

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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- a. An interactive Web site is a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites. A Web site is interactive if it has this capacity, regardless of whether donors actually use it.
 - b. To specifically target persons physically located in the state for solicitation means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
 - c. To receive contributions from the state on a repeated and ongoing basis or a substantial basis means receiving contributions within the entity's fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. States should set, and communicate to the regulated entities, numerical levels at which it will regard this criterion as satisfied. Such numerical levels should define "repeated and ongoing" in terms of a number of contributors and "substantial" in terms of a total dollar amount of contributions or percentage of total contributions received by or on behalf of the charity. Meeting any threshold would give rise to a registration requirement but would not limit an enforcement action for deceptive solicitations. For example, a state might explain that an entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year and that it receives substantial contributions if it receives \$25,000, or a stated percentage of its total contributions, in online contributions in a year.
3. An entity that solicits via e-mail into a particular state shall be treated the same as one that solicits via telephone or direct mail, if the soliciting party knew or reasonably should have known that the recipient was a resident of or was physically located in that state.
 4. Questions may arise as to whether individual charities are required to register in a particular state when the operator of a Web site through which contributions for that charity are solicited or received is required to register, but the charity itself would not independently satisfy the criteria of Principle III(B)(1)(b). As to such charities:
 - a. If the law of the state does not universally require the registration of all charities on whose behalf contributions are solicited or received through a commercial fundraiser, commercial co-venturer,

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or fundraising counsel who is required to register, then states should independently apply the criteria of Principle III(B)(1)(b) to each charity and require registration only by charities that independently meet those tests; but

- b. If the law of the state universally requires registration of all charities under such circumstances, states should consider whether, as a matter of prosecutorial discretion, public policy, and the prioritized use of limited resources, it would take action to enforce registration requirements as to charities who do not independently meet the criteria of Principle III(B)(1)(b); and
 - c. For purposes of this Principle, a charity satisfies the interactivity criterion of Principle III(B)(1)(b)(i) if (i) any Web site through which contributions are solicited or received for that charity satisfies that requirement, and (ii) that Web site is operated by an entity with whom the charity contracts. This paragraph does not define the concept of interactivity, but merely addresses the application of that concept in this specific context.
5. Solicitations for the sale of a product or service that include a representation that some portion of the price shall be devoted to a charitable organization or charitable purpose (often referred to as “commercial coventuring” or “cause marketing”) shall be governed by the same standards as otherwise set out in these Principles governing charitable solicitations. Registration is therefore required in those states that require registration for such activities, by charitable organizations and their internal fundraisers, their external commercial fundraisers as applicable.

C. General Exclusions from Registration

1. Maintaining or operating a Web site that does not contain a solicitation of contributions but merely provides program services via the Internet—such as through a public information Web site—does not, by itself, invoke a registration requirement. This is true even if unsolicited donations are received.
2. Entities that provide solely administrative, supportive or technical services to charities without providing substantive content, or advice concerning substantive content, are not required to register. Such service providers (a) include Internet service providers and entities that do nothing more than process online transactions for a separate firm that operates a Web site or provide similar services, but (b) do not include commercial fundraisers, commercial co-venturers, or fundraising counsel. Administrative, supportive, or technical service providers may be required to register if they do more than simply provide such technical services and actually solicit, promote a Web site or engage in other conduct that requires registration. Compensation for services based on the amount of funds raised may be a strong indication the entity is doing more than simply providing technical services.

IV. Principles Related to Minimizing Regulatory Responsibilities for Multi-State Filers

- A. State charity officials recognize that the burden of compliance by charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel

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should be kept reasonable in relation to the benefits to the public achieved by registration. The acceptance and use of the Unified Registration Statement for charitable organizations by state charity offices and the development and acceptance of other related projects to create such common forms are strongly encouraged.

- B. State charity officials recognize the power of the Internet to assist in the registration of charitable organizations and their agents. State charity offices are strongly encouraged to publish their registration and reporting forms, their laws and regulations and other related information on the Internet to facilitate registration and reporting by charitable organizations and their agents while assuring proper public accountability by regulated entities.
- C. State charity officials, charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel have a mutual interest in exploring how to develop the information technology infrastructure so that registration and reporting can be accomplished electronically in the future. Collaboration on this project between state charity officials and these entities, where appropriate, will advance the timeframe for establishing electronic filing. This collaboration may include discussion of the types of information that entities soliciting through the Internet should be required to retain, so that these Principles can be applied to a particular Web site. This would include information sufficient to determine, within the scope of the law and relevant donor privacy concerns, whether an entity's ties to a particular state are sufficient to give rise to a registration requirement.
- D. Because disclosure to the public promotes informed giving, charitable organizations are encouraged to satisfy the IRS "widely available" standard by posting, without charge, their current Unified Registration Statement, their last three IRS Forms 990, and their complete IRS Form 1023 or 1024 application and resulting determination letter on their Web pages. Links to other sites that provide such information, including any relevant state agency, or other Web sites, are also encouraged. Such postings, however, do not currently fulfill any applicable registration requirements.

Annotations to the Principles

These annotations, and the appendices that follow, are designed for internal discussions among members of NASCO. They are not designed to become an official part of the Principles, but rather to provide background information concerning choices made in drafting the Principles.

General Note Regarding Terms: Throughout these Principles there are references to enforcement actions. These terms are used in a general, rather than a technical sense. References to enforcement actions generally refer to actions relating to deceptive charitable solicitations, which includes any action by which a state seeks to enforce any requirement of law other than a registration requirement alone, whether such action is civil or criminal.

The Principles also use terms such as “deceptive charitable solicitation,” “fraud,” and “misuse of charitable funds” in similarly broad ways. Such terms are used to describe, in general, the circumstances that might give rise to an enforcement action without being limited to legally precise definitions of such terms.

“WHEREAS” Clause No. 1: Although identifying the actual amount of charitable fraud is difficult for many reasons, the Federal Trade Commission estimates that about one percent of giving was either misused or donated to solicitors or charitable organizations employing fraudulent tactics. While one percent of giving is not a substantial percentage of the total giving, converting a percentage into a dollar value highlights the seriousness and extent of the problem.

According to “Giving USA 1998: The Annual Report on Philanthropy for the Year 1997” published by the AAFRC Trust for Philanthropy, total giving in 1997 exceeded \$143.46 billion. According to the Federal Trade Commission’s estimate, approximately \$1.43 billion of the funds donated were not spent as the donor intended or were gifted to a solicitor or charity utilizing fraudulent solicitations.

An alternative method to determine the baseline amount of fraud and misuse in the charitable sector is to review the number of solicitation fraud and misuse cases brought by state and federal agencies as well as the size of the awards obtained by these agencies. Although identification of all criminal and civil proceedings brought against charitable organizations and solicitors can be used as a guide, the findings do not include non-financial criminal penalties ordered or temporary or permanent bans from soliciting the jurisdiction bringing the action.

In preparation for a 1998 national telemarketing educational effort, a compilation of the number of federal and state actions brought against charitable organizations, fundraisers, and fund-raising counsel for fraudulent acts and the amount of penalties, fines, attorney fees, costs, and restitution awarded was made. Fifteen states and the Federal Trade Commission reported in 1997 seventy cases involving

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misrepresentation during telephone solicitations for charitable organizations. These 70 cases resulted in awards of over \$26.7 million.

Although the amount of the award is significant standing alone, the number of cases and the cumulative size of the award demonstrates that misrepresentation in solicitation is not an isolated or insignificant issue. Since a substantial portion of the misuse or fraud is not reported, the seventy cases represent only a small percentage of the misuse and fraud.

I(A): This Principle addresses the nature of this document as a collaborative product of NASCO. While state laws are similar to each other in many respects, they also vary in significant ways. Each state will, of necessity, need to interpret its own law and develop its own policies to implement its law. These Principles are intended to provide guidance to the states in doing so, but they do not purport to state rules of law of universal application.

The need to provide guidance dictates that these Principles be reasonably detailed, and not merely abstract conceptual statements. They must provide bright lines, where possible, in order to provide clarity, or they will not be useful. The Principles therefore are not primarily intended to state what the law is, but rather to provide guidance as to implementation in a reasonable and consistent manner.

One purpose of these Principles is to discourage the development of the law in ways that would undermine state authority regarding registration and enforcement. Accordingly, the Principles do not always assert the most aggressive possible posture, but rather stop short of doing so in favor of a uniform and coordinated approach. The most likely cause of any developments in the law that harm state interests (actually public interests) would be for states to take unconstitutional positions on this subject. If states assert jurisdiction to require registration under circumstances in which constitutional principles clearly preclude that jurisdiction, then we risk negative court rulings, pre-emptive federal legislation, or both. Court rulings from any state holding that a state lacks jurisdiction under any circumstances would undoubtedly be cited against us, both regarding registration and in enforcement actions, even when the facts and law should support the state position. It is therefore vital that we assess our jurisdictional limits in a careful and principled manner, in order to avoid negative precedents that will be used against all of us, even under different circumstances.

I(C): It appears that the costs associated with raising funds over the Internet are less than those involving large direct mail and large telemarketing campaigns. In fact, it is the effect of the Internet on lowering these barriers of entry to reaching a national audience that has raised the fundamental questions concerning registration. Internet fundraising appears to create the opportunity for newer and smaller charities to compete more successfully with more established and larger ones. To the extent that Internet fundraising is less expensive than the more traditional uses of direct mail and telemarketing, more money raised should be available for the charity's program service accomplishments. To the

extent that state charity officials are concerned about fundraising efficiency, the development of the Internet as a fundraising tool appears to be a positive development. While state charity officials "do not desire to discourage or limit the use of the Internet as a forum for fundraising," we are required to fulfill our statutory duty to regulate charitable solicitations within our respective states. This general Principle merely recognizes the potential of Internet fundraising to be a positive development. Simultaneously, it notes the usefulness of the Internet in improving charitable accountability, such as by posting registration materials for the use of the public.

I(D): Use of the Internet for charitable solicitations presents very different jurisdictional questions than do traditional methods of solicitation, such as direct mail and telephone solicitations. The importance of jurisdictional concepts to these Principles suggests that we must differentiate our analysis in two ways. First, we must distinguish residents of our states from non-residents. Jurisdictional concerns would not arise as to the former, but may as to the latter. Second, we must distinguish the ability of states to require entities to register from the ability to pursue enforcement actions for substantive violations of our laws. Jurisdictional concerns will sometimes prevent states from requiring non-residents to register, but should not form a bar to substantive enforcement actions. The specific Principles that follow, in sections II and III, further explore both of these two lines of cleavage in our analysis.

Jurisdictional concerns relating to registrations will be somewhat different than other jurisdictional issues arising in cyberspace as to other kinds of activities. This is because the laws of most states facially impose a registration requirement based upon a unilateral action, rather than a completed two-party transaction. In other words, our laws require registration when somebody *asks* for money, whether or not anybody gives them any. The unilateral nature of this standard means that in attempting to enforce registration we will generally lack the factual development of specific contacts with our states that we would expect to find if a completed transaction were involved. A factual determination of whether or not a contribution has been made and of what subsequent actions by the entity to target the donor in the state in question may be necessary for the state in question to assert personal jurisdiction over that entity.

Please note, this analysis should guide state charity officials' registration and enforcement actions only to the extent that the entity's only contact with the state in question is via the Internet. Where non-Internet solicitations alone trigger registration and reporting requirements, these Principles do not have any impact. (See Principle III(B)(1)(a).)

The practical result of these Principles will be to relieve the entities of the need to register with every state charity office simply for the act of creating a Web site that asks for a contribution. State charity offices will also be relieved of the administrative burden of seeking to register numerous entities who have few, if any, actual contacts with their state.

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II: This Principle is essentially the counterpoint to the discussion note above, under Principle I(D). Jurisdictional problems, if any, and actions regarding solicitation fraud should be substantially less serious than those involving registration requirements. The Principles, therefore, draw a bright line regarding enforcement actions against fraudulent solicitations, asserting that we do not expect jurisdictional concerns to be an obstacle in this area.

The authority of a state to bring an enforcement action for solicitation fraud is based upon the ability to exercise specific jurisdiction over the violating party. The law is well settled that a state may exercise specific jurisdiction over the defendant if the cause of action arises from or is directly related to the defendant's contacts with a state. If a donor has been misled by an entity's fraudulent Internet claims and makes a donation to the organization, the state in which the donor is located could exercise specific jurisdiction over the entity because the cause of action arose from the entity's contact with the state. As a result, the state could bring an enforcement action for solicitation fraud, regardless of whether the solicitation is by mail, telephone, or over the Internet.

III(A)(2): This Principle asserts that an entity is domiciled within a state only if its principal place of business is located there. It does not define domicile in terms of the state of incorporation, or similar action, as this may lead to anomalous results in some instances.

This Principle should also be read in conjunction with other Principles under which jurisdiction could be asserted over entities that are not domiciled within a state. For example, a physical presence within a state, such as a branch office or regional office, would support jurisdiction even if that is not defined as a domicile. Similarly, non-Internet contacts with a state, such as direct mail or telemarketing campaigns, can also provide a basis for jurisdiction even in the absence of physical presence. Jurisdiction in such instances is best analyzed as an assertion of jurisdiction over a non-resident entity, and this Principle should not be read as limiting that concept.

III(B)(1)(a). Contacts with the state that are not based on the Internet include entities that have a physical presence (but less than a domicile) in a state in which they solicit. They also include contacts for which a physical presence is not required, such as direct mail, telemarketing campaigns, advertising in local media, or similar activities. Such circumstances are familiar and the approaches of the states are well established and legally recognized. These Principles do not alter them. Entities with such contacts with the state are required to register without regard to what issues may or may not arise if their only contacts were through the Internet.

III(B)(1)(b): This Principle describes when online solicitations by non-resident entities using an interactive Web site will trigger a registration requirement. It sets forth the circumstances that the drafters believe will establish both a sound policy basis for requiring registration and sufficient contacts

with the forum state upon which to base a claim of jurisdiction to enforce a registration requirement when non-Internet contacts are lacking.

Principle III(B)(1)(b) states a general rule, which must be construed in light of the definitions contained in Principle III(B)(2). The Principle explains that there are two requirements that must be met before the use of a Web site, by itself, will constitute sufficient contacts to confer personal jurisdiction. First, the Web site must be interactive, a term described more fully in Principle III(B)(2)(a). Second, there must be a substantial link between the solicitation and the forum state, a requirement that can be satisfied in either of two ways. The entity might target the state for its solicitations, as described in Principle III(B)(2)(b). Alternatively, the entity might receive contributions from the state on a repeated and ongoing or substantial basis through its Web site, as described in Principle III(B)(2)(c). It is important to note that solicitations using an interactive Web site will require registration if *either* subsection (b)(2)(i) or (b)(2)(ii) is satisfied; meeting the terms of both is not necessary.

III(B)(1)(c): This Principle describes circumstances under which the use of a Web site that contains a solicitation, but which is not interactive (as described in Principle III(B)(2)(a)) will nevertheless invoke a registration requirement. Because the contribution cannot be entirely completed online using such a site, additional ties to the state are necessary in order to support a claim of jurisdiction.

One way of satisfying that additional tie to the state is for the site to invite specific further offline activity to complete a contribution, such as directing the donor to a telephone number or providing an address to which a contribution could be mailed. Alternatively, uses of other means of communication to direct individuals to its Web site will subject the entity to the registration requirements of the states into which the non-Internet communication is directed, if the Web site contains a request for contributions. These additional steps may provide sufficient additional facts upon which to base jurisdiction when the site is not interactive. It is still necessary, as with interactive sites, to establish a practical link to the forum state, by either targeting persons located there or by receiving repeated and ongoing or substantial contributions from that state, as described above.

III(B)(2): This Principle contains definitions of terms used in Principle III(B)(1)(b). The definitions are set out in a separate Principle for purposes of clarity and to explain in greater detail the concepts stated in Principle III(B)(1)(b).

III(B)(2)(a): The term “interactive” means that the entire transaction is completed online, i.e., the request for donations is posted on the entity’s Web site and the donor can make the contribution by providing his or her credit card information. It should be noted that under Principle III(B)(1)(c) a Web site might invoke a registration requirement even if it is not interactive as described in this Principle. While it is anticipated that it will be easier to establish a basis for jurisdiction when the site is fully

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interactive, these Principles should not be construed as requiring interactivity under all circumstances. See Principle III(B)(1)(c).

From a practical standpoint, an entity, which provides on its purely passive Web site only the address to which donations may be sent, will, within a relatively short period of time, be subject to the registration requirements of a state under Principle III(B)(1)(a). If a donor sends a contribution as a result of visiting the entity's non-interactive Web site, the entity will likely include the donor in its donor list and will solicit contributions of this individual via direct mail, telephone, electronic mail, or other communication. This subsequent communication would be sufficient to trigger registration requirements under Principle III(B)(1)(a). Additionally, even if the absence of an interactive Web site, entities whose non-Internet activities are sufficient to invoke state jurisdiction will be required to register pursuant to Principle III(B)(1)(a) or Principle III(B)(1)(c).

III(B)(2)(b): There are circumstances in which an entity can be required to register based on a solicitation contained on a Web site even if no contributions are actually received. This subsection explains that a state can be targeted for a solicitation either based upon an express or implied solicitation of contributions from the state, or by making an affirmative appeal to persons located in the state. In the case of an express reference to a state, the application of this Principle is clear. An implication that the solicitation is targeted to the persons located in a particular state would require a full examination of the entire context of the Web site, so that this Principle would apply only if persons located within the state are clearly targeted.

It is also possible that some charities may limit their solicitation, either expressly or impliedly, to a limited geographic area such as their local community. These Principles are not intended to assert that local charities must register in every jurisdiction merely because their Web site can be viewed outside their local area. The Web site might include an express statement to this effect, or it might simply be clear from its context. Where it is clear that the geographic scope of a solicitation is limited, then registration would be required only in the areas solicited. This is true even if the entity receives contributions from outside that area, unless those contributions become repeated and ongoing or substantial within the meaning of Principle III(B)(1)(b).

This approach has the advantage of avoiding any potential issues regarding compelled speech that might arise if the Principles were framed to include an express exclusion from registration for local charities that included specified disclaimer language. The Principle therefore directs attention to the substance of the solicitation and to the question of whether a particular state is targeted.

One of the examples offered as to how an entity might affirmatively appeal to persons located in the state involves sending messages either by e-mail or postal mail to people that the entity knows or should know are physically within the state. This "knew or should have known" standard is important to

understanding this Principle. Particularly where e-mail messages are concerned, solicitors may deny any knowledge of the geographic location of the recipient, because e-mail addresses do not normally include geographic information. It is possible, however, that the solicitor might know where the recipient lives based on prior conduct or capture of information through the use of technology. For example, if the recipient has made an online contribution in the past, the entity will have received his or her billing address as part of the credit card transaction. An entity that subsequently sends e-mail messages to a past credit card contributor can therefore be regarded as knowing where that contributor resides.

Additionally, it is possible that an entity may satisfy this “knew or should have known” standard based upon other information tracked through the Web site, such as Internet Protocol addresses or cross-references to other databases.

III(B)(2)(c): This Principle reflects two concerns: (1) the need to establish jurisdictional facts necessary to support any attempt to enforce a registration requirement; and (2) the need to draw a bright line so that these Principles can be readily applied by both charities, professional solicitors, and fundraising counsel and state charity officials.

One obvious method of establishing jurisdictional ties between the entity and the forum state would be to establish that the entity has accepted contributions from residents of the state or persons physically located there. As the absolute constitutional minimum level of contributions necessary in order to do so may vary on a case-by-case basis and has not yet been precisely defined there are sound policy reasons not to require registration based upon the most fleeting of contacts. States may vary as to the numerical levels that they believe will satisfy these interests, and so the Principles stop short of stating numbers, except by way of example. If these Principles are to be useful, however, the states must draw a bright line, even if that line is somewhat arbitrary and even if it is not the same in all states. It is therefore recommended that states recognize the necessity of quantifying this concept and work toward consistent approaches to this issue. The drafters of these Principles were comfortable with the numeric levels recited as examples, but recognize that those levels may not always reflect the established constitutional minimum and that opinions may vary in establishing a practical and useful bright line for the benefit of all. Regarding the option of defining “substantial” contributions as a percentage of total contributions received, the drafters did not suggest a specific percentage because the relevant percentage may vary depending on the size of the state involved. For example, a state might look to whether a disproportionate total of the contributions comes from a particular state relative to that state’s proportionate share of the national population. This may not be the only basis upon which to set such a percentage, however.

It is again important to emphasize the distinction drawn in these Principles between registration and enforcement. Principle II asserts blanket jurisdiction to bring any action necessary to remedy a

fraudulent solicitation. At the same time, more extensive factual connections to the state will be necessary in order to enforce registration requirements.

III(B)(3): The major limitation upon our ability to equate e-mail with telephone and direct mail solicitations is that, unlike those media, e-mail addresses do not generally include geographic components. For this reason, the Principle adopts a “knew or reasonably should have known” standard for assessing whether the solicitor has knowingly engaged in solicitation within the state.

There are several factors that state charity officials may need to consider as to whether an entity “knew or reasonably should have known” the geographic location of the recipient of the e-mail. If the entity accepts on-line processing of a donation by credit card, the entity will collect the billing address information as an essential part of processing the credit card payment of the charitable contribution. The entity will certainly collect mailing information if it is sending the donor a premium in recognition for a contribution, or a paper receipt for tax purposes. The entity may also collect mailing information and telephone numbers as part of a “guest book” sign-in procedure or through a “membership” application procedure. States may also consider the entity’s use of technology (such as user logs, placement and tracking of cookies, tracking Internet Protocol addresses, and use of external databases to create user profiles) to collect information about individuals who visit a Web site when determining whether an entity “knew or should have known” the location of the sender of the e-mail.

III(B)(4): It is possible that some fundraisers might be required to register pursuant to Principle III(B)(1)(b), but some of the charities with which it contracts might not separately be required to register under that Principle. The laws of many states require that all charities register when the commercial fundraisers, commercial co-venturers, or fundraising counsel with which they contract are required to register. In other states, the registration requirements may operate independently of each other. In either case, this Principle reflects the observation that in the case of Web sites through which contributions are solicited for large numbers of charities, a registration requirement imposed against all such charities might have the effect of inundating the registration office with filings from many charities that in fact have little contact with that state. At the same time, many otherwise local or regional charities would face registration requirements in numerous states from which they receive little or no contributions based upon their participation in a Web site that may be required to register broadly. This Principle accordingly recognizes the public interest in recognizing the limited contacts that many such charities may have with individual states. States may reasonably decline to assert the most aggressive possible posture with regard to charities whose individual contacts with the state are minimal, but who appear on a broader-based Web site. This may take the form of a legal interpretation or the exercise of prosecutorial discretion, depending upon the laws of the particular state.

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Principle III(B)(5)(c) should not be construed as stating, or elaborating upon, the definition of interactivity. It merely describes the application of that concept in this context, and does not necessarily have any application outside this context.

III(C)(2): This Principle recognizes that the maintenance of a Web site often involves the services of entities that do not themselves actually engage in charitable solicitations or otherwise engage in activities requiring registration. The Principle also recognizes that some states require registrations by entities that others do not. For example, some states require fundraising counsel to register, while others do not. The determination of whether an entity must register therefore depends, so far as this Principle is concerned, upon an individual analysis of the work performed by a particular entity and whether that falls within a registration requirement under the law of a particular state.

An example would be an Internet service provider (ISP), which would not be required to register merely because the Web site appears on its equipment. This would not be true if the ISP actually designed the content of the site, such that it would act as a commercial fundraiser or fundraising counsel (in those states that require fundraising counsel to register). If, however, the ISP takes affirmative steps to drive traffic to a charity's site then such actions may, depending upon all the facts and circumstances, bring that ISP within the definition of a commercial fundraiser. One fact to look to in this regard is whether the ISP is compensated based upon the amount of funds raised.

Similarly, an entity that merely provided technical services in processing online transactions would not be required to register, much as a bank that processes a check received in a direct mail campaign would not be required to register, unless that entity performed additional functions that bring it within a state's registration requirement. Again, this may be particularly true if the service provider is compensated based upon the amount of funds raised.

APPENDIX
A QUESTION-AND-ANSWER WORKSHEET
FOR REGISTRATION DETERMINATIONS

Registration offices may find it helpful to have the concepts illustrated in the Principles translated into a question-and-answer format that they can use to determine whether a particular entity is required to register. The following questions are therefore designed to guide a registration official through the thought process of deciding whether a particular entity must register.

The questions below are based upon the law of the State of Washington. Some of them may require modification in order to comport with the laws of other states, and are offered as an example of a type of approach that might be helpful.

- **Determining whether a registration requirement is imposed by the charitable solicitations act**

1. Does the entity's Web site request a contribution (including an offer to sell any property, service, or other thing) in which
 - a. an appeal is made to any charitable purpose, or
 - b. the name of any charitable organization is used, or
 - c. any statement is made that implies that the whole or any part of the proceeds will be applied toward any charitable purpose or donated to any charitable organization?

If the answer to question 1 is "no" then the entity is not engaged in a charitable solicitation and the inquiry ends. If the answer to question 1 is "yes" (as to any of the subparts) then a charitable solicitation is taking place and we must proceed to question 2.

2. Is the entity exempt from registration for any established reason (e.g., a volunteer operation raising less than \$25,000 per year, a religious or political organization, etc.)?

If the answer to question 2 is "yes" then the organization is not required to register and the inquiry ends. If the answer to question (2) is "no" then continue to question 3.

- **Determining whether personal jurisdiction is an issue**

3. Is the entity domiciled in the state?

An entity is domiciled in the state if its principle place of business is in the state.

If the answer to question 3 is "yes" then the entity is required to register. If the answer to question "3" is "no" then we must determine whether the entity has sufficient minimum contacts with the state to require registration, and must proceed to question 4.

- **Determining whether the state can assert personal jurisdiction over an out-of-state entity**

- **Are the entity’s non-Internet ties sufficient to confer jurisdiction?**

4. In addition to any solicitations over the Internet, does the entity plan to engage (or has it engaged within the period covered by the registration) in any solicitations in the state using any of the following methods:

- direct mail or telephone?
- purchasing advertising in any local newspaper or on any TV station or radio station in the state?
- Soliciting funds in person, such as through door-to-door solicitations or by placing donation boxes or vending machines within the state, or through other activities that are physically present within the state?

If the answer to question 4 is “yes,” as to any of the listed actions, then the entity is required to register. If the answer is “no” then continue to question 5.

- **Is the entity’s Web Site active or passive?**

- **Treatment of active Web Sites**

5. Does the entity’s Web site permit it to accept contributions, or sell a product involving an appeal to charity, directly over the Internet, such as by inputting credit card information?

If the answer to this question is “yes” then continue to question 6. If the answer to this question is “no” then go to question 8.

6. Within the past year, has the entity accepted contributions in the amount of at least [insert dollar amount] or accepted at least [insert number of contributions] contributions in any amount from persons physically located in the state or has the total percentage of contributions received from persons physically located in the state exceed [insert percentage of contributions] of the entity’s total contributions?

If the answer to this question is “yes” then the entity must register. If the answer to this question is “no” or “we don’t know,” then go to question 7.

7. Does the entity specifically target persons located within the state for its solicitations?

Persons located in a specific state may be targeted if the Web site expressly or impliedly requests contributions from residents of the state, or if the entity otherwise affirmatively appeals to residents of the state (such as through advertising or other means). **Please note:** If the Web site clearly indicates that its

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solicitation is limited to a geographic area that does not include the state, then the Web site alone would not give rise to a registration requirement even if the site would otherwise seem to be required to register.

If the answer to this question is “yes” then the entity must register. If the answer is “no” then the entity is not required to register.

- **Treatment of passive and “gray area” Web Sites**

8. Does the entity solicit through a Web site that is not interactive, but specifically invite further offline activity to complete a contribution ?

If the answer to question 8 is “yes” then go to question 10. If the answer to question 8 is “no” then go to question 9.

9. Does the entity do anything to target its message specifically to residents of the state, such as by advertising, taking steps to drive traffic to its Web site, or otherwise taking steps to direct its message specifically to persons physically located in the state?

If the answer to question 9 is “yes” then go to question 10. If the answer to question 8 is “no” then the entity is not required to register.

10. Within the past year, has the entity accepted contributions in the amount of at least [insert dollar amount] or accepted at least [insert number of contributions] contributions in any amount from persons physically located in the state or has the total percentage of contributions received from persons physically located in the state exceed [insert percentage of contributions] of the entities total contributions?

If the answer to this question is “yes” then the entity must register. If the answer to this question is “no” or “we don’t know, ” then go to question 11.

11. Does the entity specifically target persons located within the state for its solicitations?

Persons located in a specific state may be targeted if the Web site expressly or impliedly requests contributions from residents of the state, or if the entity otherwise affirmatively appeals to residents of the state (such as through advertising or other means). **Please note:** If the Web site clearly indicates that its solicitation is limited to a geographic area that does not include the state, then the Web site alone would not give rise to a registration requirement even if the site would otherwise seem to be required to register.

If the answer to this question is “yes” then the entity must register. If the answer is “no” then the entity is not required to register.

If, after responding to all of these questions, no result has been encountered requiring the entity to register, it need not register.