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## PDC Interpretation

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[Title 390 WAC](#)

APPROVED BY: The Commission

SEE ALSO: [PDC Interpretation 00-02](#) (Guidelines for Contributions Received Via the Internet)

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### Campaign Activities on the Internet

The Public Disclosure Commission implements and enforces the campaign finance reporting requirements in [Chapter 42.17 RCW](#) and [Title 390 WAC](#). During the fall of 2007, the Commission reviewed the approach of the Federal Election Commission (FEC) concerning campaign activities on the Internet. The Commission also reviewed current PDC statutes and rules, and gathered information from participants in the state and federal political campaign process about Internet campaign activities.

The Commission's intent in providing this Interpretation is based on state voters' strong interest in public disclosure of campaign financing which allows the public to "follow the money." However, the Commission also recognizes the unique and evolving nature of the Internet, and that it often offers no-cost or low-cost opportunities for candidates, voters, bloggers and others to participate in the political process. The focus of the agency will be to first apply current state laws and rules to Internet activity where possible, before promulgating new rules or amending current rules.

As a result, to provide guidance to state political campaign participants at this time and while technology, Internet use, and the laws continue to unfold, the Commission is providing this Interpretation of its laws and rules as they are currently written, and as they may impact political campaign activities conducted on the Internet, and impact Internet users. Those approaches are explained in this Interpretation.

Readers are also encouraged to check the PDC's website at [www.pdc.wa.gov](http://www.pdc.wa.gov) for any legislative changes or other developments in the law or rules. This Interpretation may also be subject to revision as the laws or rules are amended, or Internet usage develops and changes.

If you have any questions after reading this, please contact the PDC toll-free at 1-877-601-2828. You may also e-mail the PDC at [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov).

## General Approach and Guiding Principles

- The primary objective is to not interfere with the free flow of political information provided via the Internet, particularly when the information is provided at no or little cost, knowing that any such interference may be counterproductive to enabling an informed electorate and the electoral process.
- The Internet is a unique and evolving mode of mass communication and political speech that is distinct from other media and warrants a restrained regulatory approach at this time. At this juncture in history, some have described the Internet as supplanting the town square or common as the primary place of citizen-to-citizen public discourse.
- RCW 42.17 is to be liberally construed to promote the complete disclosure of all information respecting the financing of political campaigns to and assure the public interest is protected. [RCW 42.17.010](#). In addition, small contributions by individual contributors are to be encouraged and not requiring the reporting of small contributions may tend to encourage such contributions. [RCW 42.17.010](#).
- Where possible, state regulation of Internet activity will follow the Federal Election Commission approach. The concepts of disclosure and limitation of election campaign financing established by the Federal Election Campaign Act (FECA) will be implemented to the extent feasible at the state level, within the parameters of state laws and rules. See [RCW 42.17.010](#).
- The FEC approach provides in part, for example, that uncompensated individuals or groups of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction, and the activity would not result in a “contribution” or “expenditure” that triggers reporting requirements. However, under the FEC approach, Internet communications placed on another person’s website for a fee are subject to FEC regulation (disclosure and disclaimer requirements apply), and which may result in a contribution or expenditure. Uncompensated “blogging” whether done by individuals or groups of individuals is exempt from FEC regulation. [11 CFR Parts 100, 110 and 114](#).

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## Answers to Questions about Internet Campaign Activities in Washington

### POLITICAL ADVERTISING

1. **What political advertising placed on the Internet requires disclosure to the public (in a report filed with the PDC of what is paid and to whom) and a disclaimer (“paid for by”)?**

**Answer:** By way of background, “political advertising” includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign. [RCW 42.17.020](#). Under state law, most “written political advertising” is to include the “sponsor’s name and address.” Under state law, “sponsor” means the person paying for the political advertising or independent expenditure. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor. [RCW 42.17.020](#). There are some exemptions (exceptions).

- **Payment is Key.** With respect to political advertising on the Internet, only paid advertising placed on another person’s website is subject to disclosure and reporting by the person paying for the advertising. This advertising is a political “expenditure” and “contribution” and must be disclosed by the sponsor (the person or entity paying for the advertisement). [RCW 42.17.020\(15\)\(a\) and \(37\)](#), [RCW 42.17.103](#), [RCW 42.17.510](#); [WAC 390-18-010](#), [WAC 390-18-020](#), [WAC 390-18-025](#).

If no cost is involved with the political advertising (such as you “cut and paste” the ad or information from another document or website, or you simply linked your website to another website containing an ad and no payment was required for that activity), no reporting or additional disclaimers are required.

However, when a candidate or political committee is provided ad space for which the website owner, blog or Internet provider usually charges a fee but provides it to a candidate or campaign for less than fair market value, that is an “in kind contribution” to the campaign that is reportable by the candidate or political committee and is subject to any applicable limit. [WAC 390-16-207](#).

- **Media Exemption and Disclaimers.** Under statute, there is a “media exemption” from what is considered a campaign contribution (thus reporting and disclosure requirements do not apply). See answers to Questions # 7 and # 8. Under current rule, “political advertising” does not include “letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.” [WAC 390-05-290](#). At this time, the Commission is applying a modern day reading to what constitutes a

newspaper or periodical for the purposes of this rule, and will apply this rule to online publications (whether it is an online publication that is the online presence of “mainstream media” or whether the publication has only an online presence via a website or blog.) This means that the disclaimer requirements (“paid for by”) do not apply to the activity exempted in [WAC 390-05-290](#) where payment is not normally required. The Commission may be interested in rulemaking in the future to update this rule or other rules, if it becomes necessary.

- **Electioneering Communications Exemption.** By definition, “electioneering communications” do not include political advertising on the Internet. [RCW 42.17.020](#), [WAC 390-05-505](#).
- **Sample Ballots and Slate Cards Exemption.** There is also a partial exception for sample ballots and slate cards: while they are political advertising, they may be distributed via websites, electronic bulletin boards and e-mails (but not other types of media), and they do not count against a contribution limit. See [WAC 390-17-030](#) for details on sample ballots and slate cards, including disclaimer requirements.

In sum, the financing of political advertising activates many of the reporting and disclaimer requirements under [RCW 42.17](#). As applied to the Internet, persons or entities paying for such political ads to be placed on websites or blogs should review the PDC’s information on political advertising and on independent expenditures. See the brochures on Political Advertising and Electioneering Communications on the PDC’s website at [www.pdc.wa.gov](#). Click on “Filer Resources” then “Advertising Sponsors” or “Manuals/Brochures.”



## WEBSITES

2. **What other campaign activity on the Internet, such as creating and maintaining websites or “blogging,” are subject to reporting or disclaimer (“paid for by”) requirements?**

**Answer:** Very little. First, recall for candidates and political committees that expenditures and contributions related to creating and maintaining websites, like other campaign expenditures and contributions, are generally reportable. The topic of blogs and blogging is discussed in Questions ## 3 - 6. Here is a description of some Internet campaign activities and topics that the Commission has been made aware of at this time, and how those activities will be addressed under current laws and rules.

- **Volunteer Services to a Campaign – Website Design and Maintenance.** In general, certain campaign activities are considered “volunteer services” and are not considered a contribution or expenditure, so long as the volunteer does not incur incidental expenses exceeding \$50. [RCW 42.17.020\(15\)\(a\)](#), [WAC 390-17-405](#). The Commission understands that currently, campaigns may be interested in

obtaining volunteer services of non-professional persons who can assist the campaign by designing and maintaining websites. The Commission understands these non-professionals may earn a modest income from time to time in providing such website services for others (such as for their schools, friends, family members, community groups, etc.), but it is not their full-time profession. The Commission also wants to encourage candidates and campaigns to expand their outreach to voters via the Internet.

Therefore, at this time, the Commission will consider donated website design and maintenance services a “volunteer” service, so long as the volunteer does not incur incidental expenses exceeding \$50, and so long as the volunteer does not earn more than \$10,000 per calendar year providing similar services to others. The Commission will begin rulemaking to address this in [WAC 390-17-405](#), but in the interim, wanted to provide guidance to campaigns and candidates that are seeking to engage in Internet activities, but may lack the technological capability among its officers or current staff.

- **Disclaimers (“Paid for By”).** The Commission recognizes that at this time, there are often no-costs or low-costs associated with creating and maintaining most campaign websites. The Commission also recognizes that there has been a development of websites maintained by individuals using their own modest resources in support of or in opposition to candidates or campaigns (sometimes called “fan sites.”) The Commission has determined that even if they support or oppose a campaign, these websites are similar to the level of small contributions that the Public Disclosure Act encourages. Therefore, at this time, and pending further developments on state campaign Internet use by candidates, political committees, or others in Washington State, or developments in the law, the Commission is not requiring “paid for by” on any website. For example, if Joe Doe wants to use his home computer to create a website to support his favorite candidate, and link other similar websites, and use or purchase software at a modest cost to enable him to engage in this Internet campaign activity, none of those modest costs associated with those activities (use of computer, depreciation of computer, use or purchase of software, use or purchase of domain name) would be reportable to the PDC as a contribution or expenditure.

Remember, however, from the answer to Question # 1 that if a qualifying paid political advertisement under [RCW 42.17.020](#) is placed on a website, the disclosure and reporting requirements otherwise apply.

- **Website Hosting and Similar Costs, Website Political Advertising, and Reporting Independent Expenditures.** As noted, the Commission recognizes that many websites have no costs or minimal costs associated with their creation and maintenance. The Commission also recognizes that candidates and campaigns may also elect to utilize qualifying volunteer services to assist them, and qualifying volunteer services thus do not constitute a reportable “contribution.”

However, there are other state laws that require reporting of certain expenditures in support of or opposition to a candidate or ballot measure that are made independently from a candidate or political committee, once a particular dollar threshold is reached. [RCW 42.17.100](#) (\$100 reporting threshold for an independent expenditure) and [RCW 42.17.103](#) (\$1,000 reporting threshold for independent expenditures that are political advertising) provide for disclosure (reporting) of the value of those expenditures once those thresholds are met.<sup>1</sup> Regarding the second statute ([RCW 42.17.103](#)), as described in the answer to Question # 1, if political advertising is placed on a website, and there is payment (an expenditure) for this advertising, state laws and rules require a report to be filed.



## BLOGS

### 3. What “blogging”<sup>2</sup> activity is subject to reporting and disclaimer (“paid for by”) requirements?

**Answer:** Very little. In particular, like at the federal level, uncompensated blogging is not subject to disclosure or disclaimer requirements.

- **Payment is Key.** A candidate, campaign or political committee paying a “blogger” to blog on behalf of a candidate or ballot measure would be required to report that campaign expenditure like they would any other campaign expenditure. The blogger is not required to report. A person or entity not associated with a campaign or candidate paying a blogger to blog on behalf of or in opposition to a candidate or campaign would be required to report that expenditure as an “independent expenditure” like that person or entity would report any other qualifying independent expenditure. [RCW 42.17.100](#). A person otherwise hiring a blogger as a vendor, independent contractor or employee to post information in support of or opposition to a candidate, campaign or ballot measure would be required to report that cost like any other campaign expenditure.

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<sup>1</sup> [RCW 42.17.100\(2\)](#) provides in part that “within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more” the person making the expenditure must file a report with the PDC. [RCW 42.17.103\(1\)](#) provides that the sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

<sup>2</sup> A blog (“web log”) is a website where entries are written in chronological order and commonly displayed in reverse chronological order. Many blogs provide commentary or news on a particular subject such as food, politics, or local news. A blog can combine text, images, and links to other blogs, web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is an important part of many blogs.

- **Blogs May Also Be Entitled To The “Media Exemption.”** In addition, a blog or blogger may be entitled to the “media exemption” from reporting and disclosure requirements in any event, if the statutory criteria are met in [RCW 42.17.020](#). See answer to Question # 8.

**4. What about “tip jars” or other voluntary donations to bloggers?**

**Answer:** A blogger who simply has a “tip jar” and has no direct payment arrangement with a candidate, campaign or political committee to post specific information in support or opposition to a candidate or campaign in exchange for the “tips” is not subject to any PDC regulatory requirements, nor is the donor.

**5. Does the fact that a blogger otherwise sells advertising space place a reporting requirement on the blogger, if some of the space is sold to a candidate, political committee, or campaign?**

**Answer:** No. However, if a blogger provides a candidate or political committee ad space for which the blogger usually charges a fee, but provides it to a candidate or campaign for less than fair market value, that is an “in kind contribution” to the campaign that is reportable by the candidate or political committee. [WAC 390-16-207](#).

**6. Can public agency employees create blogs on public agency computers to support or oppose candidates or campaigns?**

**Answer:** No. Statutes prohibit use of public agency facilities (including computers) for political campaign purposes. [RCW 42.17.130](#) and [RCW 42.52.180](#). Also see [WAC 390-05-273](#), and [PDC Interpretations 04-02, 01-03](#).



## **MEDIA EXEMPTION**

**7. Does the statutory “media exemption” from what is not considered a contribution extend to media activities on the Internet, including news media that exist only on the Internet?**

**Answer:** Yes, if the statutory criteria in [RCW 42.17.020](#) are satisfied. The statute exempts from what is considered a contribution those communications that meet all the following criteria:

- a news item, feature, commentary, or editorial
- in a regularly scheduled news medium of primary interest to the general public
- that is in a news medium controlled by a person whose business is that news medium
- and that is not controlled by a candidate or political committee.

Also see [WAC 390-05-290](#) (political advertising exemption) and [WAC 390-16-313](#) (independent expenditures exemption). The Commission is considering rulemaking regarding [WAC 390-16-206](#) (ratings and endorsements).

## 8. Does this media exemption apply to blogs and bloggers, too?

**Answer:** Yes, if the statutory criteria in [RCW 42.17.020](#) are satisfied. In addition, under current rule, political advertising does not include “letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.” [WAC 390-05-290](#). At this time, the Commission is applying a modern day reading to what constitutes a newspaper or periodical for the purposes of this rule, and will apply this rule to online publications (whether it is an online publication that is the online presence of “mainstream media” or whether the publication has only an online presence via a website or blog.) The Commission may be interested in rulemaking in the future to update this rule, if it becomes necessary. Also see [WAC 390-16-313](#) (independent expenditures exemption). The Commission is considering rulemaking regarding [WAC 390-16-206](#) (ratings and endorsements).



## E-MAILS

### 9. What about mass distribution of e-mails that urge persons to vote for or against a candidate or ballot measure, or otherwise constitute political advertising? Are there reporting or disclaimer (“paid for by”) requirements?

**Answer:** The cost to a candidate or committee that is associated with purchasing an e-mail address list would be a reportable expenditure, just like any other expenditure.

At this time, because unlike at the federal level, the Commission has not been provided information that “mass e-mails” are used in Washington State campaigns as a “means of mass communication” under [RCW 42.17.020\(37\)](#), or have presented disclosure or reporting issues or complaints, or other issues regarding reportable expenditures, the Commission is taking a “wait and see” approach with respect to any further provisions regarding e-mails. This means there are no other disclaimer or reporting requirements at this time that will be applied to e-mails, except for sample ballots and slate cards sent via e-mail which are subject to [WAC 390-17-030](#).

E-mails from or on behalf of individuals, where there is little or no cost to the individual, remain unregulated. A person on his or her own time, who volunteers to send e-mails supporting a candidate or ballot measure, is not making a contribution. Similarly, if an individual who is not in the business of compiling e-mail lists creates an e-mail address list using his or her own contacts (like from a personal e-mail address book) and provides the list to a candidate or committee, such activity is also not reportable.

These e-mail provisions do not apply where other statutes prohibit use of public agency facilities (including computers and e-mail systems) for campaign purposes, such as [RCW 42.17.130](#) or [RCW 42.52.180](#). Also see [WAC 390-05-273](#), and [PDC Interpretations 04-02, 01-03](#).



## **OTHER QUESTIONS**

**10. Will the Commission examine and possibly revise this Interpretation in the future if new or other questions are raised, if laws or rules are amended or new provisions adopted, if technology changes, or if Internet use changes?**

**Answer:** Yes.