup’s fixed criteria,

1 whether or not the entities are Federal candidates, political committees, businesses, or other  
2 entities in the general public.<sup>2</sup>

3

4 ***Issue***

5 May Meetup include Federal candidates and political committees in its list of event  
6 topics, both in “Featured Meetups” and throughout its site, without violating the Act’s  
7 prohibition on contributions or expenditures by corporations?

8

9 ***Legal Analysis and Conclusions***

10 For the reasons explained below, Meetup may include Federal candidates and  
11 political committees in its list of meetup topics and Featured Meetups without violating the  
12 Act or Commission regulations.

13 Meetup is an incorporated entity and is therefore prohibited from making any  
14 “contribution or expenditure” in connection with a Federal election. 2 U.S.C. 441b(a); 11  
15 CFR 114.2(b). The term “contribution” is defined in the Act to include “any gift, loan,  
16 advance, or deposit of money or anything of value made by any person for the purpose of  
17 influencing any election for Federal office.” 2 U.S.C. 431(8)(A). In the specific context of  
18 contributions by corporations or labor organizations, the term “contribution” is also defined  
19 to include “any direct or indirect payment, distribution, loan, advance, deposit, or gift of  
20 money to any candidate, campaign committee, or political party or organization, in

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<sup>2</sup> As explained below, Meetup will not list a candidate’s or political committee’s meetup event in the “Featured Meetup” list unless the candidate or political committee has paid to sponsor the meetup event. In this one area candidates and political committees are treated differently than other persons because Meetup may list as “Featured Meetups” other, non-candidate meetup events on different subjects that are not sponsored meetups.

1 connection with any election to” Federal office. 2 U.S.C. 441b(b)(2). A “donation” means  
2 “a payment, gift, subscription, loan, advance, deposit, or anything of value given  
3 to a person, but does not include contributions.” 11 CFR 300.2(e). The phrase “anything of  
4 value” includes all in-kind contributions, including the provision of goods or services  
5 without charge or a charge that is less than the usual and normal charge for such goods or  
6 services. 11 CFR 100.52(d)(1), 100.111(e)(1). Section 100.52(d)(2) defines “usual  
7 and normal charge for goods” as the price of those goods in the market from which they  
8 ordinarily would have been purchased at the time of the contribution.

9

10 *Meetup’s Provision of Free Basic Services to Candidates and Political Committees, or*  
11 *Their Supporters, is Not a Contribution*

12 Although a corporation’s provision of a service without charge to a candidate would  
13 ordinarily result in an in-kind contribution to that candidate under 11 CFR 100.52(d), the  
14 provision of a service that is always provided without charge to every person does not fall  
15 within this general rule. For example, in Advisory Opinion 1978-60, the Commission  
16 concluded that a television network corporation could give to the candidate a copy of a  
17 videotape segment in which the candidate appeared, so long as the company's policy was to  
18 provide a videotape copy free of charge to any member of the public appearing in a  
19 newscast. *See also* AO 1996-11 (incorporated membership organization permitted to  
20 provide candidate speakers with free audio and video tapes of their own speeches because  
21 the tapes would be provided to all speakers, including candidates.)

22 Advisory Opinion 1996-2 is distinguishable. There, the Commission determined  
23 that user accounts provided to candidates without charge by CompuServe, an incorporated

1 electronic bulletin board service provider, would constitute in-kind contributions to such  
2 candidates. The services provided by Compuserve, however, were normally offered for a  
3 fee and were only offered without charge to a select group. Because Meetup provides its  
4 basic services to all persons without charge, its provision of basic services for free is  
5 therefore significantly different than Compuserve's proposal. Whereas the normal and  
6 usual charge for Compuserve's service was a fixed fee that was waived in some  
7 circumstances, the normal and usual charge for Meetup's basic service is always zero  
8 without any obligation to purchase other services. Therefore, Meetup would not make a  
9 contribution or expenditure solely by providing these basic services to Federal candidates in  
10 the ordinary course of its business on the same terms and conditions on which they are  
11 offered to all members of the general public.

12

13 *Meetup's Provision of Premium Services to Candidates For the Usual and Normal Fee Is*  
14 *Not a Contribution.*

15 Like any other member of the general public, a Federal candidate or political  
16 committee may "sponsor" meetup topics at various levels for a fixed set of fees. The  
17 Commission notes that because each fixed fee amount entitles the sponsor to a specific set  
18 of services with clear limits, Meetup does not reserve the discretion to provide enhanced or  
19 reduced services to a Federal candidate or political committee in comparison with other  
20 similarly situated individuals or groups who have paid the same fee. For example, while  
21 sponsors may elect to pay a fixed fee to control the text in the "What" section of the Meetup  
22 page or the text that appears in e-mails sent to members of their sponsored Meetup, the  
23 number of characters in these texts are fixed. Thus, Meetup would not make a contribution

1 or expenditure solely by providing Federal candidates and political committees with the  
2 same fixed premium services as provided to any similarly situated member of the general  
3 public, so long as it does so in the ordinary course of business for the usual and normal  
4 charge. This charge must be set in accordance with the fixed set of fee criteria you describe  
5 and must be applied equally between the various classes of Federal candidates (i.e.,  
6 presidential candidates, U.S. Senate candidates, and House candidates) and other businesses  
7 or members of the general public who are similarly situated with respect to the respective  
8 classes of candidates and political committees. This conclusion is based on the factors  
9 described above and the assumption that the Federal candidates and political committees  
10 will pay for each premium service in a timely manner such that Meetup would not extend  
11 credit to a candidate or candidate's authorized committee outside the ordinary course of its  
12 business. *See* 11 CFR 100.55, 116.3 and 116.4.

13 This conclusion also applies to Federal candidate and political committee meetups  
14 in the list of "Featured Meetups." Because Federal candidate and political committee  
15 meetups will only be featured in accordance with the fixed sponsorship fee arrangement,  
16 meaning that Meetup will never exercise its discretion in featuring a candidate or political  
17 committee meetup, no contribution or expenditure will result solely from Meetup's  
18 featuring of a sponsoring candidate's or political committee's meetup event in the manner  
19 you describe in your request.

20 This response constitutes an advisory opinion concerning the application of the Act  
21 and Commission regulations to the specific transaction or activity set forth in your request.  
22 *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts  
23 or assumptions presented, and such facts or assumptions are material to a conclusion



1 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
2 support for its proposed activity.

3

4

Sincerely,

5

6

7

8

Bradley A. Smith  
Chairman

9

10

11 Enclosures (AOs 1996-11, 1996-2, 1978-60)