

THE CHARLESTON PRINCIPLES: GUIDELINES ON CHARITABLE SOLICITATIONS USING THE INTERNET

WHEREAS:

1. Most charitable organizations provide valuable services to society--services that are not provided by government or the private for-profit sector. At the same time, deceptive charitable solicitations, including fraud and misuse of charitable contributions, are significant problems in our country. Reasonable state oversight of charitable organizations and professional fundraisers can remedy or minimize such abuses while facilitating the charitable missions of those who provide needed services to our nation and communities, and by providing information and education to donors;
2. Registration and financial reporting by charitable organizations and their internal fundraisers, their external commercial fundraisers and, where applicable, their fundraising counsel and commercial co-venturers is critical to (a) providing information to the public in order to increase donor confidence in those who solicit their support and (b) providing information to law enforcers to enable them to fight deception and misuse of contributions;
3. Existing registration statutes generally, of their own terms, encompass and apply to Internet solicitations. The application of those statutes beyond more established fundraising techniques, such as telephone, direct mail, and in-person solicitations, raises a number of issues that state charity officials are often called upon to address;
4. The proliferation of Web site solicitations compels state charity officials to address the issue of who has to register where;
5. State charity officials consistently gain valuable insights when the views of the regulated communities are sought;
6. Consistent guidelines addressing online charitable solicitations will assist state charity officials, as well as donors, charities, and online entrepreneurs, throughout the nation. These Principles have been adopted as guidance to state charity officials, but with the express intention of both creating a climate in which creativity and enterprise in the use of the Internet to support charitable activities is encouraged and in which the public interest is vigorously protected; and
7. Therefore, state charity officials discussed the formation of these Principles while gathered at the National Association of Attorneys General/National Association of State Charity Officials ("NAAG/NASCO") Conference in Charleston, South Carolina in October 1999. During the public portion of that conference, which was devoted to the subject of Internet solicitations, state charity officials began a dialogue with invited guests on this topic.

THEREFORE WE, THE BOARD OF DIRECTORS OF NASCO, OFFER THE FOLLOWING PRINCIPLES:

I. General Principles

- A. These Principles are offered as a guide to states as to when charities, and their fundraisers, fundraising counsel and commercial co-venturers may be required to register, or may be subject to enforcement action, and in what jurisdictions, with regard to charitable solicitations via the Internet. States are encouraged to use these Principles to develop common policies to implement their specific state laws, but these Principles are not necessarily the views of any particular individual, office, or state, nor do they state an official policy position of NASCO. These Principles recognize that the laws of individual states vary, and that implementation of these Principles may also vary.
- B. These Principles are necessarily dynamic, and may change as laws, technology and business models change. Further discussions among states and between states and the regulated community are desirable.
- C. The Internet can be a valuable and efficient forum for conducting charitable solicitations. State charity officials do not desire to discourage or limit its use.
- D. The basic premise of these Principles is this: Although existing state laws govern charitable solicitations on the Internet, in many instances the use of the Internet raises new questions that state charity officials must answer in order to effectively carry out their statutory missions. Therefore, state charity officials should require registration of those over whom their state courts could constitutionally assert personal jurisdiction to enforce a registration requirement. State charity officials and those who solicit contributions using the Internet should note that in actions to enforce state laws against deceptive charitable solicitations, including fraud and misuse of charitable funds, jurisdiction typically exists over some organizations not required to register in the state.
- E. Nothing in these Principles is intended to limit jurisdiction available under common law. The traditional jurisprudence analysis for jurisdiction is the appropriate rule with which states need to comply.

II. Actions to Enforce State Laws Against Charitable Solicitation Fraud

States will enforce the law against any entity whose Internet solicitations mislead or defraud persons physically located within a particular state, without regard to whether that entity is domiciled in the state or is required to register in that state pursuant to these Principles.

III. Application of Registration Requirements to Internet Solicitation

A. Entities That Are Domiciled Within the State

1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
2. An entity is domiciled within a particular state if its principal place of business is in that state.

B. Entities That Are Domiciled Outside the State

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
 - a. Its non-Internet activities alone would be sufficient to require registration;
 - b. (1) The entity solicits contributions through an interactive Web site; and
(2) Either the entity:
 - i. Specifically targets persons physically located in the state for solicitation, or
 - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its Web site.; or
 - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the Web site; and
(2) The entity satisfies Principle III(B)(1)(b)(2).
2. For purposes of these Principles, each of the following terms shall have the following meanings:

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40th Annual Nonprofit Organizations Institute session

"Social Media Do's & Don'ts"