

May 7, 2019

The Honorable Ellen Weintraub
Chair
Federal Election Commission
Washington DC 20463

Craig Engle

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Re: Draft Advisory Opinion 2019-A

Dear Chair Weintraub:

Advisory Opinion 2019-05 Draft A's conclusion can only be approved by disregarding the following facts:

1. Providing payment for content is a legitimate media function, and
2. Providing a license fee in exchange for exclusive broadband access is not a mechanism for fundraising.

Anyone who has watched something on Netflix or an NFL game has watched a program where an intermediary has bought licensed content from a creative provider and then sold subscriptions or advertising time during that broadcast to recoup its investment. Hundreds of billions of dollars are transacted in this way every year by CBS, HULU, CNN and many of the hundreds of other channels on livestream we receive.

It is not only a legitimate media function to pay for content, it is a common media function: <https://www.investopedia.com/articles/investing/062515/how-netflix-pays-movie-and-tv-show-licensing.asp>. The Commission would be left in past if it thought otherwise.

Second, providing a license fee is absolutely not a mechanism for fundraising as was prohibited in Advisory Opinion 2008-14 (Melothe). There, a media company wanted to provide a contribution page or permanent hyperlink to a website where viewers could make contributions to favored candidates via unpaid solicitations. Melothe was correctly decided: it prevented the media's facilitation of individuals donating money to candidates for the purpose of influencing an election.

But there are no donors here. There are no contribution pages or hyperlinks for the general public. No one is contributing money for the purpose of influencing an election. What we propose is an even-handed commercial transaction so more people can watch speeches. Melothe just doesn't have anything to do with System73.

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The weakest rationale in Draft A, however, is found on page 12:

For example, the opportunity to earn a license fee could encourage a political committee to hold additional campaign events beyond what the committee would otherwise schedule so that it could receive additional campaign funds.

With all due respect, this is ridiculous. The thought that a campaign, or party committee or PAC would schedule unnecessary events just to pick-up an extra license fee misunderstands how campaigns work (i.e., they are in the business of using the candidate's time to get votes, not payments from vendors). And remember, System73 will not pay a license fee for an event they cannot sell, and this license fee is really an offset to an operating expense (payment netted against the cost of holding a campaign event) rather than a contribution (voluntary donation made by a supporter for the purpose of influencing an election.)¹

Next, the Draft completely misses the point that this is a proposed commercial transaction. The entire premise of this request is based on a quid pro quo exchange: a license fee being paid for exclusive broadband access. The Commission should appreciate that *the content of a candidate's appearance has value*. Committees should be able to license their content for distribution just as millions of other creators do in order to get the greatest exposure possible. Campaigns have more assets than used furniture. This is the 2020 presidential election where candidates need the internet to increase their exposure.²

Last, the Draft points out that System73 is not like an affinity program where commercial transactions generate revenue from third parties to a political committee. This is true, there is no such third party fundraising here. In fact, System73 has created a business model to prevent that.

At its best, the Draft's answer is: the Commission has never approved such a thing as this, therefore it must be prohibited, and there are some partially relevant elderly Advisory Opinions to support this result. Well, in the requestors opinion, the absence of prior disapproval by the Commission is encouraging, as is the fact that the Commissioners tend to look forward, not backward, when addressing technology and the needs of the next election.

¹ The Requestor also does not follow the Draft's rationale analogizing this to candidate speaking fees rather than video footage. There is a factual misunderstanding here that can be cleared up with additional analysis.

² System73's broadcasting ideas are a lot more even-handed than those networks that give prime time town hall exposure to some, but not all, candidates on *shows they actually create*.
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I request the opportunity to testify at the Commission's hearing when it considers this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Craig Engle". The signature is fluid and cursive, with a long horizontal stroke at the end.

Craig Engle