



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission  
Staff Director  
General Counsel  
FEC Press Office  
FEC Public Disclosure

**FROM:** Office of the Commission Secretary 

**DATE:** January 11, 2012

**SUBJECT:** Comments on Draft AO 2011-24  
(StandLouder.com)

Transmitted herewith is a timely submitted comment from James A. Kahl regarding the above-captioned matter.

Draft Advisory Opinion 2011-24 is on the open meeting agenda for January 12, 2012.

Attachment



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### FACSIMILE

<b>TO</b>	<b>Ms. Shawn Woodhead Werth</b>	<b>Wednesday, January 11, 2012 11:2</b>
	<small>Name</small>	<small>Date</small>
	<b>Office of the Commission Secretary</b>	<b>202 208 3333</b>
	<small>Company/Firm</small>	<small>Fax #</small>
<b>FROM</b>	<b>Diane J. Fuchs</b>	
	<small>Name</small>	<small>Direct Fax #</small>
	<b>Number of Pages (Including Cover)</b>	<b>202-857-4457</b>
	<b>05</b>	<small>Direct Dial #</small>

**MESSAGE:**

Attached please find the comments of Louder Solutions, LLC on drafts A, B and C of Advisory Opinion 2011-24.

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January 11, 2012

**BY FAX DELIVERY**

Ms. Shawn Woodhead Werth  
Secretary and Clerk of the Commission  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Advisory Opinion Request 2011-24 (StandLouder.com)

Dear Ms. Werth:

These comments are submitted on behalf of requestor, Louder Solutions, LLC (the "Company"), the owner of StandLouder.com, concerning drafts A, B and C of Advisory Opinion 2011-24.

All three drafts concur with requestor's conclusion that StandLouder.com is not a political committee. The differences in the three drafts largely concern disclosures and disclaimers. As discussed in the request, the FEC's disclaimer and disclosure regulations do not contemplate the political funding model developed by the Company. However, many organizations, such as trade associations and advocacy groups, engage in similar types of activities. They collect funds from individuals and entities and use those funds to place ads in the mass media, many of which qualify as independent expenditures and electioneering communications. We believe that StandLouder.com should be subject to the same level of regulation as these entities.

For the foregoing reasons, we urge the Commission to adopt Draft B because we believe it correctly defines the regulatory obligations for organizations that engage in the types of activities proposed by the Company. The following comments are directed at Drafts A and C.

**Comments on Advisory Opinion Draft A**

Draft A concludes that StandLouder.com does not have any disclaimer obligations because it is not the "maker" of the expenditures. Nonetheless, the draft proceeds to describe the two alternative disclaimer options that could be used by StandLouder.com.



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The first option would be for StandLoud.com to use a disclaimer that includes a reference to a page on the StandLoud.com website where contributors to the ad would be listed. The draft does not indicate whether all or some of the ad contributors would have to be listed on the website. No law or regulation requires a person or committee that reports independent expenditures or electioneering communications to the Commission to make a duplicate disclosure on a private website. If, however, the Commission were to adopt this general approach, we would urge that the Company be allowed to comply by providing a link to the filings on the FEC website rather than listing contributors on the StandLoud.com site.

As we understand it, the second option would require no identification of the ad sponsor at all. StandLoud.com would merely be required to state in the disclaimer that the ad was paid for by persons who are not a political committee and was not authorized by any candidate or candidate's committee.

Given the conflicting disclaimer options outlined in Draft A, we believe the disclaimer proposed in the request provides a more consistent and less confusing approach. Under the circumstances, it is reasonable to view StandLoud.com as the party "paying" for the ads. While there is scant Commission guidance on this point, it is significant that the Company has considerable control over the airing of the ads, the Company will provide support for the ads in some instances, and the funds used to pay for the ads will be Company funds. StandLoud.com has no obligation to return donations to a funder if an ad is not run.

Draft A similarly concludes that StandLoud.com does not have any reporting obligations, and it provides two options for dealing with this issue. First, content creators or other users could file their own reports. Alternatively, StandLoud.com may "facilitate its users in satisfying" the reporting requirements. We are not at all clear what such facilitation entails and how it differs from the independent expenditure and electioneering communication reporting process proposed in our request. In either event, however, it is far more likely that the required information will be disclosed to the public in a full and timely manner if undertaken by StandLoud.com rather than a large number of content creators and funders.

#### Comments on Advisory Opinion Draft C

Draft C, like the other drafts, concludes that StandLoud.com is not a political committee. However, unlike Drafts A and B, it observes that StandLoud.com, the content creators and the ad funders may become a political committee or a series of political committees. This conclusion is based on the premise that the message forum associated with ads on the StandLoud.com website could be used to share plans and activities which would "actualize" the participants' efforts to act as a group. However, the draft is not clear on the precise circumstances under which such political committee status would arise.

We disagree with this conclusion for several reasons. First, neither the Company nor any of its representatives intends to engage in discussions on the message forum. It is a service provided to the Company's individual website users. Secondly, as we discussed in our request, the Commission clearly articulated in the Explanation and Justification for the Internet rule that



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uncompensated individual online political discussions and activities will not trigger political committee status. *See* 71 Fed. Reg. 18589, 18064 (April 12, 2006). As discussed in the request, StandLoud.com will require all forum users to represent that they are not compensated for these activities. Finally, this type of political committee analysis is not applied to other non-registered entities that sponsor independent expenditures or electioneering communications. An express advocacy communication sponsored by a trade association, for example, is not viewed as a separate political committee consisting of the association and those members who choose to contribute to the ad, even if there are significant discussions about content and strategy.

Draft C also concludes that the disclaimer must identify the content creator as the party that "paid" for the communication, and the content creator must file the disclosure reports. We believe this conclusion is not consistent with the facts presented to the Commission. In most instances, the ad creator will not have "paid" anything other than the cost of creating and submitting the ad. Indeed, the Company anticipates that most funding will be provided by visitors to the website who agree with an ad's message. Moreover, as discussed above, the funds paid to air the communications will be StandLoud.com corporate funds, not funds that are held in escrow for the content creator. Finally, the Company has endeavored to make clear in its request that it is committed to the principle of transparency. As we indicated above, it is far more likely that the required information will be disclosed to the public in a full and timely manner if undertaken by StandLoud.com than a large number of individual content creators.

Draft C's final conclusion is that StandLoud.com may form an independent expenditure-only political committee, but the content creator must, nonetheless, be identified in the disclaimer and must file the disclosure report. The basis for this conclusion is that the advertisement is the creator's "expenditure." No authority is cited for this conclusion, and we are aware of none.

Each content creator must grant the Company the right to use, modify or distribute the material in whole or in part. As such, if StandLoud.com forms a political committee, the rights granted by the content creator would be something "of value" and would constitute a contribution to the committee. 2 U.S.C. § 431(8)(a); 11 CFR 100.52(a). Such in-kind contributions would be reported by the committee in accordance with Commission rules. Separate disclosure by the contributor to the Commission is not required.

As a final comment, we believe the facts in all three drafts accurately reflect the proposed activities of StandLoud.com. Each draft also correctly describes the two-stage process for collecting funds from users who wish to finance an advertisement. The Commission should be aware that if an extremely large number of ads are submitted at the outset, the Company could be limited in its ability to move all ads into the funding status described in the drafts. In that event, the Company might be required to use a screening process that involves no donation of funds, and would involve no exercise of discretion on the Company's behalf. For example, the Company might allow website users to cast a "Like" or "Dislike" vote for an ad, and those ads accumulating an established number of affirmative votes would move into the first funding stage. We do not believe that this possibility is material to the request, but wanted to bring this to the Commission's attention.

COUNSEL  
CAPITOL  
SANDRIDGE  
& NEEL  
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We appreciate the opportunity to submit these comments. For the reasons discussed above, we respectfully request that the Commission adopt Draft B.

Sincerely,



James A. Kahl  
Counsel to Louder Solutions, LLC

cc: Anthony Herman, Esquire  
General Counsel  
By FAX Delivery