

Make Your Laws PAC, Inc. (FEC ID # C00529743)
% Nick Staddon, Secretary
122 Pinecrest Rd.
Durham, NC 27705

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Re: MYL PAC Advisory Opinion Request re. foreign national IP contributions

November 22, 2014

Dear Commissioners:

Please accept this request on behalf of Make Your Laws PAC, Inc. (MYL PAC) for an advisory opinion from the Federal Election Commission ("FEC" or "Commission"), pursuant to 11 CFR 112.1(a) and 2 USC 437(f).

Background

MYL PAC is an FEC registered, non-connected "hybrid Super PAC", 527 corporation. Make Your Laws Advocacy, Inc. is a 501(c)4 corporation. Make Your Laws, Inc. (MYL C3) is a 501(c)3 corporation. "MYL Group" refers to the group of these three organizations. All three share the same general goals of promoting liquid democracy and voter empowerment, and all are strictly non-partisan. Each entity simply handles different aspects, in accordance with different regulations.

Each MYL Group entity was independently organized by the incorporators out of their own money, and none is a member of or controls another. Each entity pays its own clearly segregable expenses (e.g. bank fees). In particular, in accordance with the FECA, MYL PAC is *not* controlled by, and does not receive *any* contribution of anything of value from, MYL C4 or MYL C3.

The MYL Group requires *all* contributions to or expenditures of the MYL Group as a whole to be handled by MYL PAC. Since MYL PAC is permitted to contribute to MYL C4 or MYL C3, this ensures conservative compliance with all FEC and IRS regulations. For instance, MYL PAC handles the Group's website hosting expenses, as well as anything whose attribution to a specific MYL entity is difficult to segregate (e.g. legal advice covering multiple MYL entities is reported by MYL PAC).

The MYL Group jointly owns the intellectual property ("IP") rights to all of the code, design, graphics,

trademarks, trade dress, etc. which power the group's website, makeyourlaws.org, and which constitute the MYL group's brand. To date, all services in creating the MYL Group's IP have been provided by unpaid volunteers who are United States citizens.

Intellectual property rights in foreign nationals' volunteer services

Nearly all¹ of the MYL Group's code is both open source² and "open source licensed"³.

Anyone who provides services to the MYL Group which may result in IP is asked to sign an IP assignment agreement⁴, in which they transfer all rights and ownership in the IP resulting from their services to the MYL Group⁵. In return, the MYL Group grants the contributor a perpetual license to use their own contributions however they see fit, and promises to keep their work open sourced and open licensed. The only exception to this "license back" provision are contributions which, in the MYL Group's sole determination, would affect any MYL Group trademark or trade dress (e.g. branding or logos); in such contributions, the MYL Group exclusively retains all rights.

This IP assignment is necessary for MYL Group's operations and to enforce its legal rights. For instance, if someone volunteering graphic design services creates art that then becomes used as or part of a MYL logo, the MYL Group has to exclusively own all IP rights in that logo to enforce its trademarks. Likewise, to effectively enforce its open source license to its code, the MYL Group must own the entire copyright to that code.

As the Commission has repeatedly held, and 2 USC 431(8)(B)(i) clearly states, volunteer *services* are not "contributions" under the Act, even when made by foreign nationals. See e.g. AO 2004-26 Weller (candidate's foreign national fiancée permitted to volunteer for his campaign); AO 2007-22 Hurysz (committee permitted to accept volunteer services of Canadian citizens); Sir Elton John / Hillary Clinton MURs 5987, 5996, and 6015 (foreign national permitted to volunteer his services in

¹ Some items that may not be made public, e.g. because of security requirements, an NDA, privilege, or a third party's restrictions on an MYL Group entity, are not part of the MYL Group's open source.

² i.e. available at <https://github.com/MakeYourLaws> for anyone to see

³ MYL Group uses "open source license" as defined by the Open Source Initiative at <http://opensource.org/licenses>. Broadly speaking, this means a copyright license that permits anyone to re-use software so long as they give credit and publish any derivative works under the same terms. The MYL Group currently uses the Affero GNU Public License and the MIT License, depending on the project involved, and retains exclusive discretion to choose which open source license to apply to any of its IP.

⁴ See e.g. https://en.wikipedia.org/wiki/Contributor_License_Agreement

⁵ As is standard for programming related IP assignments agreements, this agreement also has a provision granting the MYL Group non-exclusive license to use any other works needed to use or embodied in the contribution.

performing at a concert benefiting the candidate's campaign, so long as all costs are borne by the campaign); AO 1987-25 Otaola (foreign national permitted to provide volunteer services for presidential campaign).

It is clear that the contribution of the *services* described above, when provided on an unpaid⁶ volunteer basis, are permissible regardless of the identity of the contributor.

However, the Commission has held that foreign national contributions of *tangible goods* are *not* permitted. See e.g. AO 2007-22 Hurysz part 4 (committee not permitted to accept printed election materials from Canadian sources) and AO 1981-51 Oldaker (artist not permitted to contribute original [physical] hand-painted pieces of art to be reproduced and sold by political committee).

The Commission has not addressed the contribution of *intangible* intellectual property created by a foreign national volunteer in the course of their permitted services to a committee.

We believe that, under the FECA,

1. intellectual property of this sort — created by unpaid volunteers in the course of exempt contributions of volunteer services — is
 - a. not a tangible "thing" in the first place, and
 - b. impossible to assign an objective 'value' to;and thus not a "thing of value" under 2 USC 431(8)(A)(i) or 2 USC 441e(a); and that
2. the intellectual property resulting from exempt volunteer services is *inextricably part of* those services, and therefore its assignment must also be exempt if 2 USC 431(8)(B)(i) is to have any meaningful effect.

Volunteers *routinely* create intellectual property as part of exempt services to a political committee. For instance, unpaid volunteers act in advertisements, draw logos, invent slogans, code websites, etc. If the recipient is to effectively use those items — such as by running the advertisement on TV, selling merchandise with the logo, trademarking the slogan or logo, asserting IP rights to their website's code, etc. — they must have ownership of the IP in those assets.

This requires that any IP resulting from volunteer services either be either transferred by default, or at

⁶ Please assume that all requirements of 2 USC 431(8, 9)(B) are fulfilled. E.g. out of pocket costs such as printing, distribution, web hosting, etc. will be paid for by MYL PAC; volunteers will not be "compensated" by anyone, per 11 CFR 100.74, but may use their own equipment (such as a laptop) in providing such services; MYL PAC will not act as an agent of any foreign national nor permit any foreign national to participate in its operations, make decisions regarding contributions or expenditures, etc., per 11 CFR 110.20(i); etc.

least assignable by mutual agreement.

Therefore, we ask that the Commission hold that any intellectual property resulting from or part of exempt volunteer services provided to a committee under 2 USC 431(8)(B)(i) may be assigned to that committee without constituting a "contribution" under the FECA, even when the service is provided by a foreign national.

Specifically anticipated contributions of exempt services and resulting IP by foreign nationals

MYL PAC's president has been formally invited to participate in a conference on liquid democracy at the European Parliament in late November⁷, as well as an associated hackathon.⁸ MYL PAC anticipates that at these events, foreign nationals attending the event (whose identities will not be known until the event happens) will contribute unpaid volunteer services to the MYL Group (via MYL PAC). These services will be primarily aimed at improving the MYL Group's code, logos, etc. MYL PAC will request that all contributors sign an IP assignment agreement regarding the IP resulting from such services, as described above. MYL PAC *will not be able to use such contributions* of exempt, unpaid volunteer services unless the IP assignment is permitted under the FECA.⁹

Furthermore, because MYL Group's code is open source and *constantly* available for collaboration¹⁰, MYL PAC anticipates receiving such services on an *ad hoc*, continuous basis. Open source culture encourages *anyone* to freely contribute their services to any open source project, with minimal barriers, regardless of nationality. It would not be feasible to request the Commission's permission or opinion regarding every such contribution of volunteer services in advance.

Question Presented

1. *Under the circumstances described above, may MYL PAC accept the assignment of any intellectual property in unpaid volunteer services which are provided in accordance with 2 U.S. Code § 431(8)(B)(i)?*

⁷ See <https://iuliareda.eu/events/liquid-democracy-meetup/>.

⁸ See <http://www.2014.euhackathon.eu/program/>. A "hackathon" is an event, whose content is organized *ad hoc*, in which people collaborate on various (typically open source) projects, as chosen during the event by each individual participant based on their own interests, ideas, and skillsets.

⁹ Due to the time restriction, MYL PAC intends to hold such contributions, pending the Commission's approval.

¹⁰ See e.g. <https://help.github.com/categories/collaborating/>

Conclusion

Thank you for your consideration and assistance in answering this question. We hope that this AOR helps to clarify the FECA's applicability to foreign nationals' contributions as it relates to the intellectual property that is intrinsically a part of the provision of exempt volunteer services.

I request the Commission's permission to appear at any hearing on this matter either remotely or in person, depending on my availability.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
Sai
President & Treasurer
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