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Intellectual Property Attorneys

From *Taxation of Exempts*

## Safe Linking for Section 501(c)(3) Organizations

*The rules on political activity are the same, but changes in the Internet create more situations that the IRS might question.*

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In July 2008, the IRS distributed a field directive to all Revenue Agents. The directive provided instructions for dealing with Section 501(c)(3) organizations with Web sites that may contain information about candidates. The goal of the directive was to assist revenue agents in determining whether Section 501(c)(3) organizations were operating their Web sites in violation of the prohibition against political campaigning.

The implications of the directive are significant. Section 501(c)(3) organizations found to be involved in political campaigns run the serious risk of losing their Section 501(c)(3) status. That almost certainly would, at the very least, result in a significant loss of donations. With the complexity of the today's Web environment, it may be unclear what activities are allowed and which are violations.

### The ban

An organization cannot qualify for Section 501(c)(3) status unless (1) "carrying on propaganda, or otherwise attempting, to influence legislation" is not a substantial part of its activities and (2) it "does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."<sup>1</sup>

These limits have been justified historically because the tax benefit provided to Section 501(c)(3) organizations has been interpreted as a tax subsidy.<sup>2</sup> The ban was first proposed as part of the Revenue Act of 1934, but was deleted before the Act was passed because it was deemed too broad.<sup>3</sup> While the Revenue Act of 1954 was under consideration, and without giving an explanation, then-Sen. Lyndon Johnson requested an amendment to the act to prohibit political campaigning for Section 501(c)(3) organizations. The amendment was added and the bill enacted.

In 1966, the IRS revoked the tax-exempt status of Christian Echoes National Ministry for, *inter alia*, intervening in political campaigns on behalf of candidates running for public office in violation of Section 501(c)(3).<sup>4</sup> Christian Echoes brought suit against the IRS for a refund of taxes paid and recognition of the organization as tax exempt. The district court found for Christian Echoes, but the Tenth Circuit ultimately reversed.<sup>5</sup> It held that Christian Echoes' activity constituted political activity in violation of Section 501(c)(3). Specifically, it held that activities of the group, such as verbally attacking President John



Kennedy and urging its followers to elect conservative candidates through publications and broadcasts, were indeed prohibited political activity.

One of the questions that Christian Echoes raised on appeal was whether the ban violated the First Amendment. The Tenth Circuit held that while Christian Echoes' religious freedom may have been impinged by the IRS, the restriction was appropriate in view of the fact that tax exemption was not provided as a matter of right.

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Later, in *Regan v. Taxation With Representation of Washington*, 61 U.S. 540, 51 AFTR2d 83-1294 (1983), the Supreme Court resolved a First Amendment free speech challenge to the Section 501(c)(3) lobbying limitation in a similar manner. There, the Court held that the First Amendment was not violated when Taxation With Representation was denied tax-exempt status because a substantial amount of its activities consisted of influencing legislation. More specifically, Justice Blackmun held in a concurring opinion that because an organization is free to form a Section 501(c)(4) organization to engage in lobbying activities,<sup>6</sup> there was no issue with restricting the Section 501(c)(3)'s lobbying activities.<sup>7</sup> These restrictions, however, are not as clear as *Christian Echoes* and *Taxation With Representation* seem to make them.

Section 501(c)(3) organizations are not barred from political activity per se. They are simply barred from favoring a particular candidate.<sup>8</sup> The IRS, in fact, provides that the Section 501(c)(3) organizations can participate in certain voter education activities,<sup>9</sup> and various revenue rulings have laid out which activities are allowed and which are not.<sup>10</sup> Three major factors appear to influence the Service's determination regarding which political educational activities are allowed: (1) whether information is provided for all major political candidates for the office in question in a way that is not biased,<sup>11</sup> (2) whether the issues covered in material are broad or narrowly focused on the specific interests of the organization and its members,<sup>12</sup> and (3) how broadly the educational information is distributed.<sup>13</sup> Despite these restrictions, and perhaps as a result of their uncertainty, some nonprofit organizations continued to support candidates.<sup>14</sup> As a result, and with a growing awareness of Internet activities, the IRS apparently felt compelled to create a stronger enforcement initiative.

A wave of political campaigning at churches culminated during the 2004 presidential election.<sup>15</sup> In June 2004 the IRS implemented the "Political Activities Compliance Initiative" (PACI).<sup>16</sup> The goal of the initiative is to stop political activity through a two-pronged approach of education and enforcement. As of 2/24/06, the IRS had undertaken 82 examinations of nonprofit organizations that appeared to be involved in some form of electioneering. Of those, 75% resulted in a finding of engagement in political activities in violation of Section 501(c)(3). They included 15 allegations of charities endorsing or opposing a candidate on their Web sites, seven of which the IRS determined to be in actual violation of the ban.<sup>17</sup> As a result of this campaign the IRS realized that there was some confusion among Section 501(c)(3) organizations about just what

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constituted a violation.<sup>18</sup> The confusion only worsens when the context turns to Section 501(c)(3) organizations' Web presence.



It was in the shadow of this potential for confusion that the IRS released the field directive to its agents with instructions on handling links on the Web sites of Section 501(c)(3) organizations that point to campaign related information.

## **Section 501(c)(3) and Internet-based voter education**

On 7/28/08 the IRS released a letter that contained guidance for field agents and a reiteration of the Service's previous position on the continuing PACI initiative.<sup>19</sup> It specifically cited an increase in "issues" related to the use of links on the Internet sites of various Section 501(c)(3) organizations and laid out the Service's position with regard to the use of these links in general.

The letter pointed out several potential views of the use of links. The first was that links are simply a "referral from one source of information to another that the user can pursue or not at his or her discretion." The second was that a link is analogous to a distribution of the information to which the site links. The IRS has thrown both of these views out as presumably too broad and too narrow, respectively. It instead chose to follow the advice previously referred to in Rev. Rul. 2007-41, 2007-25 IRB 1421. That ruling deals, *inter alia*, with the distribution of information over the Internet.

In Rev. Rul. 2007-41, the IRS describes three situations involving information posted on Web sites. The site in one situation included links in an unbiased, nonpartisan voter guide. Though the links were to candidates' Web sites, there were links to all of the candidates' sites, and the links themselves were presented on "a consistent neutral basis for each candidate." These links were found not to be prohibited political activity after the evaluation prescribed in Rev. Rul. 78-248, 1978-1 CB 154.

Based in part on the guidance in Rev. Rul. 2007-41 and on case law, the field directive sets out two categories for links—those between related organizations and those between unrelated organizations. The IRS considers Section 501(c)(4) organizations under the same control or affiliation to be "related organizations." As mentioned previously, the concurrence in *Taxation With Representation* strongly suggested that prohibiting a Section 501(c)(3) from using an affiliated 501(c)(4) for political activity that is permissible for a 501(c)(4) would violate the First Amendment right of free speech. As a direct result of this issue, and the complexities that may arise from situations in which Section 501(c)(3) organizations have linked to affiliate organizations, the IRS has decided not to enforce a prohibition of links between related organizations at this time.<sup>20</sup>

When the linked-to site is unrelated to the site on which the link appears, the Service's position is that the treatment of the links should be similar to the way the linked-to information would be treated if it were presented on the linking site.<sup>21</sup> The basis for its determination is, most likely, previous revenue rulings related to similar activities, the most recent of which is Rev. Rul. 2007-41. It states that the content of an organization's Web page is considered to be the same as that of a printed publication issued by the organization. The ruling's position on links is black and white: because an organization has control over the links it puts on its site, the organization is responsible for the content to which it links, even if that content is on a third party's site. The IRS interprets content at the other end of the link in the same way it interprets content placed on the organization's own site. Therefore, content that is located on the site, or any site that it links to, will or will not be deemed a violation of the ban based on the facts and circumstances of the content. Among the facts and circumstances mentioned by Rev. Rul.



2007-41 are the context of the link, whether all candidates are represented, any exempt purpose offered by the link, and the directness of the links between the organization's Web site and the page that contains material favoring or opposing a candidate for office.

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In the first Web example (Situation 19), an organization created a voter guide on its site. The guide provided links to all of the major candidates' Web sites. The IRS ruled that, as long as the voter guide was created within the guidelines of a printed publication,<sup>22</sup> and the links were presented on a neutral and inclusive basis with regards to that particular office, the links would be appropriate. A second example (Situation 20) involved an organization whose Web site, in a section discussing a disease treatment program, maintained a link to several sites supporting the same program. One of the links was to an article on a news site that discussed the organization's work. The news site, on another page, contained political articles and editorials about specific candidates. In this example, the links were appropriate because they were put in place to further the organization's Section 501(c)(3) purposes rather than for political purposes, and there was nothing in the 501(c)(3) organization's manner of linking to the news article that indicated the organization was favoring or opposing any candidate. The last example (Situation 21) was of a church that posted a message on their site asking its members to vote for a fellow member in a town council election. In that case the organization was found to have violated the rules against political intervention.<sup>23</sup>

There are currently no revenue rulings or examples of the IRS actually finding a link to be inappropriate and, as a result, practitioners are limited to the content of the Service's analysis in these examples. Although the IRS treats links as black and white elements, the Internet is far from black and white. The Internet is a complex and dynamic environment. Without an understanding of how the Internet works, it may be difficult to realize just how tough the IRS view on links can be in practice.

## **The nuts and bolts of links**

The Internet is made up of millions of computers connected together over a data communication network made up of many elements of hardware and software. Among all the pieces of equipment, two are most important in the average user's day-to-day experience—server computers and client computers. The servers—also known as Web servers—are responsible for serving up the Web content that appears on the monitor. Client computers are the computers used at home and at work. Client computers typically use one of a growing variety of Web browsers, which allow users to view Internet pages. The client computers connect through Web servers, and pass them instructions regarding what information is being sought. Web servers are typically passive, waiting for incoming requests from client machines before commencing any activities. Once a Web server gets a request from a client, it executes instructions based on the request and conveys the appropriate content to the client. The instructions reside in the server's software. If Web servers are the "muscle" of the Internet, then browsers are its "eyes" and the servers' software its "brains."

Web browsers execute two main functions. The first is to translate the information returned by the server and use that data to render the page on the monitor. The rendering step depends on a standard document format called HTML.<sup>24</sup> The HTML document contains everything the browser needs to render the page that was requested.



The second function is to communicate with the Web server. Browsers initiate requests to servers and then process the servers' response. This communication follows a complex layer of standards in order to facilitate secure communication over the Web.

Among the data typically returned by HTML are one or more links. Links are strings of code that contain instructions that the browser can use to request a different page from a Web server. When a user clicks on the link, the browser parses it. The link has all the information the browser needs to tell a Web server what the desired content is. The browser then sends the request to the appropriate server. The Web server itself requires the use of complex

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software to interpret the request from the browser and return the appropriate information for display.

In the early days of the Internet, a vast majority of the pages available online were very simple requests for transferring a static file from the server to the browser. Today's Web pages are much more complex—more complex than they may appear. Web servers now can access local databases of information. The software can also connect to other Web servers and request content itself. It can then aggregate all of this data to create dynamic pages that are customized and unique for an individual user.<sup>25</sup> The current generation of dynamic pages can provide much more robust data to Web browsers.

The complexity of today's dynamic Web means that general statements and assumptions about Web sites can lead to incorrect and, in the case of Section 501(c)(3) organizations, potentially dangerous results.

**Example.** Take the Web site pbs.org. When you type www.pbs.org in your browser the browser requests the "homepage" from the Web server. The server then executes software that triggers instructions. These instructions go about generating the HTML file that will be returned to the browser. The instructions are programmed to know that the page needs to contain a set of shows that PBS wants to highlight. It then retrieves the data from the schedule database and organizes it in the appropriate section of the HTML file. It goes on to render the menus, and checks another database for any special product offers that PBS wants to display. Those product offers can be based on time of day, or even the geographical region where the browser making the request is located. Once it has gathered and organized all of the pieces of the HTML file, it will return that file to the browser, which then interprets the data and renders the page just as the designers intended. Every link that is clicked will follow a similar process of gathering data, organizing it, and returning it to the browser. When someone clicks on the link to npr.org from the PBS homepage, the browsers send the request to a new server that belongs to NPR. The NPR server follows a similar process for creating and returning pages.

This simple example shows just how easy it is to create links to other sites. It is also possible to see the hidden dangers of these links.

Whenever a Web server accesses a database for information, whatever data is available in that database is displayed. A link to PBS right now may display a very different set of content than a link to PBS an hour from now. As data in the database is changed, either in an automated fashion or through user input, the page itself will change. Things get



even more complicated when geographical data is used to make decisions about what content to use.

**Example.** Consider a small non-profit in Massachusetts. It creates a link to a large news organization that is carrying an AP story on information important to its exempt function. Along the right side of the page are some advertisements. The advertisements are the typical ones for consumer products. The organization's webmaster dutifully reviews the content of the page and sees that the ads are always appropriate. He or she continues to check the page on a daily basis to monitor the site for any inappropriate content and everything appears to be fine. Little does the webmaster know that organization members in Virginia are in the midst of a hotly contested election. When they click on the very same link, along with the AP story, they see advertisements for one of the candidates. Dynamic content, including location-targeted advertisements, are a part of the dynamic Web and make it nearly impossible to police external links with complete certainty.

## **IRS policy applied**

The IRS seems to paint a black and white picture of how various parts of the Internet work. The generalizations are at best simplistic but, more often than not, those generalizations can have serious negative impacts. With each new technological innovation, the impacts of the Service's stance on Internet content will take a new turn.

Today's most prominent Internet business model is one of dynamic Web advertisement. Therefore, different ads may display on a site

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depending on a growing number of factors. Popular ad distributors—Google, for example—use not only the geography of the user but also the content of the page they are viewing in order to target the ad most likely to produce results. Aside from the previously mentioned issue of online advertisements used by a site to which a Section 501(c)(3) organization may link, there is another potential hazard—a Section 501(c)(3)'s own dynamic advertisements.

An organization may choose to advertise in an effort to bring attention to its cause. In this scenario, it is clear that an ad endorsing a candidate would not be allowed, but an ad free from politics may not be safe. Without carefully controlling where an advertisement will display, an organization's ad could end up on a site that both supports the cause of the organization and takes a stance on a particular political issue or candidate.

**Example.** Imagine a small Section 501(c)(3) that funds groups teaching environmentally friendly factory operations. The members have decided to raise awareness of the organization's cause by buying an online advertisement service from Google. The 501(c)(3) puts together a set of images with corporate logos and links to their site. They select some keywords like "green," "environment," and "clean." Google uses the key words to make the advertisement appear on search results pages on the Google search engine. What the organization does not realize is that they have also signed up for "contextual targeting."<sup>26</sup> Contextual targeting places advertisements on a third party's Web page, dynamically, based on its textual content.<sup>27</sup> One of the pages on which the



organization's ad appears is an editorial in a prominent newspaper about the Green party's candidate for senator. This innocent mistake might have the side effect of triggering an IRS audit. Advertisements are not, however, the only place where organizations can inadvertently get themselves into trouble.

Many organizations maintain Web forums on their sites. Web forums allow members to openly and freely discuss topics of their choosing. Participants in the forum are free to post whatever information or questions they would like. In response, other members may comment or answer the questions. There are two general types of forums—moderated and unmoderated. As the names suggest, moderated forums employ people to review comments and remove inappropriate content from posts. Unmoderated forums are wide open. In either type of forum, administrators are given the authority to edit or remove posts at their discretion. The danger of these forums is obvious. A politically charged comment made in a forum by a member could be seen as electioneering by the IRS. That conceivably could effect the organization's Section 501(c)(3) status. Appropriate disclaimers on the forums might resolve this concern, but the IRS has not confirmed that such disclaimers would be sufficient to protect the organization.

A number of other popular technologies could create similar problems. One example is a social site like MySpace and FaceBook. These sites allow people to post information about themselves and share that information publicly. More and more organizations are also creating pages on these sites. The social aspect of the sites allows groups of people "to friend" each other. "Friending" is the act of linking another person's profile to one's own. This creates mutual links between individuals directly on their main pages. Social networking sites are hosted on servers that belong to the social networking services. This makes all of the pages on the social network site one large Web application. In essence, a Section 501(c)(3)'s link to a member's MySpace page, for instance, can violate the anti-electioneering rules of the IRS if that member openly supports a candidate on their MySpace site. In addition, a Section 501(c)(3)'s MySpace page shares a Web server and a Web domain with all of the other MySpace pages. This would include any candidate's page on MySpace.<sup>28</sup>

Twitter, another Internet technology, can also create problems for a Section 501(c)(3) organization. Twitter allows people to link together, much in the same way that the social networking sites do. Once members are connected, any member can send a "tweet," or short electronic message, to

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anyone who is listening. These messages are sent to twitter client applications, cellular phones, or can even be posted as content on a Web site. Twitter can be an extremely useful tool for an organization. By allowing a single message to be instantly sent to all of its members, at no cost, the organization can quickly notify a large and disparate group of people about their most current news and other important information. What at first seems to be a great tool for efficiently coordinating members, however, can also quickly and efficiently distribute political information to a wide audience.

The list above is not exhaustive. Many other types of Internet technologies can create anxiety for leadership of a Section 501(c)(3) organization.



## **Can organizations use the Internet without fear of scrutiny?**

In general, it is possible for a Section 501(c)(3) organization to operate a Web site without threat to its exempt status. The first thing to keep in mind is that content on the site, and content that a site links to, do not involve any new standards. The applicable standards are the same ones that every organization is currently required to follow in their printed media.<sup>29</sup> By ensuring that the content of the site is true to the mission of the organization, and by minimizing external links, any organization's site should be both effective and safe from IRS scrutiny. That, however, is not much sanctuary for organizations that want the freedom to use dynamic content or to create an environment for community voter education. There are, however, steps that an organization can take to minimize the risk of these more troublesome scenarios.

The most straightforward way to reduce risk is to form a Section 501(c)(4) organization and create links to that organization. The IRS, at least for the moment, has not made a determination as to whether or not it will prohibit linking to associated 501(c)(4)s.<sup>30</sup> Having said that, the idea of creating a 501(c)(4) organization simply to create a safety net for Internet use seems a bit complex and expensive. The expense is beyond the financial capabilities of most Section 501(c)(3) organizations. Therefore, unless an organization has already created a 501(c)(4) organization for other purposes, this will not be a viable solution. There are other options, however.

Reviewing past revenue rulings related to publications in general, and the Internet in particular, does shed some light on what the IRS may consider "safe" Internet practices. The general rule of thumb is that using the Internet for fair and unbiased voter education is appropriate.<sup>31</sup> A Section 501(c)(3) organization may even, in the interests of voter education, link to a candidate's own Web site as long as all of the other candidates are given equal treatment and are also linked as prominently.<sup>32</sup>

Another important factor that the IRS reviews is the organization's exempt mission and intent.<sup>33</sup> As long as the link to another site is created to further the organization's mission, the fact that there may be political activity somewhere on the other site does not necessarily make the link an attempt at electioneering.

One last factor, which is not immediately obvious, is that the size of the audience may

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change the activity from inappropriate to appropriate.<sup>34</sup> A politically biased message targeted to only a small audience—a few thousand—may be acceptable if the vast majority of the audience is made up of individuals who cannot vote for the candidate mentioned (e.g., the candidate is running for a particular congressional seat, and the recipients are scattered all across the country). While this fact would not protect clear candidate endorsements (or opposition), it may protect more subtle statements that could otherwise be interpreted as supporting or opposing a particular candidate.

These answers are vague because the IRS, for its part, has not taken the dynamic nature of the Internet into consideration when creating its current enforcement rules. The IRS is instead treating the Internet in the same way as paper publications. This lack of clarity



has led to much anxiety and uncertainty in organizations that simply want to get their message out. Questions relating to dynamic content, member-created content, and the level of review needed to keep an organization safe from IRS scrutiny need to be answered with specific guidelines. Otherwise, as the enforcement of inappropriate use takes shape, organizations will learn the hard way what the IRS considers proper. What is needed is a fair interpretation of the statute. IRS guidance must be proactive as well as clear in telling organizations what factors they must consider and what precautions they must take to protect themselves.

Perhaps one option would be to create a "safe harbor" provision for Section 501(c)(3) organizations. One approach would be to provide standards for recommended periods of review. An organization that creates links with proper due diligence, and then reviews its links in good faith each quarter, for example, could be protected if a linked-to page is changed between reviews. A similar approach could protect Section 501(c)(3) organizations with advertising. An organization that provides appropriate filters for advertisements, and reviews them quarterly, could be protected if their advertisement appears on an inappropriate page. This approach—diligent implementation followed by systematic, periodic review—could be applied to all facets of the regulation of a Section 501(c)(3)'s Internet practices.

Another possible approach would be to conclude that the mere appearance of a political message on a Web site that is linked to or otherwise somehow associated with the Section 501(c)(3) organization (e.g., through the appearance of an ad for the organization on the same page) will not violate the electioneering prohibition if that appearance was the result of dynamic factors such as those mentioned above that were both outside of the control of the organization and not intended by it. This standard would be more difficult to apply, however, because organizations that actually did seek such an association might represent that any association was inadvertent. It might, therefore, have to be applied in the context of an actual audit as opposed to an up-front safe harbor.

Section 501(c)(3) organizations, more than most organizations, are limited financially. The IRS can, and should, avoid creating unnecessary expenses for these organizations by providing firm guidelines and safe harbors to ensure their long term viability and compliance without unduly restricting their use of such a powerful tool. Until then, however, organizations should not abandon their use of the Internet.

## **Conclusion**

The use of the Internet can be both powerful and intimidating. The best features of the Web—dynamic content, wide and inexpensive distribution, and easy linking to other sites—make it risky to organizations that face restrictions in the way that they publish or link to information. These issues need not, however, lead an organization to forgo this powerful tool for fear of losing their Section 501(c)(3) status. Depending on how an organization wants to use the Internet, various safeguards can be implemented to help ensure safe Web practices.

For organizations that need to link to other sites, it is important that they first ensure that the page they link to has no questionable content. Among the things that an organization should review is other pages on the same linked-to



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site. When clicking through the site, an organization should start on the page they plan to link to and click on the various links on that page, reviewing each subsequent page for content that tends to be political in nature. If time and budget permit, this process should be followed for each subsequent page as well, clicking on each link on the pages they find. The reviewer should look for political messages that are unbalanced. Once this cursory review is complete, the reviewer should go to the homepage of the site they are linking to and review any content and any links from the site's homepage. This last review is to ensure that the site itself does not have a bias that may put the organization at risk. A political support group, for example, may have several pages that are politically neutral even though the rest of the site is leaning in a particular political direction. A link to the neutral content may be seen as supporting the entire site's view. If the content of the site is critical to an organization's needs, that organization may want to consider contacting the site owner and requesting permission to replicate the page its own site. This will share the content with members, while still maintaining safe Web practices.

Any organization that links to other sites should document a set schedule for review of the external links. A once-per-quarter review, for example, will ensure that a site maintains its safe linking practices, even in an ever-changing Web environment. Taking these steps, and documenting them through screen shots, should help show due diligence in the event that an IRS audit discovers a link to what it considers inappropriate content.

There are some important things to remember. The Internet should be treated with the same care as printed publications. Any political information must be balanced across candidates and issues. The safe rule of thumb is to ensure that the information distributed would be of interest to all of the electorate, not just the organization's members. Extra caution must be put in place where links and dynamic content can lead to unplanned distribution of information.

When an organization contracts for dynamic content from a third party—advertisements for example—they must ensure contractually that inappropriate content will be filtered out. This includes more than political content. Content that is counter to the organization's mission, pornography, and other inappropriate content should also be on the list of filtered content. Most content providers offer a mechanism for reviewing and filtering content that an organization feels is inappropriate. Content providers have experience in content filtering and should be able to assist an organization in creating and maintaining appropriate filters.

Finally, all online forums and publicly created content should be monitored regularly and inappropriate content deleted. Once again, this should be part of the normal operating procedure for an organization that allows public comment on their site. Because of the nature of the content, most organizations should consider reviewing and moderating publicly created content at least daily. Although daily reviews are potentially costly, an organization that is considering providing the facilities for public content to be created on their site must weigh those costs as one factor in making that decision. The Alliance for Justice suggests, as an additional safeguard, putting something in place that will ensure that only members can access the member-created content.<sup>35</sup> This can be done by assigning user names to members or using some other credentials that will allow the



organization to know who is accessing the information and enable the organization to cross-reference those user names with its member list.

Online assets are valuable and caution should be taken to ensure safe use of the Internet. The fear of losing Section 501(c)(3) status should not prevent an organization from taking advantage of the low cost and ease of access that the Internet provides. Some diligent effort will go a long way towards using the Internet to educate the public, while safeguarding an organization's Section 501(c)(3) status.

[1](#)

[2](#) Section 501(c)(3).

See *Christian Echoes National Ministry, Inc.*, 31 AFTR 2d 73-460, 470 F.2d 849, 73-1 USTC ¶9129 (CA-10, 1972), *rev'd* 28 AFTR2d 71-5934 (DC OK, 1971).

[3](#)

Rep. Samuel B. Hill (D. Wash.) commented on a fear that the provision was overly broad. Kindell and Reilly, "Election Year Issues," *IRS Exempt Organizations Continuing Professional Education Instruction Program for FY2002* (2001) p. 336 ((quoting 78 Cong. Rec. 7,831 (1934)).

[4](#)

[5](#) See *Christian Echoes National Ministry*, *supra* note 2.

[6](#)

*Id.*

[7](#)

Section 501(c)(4) allows for the creation of tax-exempt social welfare organizations not subject to the absolute prohibition against political activity. Contributions to these organizations are not tax deductible.

[8](#)

There are strict requirements that the financial records of the two organizations be kept separately and the (c)(3) cannot fund the (c)(4)'s political activities with any of its tax-deductible contributions. Justice Blackmun did leave open the possibility that an attempt by the IRS to make further restrictions may violate the First Amendment.

[9](#)

The Section 501(c)(3) ban refers to participation or intervention "directly or indirectly, in any political campaign *on behalf of or in opposition to any candidate for public office*" (emphasis added). Section 501(c)(3).

[10](#)

Rev. Rul. 78-248, 1978-1 C.B. 154.

[11](#)

See Rev. Rul. 78-248, 1978-1 CB 154; Rev. Rul. 80-282, 1980-2 CB 178.

[12](#)

All four situations of Rev. Rul. 78-248 include facts that suggest the organizations distributed inclusive party and/or candidate information.

[13](#)

Situations 1 and 2 of Rev. Rul. 78-248 were appropriate because the information that they distributed was about broad issues of interest to the broader electorate without showing bias. On the other hand, situations 3 and 4 were found to violate Section 501(c)(3) for providing educational information that the IRS felt was biased towards the interests of the members of the organization as opposed to the general electorate.

[14](#)



The IRS found in Rev. Rul. 80-282 that although the information distributed by an organization was biased, it was not in violation of Section 501(c)(3) because the information was distributed to only its members, a group numbering only in the thousands nationwide.

[14](#)

Hawkins, "From Branch Ministries to Selma: Why the Internal Revenue Service Should Strictly Enforce The Section 501(c)(3) Prohibition Against Church Electioneering," 71-SPG Law & Contemp. Probs. 185 (Spring 2008).

[15](#)

After Branch Ministries lost its Section 501(c)(3) status (Branch Ministries, 85 AFTR 2d 2000-1767, 211 F3d 137, 2000-1 USTC ¶150459 (2000)), churches remained undeterred. Even the president of the United States was not immune. In the 1998 mid-term elections, then-President Bill Clinton used an invitation to the New Psalmist Baptist Church to lobby the congregation to elect Democratic candidates to Congress. Throughout the 2004 election, the use of churches for "campaign stops" grew. So did the complaints to the IRS, which numbered in the hundreds. See Hawkins, *supra* note 13.

[16](#)

See Hawkins, *supra* note 13.

[17](#)

"IRS Releases New Guidance and Results of Political Intervention Examinations," [www.irs.gov/newsroom/article/0,,id=154780,00.html](http://www.irs.gov/newsroom/article/0,,id=154780,00.html).

[18](#)

The IRS discovered that many organizations believed that only a direct endorsement of a candidate violated the ban. They would instead endorse a policy without endorsing a candidate. In some circumstances, however, endorsing a policy can still violate the rules. See Hawkins, *supra* note 13.

[19](#)

"Political Campaign Activity on the Internet," [www.irs.gov/pub/irs-tege/internetfielddirective072808.pdf](http://www.irs.gov/pub/irs-tege/internetfielddirective072808.pdf).

[20](#)

*Id.*

[21](#)

The IRS states that "where the facts and circumstances suggest that a Section 501(c)(3) organization is using a link between Web sites ... to indirectly communicate a message that could well be a violation of the law were it done directly, EO will pursue the case." *Id.*

[22](#)

Rev. Rul. 78-248, amplified by Rev. Rul. 80-282, set out several requirements and examples for appropriate voter education materials. The most important among them are that (1) there can be no editorial opinion, (2) there can be nothing in the content that implies approval or disapproval of any candidate or their voting record, (3) issues discussed must be related to matters of interest to the general electorate as a whole and not just the members of the organization, and (4) questions and answers must not show bias to a particular issue or candidate that favors the organization's views.

[23](#)

Note that this last example is not technically a link to another site, but is instead content on the organization's own site.

[24](#)

HTML stands for Hypertext Markup Language. The information is simply alphanumeric data in a predetermined, standard format. Included in the formatting instructions are directions for where to gather additional pieces of data, such as images and videos.

[25](#)



Various technologies are used in the background to track user information. The most prominent, by far, is the cookie. Cookies are merely small bits of data stored in a file on users' computers. Data from the cookie is passed to the Web server as part of the request. Data is placed in the cookie as part of the processing of the server content that is passed to the browser in response. For security reasons, the browsers will save this cookie separately for each server, and will only transmit data from the cookie to the server when it verifies that the server is the same one that made the initial request to save data. Through this process, the users' data is kept safe from access by other servers.

[26](#)

See [www.google.com/adwords/contentnetwork/b/index.html](http://www.google.com/adwords/contentnetwork/b/index.html).

[27](#)

Google's contextual targeting will come up on pages anywhere on the Web that have signed up for Google's AdSense. AdSense allows site owners to collect money for every pageview or click on an ad placed on their page. The ads are effective because they are based on the content of the page, thereby increasing the chances that the person reading the page would be interested in the product being advertised. See

[www.google.com/adsense/login/en\\_US/?gsessionid=59n871aU7Yktwle0NBqQHw](http://www.google.com/adsense/login/en_US/?gsessionid=59n871aU7Yktwle0NBqQHw).

[28](#)

In the 2008 election year, both major candidates had pages on MySpace (both of which are still extant). See [www.myspace.com/barackobama](http://www.myspace.com/barackobama) and [www.myspace.com/johnmccain](http://www.myspace.com/johnmccain).

[29](#)

Kingsley *et al*, "E-Advocacy for Nonprofits: The Law of Lobbying and Election Related Activity on the Net," (Alliance for Justice, 2007). page 38. Available at [www.afj.org/assets/resources/publications/eadvocacy.pdf](http://www.afj.org/assets/resources/publications/eadvocacy.pdf).

[30](#)

The IRS has specifically excluded links between Section 501(c)(3) organizations and associated 501(c)(4)s. They have not however, made that statement that they will not make a determination at a later date that this is a violation. See "Political Campaign Activity on the Internet," *supra* note 19.

[31](#)

Situation 1 of Rev. Rul. 78-248 describes allowable voter education as a "publication [that] contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any Members or their voting records." Situation 3, however, showed a "bias" toward one candidate, and Situation 4 educated voters on issues that were only in "one area of concern" and was not even-handed. Both situations 3 and 4 were deemed unacceptable electioneering.

[32](#)

A non-profit public broadcaster, providing a broadcast forum for political candidates, was deemed to not be electioneering because providing "a forum for the presentation of opposing candidates and points of view to the public assists in providing the electorate with information concerning the candidates for public office and better enables them to exercise their voting rights." Rev. Rul. 74-574, 1974-2 CB 161. In contrast, a church's Web site containing the message "Lend your support to B, your fellow parishioner, in Tuesday's election for town council" was deemed to be electioneering in violation of the law. Rev. Rul. 2007-41.

[33](#)

A hospital was deemed not to be electioneering where it linked over to a news site that had a story on the work that they had done. Elsewhere on the news site were several stories about candidates. The IRS reasoned that the intent of the hospital was to create a link to a story that promoted its mission. There was no other content on the site related



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to candidates and the page they linked to also had no political information. See Rev. Rul. 2007-41.

[34](#)

An organization distributed information on candidates' voting records and the organization's views on those records. The IRS found that, although the content was biased, the activity was not electioneering because "The publication will be distributed to the organization's normal readership who number only a few thousand nationwide. This will result in a very small distribution in any particular state or congressional district. No attempt will be made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign." Rev. Rul. 80-282.

[35](#)

Kingsley et al, *supra* note 29 at 55.

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