

# CRYPTOME

3 May 2016

## IRS First Look Media Works, Inc. 2015

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2 MAY 2016

Internal Revenue Service  
P. O. Box 2508  
Cincinnati, OH 45201

Department of the Treasury

**Date:** April 22, 2016

**Person to Contact:**

Ms Singleton

**Toll Free Telephone Number:**

877-829-5500

John Young  
251 W 89<sup>th</sup> St  
New York NY 10024

Dear Sir or Madam:

This is in response to your letter of February 19, 2015 requesting copies for First Look Media Works Inc.

Enclosed are the copies you requested.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

NOV 09 2015

FIRST LOOK MEDIA WORKS INC  
114 5TH AVE 18TH FLR  
NEW YORK, NY 10011

Employer Identification Number:  
80-0951255  
DLN:  
17053258317025  
Contact Person:  
ERIC KAYE ID# 31612  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990/990-EZ/990-N Required:  
Yes  
Effective Date of Exemption:  
August 28, 2013  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to [www.irs.gov/charities](http://www.irs.gov/charities). Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947

FIRST LOOK MEDIA WORKS INC

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Cooper", written in a cursive style.

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: NOV 09 2015

FIRST LOOK MEDIA WORKS INC  
C/O MATTHEW A CLAUSEN  
235 MONTGOMERY ST STE 1220  
SAN FRANCISCO, CA 94104

Employer Identification Number:  
80-0951255  
DLN:  
17053258317025  
Contact Person:  
ERIC KAYE ID# 31612  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
170(b)(1)(A)(vi)  
Form 990/990-EZ/990-N Required:  
Yes  
Effective Date of Exemption:  
August 28, 2013  
Contribution Deductibility:  
Yes  
Addendum Applies:  
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Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

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Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

NOV 09 2015

Date:

FIRST LOOK MEDIA WORKS INC  
C/O NANCY E MCGLAMERY  
235 MONTGOMERY ST STE 1220  
SAN FRANCISCO, CA 94104

Employer Identification Number:  
80-0951255  
DLN:  
17053258317025  
Contact Person:  
ERIC KAYE ID# 31612  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
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Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements



# Form 1023 Checklist

(Revised June 2006)

## Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code

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**Note.** Retain a copy of the completed Form 1023 in your permanent records. Refer to the General Instructions regarding Public Inspection of approved applications.

**Check each box to finish your application (Form 1023). Send this completed Checklist with your filled-in application. If you have not answered all the items below, your application may be returned to you as incomplete.**

- Assemble the application and materials in this order:
- Form 1023 Checklist
  - Form 2848, *Power of Attorney and Declaration of Representative* (if filing)
  - Form 8821, *Tax Information Authorization* (if filing)
  - Expedite request (if requesting)
  - Application (Form 1023 and Schedules A through H, as required)
  - Articles of organization
  - Amendments to articles of organization in chronological order
  - Bylaws or other rules of operation and amendments
  - Documentation of nondiscriminatory policy for schools, as required by Schedule B
  - Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation* (if filing)
  - All other attachments, including explanations, financial data, and printed materials or publications. Label each page with name and EIN.
- User fee payment placed in envelope on top of checklist. DO NOT STAPLE or otherwise attach your check or money order to your application. Instead, just place it in the envelope.
- Employer Identification Number (EIN)
- Completed Parts I through XI of the application, including any requested information and any required Schedules A through H.
- You must provide specific details about your past, present, and planned activities.
  - Generalizations or failure to answer questions in the Form 1023 application will prevent us from recognizing you as tax exempt.
  - Describe your purposes and proposed activities in specific easily understood terms.
  - Financial information should correspond with proposed activities.
- Schedules. Submit only those schedules that apply to you and check either "Yes" or "No" below.
- |            |         |             |            |         |             |
|------------|---------|-------------|------------|---------|-------------|
| Schedule A | Yes ___ | No <u>X</u> | Schedule E | Yes ___ | No <u>X</u> |
| Schedule B | Yes ___ | No <u>X</u> | Schedule F | Yes ___ | No <u>X</u> |
| Schedule C | Yes ___ | No <u>X</u> | Schedule G | Yes ___ | No <u>X</u> |
| Schedule D | Yes ___ | No <u>X</u> | Schedule H | Yes ___ | No <u>X</u> |

- An exact copy of your complete articles of organization (creating document). Absence of the proper purpose and dissolution clauses is the number one reason for delays in the issuance of determination letters.
- Location of Purpose Clause from Part III, line 1 (Page, Article and Paragraph Number) **Page 1, Article Third**
  - Location of Dissolution Clause from Part III, line 2b or 2c (Page, Article and Paragraph Number) or by operation of state law **Page 1, Article Fifth**
- Signature of an officer, director, trustee, or other official who is authorized to sign the application.
- Signature at Part XI of Form 1023.
- Your name on the application must be the same as your legal name as it appears in your articles of organization.

Send completed Form 1023, user fee payment, and all other required information, to:

Internal Revenue Service  
P.O. Box 192  
Covington, KY 41012-0192

If you are using express mail or a delivery service, send Form 1023, user fee payment, and attachments to:

Internal Revenue Service  
201 West Rivercenter Blvd.  
Attn: Extracting Stop 312  
Covington, KY 41011

**Power of Attorney  
and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Received by:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Function \_\_\_\_\_

Date / /

▶ Information about Form 2848 and its instructions is at [www.irs.gov/form2848](http://www.irs.gov/form2848).

**Part I Power of Attorney**

**Caution:** A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address <b>First Look Media Works, Inc.</b> <b>114 5th Avenue, 18th Floor</b> <b>New York, NY 10011</b>		Taxpayer identification number(s) <b>80-0951255</b>	
		Daytime telephone number <b>(650) 482-2500</b>	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

**2 Representative(s) must sign and date this form on page 2, Part II.**

Name and address <b>Nancy E. McGlamery</b> <b>235 Montgomery Street, Suite 1220</b> <b>San Francisco, CA 94104</b>	CAF No. <b>0303-07371R</b> PTIN <b>P01610939</b> Telephone No. <b>(415) 421-7555</b> Fax No. <b>(415) 421-0712</b>
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

Name and address <b>Matthew A. Clausen</b> <b>235 Montgomery Street, Suite 1220</b> <b>San Francisco, CA 94104</b>	CAF No. <b>0303-38720R</b> PTIN <b>P01443655</b> Telephone No. <b>(415) 421-7555</b> Fax No. <b>(415) 421-0712</b>
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

Name and address <b>Joel Beck-Coon</b> <b>235 Montgomery Street, Suite 1220</b> <b>San Francisco, CA 94104</b>	CAF No. <b>0310-62763R</b> PTIN <b>P01776927</b> Telephone No. <b>(415) 421-7555</b> Fax No. <b>(415) 421-0712</b>
(Note. IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note. IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

**3 Acts authorized (you are required to complete this line 3).** With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
<b>Tax Exemption Application</b>	<b>1023</b>	<b>2014 - 2017</b>
<b>Election to Make Expenditures to Influence Legislation</b>	<b>5768</b>	<b>2014 - 2017</b>

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

**5a Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):


Authorize disclosure to third parties;  Substitute or add representative(s);  Sign a return; \_\_\_\_\_

Other acts authorized: \_\_\_\_\_

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.  
 List any specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b):

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here   
**YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.  
**▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.**

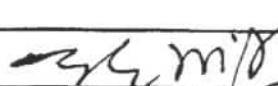


  
 Signature Will Fitzpatrick Date 9/9/15 Secretary \_\_\_\_\_ Title (if applicable) \_\_\_\_\_  
 Print Name Will Fitzpatrick **First Look Media Works, Inc.**  
 Print name of taxpayer from line 1 if other than individual

**Part II Declaration of Representative**

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice before the Internal Revenue Service;
  - I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
  - I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
  - I am one of the following:
    - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
    - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
    - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
    - d Officer—a bona fide officer of the taxpayer organization.
    - e Full-Time Employee—a full-time employee of the taxpayer.
    - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
    - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
    - h Unenrolled Return Preparer—Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have prepared and signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions (PTIN required for designation h).
    - i Registered Tax Return Preparer—registered as a tax return preparer under the requirements of section 10.4 of Circular 230. Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have prepared and signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions (PTIN required for designation i).
    - k Student Attorney or CPA—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
    - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).
- ▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2. See the instructions for Part II.**

Notes. For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column. See the instructions for Part II for more information.

Designation— Insert above letter (a-r)	Licensing jurisdiction (state) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable). See instructions for Part II for more information.	Signature	Date
a	CA	250995		9-10-15
a	CA	279052		9-10-15
a	CA	214876		9-10-15

**Application for Recognition of Exemption  
Under Section 501(c)(3) of the Internal Revenue Code**

OMB No. 1545-0056

Note: If exempt status is approved, this application will be open for public inspection.

Use the instructions to complete this application and for a definition of all **bold items**. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500. Visit our website at [www.irs.gov](http://www.irs.gov) for forms and publications. If the required information and documents are not submitted with payment of the appropriate user fee, the application may be returned to you.

Attach additional sheets to this application if you need more space to answer fully. Put your name and EIN on each sheet and identify each answer by Part and line number. Complete Parts I - XI of Form 1023 and submit only those Schedules (A through H) that apply to you.

**Part I Identification of Applicant**

1 Full name of organization (exactly as it appears in your organizing document)		2 c/o Name (if applicable)	
<b>First Look Media Works, Inc.</b>			
3 Mailing address (Number and street) (see instructions)		Room/Suite	4 Employer Identification Number (EIN)
<b>114 5th Avenue, 18th Floor</b>			<b>80-0951255</b>
City or town, state or country, and ZIP + 4		5 Month the annual accounting period ends (01 - 12)	
<b>New York, NY 10011</b>		<b>12</b>	
6 Primary contact (officer, director, trustee, or authorized representative)		b Phone: (650) 482-2500	
a Name: <b>Will Fitzpatrick</b>		c Fax: (optional)	
7 Are you represented by an authorized representative, such as an attorney or accountant? If Yes, provide the authorized representative's name, and the name and address of the authorized representative's firm. Include a completed Form 2848, <i>Power of Attorney and Declaration of Representative</i> , with your application if you would like us to communicate with your representative.		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
8 Was a person who is not one of your officers, directors, trustees, employees, or an authorized representative listed in line 7, paid, or promised payment, to help plan, manage, or advise you about the structure or activities of your organization, or about your financial or tax matters? If Yes, provide the person's name, the name and address of the person's firm, the amounts paid or promised to be paid, and describe that person's role.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9a Organization's website: <b>firstlook.org</b>			
b Organization's email: (optional)			
10 Certain organizations are not required to file an information return (Form 990 or Form 990-EZ). If you are granted tax-exemption, are you claiming to be excused from filing Form 990 or Form 990-EZ? If Yes, explain. See the instructions for a description of organizations not required to file Form 990 or Form 990-EZ.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11 Date incorporated if a corporation, or formed, if other than a corporation. (MM/DD/YYYY)		<b>08/28/2013</b>	
12 Were you formed under the laws of a foreign country? If Yes, state the country.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

For Paperwork Reduction Act Notice, see page 24 of the instructions.

Form 1023 (Rev. 6-2006)

17152015258010

POSTMARK

RECEIVED

09112015

09142015

CINCINNATI  
SERVICE CENTER

**Part II Organizational Structure**

You must be a corporation (including a limited liability company), an unincorporated association, or a trust to be tax exempt. (See instructions.) **DO NOT file this form unless you can check "Yes" on lines 1, 2, 3, or 4.**

- 1 Are you a corporation? If "Yes," attach a copy of your articles of incorporation showing certification of filing with the appropriate state agency. Include copies of any amendments to your articles and be sure they also show state filing certification.  Yes  No
- 2 Are you a limited liability company (LLC)? If "Yes," attach a copy of your articles of organization showing certification of filing with the appropriate state agency. Also, if you adopted an operating agreement, attach a copy. Include copies of any amendments to your articles and be sure they show state filing certification. Refer to the instructions for circumstances when an LLC should not file its own exemption application.  Yes  No
- 3 Are you an unincorporated association? If "Yes," attach a copy of your articles of association, constitution, or other similar organizing document that is dated and includes at least two signatures. Include signed and dated copies of any amendments.  Yes  No
- 4a Are you a trust? If "Yes," attach a signed and dated copy of your trust agreement. Include signed and dated copies of any amendments.  Yes  No
- b Have you been funded? If "No," explain how you are formed without anything of value placed in trust.  Yes  No
- 5 Have you adopted bylaws? If "Yes," attach a current copy showing date of adoption. If "No," explain how your officers, directors, or trustees are selected.  Yes  No

**Part III Required Provisions in Your Organizing Document**

The following questions are designed to ensure that when you file this application, your organizing document contains the required provisions to meet the organizational test under section 501(c)(3). Unless you can check the boxes in both lines 1 and 2, your organizing document does not meet the organizational test. **DO NOT file this application until you have amended your organizing document.** Submit your original and amended organizing documents (showing state filing certification if you are a corporation or an LLC) with your application.

- 1 Section 501(c)(3) requires that your organizing document state your exempt purpose(s), such as charitable, religious, educational, and/or scientific purposes. Check the box to confirm that your organizing document meets this requirement. Describe specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document. Refer to the instructions for exempt purpose language. Location of Purpose Clause (Page, Article, and Paragraph): Page 1, Article Third
- 2a Section 501(c)(3) requires that upon dissolution of your organization, your remaining assets must be used exclusively for exempt purposes, such as charitable, religious, educational, and/or scientific purposes. Check the box on line 2a to confirm that your organizing document meets this requirement by express provision for the distribution of assets upon dissolution. If you rely on state law for your dissolution provision, do not check the box on line 2a and go to line 2c.
- 2b If you checked the box on line 2a, specify the location of your dissolution clause (Page, Article, and Paragraph). Do not complete line 2c if you checked box 2a. Page 1, Article Fifth
- 2c See the instructions for information about the operation of state law in your particular state. Check this box if you rely on operation of state law for your dissolution provision and indicate the state:

**Part IV Narrative Description of Your Activities**

Using an attachment, describe your past, present, and planned activities in a narrative. If you believe that you have already provided some of this information in response to other parts of this application, you may summarize that information here and refer to the specific parts of the application for supporting details. You may also attach representative copies of newsletters, brochures, or similar documents for supporting details to this narrative. Remember that if this application is approved, it will be open for public inspection. Therefore, your narrative description of activities should be thorough and accurate. Refer to the instructions for information that must be included in your description.

**Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors**

- 1a List the names, titles, and mailing addresses of all of your officers, directors, and trustees. For each person listed, state their total annual compensation, or proposed compensation, for all services to the organization, whether as an officer, employee, or other position. Use actual figures, if available. Enter "none" if no compensation is or will be paid. If additional space is needed, attach a separate sheet. Refer to the instructions for information on what to include as compensation.

Name	Title	Mailing address	Compensation amount (annual actual or estimated)
See supplemental responses			

**Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors (Continued)**

**b** List the names, titles, and mailing addresses of each of your five highest compensated employees who receive or will receive compensation of more than \$50,000 per year. Use the actual figure, if available. Refer to the instructions for information on what to include as compensation. Do not include officers, directors, or trustees listed in line 1a.

Name	Title	Mailing address	Compensation amount (annual actual or estimated)
<b>See supplemental responses</b>		-----	
		-----	
		-----	
		-----	
		-----	

**c** List the names, names of businesses, and mailing addresses of your five highest compensated independent contractors that receive or will receive compensation of more than \$50,000 per year. Use the actual figure, if available. Refer to the instructions for information on what to include as compensation.

Name	Title	Mailing address	Compensation amount (annual actual or estimated)
<b>See supplemental responses</b>		-----	
		-----	
		-----	
		-----	
		-----	

The following "Yes" or "No" questions relate to *past, present, or planned* relationships, transactions, or agreements with your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed in lines 1a, 1b, and 1c.

- 2a** Are any of your officers, directors, or trustees related to each other through family or business relationships? If "Yes," identify the individuals and explain the relationship.  Yes  No
- b** Do you have a business relationship with any of your officers, directors, or trustees other than through their position as an officer, director, or trustee? If "Yes," identify the individuals and describe the business relationship with each of your officers, directors, or trustees.  Yes  No
- c** Are any of your officers, directors, or trustees related to your highest compensated employees or highest compensated independent contractors listed on lines 1b or 1c through family or business relationships? If "Yes," identify the individuals and explain the relationship.  Yes  No

**See supplemental responses**

- 3a** For each of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed on lines 1a, 1b, or 1c, attach a list showing their name, qualifications, average hours worked, and duties.
- b** Do any of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed on lines 1a, 1b, or 1c receive compensation from any other organizations, whether tax exempt or taxable, that are related to you through common control? If "Yes," identify the individuals, explain the relationship between you and the other organization, and describe the compensation arrangement.  Yes  No

**See supplemental responses**

- 4** In establishing the compensation for your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed on lines 1a, 1b, and 1c, the following practices are recommended, although they are not required to obtain exemption. Answer "Yes" to all the practices you use.
  - a** Do you or will the individuals that approve compensation arrangements follow a conflict of interest policy?  Yes  No
  - b** Do you or will you approve compensation arrangements in advance of paying compensation?  Yes  No
  - c** Do you or will you document in writing the date and terms of approved compensation arrangements?  Yes  No

**Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors (Continued)**

- d Do you or will you record in writing the decision made by each individual who decided or voted on compensation arrangements?  Yes  No
- e Do you or will you approve compensation arrangements based on information about compensation paid by **similarly situated** taxable or tax-exempt organizations for similar services, current compensation surveys compiled by independent firms, or actual written offers from similarly situated organizations? Refer to the instructions for Part V, lines 1a, 1b, and 1c, for information on what to include as compensation.  Yes  No
- f Do you or will you record in writing both the information on which you relied to base your decision and its source?  Yes  No
- g If you answered "No" to any item on lines 4a through 4f, describe how you set compensation that is **reasonable** for your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed in Part V, lines 1a, 1b, and 1c.

- 5a Have you adopted a **conflict of interest policy** consistent with the sample conflict of interest policy in Appendix A to the instructions? If "Yes," provide a copy of the policy and explain how the policy has been adopted, such as by resolution of your governing board. If "No," answer lines 5b and 5c.  Yes  No
- b What procedures will you follow to assure that persons who have a conflict of interest will not have influence over you for setting their own compensation? **See supplemental responses**
- c What procedures will you follow to assure that persons who have a conflict of interest will not have influence over you regarding business deals with themselves?

**Note:** A conflict of interest policy is recommended though it is not required to obtain exemption. Hospitals, see Schedule C, Section I, line 14.

- 6a Do you or will you compensate any of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors listed in lines 1a, 1b, or 1c through **non-fixed payments**, such as discretionary bonuses or revenue-based payments? If "Yes," describe all non-fixed compensation arrangements, including how the amounts are determined, who is eligible for such arrangements, whether you place a limitation on total compensation, and how you determine or will determine that you pay no more than reasonable compensation for services. Refer to the instructions for Part V, lines 1a, 1b, and 1c, for information on what to include as compensation.  Yes  No **See supplemental response:**
- b Do you or will you compensate any of your employees, other than your officers, directors, trustees, or your five highest compensated employees who receive or will receive compensation of more than \$50,000 per year, through non-fixed payments, such as discretionary bonuses or revenue-based payments? If "Yes," describe all non-fixed compensation arrangements, including how the amounts are or will be determined, who is or will be eligible for such arrangements, whether you place or will place a limitation on total compensation, and how you determine or will determine that you pay no more than reasonable compensation for services. Refer to the instructions for Part V, lines 1a, 1b, and 1c, for information on what to include as compensation.  Yes  No

- 7a Do you or will you purchase any goods, services, or assets from any of your officers, directors, trustees, highest compensated employees, or highest compensated independent contractors listed in lines 1a, 1b, or 1c? If "Yes," describe any such purchase that you made or intend to make, from whom you make or will make such purchases, how the terms are or will be negotiated at **arm's length**, and explain how you determine or will determine that you pay no more than **fair market value**. Attach copies of any written contracts or other agreements relating to such purchases.  Yes  No **See supplemental response:**
- b Do you or will you sell any goods, services, or assets to any of your officers, directors, trustees, highest compensated employees, or highest compensated independent contractors listed in lines 1a, 1b, or 1c? If "Yes," describe any such sales that you made or intend to make, to whom you make or will make such sales, how the terms are or will be negotiated at **arm's length**, and explain how you determine or will determine you are or will be paid at least fair market value. Attach copies of any written contracts or other agreements relating to such sales.  Yes  No

- 8a Do you or will you have any leases, contracts, loans, or other agreements with your officers, directors, trustees, highest compensated employees, or highest compensated independent contractors listed in lines 1a, 1b, or 1c? If "Yes," provide the information requested in lines 8b through 8f.  Yes  No **See supplemental responses**
- b Describe any written or oral arrangements that you made or intend to make.
- c Identify with whom you have or will have such arrangements.
- d Explain how the terms are or will be negotiated at **arm's length**.
- e Explain how you determine you pay no more than fair market value or you are paid at least fair market value.
- f Attach copies of any signed leases, contracts, loans, or other agreements relating to such arrangements.

- 9a Do you or will you have any leases, contracts, loans, or other agreements with any organization in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest? If "Yes," provide the information requested in lines 9b through 9f.  Yes  No **See supplemental responses**



**Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors (Continued)**

- b Describe any written or oral arrangements you made or intend to make.
- c Identify with whom you have or will have such arrangements.
- d Explain how the terms are or will be negotiated at arm's length.
- e Explain how you determine or will determine you pay no more than fair market value or that you are paid at least fair market value.
- f Attach a copy of any signed leases, contracts, loans, or other agreements relating to such arrangements.

**Part VI Your Members and Other Individuals and Organizations That Receive Benefits From You**

The following "Yes" or "No" questions relate to goods, services, and funds you provide to individuals and organizations as part of your activities. Your answers should pertain to *past, present, and planned* activities. (See instructions.)

- 1a In carrying out your exempt purposes, do you provide goods, services, or funds to individuals? If "Yes," describe each program that provides goods, services, or funds to individuals.  Yes  No
- b In carrying out your exempt purposes, do you provide goods, services, or funds to organizations? If "Yes," describe each program that provides goods, services, or funds to organizations.  Yes  No **See supplemental responses**
- 2 Do any of your programs limit the provision of goods, services, or funds to a specific individual or group of specific individuals? For example, answer "Yes," if goods, services, or funds are provided only for a particular individual, your members, individuals who work for a particular employer, or graduates of a particular school. If "Yes," explain the limitation and how recipients are selected for each program.  Yes  No
- 3 Do any individuals who receive goods, services, or funds through your programs have a family or business relationship with any officer, director, trustee, or with any of your highest compensated employees or highest compensated independent contractors listed in Part V, lines 1a, 1b, and 1c? If "Yes," explain how these related individuals are eligible for goods, services, or funds.  Yes  No **See supplemental responses**

**Part VII Your History**

The following "Yes" or "No" questions relate to your history. (See instructions.)

- 1 Are you a **successor** to another organization? Answer "Yes," if you have taken or will take over the activities of another organization; you took over 25% or more of the fair market value of the net assets of another organization; or you were established upon the conversion of an organization from for-profit to non-profit status. If "Yes," complete Schedule G.  Yes  No
- 2 Are you submitting this application more than 27 months after the end of the month in which you were legally formed? If "Yes," complete Schedule E.  Yes  No

**Part VIII Your Specific Activities**

The following "Yes" or "No" questions relate to specific activities that you may conduct. Check the appropriate box. Your answers should pertain to *past, present, and planned* activities. (See instructions.)

- 1 Do you support or oppose candidates in **political campaigns** in any way? If "Yes," explain.  Yes  No
- 2a Do you attempt to **influence legislation**? If "Yes," explain how you attempt to influence legislation and complete line 2b. If "No," go to line 3a.  Yes  No
- b Have you made or are you making an **election** to have your legislative activities measured by expenditures by filing Form 5768? If "Yes," attach a copy of the Form 5768 that was already filed or attach a completed Form 5768 that you are filing with this application. If "No," describe whether your attempts to influence legislation are a substantial part of your activities. Include the time and money spent on your attempts to influence legislation as compared to your total activities.  Yes  No **See supplemental responses**
- 3a Do you or will you operate bingo or **gaming** activities? If "Yes," describe who conducts them, and list all revenue received or expected to be received and expenses paid or expected to be paid in operating these activities. **Revenue and expenses** should be provided for the time periods specified in Part IX, Financial Data.  Yes  No
- b Do you or will you enter into contracts or other agreements with individuals or organizations to conduct bingo or gaming for you? If "Yes," describe any written or oral arrangements that you made or intend to make, identify with whom you have or will have such arrangements, explain how the terms are or will be negotiated at arm's length, and explain how you determine or will determine you pay no more than fair market value or you will be paid at least fair market value. Attach copies of any written contracts or other agreements relating to such arrangements.  Yes  No
- c List the states and local jurisdictions, including Indian Reservations, in which you conduct or will conduct gaming or bingo.

**Part VIII Your Specific Activities (Continued)**

- 4a** Do you or will you undertake fundraising? If "Yes," check all the fundraising programs you do or will conduct. (See instructions.)  Yes  No
- |   |  |
|---|--|
| <input type="checkbox"/> mail solicitations                         | <input checked="" type="checkbox"/> phone solicitations                        |
| <input checked="" type="checkbox"/> email solicitations             | <input checked="" type="checkbox"/> accept donations on your website           |
| <input checked="" type="checkbox"/> personal solicitations          | <input type="checkbox"/> receive donations from another organization's website |
| <input type="checkbox"/> vehicle, boat, plane, or similar donations | <input checked="" type="checkbox"/> government grant solicitations             |
| <input checked="" type="checkbox"/> foundation grant solicitations  | <input type="checkbox"/> Other   |

Attach a description of each fundraising program.

- b** Do you or will you have written or oral contracts with any individuals or organizations to raise funds for you? If "Yes," describe these activities. Include all revenue and expenses from these activities and state who conducts them. Revenue and expenses should be provided for the time periods specified in Part IX, Financial Data. Also, attach a copy of any contracts or agreements.  Yes  No
- c** Do you or will you engage in fundraising activities for other organizations? If "Yes," describe these arrangements. Include a description of the organizations for which you raise funds and attach copies of all contracts or agreements.  Yes  No
- d** List all states and local jurisdictions in which you conduct fundraising. For each state or local jurisdiction listed, specify whether you fundraise for your own organization, you fundraise for another organization, or another organization fundraises for you.
- e** Do you or will you maintain separate accounts for any contributor under which the contributor has the right to advise on the use or distribution of funds? Answer "Yes" if the donor may provide advice on the types of investments, distributions from the types of investments, or the distribution from the donor's contribution account. If "Yes," describe this program, including the type of advice that may be provided and submit copies of any written materials provided to donors.  Yes  No

- 5** Are you affiliated with a governmental unit? If "Yes," explain.  Yes  No

- 6a** Do you or will you engage in economic development? If "Yes," describe your program.  Yes  No

- b** Describe in full who benefits from your economic development activities and how the activities promote exempt purposes.

- 7a** Do or will persons other than your employees or volunteers develop your facilities? If "Yes," describe each facility, the role of the developer, and any business or family relationship(s) between the developer and your officers, directors, or trustees.  Yes  No

- b** Do or will persons other than your employees or volunteers manage your activities or facilities? If "Yes," describe each activity and facility, the role of the manager, and any business or family relationship(s) between the manager and your officers, directors, or trustees.  Yes  No

- c** If there is a business or family relationship between any manager or developer and your officers, directors, or trustees, identify the individuals, explain the relationship, describe how contracts are negotiated at arm's length so that you pay no more than fair market value, and submit a copy of any contracts or other agreements.

- 8** Do you or will you enter into joint ventures, including partnerships or limited liability companies treated as partnerships, in which you share profits and losses with partners other than section 501(c)(3) organizations? If "Yes," describe the activities of these joint ventures in which you participate.  Yes  No

- 9a** Are you applying for exemption as a childcare organization under section 501(k)? If "Yes," answer lines 9b through 9d. If "No," go to line 10.  Yes  No

- b** Do you provide child care so that parents or caretakers of children you care for can be gainfully employed (see instructions)? If "No," explain how you qualify as a childcare organization described in section 501(k).  Yes  No

- c** Of the children for whom you provide child care, are 85% or more of them cared for by you to enable their parents or caretakers to be gainfully employed (see instructions)? If "No," explain how you qualify as a childcare organization described in section 501(k).  Yes  No

- d** Are your services available to the general public? If "No," describe the specific group of people for whom your activities are available. Also, see the instructions and explain how you qualify as a childcare organization described in section 501(k).  Yes  No

- 10** Do you or will you publish, own, or have rights in music, literature, tapes, artworks, choreography, scientific discoveries, or other intellectual property? If "Yes," explain. Describe who owns or will own any copyrights, patents, or trademarks, whether fees are or will be charged, how the fees are determined, and how any items are or will be produced, distributed, and marketed.  Yes  No

See supplemental responses

**Part VIII Your Specific Activities (Continued)**

- 11** Do you or will you accept contributions of: real property; conservation easements; closely held securities; intellectual property such as patents, trademarks, and copyrights; works of music or art; licenses; royalties; automobiles, boats, planes, or other vehicles; or collectibles of any type? If "Yes," describe each type of contribution, any conditions imposed by the donor on the contribution, and any agreements with the donor regarding the contribution.  Yes  No

See supplemental responses

- 12a** Do you or will you operate in a foreign country or countries? If "Yes," answer lines 12b through 12d. If "No," go to line 13a.  Yes  No
- b** Name the foreign countries and regions within the countries in which you operate.
- c** Describe your operations in each country and region in which you operate.
- d** Describe how your operations in each country and region further your exempt purposes.

- 13a** Do you or will you make grants, loans, or other distributions to organization(s)? If "Yes," answer lines 13b through 13g. If "No," go to line 14a.  Yes  No
- b** Describe how your grants, loans, or other distributions to organizations further your exempt purposes.
- c** Do you have written contracts with each of these organizations? If "Yes," attach a copy of each contract.  Yes  No
- d** Identify each recipient organization and any relationship between you and the recipient organization.
- e** Describe the records you keep with respect to the grants, loans, or other distributions you make.
- f** Describe your selection process, including whether you do any of the following:
- (i) Do you require an application form? If "Yes," attach a copy of the form.  Yes  No
- (ii) Do you require a grant proposal? If "Yes," describe whether the grant proposal specifies your responsibilities and those of the grantee, obligates the grantee to use the grant funds only for the purposes for which the grant was made, provides for periodic written reports concerning the use of grant funds, requires a final written report and an accounting of how grant funds were used, and acknowledges your authority to withhold and/or recover grant funds in case such funds are, or appear to be, misused.  Yes  No
- g** Describe your procedures for oversight of distributions that assure you the resources are used to further your exempt purposes, including whether you require periodic and final reports on the use of resources.  Yes  No

See supplemental responses

- 14a** Do you or will you make grants, loans, or other distributions to foreign organizations? If "Yes," answer lines 14b through 14f. If "No," go to line 15.  Yes  No
- b** Provide the name of each foreign organization, the country and regions within a country in which each foreign organization operates, and describe any relationship you have with each foreign organization.
- c** Does any foreign organization listed in line 14b accept contributions earmarked for a specific country or specific organization? If "Yes," list all earmarked organizations or countries.  Yes  No
- d** Do your contributors know that you have ultimate authority to use contributions made to you at your discretion for purposes consistent with your exempt purposes? If "Yes," describe how you relay this information to contributors.  Yes  No
- e** Do you or will you make pre-grant inquiries about the recipient organization? If "Yes," describe these inquiries, including whether you inquire about the recipient's financial status, its tax-exempt status under the Internal Revenue Code, its ability to accomplish the purpose for which the resources are provided, and other relevant information.  Yes  No
- f** Do you or will you use any additional procedures to ensure that your distributions to foreign organizations are used in furtherance of your exempt purposes? If "Yes," describe these procedures, including site visits by your employees or compliance checks by impartial experts, to verify that grant funds are being used appropriately.  Yes  No

**Part VIII Your Specific Activities (Continued)**

- 15 Do you have a close connection with any organizations? If "Yes," explain.  Yes  No
- 16 Are you applying for exemption as a cooperative hospital service organization under section 501(e)? If "Yes," explain.  Yes  No
- 17 Are you applying for exemption as a cooperative service organization of operating educational organizations under section 501(f)? If "Yes," explain.  Yes  No
- 18 Are you applying for exemption as a charitable risk pool under section 501(n)? If "Yes," explain.  Yes  No
- 19 Do you or will you operate a school? If "Yes," complete Schedule B. Answer "Yes," whether you operate a school as your main function or as a secondary activity.  Yes  No
- 20 Is your main function to provide hospital or medical care? If "Yes," complete Schedule C.  Yes  No
- 21 Do you or will you provide low-income housing or housing for the elderly or handicapped? If "Yes," complete Schedule F.  Yes  No
- 22 Do you or will you provide scholarships, fellowships, educational loans, or other educational grants to individuals, including grants for travel, study, or other similar purposes? If "Yes," complete Schedule H.  Yes  No

**Note:** Private foundations may use Schedule H to request advance approval of individual grant procedures.

**Part IX Financial Data**

For purposes of this schedule, years in existence refer to completed tax years. If in existence 4 or more years, complete the schedule for the most recent 4 tax years. If in existence more than 1 year but less than 4 years, complete the statements for each year in existence and provide projections of your likely revenues and expenses based on a reasonable and good faith estimate of your future finances for a total of 3 years of financial information. If in existence less than 1 year, provide projections of your likely revenues and expenses for the current year and the 2 following years, based on a reasonable and good faith estimate of your future finances for a total of 3 years of financial information. (See instructions.)

**A. Statement of Revenues and Expenses**

	Type of revenue or expense	Current tax year	3 prior tax years or 2 succeeding tax years			(e) Provide Total for (a) through (d)
		(a) From _____ To _____	(b) From _____ To _____	(c) From _____ To _____	(d) From _____ To _____	
<b>Revenues</b>	1 Gifts, grants, and contributions received (do not include unusual grants)					
	2 Membership fees received					
	3 Gross investment income					
	4 Net unrelated business income					
	5 Taxes levied for your benefit					
	6 Value of services or facilities furnished by a governmental unit without charge (not including the value of services generally furnished to the public without charge)		<b>See Budget Attached</b>			
	7 Any revenue not otherwise listed above or in lines 9-12 below (attach an itemized list)					
	8 Total of lines 1 through 7					
	9 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to your exempt purposes (attach itemized list)					
	10 Total of lines 8 and 9					
	11 Net gain or loss on sale of capital assets (attach schedule and see instructions)					
	12 Unusual grants					
	13 Total Revenue Add lines 10 through 12					
<b>Expenses</b>	14 Fundraising expenses					
	15 Contributions, gifts, grants, and similar amounts paid out (attach an itemized list)					
	16 Disbursements to or for the benefit of members (attach an itemized list)					
	17 Compensation of officers, directors, and trustees					
	18 Other salaries and wages					
	19 Interest expense					
	20 Occupancy (rent, utilities, etc.)					
	21 Depreciation and depletion					
	22 Professional fees					
	23 Any expense not otherwise classified, such as program services (attach itemized list)					
	24 Total Expenses Add lines 14 through 23					

**Part IX Financial Data (Continued)**

**B. Balance Sheet (for your most recently completed tax year)**

		Year End:
Assets		(Whole dollars)
1	Cash .....	1
2	Accounts receivable, net .....	2
3	Inventories .....	3
4	Bonds and notes receivable (attach an itemized list) .....	4
5	Corporate stocks (attach an itemized list) .....	5
6	Loans receivable (attach an itemized list) .....	6
7	Other investments (attach an itemized list) .....	7
8	Depreciable and depletable assets (attach an itemized list) .....	8
9	Land .....	9
10	Other assets (attach an itemized list) .....	10
11	<b>Total Assets (add lines 1 through 10)</b> .....	11
<b>Liabilities</b>		
12	Accounts payable .....	12
13	Contributions, gifts, grants, etc. payable .....	13
14	Mortgages and notes payable (attach an itemized list) .....	14
15	Other liabilities (attach an itemized list) .....	15
16	<b>Total Liabilities (add lines 12 through 15)</b> .....	16
<b>Fund Balances or Net Assets</b>		
17	<b>Total fund balances or net assets</b> .....	17
18	<b>Total Liabilities and Fund Balances or Net Assets (add lines 16 and 17)</b> .....	18
19	Have there been any substantial changes in your assets or liabilities since the end of the period shown above? If "Yes," explain.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Part X Public Charity Status**

Part X is designed to classify you as an organization that is either a **private foundation** or a **public charity**. Public charity status is a more favorable tax status than private foundation status. If you are a private foundation, Part X is designed to further determine whether you are a **private operating foundation**. (See instructions.)

- 1a Are you a private foundation? If "Yes," go to line 1b. If "No," go to line 5 and proceed as instructed. If you are unsure, see the instructions.  Yes  No
- b As a private foundation, section 508(e) requires special provisions in your organizing document in addition to those that apply to all organizations described in section 501(c)(3). Check the box to confirm that your organizing document meets this requirement, whether by express provision or by reliance on operation of state law. Attach a statement that describes specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document or by operation of state law. See the instructions, including Appendix B, for information about the special provisions that need to be contained in your organizing document. Go to line 2.
- 2 Are you a private operating foundation? To be a private operating foundation you must engage directly in the active conduct of charitable, religious, educational, and similar activities, as opposed to indirectly carrying out these activities by providing grants to individuals or other organizations. If "Yes," go to line 3. If "No," go to the signature section of Part XI.  Yes  No
- 3 Have you existed for one or more years? If "Yes," attach financial information showing that you are a private operating foundation; go to the signature section of Part XI. If "No," continue to line 4.  Yes  No
- 4 Have you attached either (1) an affidavit or opinion of counsel, (including a written affidavit or opinion from a certified public accountant or accounting firm with expertise regarding this tax law matter), that sets forth facts concerning your operations and support to demonstrate that you are likely to satisfy the requirements to be classified as a private operating foundation; or (2) a statement describing your proposed operations as a private operating foundation?  Yes  No
- 5 If you answered "No" to line 1a, indicate the type of public charity status you are requesting by checking one of the choices below. You may check only one box.  
 The organization is not a private foundation because it is:
  - a 509(a)(1) and 170(b)(1)(A)(i)—a church or a convention or association of churches. Complete and attach Schedule A.
  - b 509(a)(1) and 170(b)(1)(A)(ii)—a school. Complete and attach Schedule B.
  - c 509(a)(1) and 170(b)(1)(A)(iii)—a hospital, a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital. Complete and attach Schedule C.
  - d 509(a)(3)—an organization supporting either one or more organizations described in line 5a through c, f, g, or h or a publicly supported section 501(c)(4), (5), or (6) organization. Complete and attach Schedule D.

**Part X Public Charity Status (Continued)**

- e 509(a)(4)—an organization organized and operated exclusively for testing for public safety.
- f 509(a)(1) and 170(b)(1)(A)(iv)—an organization operated for the benefit of a college or university that is owned or operated by a governmental unit.
- g 509(a)(1) and 170(b)(1)(A)(vi)—an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.
- h 509(a)(2)—an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions).
- i A publicly supported organization, but unsure if it is described in 5g or 5h. The organization would like the IRS to decide the correct status.

6 If you checked box g, h, or i in question 5 above, you must request either an **advance** or a **definitive ruling** by selecting one of the boxes below. Refer to the instructions to determine which type of ruling you are eligible to receive.

- a **Request for Advance Ruling:** By checking this box and signing the consent, pursuant to section 6501(c)(4) of the Code you request an advance ruling and agree to extend the statute of limitations on the assessment of excise tax under section 4940 of the Code. The tax will apply only if you do not establish public support status at the end of the 5-year advance ruling period. The assessment period will be extended for the 5 advance ruling years to 8 years, 4 months, and 15 days beyond the end of the first year. You have the right to refuse or limit the extension to a mutually agreed-upon period of time or issue(s). Publication 1035, *Extending the Tax Assessment Period*, provides a more detailed explanation of your rights and the consequences of the choices you make. You may obtain Publication 1035 free of charge from the IRS web site at [www.irs.gov](http://www.irs.gov) or by calling toll-free 1-800-829-3676. Signing this consent will not deprive you of any appeal rights to which you would otherwise be entitled. If you decide not to extend the statute of limitations, you are not eligible for an advance ruling.

**Consent Fixing Period of Limitations Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code**

For Organization

\_\_\_\_\_  
 (Signature of Officer, Director, Trustee, or other authorized official)

\_\_\_\_\_  
 (Type or print name of signer)

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Type or print title or authority of signer)

For IRS Use Only

\_\_\_\_\_  
 IRS Director, Exempt Organizations

\_\_\_\_\_  
 (Date)

- b **Request for Definitive Ruling:** Check this box if you have completed one tax year of at least 8 full months and you are requesting a definitive ruling. To confirm your public support status, answer line 6b(i) if you checked box g in line 5 above. Answer line 6b(ii) if you checked box h in line 5 above. If you checked box i in line 5 above, answer both lines 6b(i) and (ii).

- (i) (a) Enter 2% of line 8, column (e) on Part IX-A, Statement of Revenues and Expenses.
- (b) Attach a list showing the name and amount contributed by each person, company, or organization whose gifts totaled more than the 2% amount. If the answer is "None," check this box.
- (ii) (a) For each year amounts are included on lines 1, 2, and 9 of Part IX-A, Statement of Revenues and Expenses, attach a list showing the name of and amount received from each **disqualified person**. If the answer is "None," check this box.
- (b) For each year amounts are included on line 9 of Part IX-A, Statement of Revenues and Expenses, attach a list showing the name of and amount received from each payer, other than a disqualified person, whose payments were more than the larger of (1) 1% of line 10, Part IX-A, Statement of Revenues and Expenses, or (2) \$5,000. If the answer is "None," check this box.

- 7 Did you receive any unusual grants during any of the years shown on Part IX-A, Statement of Revenues and Expenses? If "Yes," attach a list including the name of the contributor, the date and amount of the grant, a brief description of the grant, and explain why it is unusual.  Yes  No

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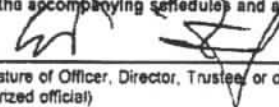
**Part XI User Fee Information**

You must include a user fee payment with this application. It will not be processed without your paid user fee. If your average annual gross receipts have exceeded or will exceed \$10,000 annually over a 4-year period, you must submit payment of \$750. If your gross receipts have not exceeded or will not exceed \$10,000 annually over a 4-year period, the required user fee payment is \$300. See instructions for Part XI, for a definition of gross receipts over a 4-year period. Your check or money order must be made payable to the United States Treasury. User fees are subject to change. Check our website at [www.irs.gov](http://www.irs.gov) and type "User Fee" in the keyword box, or call Customer Account Services at 1-877-829-5500 for current information.

- 1 Have your annual gross receipts averaged or are they expected to average not more than \$10,000?  Yes  No  
If "Yes," check the box on line 2 and enclose a user fee payment of \$300 (Subject to change—see above).  
If "No," check the box on line 3 and enclose a user fee payment of \$750 (Subject to change—see above).
- 2 Check the box if you have enclosed the reduced user fee payment of \$300 (Subject to change).
- 3 Check the box if you have enclosed the user fee payment of \$750 (Subject to change).

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please Sign Here

  
(Signature of Officer, Director, Trustee, or other authorized official)

**Will Fitzpatrick**

(Type or print name of signer)

**9/9/15**  
(Date)

**Secretary**

(Type or print title or authority of signer)

Reminder: Send the completed Form 1023 Checklist with your filled-in-application.



September 11, 2015

**VIA FEDERAL EXPRESS**

Internal Revenue Service  
Attn: Extracting - Stop 312  
201 West Rivercenter Boulevard  
Covington, Kentucky 41011-1454

Re: First Look Media Works, Inc.  
Employer Identification Number 80-0951255

Dear Sir/Ms.:

We enclose the tax exemption application of First Look Media Works, Inc. (the "Organization"), a Delaware nonprofit nonstock corporation, for your review. The Organization seeks a determination that it is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code, and a publicly supported organization described in Section 509(a)(1) and 170(b)(1)(A)(vi). The application consists of the following documents:

1. Our check for \$850.00;
2. Form 1023 Checklist;
3. Form 2848, Power of Attorney;
4. Form 1023, Application for Recognition of Exemption;
5. Certificate of Incorporation, and all amendments thereto, each certified by the Delaware Division of Corporations;
6. Amended and Restated Bylaws;
7. Form 5768, Election to Make Expenditures to Influence Legislation, for filing;

Internal Revenue Service  
September 11, 2015  
Page 2

8. Proposed Budget and Balance Sheet;
9. Supplemental Responses to Form 1023; and
10. Conflict of Interest Policy.

We look forward to receiving your prompt decision that the Organization is an organization described in Sections 501(c)(3), 509(a)(1), and 170(b)(1)(A)(vi). If you have any questions, however, please contact this office.

Very truly yours,



Nancy E. McGlamery

NEM:JBC:jb

Enclosures

cc: Will Fitzpatrick  
(via email)

Form **5768**

(Rev. August 2013)

Department of the Treasury  
Internal Revenue Service

**Election/Revocation of Election by an Eligible  
Section 501(c)(3) Organization To Make  
Expenditures To Influence Legislation**

(Under Section 501(h) of the Internal Revenue Code)

Information about Form 5768 and its instructions is at [www.irs.gov/form5768](http://www.irs.gov/form5768).

For IRS  
Use Only

Name of organization <b>First Look Media Works, Inc.</b>	Employer identification number <b>80-0951255</b>
Number and street (or P.O. box no., if mail is not delivered to street address) <b>114 5th Avenue, 18th Floor</b>	Room/suite
City, town or post office, and state <b>New York, NY 10011</b>	ZIP + 4 <b>70814</b>

**1 Election**— As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending **December 31, 2015** and all subsequent tax years until revoked.  
(Month, day, and year)

*Note: This election must be signed and postmarked within the first taxable year to which it applies.*

**2 Revocation**— As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending \_\_\_\_\_ and all subsequent tax years (until a new election is made).  
(Month, day, and year)

*Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.*

Under penalties of perjury, I declare that I am authorized to make this (check applicable box)  election  revocation on behalf of the above named organization.

\_\_\_\_\_  
(Signature of officer or trustee) **Will Fitzpatrick, Secretary**  
(Type or print name and title) **9/9/15**  
(Date)

**General Instructions**

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible section 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Part II-A of Schedule C (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item 1 or 2, as applicable, and sign and date the form in the spaces provided.

**Eligible organizations.** A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

**Disqualified organizations.** The following types of organizations are not permitted to make the election:

- a. Section 170(b)(1)(A)(i) organizations (relating to churches).

- b. An integrated auxiliary of a church or of a convention or association of churches, or
- c. A member of an affiliated group of organizations if one or more members of such group is described in a or b of this paragraph.

**Affiliated organizations.** Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

Note. A private foundation (including a private operating foundation) is not an eligible organization.

**Where to file.** Mail Form 5768 to:

Department of the Treasury  
Internal Revenue Service Center  
Ogden, UT 84201-0027

**FIRST LOOK MEDIA WORKS, INC.**  
114 5th Avenue, 18th Floor  
New York, NY 10011  
**EIN: 80-0951255**

## **SUPPLEMENTAL RESPONSES TO FORM 1023**

### **Part I: Identification of Applicant**

**Question 7: Authorized Representative.** The names, firm, and address of the authorized representatives of First Look Media Works, Inc. ("First Look Media Works" or "FLMW" and f/k/a "First Look Media, Inc.") are:

Nancy E. McGlamery, Matthew A. Clausen, and Joel Beck-Coon  
Adler & Colvin  
235 Montgomery Street, Suite 1220  
San Francisco, California 94104

We attach a completed **Form 2848**.

### **Part II: Organizational Structure**

**Question 1: Corporation.** We attach a certified copy of First Look Media Works' Certificate of Incorporation with all amendments to date as Exhibit A.

**Question 5: Bylaws.** We attach a copy of First Look Media Works' current Amended and Restated Bylaws, adopted by Unanimous Written Consent effective August 31, 2015, as Exhibit B.

### **Part IV: Narrative Description of Past, Present, and Planned Activities.**

#### **1. Introduction**

"The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

*James Madison, 1 Annals of Congress 451*

*June 8, 1789*

Investigative news and an engaged populace are two essential elements of a free and democratic society. Thomas Jefferson declared that "when the press is free and every man able to read, all is safe." Successful self-government hinges on the existence of large numbers of educated and well-informed citizens. As James Madison put it, "a well-instructed people alone can be permanently a free people." What we read in the papers and online matters to us. It

**FIRST LOOK MEDIA WORKS, INC.**

**EIN: 80-0951255**

Supplemental Responses to Form 1023

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motivates our conversations, our spending, and our civic involvement. Faithful reporting of news, and especially in-depth, investigative journalism, is an essential element of positive social change.

The Internet is now the reading public's main medium for finding and consuming news and other information. This shift online provides an opportunity to disseminate important investigative stories to a wider audience than print, radio, and television media can reach. It also challenges the survival of the traditional news organization. The reading public is constantly bombarded with messages, updates, tweets, listicles, blog-bites, and other bits that can be digested with little investment of time or thought. For news outlets that operate for profit, there is an ever-shrinking call for journalists to investigate stories in depth and produce robust stories that encourage the reader to consider the nuances of an issue; for these commercial media outlets, it is more profitable to produce as many short, inexpensive, and broadly appealing items as possible in order to keep click rates high and increase advertising revenue.

First Look Media Works has different priorities. It is committed to making the most of the opportunity the Internet provides, while overcoming the obstacles that stand between serious journalists and a potentially enormous audience of engaged citizens.

## **2. Activities**

First Look Media Works is a digital news media organization on a mission to create a world with greater understanding, engaged citizens, and responsive institutions. It will focus on national and international matters of public interest, including investigative and general reporting that is nonpartisan. First Look Media Works has hired, and continues to recruit, experienced and high-caliber independent journalists, editors, and other staff to conduct its activities, with the main hubs of operation in New York City, San Francisco, and Washington D.C.

First Look Media Works' primary activity will be researching, preparing, and publishing educational news content, and licensing such content to third parties to increase the visibility of its educational work. First Look Media Works will employ top investigative journalists, editors, and other professional staff to produce and disseminate news content, providing its newsroom with the resources and cutting edge platform needed to make the most of their skill and commitment. First Look Media Works' initial educational news content has focused and will continue to focus on national security and criminal justice issues and financial and political corruption (available on *The Intercept*). See examples of First Look Media Works' published content attached as Exhibit C.

First Look Media Works will also organize and fund various experiments in

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serving and reaching different audiences for its journalism. For example, initial journalism projects include reported.ly, a global social media news team that will create stories from citizen journalists and social media participants and will be able to react immediately to news events around the world. Other previously funded projects include a video production entity focused on reaching young women.

In addition to producing high caliber independent investigative journalism, First Look Media Works makes grants to other charitable and educational organizations that support independent journalism and a free press. First Look Media Works has awarded or designated grants totaling over \$800,000 to a variety of 501(c)(3) organizations in support of press freedom, including: the Reporters Committee for Freedom of the Press; Electronic Frontier Foundation; the Freedom of the Press Foundation; the First Amendment Coalition; the Committee to Protect Journalists; the Tides Foundation (in support of the charitable and educational purposes of its fiscally sponsored project, GlobalPost); and the University of California, Berkeley, for its Investigative Reporting Program.

First Look Media Works also has established a Press Freedom Litigation Fund designed to strengthen the ability of journalists to pursue legal action where a substantial public interest is at stake. Under this program, First Look Media Works makes financial grants, and provides expert pro bono legal services to support challenges to government policies or actions that restrict press freedoms or denials of freedom of information act requests; motions to quash subpoenas seeking source information or journalistic material; defamation cases where the underlying report concerns a matter of public interest; access cases to closed proceedings or sealed documents; and amicus efforts in support of press freedom. To date, the Press Freedom Litigation Fund has provided financial support to appeal the case of *Miranda v. Secretary of State for the Home Department*, involving the allegedly unlawful detainer of David Miranda as he supported the journalistic efforts of his partner Glenn Greenwald; to defend a defamation case launched against Sahara Reporters and its editor Patrick Sowore by Nigerian Senator Musiliu Obanikoro; to support the legal appeals of U.S. Army intelligence analyst turned whistleblower Chelsea Manning; and in support of a number of *amici curiae* briefs signed by First Look Media Works in the public interest. A committee of senior leadership at First Look Media Works decides which cases to support through the Press Freedom Litigation Fund, and at what level.

**3. First Look Media Works will be operated exclusively for exempt purposes.**

**A. Qualification for exemption of organizations engaged in publishing.** In Revenue Ruling 67-4, the Internal Revenue Service (the "Service") considered the qualification for exemption of an organization that published a journal containing abstracts of articles that had previously been published in other medical and scientific publications for the purpose of disseminating information to the public about certain types of physical and mental disorders.

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The organization sold the journal to the public at below cost, receiving income from the sale of subscriptions as well as from contributions and government grants. The fundamental question raised by the Service with respect to these activities was whether the organization's publishing activities were conducted in an exempt manner.

The Service articulated four factors for determining when "an organization engaged in publishing scientific and medical literature may qualify for exemption . . . under Section 501(c)(3) of the Code":

1. the content of the publication is educational;<sup>1</sup>
2. the preparation of material follows methods generally accepted as educational in character;
3. the distribution of the materials is necessary or valuable in achieving the organization's educational and scientific purposes; and
4. the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

Applying these factors, the Service found that the organization's methods "in preparing and presenting the abstracts conform to methods traditionally accepted as 'educational' in nature," and that "the distribution of the abstracts is carried out essentially in a 'charitable' manner, *in the sense that there is a public benefit derived from the distribution*" and that the charges for the publication recovered "only a portion of the costs."<sup>2</sup> Accordingly, the Service found that the organization qualified for exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").<sup>3</sup>

Revenue Ruling 67-4 thus establishes that an organization engaged in publishing can qualify for exemption if the content is educational; the publication is prepared in a manner accepted as educational; the publication is distributed in a manner that leads to a public benefit; and the manner of distribution is non-commercial, which includes distributing the publication at a loss.

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<sup>1</sup> Although Revenue Ruling 67-4 involved the publication of "scientific and medical literature," the Service has applied these factors to organizations engaged in publishing and distributing other types of material. *See, e.g.*, Rev. Rul. 77-4 (applying factors set forth in Rev. Rul. 67-4 to the publisher of a newspaper targeting a specific ethnic community). An organization engaged in publishing material with educational purposes that otherwise meets the requirements articulated in Revenue Ruling 67-4 should also qualify for exemption.

<sup>2</sup> Rev. Rul. 67-4 (emphasis added).

<sup>3</sup> Unless otherwise stated, all references to "Section" herein are to the Code.

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**B. Application of factors to First Look Media Works' activities.** First Look Media Works' planned activities satisfy the four factors of Revenue Ruling 67-4.

1. *The content of First Look Media Works' publications will be educational.* First Look Media Works' news content qualifies as "educational" as that term is used in Section 501(c)(3) of the Code, defined in Section 1.501(c)(3)-1(d)(3) of the Treasury Regulations, and further described by the Service in Revenue Procedure 86-43.<sup>4</sup> First Look Media Works' news content covers events and issues in more depth than is typical of today's commercial news sources, presenting a full and fair exposition of the pertinent facts on each issue sufficient to permit the reader to form an independent opinion on each issue.<sup>5</sup> First Look Media Works aims to inform, and thereby to encourage and inspire increased civic involvement among its readers. Eschewing the trend toward churning out a high volume of superficial content in order to generate web-traffic at the expense of accuracy or depth, First Look Media Works seeks to draw in and engage its readers with content and conclusions built upon facts, not sensationalism.

Even when First Look Media Works expresses a particular viewpoint, it does so in a manner consistent with Treasury Regulations and Revenue Procedure 86-43, which sets forth criteria used by the Service to determine whether advocacy of a viewpoint or position is 'educational' within the meaning of Section 1.501(c)(3)-1(d)(3) of the Treasury Regulations. All viewpoints or positions expressed by First Look Media Works are based on factual foundations and developed from relevant facts in a manner that materially aids the readership in a learning process. In addition, First Look Media Works' publications do not exhibit the negative factors outlined in Revenue Procedure 86-43.<sup>6</sup>

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<sup>4</sup> Rev. Proc. 86-43, 1986-2 C.B. 729, sets forth the criteria used by the Service to determine whether advocacy is "educational" under Section 501(c)(3), emphasizing the methods used by the organization in presenting its subject matter.

<sup>5</sup> As stated in the flush language in Treasury Regulations section 1.501(c)(3)-1(d)(3)(i), "[a]n organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion."

<sup>6</sup> These negative factors include the following: (1) the presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communication; (2) the facts that purport to support the viewpoints or positions are distorted; (3) the organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and (4) the approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter. These factors are inconsistent with sound journalism or education, and they are inconsistent with First Look Media Works' editorial practices.



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**EIN: 80-0951255**

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2. *First Look Media Works' preparation of material follows methods generally accepted as educational in nature.* Like the organization at issue in Revenue Ruling 67-4, First Look Media Works' method of gathering content is fundamentally educational in nature. Journalists select complex issues of public concern that they believe are not adequately covered by existing commercial media outlets. Journalists then investigate the issue in depth, often involving extensive background research of large volumes of government and other documents not easily accessible to the public, with the goal of producing articles or multimedia content that is easily accessible and user friendly.<sup>7</sup> By employing top reporters and public intellectuals, and providing them with significant journalistic freedom, First Look Media Works has intentionally enshrined public education as a cornerstone of its enterprise. As described in **Paragraph 4**, below, First Look Media Works will not be dependent on advertising revenue, enabling First Look Media Works to select and investigate stories without outside commercial interests influencing its actions.

3. *First Look Media Works' distribution of content is necessary in achieving its exempt purposes.* Disseminating journalistic content through its website and its other activities supporting press freedom are the very mechanisms by which First Look Media Works will achieve its charitable and educational purposes.

4. *First Look Media Works will distribute its content in a manner that is clearly distinguishable from ordinary commercial publishing practices.* Like the organization in Revenue Ruling 67-4, First Look Media Works will likely accomplish its purposes based largely on ongoing charitable support. Unlike for-profit news media and website publishers, First Look Media Works' purpose is not to make a website appealing to advertisers or to increase value for stockholders. Rather, First Look Media Works' purpose is to ensure that its content consistently promotes knowledge, transparency, and civic involvement. First Look Media Works was initially funded with a significant charitable contribution, and expects to require ongoing charitable funding to maintain its operations. First Look Media Works provides its content to readers free of charge and has no plans to impose a paid subscriber model. If it ever chooses to charge readers a subscription, it will do so in a manner that is clearly distinguishable from ordinary commercial publishing practices and in conformance with Revenue Ruling 67-4.

First Look Media Works also plans to license its content as described in **Paragraph C** below. While First Look Media Works does not expect its earned revenue to cover its costs or generate a surplus, if that were to occur, First Look Media Works could

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<sup>7</sup> Unlike the methods of a non-educational organization described in Revenue Procedure 86-43, whose "presentation is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter," First Look Media Works deliberately explains and untangles otherwise complex issues to its readers with the goal of forming a more educated and civically engaged populace.

**FIRST LOOK MEDIA WORKS, INC.**

**EIN: 80-0951255**

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become an important catalyst for investigative journalism more broadly. First Look Media Works itself would, of course, continue to be operated solely for charitable and educational purposes and not for profit, but it could at the same time help demonstrate the mainstream viability of independent investigative journalism ventures. Such a “proof of concept” would encourage support for such ventures, increasing the volume of top-level, independent journalism, and ultimately resulting in a better-informed and more civic-minded population.

First Look Media Works’ planned activities are not similar to those conducted by the organization described in Revenue Ruling 77-4, in which the Service applied the factors set forth in Revenue Ruling 67-4 and determined that the publisher in question was not entitled to exemption. That organization’s only activity was the publication of a newspaper “of local, national, and international news articles with an ethnic emphasis, soliciting advertising and selling subscriptions . . . *in a manner indistinguishable from ordinary commercial publishing practices.*” (Emphasis added.) Importantly, the organization’s only apparent sources of income were advertising sales and subscriptions; unlike First Look Media Works, it did not receive any charitable support.

First Look Media Works has no immediate plans to sell advertising, and expects only a small portion of its income to be generated by outgoing licensing. First Look Media Works expects its sources of revenue, in order of significance, to include charitable support, royalties from licensing its educational news content for syndication, and royalties from licensing its trademark to its affiliate First Look Productions, Inc. (“FLP”). Please see **Paragraph C**, below, for more information about FLP. First Look Media Works expects its royalty income will not be sufficient to cover its operating costs, and that it will remain dependent on charitable support. While First Look Media Works anticipates that a vast majority of its activities and collaborations will result in donative or exempt function income or royalties, to the extent that First Look Media Works does participate in activities, such as limited advertising, that result in net unrelated business taxable income (“UBTI”), it understands that it may incur unrelated business income tax (“UBIT”). In any year in which First Look Media Works incurs UBTI of \$1,000 or more, it will report its UBTI on Form 990-T and pay any applicable UBIT.

***C. First Look Media Works is operated for public and not private interests.***

First Look Media Works’ intent is to become a strong hub for investigative journalism with integrity, where journalists can rigorously pursue important, public-minded stories without pressure to reveal sources or pander to business or political interests. The goal of First Look Media Works is to draw broad swaths of the public to investigative news stories and to bring high-quality written journalism back into the mainstream. Though 501(c)(3) radio giant National Public Radio has been successful balancing real investigative journalism with

**FIRST LOOK MEDIA WORKS, INC.**

**EIN: 80-0951255**

Supplemental Responses to Form 1023

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mainstream appeal, and its stories are now accessible online, the United States has few nonprofit written-journalism outlets (online or in actual print) comparable in scale to NPR.

Niche publishers rarely have the technology to protect their journalists and sources from privacy breaches, the wherewithal to insulate their journalists from specious lawsuits, or the distribution networks and content needed to engage members of the public beyond the realm of investigative journalism enthusiasts. In order to achieve its charitable and educational purposes, however, First Look Media Works intends to purchase or produce the cutting edge media and publishing resources that high production-value, controversial investigative journalism content demands, and to provide the resources necessary to protect its journalists and the integrity of their work. To maximize its educational impact and increase interest in investigative news generally, First Look Media Works will also strive to ensure its educational content reaches the widest audience possible by distributing such content online and licensing the content to unrelated educational and commercial news outlets, including its affiliate FLP.<sup>8</sup>

FLP will publish online investigative journalistic content for profit, and will also conduct promotional activity designed to maximize the reach of content licensed from First Look Media Works. First Look Media Works anticipates that FLP will ultimately help to restore and prove the commercial value of investigative news, helping bring rigorous journalism back into the mainstream. The respective missions of First Look Media Works and FLP are generally in accord, but because FLP's business is more focused on promoting and disseminating content, FLP will use some commercial methods that are beyond the scope of First Look Media Works' charitable and educational purposes (such as advertising or subscriber revenue models). Through its resource sharing agreement and trademark license agreement with FLP, described below in **Part V, Question 9** and **Part VIII, Question 10**, and content licensing agreements (if any) with FLP, First Look Media Works will ensure that it in no way subsidizes FLP's activities or provides any more than incidental benefits to FLP, its shareholders, or any other commercial third party with whom it establishes licensing or distribution agreements. First Look Media Works' mission is educational journalism with integrity, and its relationship with FLP will provide a distribution channel that is in harmony with First Look Media Works' overall mission.

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<sup>8</sup> FLP is organized as a Delaware stock corporation. As described below, it is restricted to operating for purposes that are consistent with First Look Media Works' educational mission. The majority shareholder of FLP is First Look LLC ("FL LLC"), a Delaware limited liability company. The sole member of FL LLC is the Pierre M. Omidyar Trust whose trustee is First Look Media Works founder, President, and Director Pierre M. Omidyar. FL LLC was created to be both a possible source of future funding for First Look Media Works and a source of capital for any affiliated entities. FL LLC's Operating Agreement states that FL LLC's purpose is "to promote the dissemination of quality journalism and transparency through the development of technology and production of digital and other media sources."

**FIRST LOOK MEDIA WORKS, INC.**

**EIN: 80-0951255**

Supplemental Responses to Form 1023

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Any content licensed to third party commercial news outlets, including FLP, will be done at fair-market-value for such material.

Please see **Part V, Question 9, Part VIII, Question 10, and Part VIII, Question 15** for additional information on the relationship between First Look Media Works and its affiliates.

**4. First Look Media Works will not engage in prohibited political campaign activity and no more than an insubstantial part of its activities will constitute legislative lobbying.**

As required by law and its editorial policy, First Look Media Works neither takes nor publishes any position, directly or indirectly, in support of or opposition to candidates for political office or political parties, and First Look Media Works will not publish any articles or op-ed pieces that attempt to influence the outcome of elections. While First Look Media Works may report on issues related to elections and politics, it will do so only for the purpose of educating its readership to allow them to form their own independent opinions and conclusions. First Look Media Works may from time to time publish articles or op-ed pieces that take positions on particular legislation or proposed legislation, though it will spend no more than the ceiling amounts permitted under Section 501(h) of the Code and regulations thereunder on direct lobbying and grassroots lobbying.

**Part V: Compensation of/Financial Arrangements with Key Personnel.**

*Question 1a: Officers and Directors.*

<b>Name</b>	<b>Title</b>	<b>Mailing Address</b>	<b>Compensation amount</b>
Pierre Omidyar	Director and Chief Executive Officer	114 5th Avenue, 18th Floor New York, NY 10011	None
Will Fitzpatrick	Director, Secretary, and Independent Contractor (Counsel)	114 5th Avenue, 18th Floor New York, NY 10011	\$315,000 <sup>9</sup>

<sup>9</sup> Will Fitzpatrick is compensated through Will Fitzpatrick PC, of which Mr. Fitzpatrick is the principal, as an independent provider of legal services to First Look Media Works. First Look Media Works does not have, and does not intend to have, an ongoing business relationship in which it provides compensation to Will Fitzpatrick, and the compensation amounts provided here reflect the annual compensation paid by First Look Media Works to Mr. Fitzpatrick during his tenure as a First Look Media Works independent contractor. Going forward, Mr. Fitzpatrick will have certain of his services donated by FLP or First Look Services, Inc. ("FLS"), each of whom he serves as an independent contractor. Mr. Fitzpatrick also intends to continue serving First Look Media Works as a non-compensated Director going forward. See **Part V, Question 9** for additional information on FLS.

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Michael Mohr	Director and Treasurer	114 5th Avenue, 18th Floor New York, NY 10011	None
Debbie Cohen	Director and Chief People Officer	114 5th Avenue, 18th Floor New York, NY 10011	\$172,839 <sup>10</sup>
Michael Bloom	President	114 5th Avenue, 18th Floor New York, NY 10011	None

**Question 1b: Highest Compensated Employees.**

Name	Title	Mailing Address	Compensation amount
Lynn Oberlander	General Counsel - Media Operations	114 5th Avenue, 18th Floor New York, NY 10011	\$410,010
William Gannon	Executive Editor	114 5th Avenue, 18th Floor New York, NY 10011	\$396,706
Eric Bates	Executive Editor	114 5th Avenue, 18th Floor New York, NY 10011	\$359,502
Elizabeth Reed	Editor in Chief	114 5th Avenue, 18th Floor New York, NY 10011	\$299,670
Daniel Froomkin	Washington Editor, <i>The Intercept</i>	114 5th Avenue, 18th Floor New York, NY 10011	\$252,944

**Question 1c: Independent Contractors.**

Name	Title	Mailing Address	Compensation amount
Enzuli Management LLC	Investigative Reporter	Enzuli Management, L.L.C. Gary Kaufman, Esq. 58 <sup>th</sup> West 84 <sup>th</sup> Street, Ste. 2F New York, NY 10024	\$490,000
Hilgart LLC <sup>11</sup>	Human Resources	Erin Hilgart, Principal	\$290,000

<sup>10</sup> First Look Media Works does not have, and does not intend to have, an ongoing business relationship in which it provides compensation to Debbie Cohen, and the compensation amounts provided here reflect the compensation paid by First Look Media Works to Ms. Cohen from during her tenure as a First Look Media Works employee, from January 15, 2015 to May 29, 2015. Going forward, Ms. Cohen will have certain of her services donated by FLS, for whom she serves as an employee. Ms. Cohen intends to continue serving First Look Media Works as a non-compensated director going forward. See Part V, Question 9 for additional information on FLS.

<sup>11</sup> FLMW does not have, and does not intend to have, an ongoing business relationship with Hilgart LLC, and the compensation amounts provided here reflect compensation paid by FLMW to Hilgart LLC in calendar year 2014.

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	Consulting	260 Park Avenue, South New York, NY 10010	
Jeremy Scahill	Investigative Reporter	Jeremy Scahill c/o First Look Media Works 114 5th Avenue, 18th Floor New York, NY 10011	\$256,000
One Workplace L. <sup>12</sup> Ferrari	Workplace Design	One Workplace 2500 De La Cruz Blvd. Santa Clara, California 95050	\$205,000
Parabola Architecture <sup>13</sup>	Architect	Parabola Consulting Art Silo bldg 7F 4-2-5 Nishi Azabu Tokyo Japan 106-0031	\$195,000

**Question 2a: Relationships among Directors.** Pierre Omidyar, Will Fitzpatrick, and Michael Mohr are also involved in Omidyar Network, a philanthropic investment firm committed to helping people realize their potential, co-founded by Pierre Omidyar, First Look Media Works' CEO, founder, and a Director of the organization, and his wife Pam Omidyar. Mr. Mohr and Mr. Fitzpatrick each also own a firm that performs work for Mr. Omidyar and related entities. Pierre Omidyar and Will Fitzpatrick are also involved in FLP, described above in **Part IV, Question 3, Paragraph C** and further described in **Part V, Question 9**, and Pierre Omidyar, Will Fitzpatrick, and Debbie Cohen are involved in First Look Services, Inc. ("FLS"), described below in **Part V, Question 9**. Please see the descriptions of each Director's qualifications, below, for additional details. First Look Media Works intends to add one or more independent directors in the near future.

**Questions 2b-c: Relationships with Directors and between Directors and Employees or Independent Contractors.** Mr. Fitzpatrick is a Director, and his firm formerly served and was compensated as an independent contractor to First Look Media Works. Mr. Fitzpatrick's firm performs work for Mr. Omidyar and related entities, including FLS and FLP.

<sup>12</sup> FLMW does not have, and does not intend to have, an ongoing business relationship with One Workplace L. Ferrari, and the compensation amounts provided here reflect compensation paid by FLMW to One Workplace L. Ferrari in calendar year 2014.

<sup>13</sup> FLMW does not intend to have an ongoing business relationship with Parabola Architecture following the build-out of its San Francisco and New York offices, and the compensation amounts provided here reflect compensation paid by FLMW to Parabola Architecture in calendar year 2014.

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***Question 3a: Qualifications and Duties of Directors, Officers, Employees, Contractors.***

***A. Duties, Hours, and Qualifications of Directors.***

Directors are expected to meet at least one time per year and as often as additionally necessary to manage First Look Media Works and fulfill their fiduciary duties. Under corporate law governing nonprofit corporations like First Look Media Works, the Board is responsible for the overall direction and management of First Look Media Works' activities and affairs, although the Board is permitted to delegate with supervision. Each individual Director owes fiduciary duties to First Look Media Works to act in good faith in what the Director believes to be the best interests of First Look Media Works, with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Directors generally serve as many hours as necessary to accomplish their duties.

***B. Duties, Hours, and Qualifications of Officers.***

**1. Pierre Omidyar, Director and Chief Executive Officer**

Mr. Omidyar's specific duties and hours as a Director are described above in **Paragraph A**. Mr. Omidyar also serves, without compensation, as the Chief Executive Officer of First Look Media Works. The role of CEO is not a corporate office, and Mr. Omidyar serves as many hours as are necessary to complete his duties as CEO.

***Qualifications.***

Mr. Omidyar serves as a trustee, director, and/or officer of a number of charitable organizations he and his wife Pam have founded, including Omidyar Network Fund, Inc. (a private foundation that promotes positive social change by making strategic grants and program-related investments), The Fund for Humanity United (a private foundation that supports the charitable work of organizations to end slavery and mass atrocity), and HopeLab Foundation, Inc. (a private operating foundation that combines rigorous research with innovative solutions to improve human health and well-being). Mr. Omidyar is also co-founder and Founding Partner of Omidyar Network, a philanthropic investment firm committed to helping people realize their potential. He is also the CEO and publisher of Honolulu Civil Beat, a local service in Hawaii that encourages greater civic participation through media. Prior to that, he served as the founder of eBay, an online platform that provides consumer-to-consumer and business-to-consumer sales and payment services worldwide. Mr. Omidyar currently serves on the eBay and PayPal boards of directors, and as a trustee of public charities Santa Fe Institute and Punahou School. Mr. Omidyar and his wife Pam Omidyar have signed the Giving Pledge, a commitment by the

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world's wealthiest individuals and families to dedicate the majority of their wealth to philanthropy. In 2011, the Omidyars were honored with the Carnegie Medal of Philanthropy.

**2. Will Fitzpatrick, Secretary, Director, and Independent Contractor (Counsel)**

In his capacity as Secretary, Mr. Fitzpatrick keeps the minutes of the proceedings of the Board of Directors in First Look Media Works' minute books; sees that all notices are duly given in accordance with the provisions of the Bylaws or as required by law; serves as the custodian of the corporate records; keeps a register of the address of each Director; and generally performs all other duties incident to the office of the Secretary, as well as such other duties as may be assigned to him by the President and by the Board of Directors from time to time.

Mr. Fitzpatrick's specific duties and hours as a Director are described above in **Paragraph A**. Mr. Fitzpatrick formerly served as counsel to First Look Media Works on an independent contractor basis. Mr. Fitzpatrick no longer serves or is compensated as an independent contractor of First Look Media Works, and all non-director services provided by Mr. Fitzpatrick to First Look Media Works are paid for and donated by FLS or FLP.

***Qualifications.***

Mr. Fitzpatrick is Secretary of Omidyar Network Fund, Inc. and, through his company Will Fitzpatrick, PC, serves as Counsel to Omidyar Network and also represents Mr. Omidyar, Comprehensive Family Management, and First Look Media Works, among other clients. Prior to joining Omidyar Network, Mr. Fitzpatrick had an independent law practice representing such companies such as Google, Electronic Arts, and Opware. Prior to that, he was an in-house counsel for several technology companies and an associate at the law firm of Fenwick & West. Mr. Fitzpatrick also serves on the board of directors of the Democracy Fund, Inc., a Delaware non-stock, nonprofit organization exempt under Section 501(c)(3).

**3. Michael Mohr, Treasurer and Director**

In his capacity as Treasurer, Mr. Mohr oversees the keeping of full and accurate accounts of the receipts and disbursements of First Look Media Works, and the deposit of all monies and other valuable effects in the name and to the credit of First Look Media Works in such banks and depositories as designated by the Board of Directors from time to time. Mr. Mohr oversees the disbursement of funds of First Look Media Works pursuant to the direction of the Board of Directors and renders to the President and Directors an accounting of First Look Media Works' financial transactions and condition at regular Board meetings and such other times as necessary. Mr. Mohr also performs such other duties as may be prescribed



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by the Board of Directors or by the President from time to time. Mr. Mohr serves as many hours as are necessary to fulfill his duties as Treasurer.

Mr. Mohr's specific duties and hours as a Director are described above in **Paragraph A.**

***Qualifications.***

Mr. Mohr serves as trustee, director, and/or officer of a number of charitable organizations (including The Fund for Humanity United, the Democracy Fund, Inc., and HopeLab Foundation, Inc.) and commercial ventures. Mr. Mohr is the founder and chairman of Comprehensive Financial Management, one of the nation's premier multi-family offices, where he has more than twenty-five years of diverse financial and managerial experience. He oversees investment matters for Omidyar Network and related nonprofit enterprises, as well as for Mr. Omidyar.

**4. Debbie Cohen, Director and Chief People Officer.**

Ms. Cohen's specific duties and hours as a Director are described above in **Paragraph A.** Ms. Cohen formerly served, and was compensated, as the Chief People Officer of First Look Media Works, which was not a corporate office. Ms. Cohen no longer serves or is compensated as an employee of First Look Media Works, and all non-director services provided by Ms. Cohen to First Look Media Works are paid for and donated by FLS.

***Qualifications.***

Debbie Cohen's career has been a richly diverse and eclectic journey of non-profits and Global Fortune 100's, from preschool teacher to executive leadership roles in high-tech, entertainment, media and advertising. Ms. Cohen is sought after for her thought leadership and creative approach to evolving organizations. She most recently served as the first Chief of People for Mozilla where she led its global people practice, community building, culture evolution, and leadership initiatives. A published case study of her work was recognized in 2013 by Berkeley-Haas as having provided the most important contribution to management education in the preceding year. Prior to Mozilla, Ms. Cohen held executive human resource positions for the Western region of Razorfish and Time Warner Corporate in New York. Before joining Time Warner, Debbie was the Senior Strategist for Bright Horizons Family Solutions where she was known as a thought leader in work life, dependent care, and human capital management. In this role, Debbie worked with Fortune 500 clients to evaluate their changing business needs and design responses to strengthen the attraction and retention of talent in competitive labor markets. Her beliefs in the capacity of human potential were formed early in her career, first as an early

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childhood educator and then as the Executive Director of parent-cooperative child care centers for Stanford University and the Department of Interior. She holds a B.A. in Organizational Behavior from the University of San Francisco.

**5. Michael Bloom, President**

In his capacity as President, Mr. Bloom, subject to the control of the Board of Directors, directs the day-to-day business and affairs of First Look Media Works, and is responsible for the direction of all First Look Media Works employees and operations. Mr. Bloom is an employee to both First Look Media Works and FLP, and serves as many hours as are necessary to First Look Media Works to complete his duties as President. All services provided by Mr. Bloom to First Look Media Works are paid for and donated by FLP.

***Qualifications.***

Michael Bloom is an internet entrepreneur and digital media veteran who has built and run startups as well as divisions of global internet and media companies. In 1995 he co-founded his first company, Stockpoint.com, a pioneering online finance company. In 1999 Mr. Bloom served as President of iAmaze, an early cloud company acquired by AOL. He then served as Vice President & General Manager, AOL Products, where he led several divisions, including AOL Music & Media. From 2004 to 2009 Mr. Bloom was with MTV Networks / Viacom, most recently as Senior Vice President & General Manager, Digital, where he built and led the company's digital music business. Prior to First Look Media Works, Bloom was CEO, Guardian News & Media, North America, where he built the business from a startup into a leading digital brand in the US. Mr. Bloom lives in the New York area with his wife and two children. He received his B.A. in Communications from the University of Arizona.

***C. Duties, Hours, and Qualifications of Employees.***

**1. Lynn Oberlander, General Counsel - Media Operations.** As General Counsel - Media Operations, Lynn Oberlander oversees the company's legal operations and its charitable donations. She engages in extensive newsroom counseling and prepublication review for *The Intercept* and First Look Media Works' other media properties. She establishes the company's contractual terms and drafts and negotiates its licenses and other agreements. In addition, she oversees outside counsel; consults on personnel and real estate; and is responsible for First Look Media Works' intellectual property rights. In addition, she oversees First Look Media Works' litigation in pursuit of first amendment and freedom of expression rights, which includes freedom of information act requests, access and amicus filings. Ms. Oberlander also oversees the Press Freedom Litigation Fund and First Look Media Works' charitable donations to other non-profit groups working in support of freedom of expression worldwide.

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Ms. Oberlander is a full time employee and serves as many hours as are necessary to complete her duties as General Counsel - Media Operations.

Ms. Oberlander has been the General Counsel - Media Operations for First Look Media Works since March of 2014. For the previous seven years, from 2006 to 2014, she was the General Counsel of *The New Yorker*, where in addition to her legal duties, she also wrote for newyorker.com on media law topics. She is a frequent speaker on freedom of expression and media law topics. From 2001 through 2006, she was the Editorial Counsel at *Forbes*, and from 1996 to 2001, Ms. Oberlander was senior media counsel at NBC, working with the local and network news divisions. After clerking for the Hon. John H. Pratt of the U.S. District Court for the District of Columbia in 1991-92, Ms. Oberlander began her legal career at Paul, Weiss, Rifkind, Wharton & Garrison as a litigator and antitrust attorney. She teaches a graduate course in Media, Corporate Responsibility, and the Law, both in a traditional classroom setting and online, at The New School in New York. She is the chair of the Communications and Media Law Committee of the New York State Bar Association, and the chair of the board of directors of the Media Law Resource Center. She also is the chair of the Manhattan Division of Jewish Home Lifecare, a major nursing home and elder care system. Ms. Oberlander received her B.A., *cum laude*, from Yale College, where she was the news editor and a columnist for the *Yale Daily News* and her J.D. from Columbia Law School, where she was an editor of the Law Review and a Harlan Fiske Stone Scholar.

**2. William Gannon, Executive Editor.** As Executive Editor, Bill Gannon is responsible for all audience development and social engagement efforts for all First Look Media Works initiatives. He also serves as the executive leading the strategy, management and budgeting of the First Look Media Works web property reported.ly. Mr. Gannon is a full time employee and serves as many hours as are necessary to complete his duties as Executive Editor.

Bill Gannon is a digital strategist and executive who has led editorial and product development teams at some of the most iconic digital brands in the world. Prior to joining First Look Media Works, he served as the Editor of Time Inc.'s Entertainment Weekly Digital brand where he launched new initiatives on responsive mobile platforms, video, social engagement, new brand extensions, and new content verticals. Among the many accolades achieved during his tenure, EW.com earned Ad Age's Media Vanguard Award, Min's 2013 Digital Team of the Year, and was a finalist for the National Magazine Award in 2012. Prior to joining Time Inc., he was the Director of Digital Media for Lucasfilm Ltd., where he was responsible for all digital strategy and operations for a range of initiatives including new digital user experiences, e-commerce, and marketing initiatives supporting the global Star Wars franchise, LucasArts Games, the launch of a new animated Star Wars TV series, and a new Indiana Jones theatrical film.

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From 2003 to 2007 Mr. Gannon served as the Sr. Editorial Director & Managing Editor of Yahoo Inc., where his duties included managing content programming for the Yahoo Front Page, news aggregation within Yahoo News, and a range of editorial strategy and operations across the Internet portal. Prior to joining Yahoo, he was the Editorial Director & Managing Editor at Financial Engines Inc. Prior to joining Financial Engines he was a journalist who worked at several newspapers as a reporter. A recipient of the John S. Knight Fellowship at Stanford University in 1997, Bill attended Maryville College and has served as an adjunct faculty member of the University of California-Berkeley Graduate School of Journalism. He has previously served on the boards of the Knight Digital Media Center, and New Voices – JLab, The Institute for Interactive Journalism.

**3. Eric Bates, Executive Editor.** As Executive Editor, Eric Bates is responsible for developing new approaches to long-form journalism in the public interest. He makes all assignments and editorial decisions, identifies partnerships with suitable platforms and publications, and coordinates the participation of other departments, including research, legal, design, and audience development. Mr. Bates is a full time employee and serves as many hours as are necessary to complete his duties as Executive Editor.

Mr. Bates is a veteran editor and writer whose work as a journalist has sparked numerous reforms and earned many of the profession's highest honors. As executive editor of *Rolling Stone* for nearly a decade, he oversaw the magazine's feature writing and political reporting, helping to reestablish the publication as a leading source of in-depth journalism and narrative storytelling. He assigned and edited the magazine's influential exposes of Wall Street corruption, as well as the celebrated profile that led to the resignation of Gen. Stanley McChrystal, and his own cover stories included three Oval Office interviews with President Obama. As investigative editor of *Mother Jones* and editor-in-chief of *Southern Exposure*, Mr. Bates spearheaded groundbreaking investigations of military contractors, for-profit prisons, factory farming, welfare reform, and predatory lending. Mr. Bates has served as a visiting lecturer at Duke University, a visiting scholar at New York University, and a trustee of Antioch College. His work as an editor has earned seven National Magazine Awards, the profession's top honor, and has been a finalist for the award another seven times. Stories he edited have also been selected for inclusion in the *Best American Series* of journalism a dozen times, in six different categories. He holds a B.A. in communications and political science from Antioch College, and an M.S. in journalism from Columbia University, where he graduated with high honors.

**4. Elizabeth Reed, Editor in Chief, The Intercept.** As the Editor in Chief of *The Intercept*, Ms. Reed is responsible for the final product of *The Intercept* website. She sets the tone, editorial direction and policies for the publication and makes sure every release is consistent on these measures. She is involved in budgeting and strategic planning and represents

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the publication at social and business events. Ms. Reed is a full time employee and serves as many hours as are necessary to complete her duties as Editor in Chief

Prior to her role at First Look Media Works, Ms. Reed was the executive editor of *The Nation* for most of the previous decade, where she edited the magazine's award-winning commentary and investigative reporting. Articles she edited have won the industry's highest honors, including the National Magazine Award, the George Polk Award, and the James Aronson Award, among other journalism prizes. She has been a frequent public speaker on journalism, politics and accountability, appearing as a guest commentator on public radio programs as well as on television programs at MSNBC, CBS, and CBC; and on panels and conferences across the country. Her articles have appeared in *The Nation*, *The Guardian*, NPR.com, and CNN.com, among other outlets. Her book *Going Rouge: Sarah Palin--An American Nightmare*, an edited anthology, was a *New York Times* bestseller. She has edited several other national bestsellers including Jeremy Scahill's *Blackwater: The Rise of the World's Most Powerful Mercenary Army* and *Dirty Wars: The World is a Battlefield*. She is also the editor of *Unnatural Disaster: The Nation on Hurricane Katrina*, a collection of the magazine's coverage of the storm and its aftermath, and of the anthology *Nothing Sacred: Women Respond to Religious Fundamentalism and Terror*. Ms. Reed graduated *magna cum laude* from Harvard University, with a concentration in History and Literature.

**5. Daniel Froomkin, Washington Editor, *The Intercept*.** As Washington Editor of *The Intercept*, Daniel Froomkin has responsibility for *The Intercept*'s Washington coverage, and acts as a reporter, blogger, and editor of the website. Mr. Froomkin is a full time employee and serves as many hours as are necessary to complete his duties as Washington Editor, *The Intercept*.

Mr. Froomkin, widely recognized as a leading accountability journalist, joined First Look Media Works in October 2013. He previously worked at the *Huffington Post* as Washington Bureau Chief and Senior Washington Correspondent. Prior to that, he spent 12 years at the *Washington Post*, where he was Editor of the washingtonpost.com website from 2000 to 2003, and wrote the site's popular White House Watch column from 2004 to 2009. From 2004 to 2013, he also worked for the Watchdog Project of the Nieman Foundation for Journalism at Harvard University, first as deputy editor of the NiemanWatchdog.org website, and then as a contributor to *Nieman Reports*. Mr. Froomkin began his career as a daily newspaper reporter, and spent 10 years covering local news for the *Winston-Salem Journal*, the *Miami Herald*, and the *Orange County Register*. In 1996, he served as Editor of New Media for Education Week. Immediately prior to joining First Look Media Works, he founded the Center for Accountability Journalism, a project of the nonprofit Investigative News Network intended to promote reporting that fights misinformation and holds the powerful accountable. He has taught online journalism at the Poynter Institute and the American University Graduate School of Communication.

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Mr. Froomkin received his B.A. from Yale College, where he was editorial editor for the *Yale Daily News*, and was awarded the Michigan Journalism Fellowship (now called the Knight/Wallace Fellowship).

**D. Duties, Hours, and Qualifications of Independent Contractors.**

**1. Enzuli Management LLC.** Enzuli Management LLC is a New York Domestic Limited Liability Company. The LLC arranges for Glenn Greenwald to perform personal reporting, writing and editing duties including investigative reporting, blogging and preparation of periodic columns for First Look Media Works. First Look Media Works provides Mr. Greenwald with the freedom to pursue journalist endeavors he finds meaningful. His editorial voice is his own including direct unedited posts to a blog designated for such purposes. Enzuli serves as many hours as are necessary to complete its duties as an independent contractor.

Glenn Greenwald is a journalist, constitutional lawyer, and author of four *New York Times* best-selling books on politics and law. His most recent book, *No Place to Hide*, is about the U.S. surveillance state and his experiences reporting on the Edward Snowden documents around the world. Prior to his collaboration with Pierre Omidyar, Glenn's column was featured at *The Guardian* and *Salon*. He was the debut winner, along with Amy Goodman, of the Park Center I.F. Stone Award for Independent Journalism in 2008, and also received the 2010 Online Journalism Award for his investigative work on the abusive detention conditions of Chelsea Manning. For his 2013 NSA reporting, he received the George Polk award for National Security Reporting; the Gannett Foundation award for investigative journalism and the Gannett Foundation watchdog journalism award; the Esso Premio for Excellence in Investigative Reporting in Brazil (he was the first non-Brazilian to win); and the Electronic Frontier Foundation's Pioneer Award. Along with Laura Poitras, *Foreign Policy* magazine named him one of the top 100 Global Thinkers for 2013. The NSA reporting he led for *The Guardian* was awarded the 2014 Pulitzer Prize for public service.

**2. Hilgart LLC.** Hilgart is an organizational development and leadership strategy firm. They were contracted for a fixed period of time, November 10, 2014 - February 9, 2015. During those months the team of four people collectively spent 119 days in self-directed forms of activities: interviews, data collection, conflict mitigation, coaching, training, practice refinement, and policy development. It is not anticipated that Hilgart LLC will be engaged as an independent contractor on a regular basis going forward.

Erin Hilgart, Principal, is an expert change consultant, certified executive coach, and thought-provoking facilitator. With fifteen years of experience in over twenty countries, Ms. Hilgart brings a holistic approach to helping great leaders build great companies. From working with leaders to envision the future of their organizations, to coaching them to have the

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skills needed to embark on that visionary path, to assessing the reality of an organization's current culture and developing the training and policies that will better engage employees, Ms. Hilgart considers the full scope of a company and its people. She and her team forge true partnerships with clients and develop leaders to be the drivers of change, rather than doing the change for them. Ms. Hilgart holds an M.A. in Organizational Psychology from Columbia, a B.A. from Alverno College, and is currently a Doctoral Candidate at Columbia University in Adult Learning and Leadership. Additional members of the consulting team were Denise Prentice, Rob Solomon, and Susan Livingston.

**3. Jeremy Scahill.** Jeremy Scahill performs reporting, writing and editing duties including investigative reporting, news reporting, and preparation of periodic columns for First Look Media Works. First Look Media Works provides Mr. Scahill with the freedom to pursue journalist endeavors he finds meaningful. His editorial voice is his own including direct unedited posts to a blog designated for such purposes. Mr. Scahill serves as many hours as are necessary to complete his duties as independent contractor.

Jeremy Scahill is an experienced war correspondent and investigative reporter. His work on privatized warfare and covert operations have influenced public debate on a variety of issues and he has testified before Congress on several occasions. Scahill is an award-winning investigative journalist. His latest book, *Dirty Wars: The World Is a Battlefield*, takes readers inside America's new covert wars, in which foot soldiers operate globally and inside the US with orders from the White House to do whatever is necessary to hunt down, capture, or kill individuals designated by the president as enemies. The process of reporting for the book was documented in a film by the same name, directed by Richard Rowley. Scahill and Rowley were nominated for an Academy Award for the film. His first book, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* is a *New York Times* bestseller.

Mr. Scahill has appeared as a commentator on many news programs and networks, including *CBS Evening News*, *ABC World News Tonight*, *NBC Nightly News*, CNN, MSNBC, *Bill Moyers Journal*, *The Daily Show*, *The Colbert Report*, *The News Hour with Jim Lehrer*, NPR's "Fresh Air," and *BBC World News*. Scahill has reported from many war zones and conflict areas, including Somalia, Yemen, Iraq, Afghanistan and Nigeria. Traveling around the hurricane zone in the wake of Katrina in 2005, Scahill exposed the presence of Blackwater mercenaries in New Orleans and his reporting sparked a congressional inquiry and an internal Department of Homeland Security investigation.

Jeremy Scahill has won numerous awards, including two prestigious George Polk Awards and was a recipient of the first Windham-Campbell Prizes presented at Yale University. He was among the only reporters to gain access to the Abu Ghraib prison when Saddam Hussein was in power and his story on the emptying of the prison won a Golden Reel for Best National

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Radio News Story. He also worked in 2000 as a producer for Michael Moore's series *The Awful Truth* on the Bravo network. He is a former senior producer and correspondent for the national TV and radio show *Democracy Now!* and the former National Security Correspondent for *The Nation*.

**4. One Workplace L. Ferrari.** One Workplace L. Ferrari ("One Workplace") is a family owned workplace design firm that helped First Look Media Works with the design and build out of its San Francisco and New York City offices. One Workplace improves the lifestyle and efficiencies of organizations and their employees by creating integrated, flexible, and custom-tailored workspaces. It serves customers in the healthcare, educational, financial, and high-tech industries that range from start-up to Fortune 500. As a one-stop shop, One Workplace is unique in creating engaging workplaces through the integration of architecture, furniture, and technology expertise. One Workplace focuses not only on the physical workspace, but also explores how it relates to employee productivity, creativity and collaboration. Through the integration of architecture, office furniture and technology solutions, it creates an environment that is tailored to the way each of its clients does business.

**5. Parabola Architecture.** Parabola Architecture provided architectural services to First Look Media Works for the build out of its San Francisco and New York City offices. Its principals are Carrie Meinberg Burke and Kevin Burke.

Ms. Meinberg's work integrates architecture, industrial design, and construction through an interdisciplinary design process. She finds inspiration in the technical and nuanced aspects of natural forces and user experience applied to the design of built environments at all scales. Recent work includes the development of Google's workplace design process and Global Project Guide. She was lead designer and contractor on Parabola's live/work laboratory, and recently was the lead designer for a Living Building Challenge residence in the Bay Area. Ms. Meinberg received a M.A. in Architecture from Yale, and B.A. in Architecture from Virginia Tech and the Architectural Association, London. Her Awards include the Yale Feldman Prize for design solutions that achieve the practical and poetic, Richard Kelly Grant for innovative lighting design, and the Virginia AIA award for design excellence. She received a National Science Foundation EFRI-SEED grant for interdisciplinary engineering research, and was the Esherick Visiting Professor at UC Berkeley with Kevin Burke.

Mr. Burke is a recognized leader in integrated design. Prior to Parabola, he was a partner at William McDonough + Partners and directed the 50-person international studio for six years. Mr. Burke opened studios in San Francisco and Amsterdam, and guided the firm's implementation of the Cradle to Cradle sustainability protocol within the firm's building and community designs. Mr. Burke's diverse design portfolio includes a number of pioneering projects, including NASA's Sustainability Base. His award-winning designs have achieved the



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highest levels of environmental performance while creating inspiring places of community, connectivity and well-being. Recent work includes the creating the workplace design process and Global Project Guide for Google. Mr. Burke received his undergraduate degree in International Relations from Stanford University, and a Masters in Architecture from the University of Virginia. He was the Esherick Visiting Professor at UC Berkeley's College of Environmental Design with Carrie Meinberg.

***Question 3b: Compensation from Related Organizations.***

Michael Bloom and FLP are party to an employment agreement whereby FLP compensates Mr. Bloom for his services to FLP. Mr. Bloom donates his time and efforts to First Look Media Works in his role as President.

Enzuli Management, LLC and FLP are party to a professional services agreement whereby Glenn Greenwald provides consulting services to FLP, either independently or in collaboration with First Look Media Works, for a monthly fee.

Jeremy Scahill and FLP are party to a professional services agreement whereby Mr. Scahill provides consulting services to FLP, either independently or in collaboration with First Look Media Works, for a monthly fee.

Will Fitzpatrick, PC and FLS are party to an engagement letter whereby Mr. Fitzpatrick, the principal of Will Fitzpatrick, PC, provides legal services to FLS as an independent contractor.<sup>14</sup> Mr. Fitzpatrick is also compensated by FLP for independent contractor services provided to that organization.

Debbie Cohen and FLS are party to an employment agreement whereby Ms. Cohen serves as the Chief People Officer to FLS.

***Question 5a: Conflict of Interest Policy.*** A copy of First Look Media Works' conflict of interest policy, which is consistent with the sample in Appendix A to Form 1023, is attached as Exhibit D. The current policy was adopted by the Board of Directors on May 28, 2015.

***Question 6a/b: Non-fixed Payments of Compensation.*** The Board has provided, and plans to provide, non-fixed compensation to its founding journalists, Glenn Greenwald (paid through Enzuli Management LLC) and Jeremy Scahill. In 2014, First Look Media Works provided Mr. Greenwald \$240,000 in incentive compensation and Mr. Scahill \$100,000. In

<sup>14</sup> Please see the discussion in **Part V, Question 9** for additional information regarding FLS.

**FIRST LOOK MEDIA WORKS, INC.**

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order to encourage high employee performance, bonuses are tied to First Look Media Works achieving certain annual performance targets. Bonuses are individually determined by the Board based on individual (and potentially department) contributions.

First Look Media Works' intent is to become a strong hub for investigative journalism with integrity, where journalists can rigorously pursue important, public-minded stories without pressure to reveal sources or pander to business or political interests. The goal is to draw the public to news stories more effectively than any existing U.S. investigative journalism organization has been able to do so far and bring high-quality written journalism back into the mainstream. Most such organizations, especially those organized and operated in a manner consistent with Section 501(c)(3), have struggled to successfully engage broad swaths of the general public. Accomplishing the charitable purpose of publishing high-quality educational content with wide appeal requires the attraction and retention of top journalistic talent in a competitive labor market. The non-incentive compensation provided to its founding journalists is directly tied to the accomplishment of such charitable purposes.

***Question 7a: Purchases from Insiders.***

Aside from employment and contractor services described in response to **Part V, Question 3a** above, First Look Media Works does not purchase any goods, services, or assets from its officers, directors, highest compensated employees, or highest compensated independent contractors. If in the future the First Look Media Works Board of Directors chooses to purchase such goods, services, or assets from its officers, directors, highest compensated employees, or highest compensated independent contractors, it will follow the procedures set forth in its Conflict of Interest Policy and Internal Revenue Code Section 4958 before doing so, and all such purchases will be made at arm's length and reflect the payment of no more than fair market value for the goods, services, or assets provided.

***Question 8a-f: Contracts with officers, directors, highest compensated employees, and highest compensated independent contractors.***

Aside from employment and contractor agreements related to the employment and contractor services described in response to **Part V, Question 3a** above, First Look Media Works does not have any leases, contracts, loans, or other agreements with its officers, directors, highest compensated employees, or highest compensated independent contractors. If in the future the First Look Media Works Board of Directors chooses to enter leases, contracts, loans, or other agreements with its officers, directors, highest compensated employees, or highest compensated independent contractors, it will follow the procedures set forth in its Conflict of Interest Policy and Internal Revenue Code Section 4958 before doing so, and all such

**FIRST LOOK MEDIA WORKS, INC.**

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agreements will be made at arm's length and reflect the payment of no more than fair market value for the goods, services, or assets provided thereunder.

***Question 9a-f: Contracts with Affiliated Entities.***

First Look Media Works has entered into a resource sharing agreement with FLP, an affiliated organization (the "Resource Sharing Agreement"). See Exhibit E. The Resource Sharing Agreement addresses the sharing of resources and allocation of costs between the two parties. First Look Media Works may share employees with FLP, in which case FLP will be the common paymaster for such shared employees. First Look Media Works will reimburse FLP for its proportionate share of the total costs of providing compensation and benefits to First Look Media Works employees, according to the number of hours worked by each employee for each employer. In certain instances, FLP may also donate the shared time of certain employees and contractors to First Look Media Works at no cost. FLP will also provide back-office support to First Look Media Works on a cost-reimbursement basis.

First Look Media Works has entered into a trademark license agreement with FLP, an affiliated organization, and FLS, fka First Look Technologies, Inc. (the "Trademark License Agreement"). See Exhibit F. The Trademark License Agreement provides FLP and FLS a license to the "First Look" mark (the "Mark"), but only for uses in furtherance of the First Look Media Works' charitable and educational mission to promote the dissemination of quality independent and transparent journalism. In return for use of the Mark, FLP and FLS agree to provide certain market-rate payments to First Look Media Works.

First Look Media Works intends to, but has not yet entered into one or more content licensing agreements with FLP. First Look Media Works' relationship with FLP aids First Look Media Works' ability to carry out, and is intended solely to further, its exempt purposes. First Look Media Works will make it a first priority in negotiating any agreement with FLP to ensure that First Look Media Works will receive at least fair market value for any goods or services it provides. First Look Media Works will also demand language in each of the license agreements requiring that its intellectual property be used only in the furtherance of First Look Media Works' primary mission to promote the dissemination of quality journalism and transparency through digital and other media sources. Each party will be represented by separate counsel during the negotiation of any agreements between First Look Media Works and FLP.

First Look Media Works intends to but has not yet entered into a resource sharing agreement with FLS. FLS is a management company that provides certain management and employment services to First Look Media Works, FLP and FL LLC. The majority shareholder of FLS is FL LLC. The First Look Media Works and FLS resource sharing agreement will address the sharing of resources and allocation of costs between the two parties, including the

**FIRST LOOK MEDIA WORKS, INC.**

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allocation of leased space and shared overhead between First Look Media Works and FLS for space leased by FLS and currently provided to First Look Media Works free of charge. First Look Media Works may share employees with FLS, in which case FLS will be the common paymaster for such shared employees. If the parties do share employees under a resource sharing agreement, First Look Media Works will reimburse FLS for its proportionate share of the total costs of providing compensation and benefits to First Look Media Works employees, according to the number of hours worked by each employee for each employer. In certain instances, FLS may also donate the shared time of certain employees and contractors to First Look Media Works at no cost. FLS may also provide back-office support to First Look Media Works on a cost-reimbursement basis. Each party will be represented by separate counsel during the negotiation of any agreements between First Look Media Works and FLS, and any services provided by FLS to First Look Media Works will be at or below market rates.

First Look Media Works' initial funding came from the Pierre M. Omidyar Trust in the form of publicly-traded securities. See the answers to **Part IV, Question 3, Paragraph C** above for additional details on the relationship between First Look Media Works and its affiliates.

**Part VI: Benefits to Individuals and Organizations.**

**Question 1a: Goods, Services or Funds Provided to Individuals.** Through its Press Freedom Litigation Fund, First Look Media Works may make financial grants, and provide expert pro bono legal services to individuals, to support challenges to government policies or actions that restrict press freedoms or denials of freedom of information act requests; motions to quash subpoenas seeking source information or journalistic material; defamation cases where the underlying report concerns a matter of public interest; access cases to closed proceedings or sealed documents; and amicus efforts in support of press freedom. First Look Media Works' support will be limited to contests seeking to define either the extent or limitation of press freedoms or similar freedom of expression rights protected under law, and in no instance will it involve support for contests or activities that are illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions.

Support from the Press Freedom Litigation Fund will only be provided in lawsuits brought by or against third parties and will never involve affirmative and defensive litigation on behalf of First Look Media Works or its directors, officers, employees or agents. Per First Look Media Works' Litigation Support Program policy, for any grant to or in support of an individual from the Press Litigation Fund, the public benefit of the litigation must have a substantial impact beyond any private benefit to the individual litigant. Such grants will be implemented in a manner that ensures that there is no improper private benefit or inurement, meets the record keeping requirements of Revenue Ruling 56-304, and complies with First Look Media Works'

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conflict of interest policy. Please see also our responses to **Part IV**, above.

**Question 1b: Goods, Services or Funds Provided to Organizations.** First Look Media Works will provide grants to other charitable and educational organizations that support independent journalism and a free press. Through its Press Freedom Litigation Fund, First Look Media Works will also make financial grants, and provide expert pro bono legal services to support challenges to government policies or actions that restrict press freedoms or denials of freedom of information act requests; motions to quash subpoenas seeking source information or journalistic material; defamation cases where the underlying report concerns a matter of public interest; access cases to closed proceedings or sealed documents; and amicus efforts in support of press freedom. Please see our responses to **Part IV**, above, and **Part VIII, Question 13**, below.

**Question 3: Goods, Services or Funds to Related Individuals:** First Look Media Works' Press Freedom Litigation Fund has provided financial support to appeal the case of *Miranda v. Secretary of State for the Home Department*, involving the allegedly unlawful detainer of David Miranda while he was assisting the journalistic activity of Glenn Greenwald. Mr. Greenwald is one of the highest paid independent contractors listed in **Part V, Question 1c** above, and is the domestic partner of Mr. Miranda. First Look Media Works' support of the *Miranda* case has been limited to the payment of legal bills, and no funds have been provided directly to Mr. Miranda.

Per First Look Media Works' Litigation Support Program policies, prior to making a grant in support of the *Miranda* case, the First Look Media Works Board of Directors determined that the public benefit of the litigation had a substantial impact beyond any private benefit to the individual litigant, Mr. Miranda. The grant was approved without the participation of Mr. Greenwald and in compliance with the First Look Media Works conflict of interest policy, and has been implemented in a manner that ensures that there is no improper private benefit or inurement to Mr. Miranda or Mr. Greenwald. Please see our responses to **Part IV**, and **Part VI, Question 1a**, above.

**Part VIII: Specific Activities.**

**Question 2: Influencing Legislation and 501(h) Election.** First Look Media Works has no immediate plans to publish articles or op-ed pieces that take positions on particular legislation or proposed legislation, though it may do so as permitted by law in the future in order to further its exempt purposes of education and advocacy on matters of freedom of the press. If First Look Media Works publishes such pieces, or undertakes other activities that qualify as lobbying for purposes of Section 501(c)(3), it will spend no more than the ceiling amounts permitted under Section 501(h) of the Code and regulations thereunder on direct lobbying and grassroots lobbying. We attach a copy of the completed Form 5768, Election/Revocation of

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Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation, for filing with this application.

**Question 4a-e: Fundraising Programs.** As described above in **Part IV**, First Look Media Works was initially funded with contributions from the Pierre M. Omidyar Trust. In addition to Mr. Omidyar's support, First Look Media Works anticipates receiving support from a variety of governmental, individual, and institutional grantors in the United States who support First Look Media Works' educational and charitable mission. First Look Media Works will also develop project specific fundraising campaigns in support of its charitable programs, for example, in support of its Press Freedom Litigation Fund generally or a particular first amendment appeal of public importance being funded out of the fund. Additionally, First Look Media Works intends to allow public contributions on its website following receipt of its determination letter. The directors of First Look Media Works also intend to use their extensive personal networks to solicit charitable contributions face-to-face, or by individualized mail, email, or telephone.

Because independent journalism is of great concern to people throughout the United States as well as other countries, First Look Media Works has no plans to limit its fundraising activities by geographic area. First Look Media Works will not fundraise for other organizations, and does not expect to allow other organizations to fundraise on its behalf or in its name. It may, however, receive donations from individuals via the websites of other organizations such as online giving sites or online workplace giving programs. As First Look Media Works grows, the fundraising tasks will likely be taken over by staff.

**Question 10: Intellectual Property.** First Look Media Works will create educational news content. First Look Media Works will own the copyright on all content that its employees produce at its direction, and will own or have license to all content that its independent contractors produce at its direction. First Look Media Works plans to license or sublicense content to FLP for syndication pursuant to a Content License Agreement, under which FLP will pay royalties to First Look Media Works equal to or in excess of fair market value. First Look Media Works expects to license or sublicense its content to unrelated third parties, including both educational content publishers and commercial distribution channels. First Look Media Works also owns the "First Look" name and trademark, which it licenses to FLP and FLS pursuant to the Trademark License Agreement described in **Part V, Question 9** above. Any intellectual property licensed to FLP, FLS, or any other commercial third party by First Look Media Works will be licensed at or above fair market value, and First Look Media Works will ensure that it in no way subsidizes FLP or FLS' activities or provides any more than incidental benefits to FLP, FLS, their shareholders, or any other commercial third party with whom it establishes licensing agreements. Please see discussion in **Part IV** and in **Part V, Question 9** regarding FLP and FLS.

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**Question 11: Non-cash Contributions Accepted.** First Look Media Works has no current plans to solicit or accept contributions of real property, closely-held securities, intellectual property, licenses, royalties, vehicles, or collectibles. If offered such assets, however, First Look Media Works' Board would evaluate the possible use to First Look Media Works' mission of any proffered in-kind gift, the risks and difficulties associated with holding or liquidating it, and any donor restrictions associated with the gift, on a case-by-case basis before deciding to accept any such gift. First Look Media Works would expect to liquidate all in-kind gifts (other than publicly-traded securities) promptly, unless useful in its operations or prohibited by the donor. Should First Look Media Works decide to accept any such gift, it will ensure that it is properly documented, including any donor-imposed conditions or restrictions. First Look Media Works will not accept any in-kind gift subject to donor-imposed conditions or restrictions unless First Look Media Works' Board determines such conditions or restrictions are consistent with First Look Media Works' charitable purposes and programs. No existing agreements concerning in-kind contributions currently exist, and therefore none are attached.

**Question 13b: How Grants/Loans/Distributions Further Exempt Purposes.** First Look Media Works intends to make grants to qualified organizations in order to advance its exempt purposes. For example, as described above in the response to **Part IV**, First Look Media Works expects initially to focus its grant program on charitable and educational organizations that support independent journalism and a free press. First Look Media Works will make distributions only to the following organizational recipients:

- (1) organizations exempt from federal income tax under Section 501(c)(3);
- and
- (2) other organizations exclusively for charitable, scientific, or educational purposes, with First Look Media Works retaining discretion and control (within the meaning of Revenue Ruling 68-489).

**Question 13c: Contracts.** FLMW utilizes a form grant agreement for certain grants to charitable organizations, and attaches each grant agreement to which it is a party hereto. All grants to non-charitable organizations, and any grants to non-U.S. organizations, if any, will also be governed by written agreements with grantees. FLMW's grant agreements prohibit grant funds from being used for any activity or purpose other than charitable, scientific, or educational purposes within the meaning of Section 170(c)(2)(B) of the Code, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit, or to take any other action inconsistent with Section 501(c)(3) of the Code. FLMW's use and content of the agreements may vary depending on the nature, location, and track record of the grantee and of the funded project. For example, FLMW will build more protections into

**FIRST LOOK MEDIA WORKS, INC.**

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agreements with grantees that have been recently formed or present other factors judged by FLMW to indicate a greater risk that assets may be diverted away from charitable purposes. Please see response to *Question 13f(ii)* below.

**Question 13d: Recipient Organizations and Relationships.** FLMW will not make grants to organizations that are controlled by any officers or directors of FLMW or other related parties. In its first full year of operation First Look Media Works awarded or designated grants totaling more than \$800,000 to a variety of 501(c)(3) organizations in support of press freedom: the Reporters Committee for Freedom of the Press; Electronic Frontier Foundation; the Freedom of the Press Foundation; the First Amendment Coalition; the Committee to Protect Journalists; the Tides Foundation (in support of the charitable and educational purposes of its fiscally sponsored project, GlobalPost); and the University of California, Berkeley, for its Investigative Reporting Program. Copies of FLMW's grant agreements with Freedom of the Press Foundation, Electronic Frontier Foundation, and Reporters Committee for Freedom of the Press are each attached hereto as Exhibit G. FLMW did not utilize grant agreements for its grants to the First Amendment Coalition, the Committee to Protect Journalists, Tides Foundation, or the University of California.

**Question 13e: Recordkeeping.** FLMW keeps a file on each grant that it makes. In that file it maintains notes and records related to its pre-grant inquiries (if any are appropriate under the circumstances), a copy of the signed grant agreement between FLMW and its grantee (if any), a record of what funds under the grant agreement have been disbursed, copies of relevant reports on the use of the grant funds, and any other documents related to that grant.

**Question 13f: Description of Selection Process.** Grantees are selected by FLMW's Board of Directors (or a committee of senior leadership to whom the Board has delegated selection authority), based on information obtained and provided by FLMW's staff, officers, or directors.

**Question 13f(i): Grant Application Form.** Initially, FLMW's Board (or a committee with delegated selection authority) will choose potential grant recipients. While FLMW does not have a grant application form at this time, it may develop an application form in the future.

**Question 13f(ii): Grant Proposals and Agreements.** Where appropriate, FLMW will require potential grantees to submit a detailed description of how they would use funds provided by FLMW. If FLMW chooses to provide funding to an organization that is not a charity as defined under Sections 501(c)(3) and 509(a), FLMW will first enter into a grant agreement with the organization before granting funds. The grant agreement will set forth the grantor's and grantee's responsibilities. It will require the grantee to use funds only for grant



**FIRST LOOK MEDIA WORKS, INC.**

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purposes, provide periodic written reports on the use of grant funds, provide ongoing written reports and accounting, and acknowledge the grantor's authority to withhold or recover funds if abuse occurs.

**Question 13g: Oversight Procedures.** The level of scrutiny will vary with the nature of the entity and the circumstances of the grant, as noted in the discussion of contracts at **Question 13c**. As noted above in the supplemental response to **Question 13f**, FLMW may require periodic reports and will review them to determine whether further inquiry is warranted.

**Question 14a-f: International Grants.** FLMW has not made, and has no immediate plans to make grants, loans, or other distributions to foreign organizations. If it does choose to make grants to foreign organizations, it will make its decisions based on the criteria and procedures elaborated above in answer to **Question 13**. For all grantees, whether foreign or domestic, FLMW will investigate the organization's financial situation and its ability to accomplish the charitable purposes for which the particular grant is intended. FLMW's pre-grant inquiries will focus on whether a grantee is organized and operated in a manner that enables it to carry out FLMW's purposes, and will also assess the potential grantee's location and operations for any indication of higher than usual risk that charitable assets may be diverted to non-charitable purposes (such as private benefit or, in the worst case, terrorist activities). FLMW will assess the diversity, expertise, and commitment of a potential grantee's governing body and staff leadership, and will expect that its grantees be welcoming and inclusive of people from all ethnic groups and religious backgrounds. Where a grantee's location or operations indicate that there is a higher than usual risk that charitable assets may be diverted, FLMW will take such steps as it believes are most likely to reduce that risk. For example, a grant to a nonprofit organization in a region where corruption is endemic will require close monitoring by staff and volunteers to reduce the risk of diversion of charitable assets.

**Question 15: Close Connection With Another Organization.** First Look Media Works has a close connection with FLP, FLS, and FL LLC. Please see discussion in **Part IV** and **Part V, Question 9** for more information regarding these entities and the relationship each has with First Look Media Works.

**FIRST LOOK MEDIA WORKS, INC.**

EIN: 80-0951255

114 5th Avenue, 18th Floor

New York, NY 10011

**PROPOSED BUDGET**

	2013	2014	2015*	2016*	Total
<i>Notes</i>					
<b>INCOME</b>					
Gifts, grants, and contributions:	30,865,150		24,841,250	\$ 3,000,000	58,706,400
Program-related income	-	-	-	\$ -	-
Unrelated business income	-	-	-	\$ -	-
Investment income (interest, etc.)	(98,031)	11,505	(215,090)	\$ 50,000	(251,616)
Other	-	-	4,845	\$ 5,087	9,932
<b>Total Income</b>	<b>30,767,119</b>	<b>11,505</b>	<b>24,631,005</b>	<b>3,055,087</b>	<b>58,464,716</b>
<b>EXPENSES</b>					
Salaries and wages:		<i>1</i>			
Directors and officers	-	2,110,875	1,602,000	1,682,100	5,394,975
Other employees	424,261	3,517,328	5,026,018	5,277,319	14,244,925
<i>Subtotal salary and wages</i>	424,261	5,628,203	6,628,018	6,959,419	19,639,900
Payroll taxes and benefits (20%)	47,399	797,461	1,110,687	1,166,222	3,121,769
Grants and assistance to others	-	493,203	275,000	288,750	1,056,953
Occupancy	697	847,778	3,694,977	3,879,726	8,423,177
Insurance	-	429,033	418,218	439,129	1,286,380
Telecommunications	-	33,545	70,853	74,396	178,794
Postage & shipping	-	4,228	994	1,044	6,266
Printing & copying	-	102	750	788	1,640
Office supplies	213	213,273	17,943	18,840	250,269
Office equipment & furniture	11,573	146,103	231,804	243,394	632,874
Legal, accounting & payroll services	167,666	1,153,580	138,537	145,464	1,605,246
Travel	50,669	455,302	361,932	380,028	1,247,931
Consultants	<i>2</i> 159,595	1,558,022	2,312,930	2,428,576	6,459,123
Other	<i>3</i> 771	70,260	2,819,117	2,960,073	5,850,221
<b>Total Expenses</b>	<b>862,844</b>	<b>11,830,093</b>	<b>18,081,759</b>	<b>18,985,847</b>	<b>49,760,543</b>
<b>NET INCOME</b>	<b>\$ 29,904,275</b>	<b>\$(11,818,588)</b>	<b>\$ 6,549,245</b>	<b>\$(15,930,760)</b>	<b>\$ 8,704,173</b>

**Notes**

\* 2015 and 2016 Budgets are prospective

*1* Salaries and Wages covers a variety of positions. All staff will be paid amounts which are reasonable in light of amounts paid to comparably qualified individuals by comparable organizations for comparable responsibilities.

*2* Consultants and service providers will be arm's-length contractors, and will be paid amounts that are reasonable in light of similar services. In no case will individuals who would be properly classified as employees be paid as independent contractors.

*3* 2015 "Other" Amount Includes:

FLMW Misc. Overhead Allocation \$ 627,305.55

Video production expenses	\$ 1,013,607.46
Meetings and events	\$ 6,983.33
Miscellaneous	\$ 25,304.87
Dues, Subscriptions & Memberships	\$ 26,145.39
License and Fees	\$ 2,416.00
Books and Publications	\$ 355.16
Fact checking	\$ 60,298.86
Illustrations	\$ 18,100.00
Photography and photos	\$ 90,381.66
Audio/music	\$ 2,200.00
Blogging	\$ -
Transcription/translation services	\$ 7,390.00
Editing	\$ 29,530.00
Writing and reporting	\$ 37,808.49
Research and database subscriptions	\$ 111,409.81
Freelance stories	\$ 512,500.00
Site analytics and measurement	\$ 60,622.53
Audience acquisition	\$ 110,800.00
Website development and maintenance	\$ 10,766.00
Other	\$ 65,192.00
	<b>\$ 2,819,117.11</b>

**FIRST LOOK MEDIA WORKS, INC.**

EIN: 80-0951255

114 5th Avenue, 18th Floor

New York, NY 10011

**BALANCE SHEET**

	2014	2013
<b>Assets</b>		
Cash and cash equivalents	\$ 16,480,643	\$ 30,122,995
Restricted cash	130,030	-
Accounts receivable and accrued income	278	-
Prepaid expenses and deposits	397,505	-
Fixed assets, net	2,605,029	-
	<hr/>	<hr/>
Total assets	\$ 19,613,485	\$ 30,122,995
	<hr/>	<hr/>
<b>Liabilities and Net Assets</b>		
Accounts payable and accrued expenses	\$ 1,527,797	\$ 218,720
	<hr/>	<hr/>
Total liabilities	1,527,797	218,720
	<hr/>	<hr/>
Unrestricted net assets	18,085,688	29,904,275
	<hr/>	<hr/>
Total liabilities and unrestricted net assets	\$ 19,613,485	\$ 30,122,995
	<hr/>	<hr/>

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "FIRST LOOK MEDIA, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF AUGUST, A.D. 2015, AT 7:21 O'CLOCK P.M.


A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



5389178 8100

151239825

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2692525

DATE: 09-01-15

EXHIBIT A

CERTIFICATE OF INCORPORATION

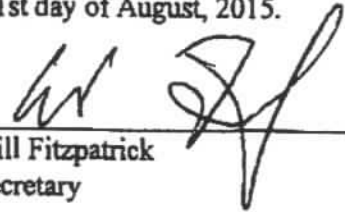
**CERTIFICATE**  
*of*  
**AMENDED and RESTATED**  
**CERTIFICATE OF INCORPORATION**  
*of*  
**FIRST LOOK MEDIA, INC.**  
**(A NONPROFIT NONSTOCK CORPORATION)**

Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, First Look Media, Inc., a nonprofit nonstock corporation organized and existing under the laws of the state of Delaware, and originally incorporated under the same name on August 28, 2013, does hereby certify:

FIRST: That the Certificate of Incorporation of this corporation is hereby amended and restated as set forth in the attached Amended and Restated Certificate of Incorporation.

SECOND: That the attached Amended and Restated Certificate of Incorporation was duly adopted by the members of the governing body of this corporation in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by Will Fitzpatrick, its authorized officer, this 31st day of August, 2015.

By:   
Name: Will Fitzpatrick  
Title: Secretary

STATE of DELAWARE  
AMENDED and RESTATED  
CERTIFICATE of INCORPORATION  
of FIRST LOOK MEDIA WORKS, INC.  
a NONPROFIT NONSTOCK CORPORATION

**First:** The name of this corporation is **FIRST LOOK MEDIA WORKS, INC.**

**Second:** Its registered office in the State of Delaware is to be located at 3500 S. DuPont Highway, City of Dover, County of Kent, Delaware 19901. The name of the Corporation's registered agent at such address is Incorporating Services, Ltd.

**Third:** This corporation is a nonprofit nonstock corporation organized under the General Corporation Law of the State of Delaware (hereinafter referred to as the "Law") and is not authorized to issue any capital stock. The specific and primary purpose of this corporation is to engage in charitable and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law (the "IRC").

**Fourth:** Notwithstanding any other provision of this certificate, this corporation shall not carry on any activities not permitted to be carried on (1) by a corporation exempt from federal income tax under IRC Section 501(c)(3), or (2) by a corporation, contributions to which are deductible under IRC Sections 170(c)(2), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), or 2522(b)(2). Except as permitted by law, no substantial part of the activities of this corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, nor shall this corporation participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

**Fifth:** The property of this corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member of this corporation, or any other private person. Upon the winding up and dissolution of this corporation and after paying or adequately providing for the debts and obligations of this corporation, the remaining assets shall be distributed for one or more exempt purposes within the meaning of IRC Section 501(c)(3). Any such assets not so disposed of shall be disposed of, by the Court of Common Pleas of the county in which the principal office of this corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

**Sixth:** This corporation shall have one or more members, and the conditions of membership shall be stated in the Bylaws.



**Seventh:** The personal liability of the directors and any persons performing the duties of directors of this corporation is hereby eliminated or limited to the fullest extent permitted by Section 102(b)(7) of the Law as the same may be hereafter amended and supplemented.

**Eighth:** Any amendment to this Certificate must be approved by the Board of Directors of this corporation. In addition, any amendment to this Certificate that either changes the name of this corporation or directly or indirectly affects the rights of members requires approval by the Class I Member (as "Class I Member" is defined in the Bylaws of this corporation) in accordance with Section 242(b)(3) of the Law, but only insofar as the Class I Member rights have not reverted to the Class II Members (as "Class II Members" is defined in the Bylaws of this corporation) pursuant to the Bylaws of this corporation.

**Ninth:** The Class II Members may adopt, amend or repeal the Bylaws of this corporation; provided however that any adoption, amendment, or repeal of the Bylaws of this corporation that directly or indirectly affects the rights of members requires approval by the Class I Member, but only insofar as the Class I Member rights have not reverted to the Class II Members pursuant to the Bylaws of this corporation.

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "FIRST LOOK MEDIA, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF AUGUST, A.D. 2013, AT 3:22 O'CLOCK P.M.

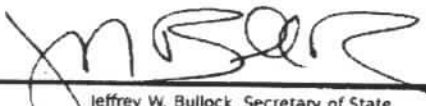
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

5389178 8100

131034829



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0698721

DATE: 08-28-13

STATE of DELAWARE  
CERTIFICATE of INCORPORATION  
of FIRST LOOK MEDIA, INC.  
a NONPROFIT NONSTOCK CORPORATION

**First:** The name of this corporation is **FIRST LOOK MEDIA, INC.**

**Second:** Its registered office in the State of Delaware is to be located at 3500 S. DuPont Highway, City of Dover, County of Kent, Delaware 19901. The name of the Corporation's registered agent at such address is Incorporating Services, Ltd.

**Third:** This corporation is a nonprofit nonstock corporation organized under the General Corporation Law of the State of Delaware (hereinafter referred to as the "Law") and is not authorized to issue any capital stock. The specific and primary purpose of this corporation is to engage in charitable and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law (the "IRC").

**Fourth:** Notwithstanding any other provision of this certificate, this corporation shall not carry on any activities not permitted to be carried on (1) by a corporation exempt from federal income tax under IRC Section 501(c)(3), or (2) by a corporation, contributions to which are deductible under IRC Sections 170(c)(2), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), or 2522(b)(2). Except as permitted by law, no substantial part of the activities of this corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, nor shall this corporation participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

**Fifth:** The property of this corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member of this corporation, or any other private person. Upon the winding up and dissolution of this corporation and after paying or adequately providing for the debts and obligations of this corporation, the remaining assets shall be distributed for one or more exempt purposes within the meaning of IRC Section 501(c)(3). Any such assets not so disposed of shall be disposed of, by the Court of Common Pleas of the county in which the principal office of this corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

**Sixth:** This corporation shall have one or more members, and the conditions of membership shall be stated in the Bylaws.

**Seventh:** The name and mailing address of the incorporator are as follows:

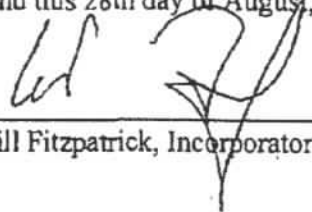
Will Fitzpatrick  
1991 Broadway, Suite 200  
Redwood City, CA 94063

**Eighth:** The personal liability of the directors and any persons performing the duties of directors of this corporation is hereby eliminated or limited to the fullest extent permitted by Section 102(b)(7) of the Law as the same may be hereafter amended and supplemented.

**Ninth:** Any amendment to this Certificate must be approved by the Board of Directors of this corporation.

**Tenth:** The members or the Board of Directors may adopt, amend or repeal the Bylaws of this corporation.

**I, the undersigned,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file, and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 28th day of August, 2013.

  
\_\_\_\_\_  
Will Fitzpatrick, Incorporator

**EXHIBIT B**

**BYLAWS**

**AMENDED AND RESTATED**  
**BYLAWS**  
**of**  
**FIRST LOOK MEDIA WORKS, INC.**

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AMENDED AND RESTATED  
BYLAWS  
of  
FIRST LOOK MEDIA WORKS, INC.

ARTICLE I  
REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS

This corporation shall have and maintain at all times within the State of Delaware a registered office at such place as may be specified in the Certificate of Incorporation or subsequently designated by the Board. Notwithstanding the foregoing, this corporation's principal place of business may be different from its registered office, and may be located from time to time at any place as may be designated by the Board of Directors of this corporation, including a place outside of the State of Delaware. This corporation shall keep at its principal place of business current copies of the Certificate of Incorporation and Bylaws of this corporation, and in accordance with these Bylaws, the Secretary shall furnish copies of the Certificate of Incorporation and Bylaws to the members or directors requesting to inspect them.

ARTICLE II  
MEMBERSHIP

Section 1. Classes of Members. This corporation shall have two classes of members: (1) the Class I Member and (2) the Class II Members.

(a) The Class I Member shall at all times be the Pierre M. Omidyar Trust or such successor as may be designated in writing by the Class I Member; provided, however, that (i) if the Class I Member dissolves or otherwise ceases to exist (if a legal entity), or (ii) if the Class I Member dies, resigns, or is declared incompetent by a court of competent jurisdiction (if an individual), in each case without the Class I Member first designating a successor in writing, then all rights reserved to the Class I Member under these Bylaws shall be exercised by the Class II Members, who shall then be the only class of members of this corporation.

(b) The Class II Members shall be the directors of this corporation then serving. Election to the Board of Directors shall constitute election to the Class II Membership of this corporation, and the Class II Member status of any director shall terminate immediately and without further corporate action upon such person's ceasing to be a director for any reason.

Section 2. Nonliability. The members shall not be liable for the debts, liabilities, or obligations of this corporation.

Section 3. Nontransferability. No member may transfer for value or otherwise his or her membership or any right arising therefrom. Appointing successor members shall not be deemed to be a transfer.

ARTICLE III  
MEMBERSHIP RIGHTS

Section 1. Voting Rights of the Class I Member. Subject to these Bylaws, the Class I Member of this corporation shall have the following rights, as set forth in these Bylaws:

(a) the exclusive right to appoint each Class I Director;

(b) the exclusive right to remove any Class I Director, with or without cause;  
and

(c) the right to approve or veto any of the following actions of the Board of Directors, the Class II Members, or any committee:

(1) any sale, lease, transfer, or other disposition of all or any substantial part of the assets or properties of this corporation;

(2) any acquisition of assets by this corporation outside the ordinary course of business;

(3) any financing transaction outside the ordinary course of business to which this corporation is a party;

(4) any merger of this corporation;

(5) the dissolution of this corporation;

(6) any amendment or repeal of these Bylaws that directly or indirectly affects the rights of members; and

(7) any proposed amendment of the Certificate of Incorporation of this corporation that directly or indirectly affects the rights of members.

The right of the Class I Member to approve or veto the matters set forth in Article III, Section 1(c), shall be exercised as follows: Any action of the Board of Directors, the Class II Members, or any committee, described in Article III, Section 1(c), shall not be effective without the affirmative written approval of the Class I Member, which shall be exercised in the Class I Member's sole discretion.

Section 2. Voting Rights of the Class II Members. Subject to these Bylaws, the Class II Members of this corporation shall have the following rights, as set forth in these Bylaws:

(a) the exclusive right to elect the Class II Directors;

(b) the exclusive right to remove any Class II Director, with or without cause;  
and

(c) subject to Article III, Section 1, of these Bylaws, the right to vote on any other matters that may properly be presented to members for a vote, pursuant to this corporation's Certificate of Incorporation, Bylaws, or action of the Board of Directors, or by operation of law.

Section 3. Inspection Rights. The right of the members to have access to the membership list of this corporation or its other books and records shall be governed by Section 220 of the Delaware General Corporation Law.

Section 4. Other Rights. In addition to the rights described in these Bylaws, the members of this corporation shall have any other rights afforded voting members under the Delaware General Corporation Law.

#### ARTICLE IV MEMBER MEETINGS AND VOTING

Section 1. Actions of the Class I Member. All actions of the Class I Member shall be evidenced by a writing signed by an authorized representative of the Class I Member and delivered to an officer of this corporation.

Section 2. Special Meetings of the Class II Members.

A. Who May Call. Special meetings of the Class II Members may be called by (a) the Board, (b) the Chair of the Board, (c) the President, or (d) on the written request of the majority of Class II Members wanting to vote, and shall be held at a place determined by the Board.

B. Procedures for Calling Special Meetings Requested by Class II Members. If a special meeting is called by Class II Members, the requesting Class II Members shall deliver a written notice specifying the general nature of the business proposed to be transacted personally, by registered mail, or electronic or facsimile transmission, to the Chair of the Board, the President, or the Secretary of this corporation. The requested meeting will be held not less than thirty, nor more than eighty, days following the corporation's receipt of the request. If appropriate notice of such a meeting is not given by the corporation within twenty days after delivery of the request, the requesting Class II Members may give the notice. Nothing contained in this subsection shall be construed as limiting, fixing, or affecting the time of any meeting of members called by the Board, the Chair of the Board, or the President of this corporation.

Section 3. Meeting by Remote Communication. The Board, in determining the place for a special meeting of Class II Members, may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided in Section 10 of this Article IV.

Section 4. Record Dates. For any notice, vote, or exercise of rights, the Board may, in advance, by resolution, fix a record date, and only Class II Members of record on the date so fixed shall be entitled to notice, vote, or exercise rights, as the case may be. For this

purpose, a person holding a Class II Membership as of the close of business on the record date shall be deemed a member of record. The Board may not fix a record date preceding the date of the relevant resolution of the Board.

A. Notice of Meetings. Unless otherwise fixed by the Board, the record date for the purpose of determining which Class II Members are entitled to notice of any Class II Members' meeting, shall be the business day preceding the date on which notice for that meeting is given. If the Board, by resolution, fixes a record date for notice, the record date shall be not less than thirty, nor more than sixty, days before the date of the meeting.

B. Voting at Meetings. Unless otherwise fixed by the Board, the record date for the purpose of determining which Class II Members are entitled to vote at any Class II Members' meeting, shall be the day of that meeting. If the Board, by resolution, fixes a record date for notice, the record date shall be not less than ten, nor more than sixty, days before the date of the meeting.

C. Voting by Written Consent. Unless otherwise fixed by the Board, the record date for the purpose of determining which Class II Members are entitled to vote by written consent shall be the day on which the first written consent is mailed or solicited by this corporation.

D. Other Lawful Action. Unless otherwise fixed by the Board, the record date for the purpose of determining which Class II Members are entitled to exercise any rights in respect to any other lawful action, shall be the date on which the Board adopts the resolution relating thereto or the sixtieth day before the date of such other action, whichever is later.

Section 5. Time and Manner of Notice of Meetings.

A. General Notice Provisions. The Secretary shall give written notice of each Class II Members' meeting to each Class II Member of record who, as of the record date for notice of the meeting, would be or would have been entitled to vote at such meeting. The notice shall be delivered to the last address provided by the members to this corporation for purposes of notice, either personally, by electronic transmission pursuant to Section 5.B of this Article IV, following, or first-class, registered, or certified mail not less than thirty nor more than sixty days before the date of such meeting.

B. Notice by Electronic Transmission. Notice may also be provided by electronic transmission if given by a form of electronic transmission consented to by the Class II Member to whom the notice is given. Any form of electronic transmission must be able to be directly reproduced in paper form by the recipient through an automated process. Any such consent shall be deemed revoked if: (a) this corporation is unable to deliver by electronic transmission two consecutive notices given by this corporation in accordance with the consent and (b) such inability becomes known to the Secretary or other person responsible for the giving of notice. Notice by electronic transmission shall be deemed given: (a) if by facsimile, when directed to the number at which the Class II Member has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the Class II Member has

consented to receive notice; (c) if by posting on an electronic network together with a separate notice to the Class II Member of such specific posting, upon the later of such posting and the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the Class II Member.

Section 6. Contents of Notice. The notice shall state the place, date, and time of the meeting and, in the case of special meetings, the general nature of the business to be transacted, and no other business may be transacted.

Section 7. Member Quorum. A majority of the Class II Members shall constitute a quorum. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of enough Class II Members to leave less than a quorum, so long as any action taken thereafter is approved by at least a majority of the Class II Members then serving as Class II Members or such other standards as may be set forth in the Certificate or these Bylaws.

Section 8. Act of the Class II Members. Every decision or act made or done by a majority of Class II Members then serving as Class II Members and voting at a duly held meeting at which a quorum is present is the act of the Class II Members, unless the DGCL, the Certificate of Incorporation, or these Bylaws require a different number.

Section 9. Manner of Voting.

A. Voting at Meetings. Voting at meetings may be by voice or by secret ballot.

B. Proxy Voting Prohibited. Proxy voting shall not be permitted on any matter put to the vote of the Class II Members.

C. Cumulative Voting Prohibited. Cumulative voting shall not be permitted with respect to the election of Class II Directors or any other matter put to the vote of the Class II Members.

Section 10. Participation by Remote Communication. Class II Members may participate in a meeting by means of remote communication and shall be deemed present in person and vote, provided that: (a) this corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting is a Class II Member; (b) this corporation shall implement reasonable measures to provide such Class II Members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Class II Members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (c) if any Class II Member votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by this corporation.

Section 11. Waiver of Notice or Consent by Members.

A. Generally. Any action of the Class II Members taken at a meeting where a quorum is present but for which proper notice was not given, will be valid if, either before or after the meeting, each Class II Member entitled to vote who was not present at the meeting provides a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice.

B. Effect of Attendance at Meeting. Attendance by a Class II Member at a meeting shall also constitute a waiver of notice of that meeting, unless the Class II Member attends for the sole purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 12. Action by Unanimous Written Consent. Any action which may be taken at a meeting of the Class II Members, may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be dated and signed by Class II Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Class II Members having a right to vote thereon were present and voted, and shall be delivered to this corporation by delivery to its registered office in this State, its principal place of business, or its Secretary. Any such writing may be signed in counterparts. Notwithstanding the foregoing, Class II Members may demonstrate their consent to actions through an electronic transmission, provided that the electronic transmission is delivered with information from which this corporation can determine: (A) that the electronic transmission was transmitted by the Class II Member (or by a person or persons authorized to act for the member); and (B) the date on which such member or authorized person or persons transmitted such electronic transmission. Such electronic transmissions may be delivered to the principal place of business of this corporation or to this corporation's Secretary if either such delivery has been approved by resolution of the Board of Directors and is made in the manner provided in the resolution.

ARTICLE V  
BOARD OF DIRECTORS

Section 1. Powers. This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed by the Board of Directors of this corporation directly or, if delegated, under the ultimate direction of the Board.

Section 2. Number and Classes of Directors. So long as this corporation has a Class I Member and Class II Members, it shall have two classes of directors: Class I Directors and Class II Directors. In the instance that this corporation no longer has a Class I Member, pursuant to Article II, Section 1(a) of these Bylaws, there shall be a single class of directors, elected by the single class of members. The total number of directors shall be not less than three nor more than nine, with the exact authorized number of directors to be fixed from time to time by the Board of Directors. The authorized number of Class I Directors shall be the total number of authorized directors minus the authorized number of Class II Directors. The authorized number of Class II

Directors shall equal the smallest whole number larger than fifty percent (50%) of the total number of authorized directors.

Section 3. Election and Term of Office of Directors. Except for the initial directors appointed by the incorporator, directors shall be selected as follows:

(a) The Class I Directors shall be appointed from time to time by the Class I Member. The effective date of any election shall be as provided in the action of the Class I Member. Class I Directors shall be appointed for a term of two years. Each Class I Director shall hold office until such Class I Director's successor is elected and qualified or until such Class I Director's earlier resignation or removal.

(b) The Class II Directors shall be elected from time to time by a majority of the votes of the Class II Members of this corporation present at the meeting and entitled to vote thereon. The effective date of any election shall be as provided in the action of the Class II Members. Class II Directors shall be elected for a term of two years. Each Class II Director shall hold office until such Class II Director's successor is elected and qualified or until such Class II Director's earlier resignation or removal.

Section 4. Vacancies. A vacancy shall be deemed to exist on the Board in the event that the actual number of directors is less than the authorized number for any reason. Vacancies in Class I Directors may be filled by the Class I Member, and vacancies in Class II Directors may be filled by the Class II Members, in each case for the unexpired portion of the term. No reduction in the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

Section 5. Resignation and Removal. Any director may resign at any time upon notice given in writing addressed to any director or officer of this corporation other than himself or herself or by electronic transmission addressed to any member of the Board or officer of this corporation other than himself or herself. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any Class I Director may be removed at any time by the Class I Member with or without cause. Any Class II Directors may be removed at any time by the Class II Members with or without cause or by the Board of Directors if and to the extent permitted in the Certificate of Incorporation.

Section 6. Annual Board Meetings. A meeting of the Board of Directors shall be held at least once a year. Annual meetings shall be called by the President or any two directors and noticed in accordance with Section 8 of this Article.

Section 7. Special Meetings. Special meetings of the Board may be called by the President or any two directors and noticed in accordance with Section 8 of this Article.

Section 8. Place of Meetings; Notice. Meetings of the Board of Directors may be held at a location inside or outside of the state of Delaware, which is fixed by the Board of Directors or, in the case of a special meeting, by the person or persons calling the special meeting.



Notice of the annual meeting and any special meetings of the Board of Directors shall state the date, place, and time of the meeting if given by first-class mail or forty-eight hours before any such meeting if given personally, by telephone, including a voice messaging system, or by other system of technology designed to record and communicate messages, by facsimile, or by electronic transmission.

Section 9. Waiver of Notice. Whenever notice is required to be given under any provision of these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 10. Quorum. A majority of the total number of directors then in office shall constitute a quorum of the Board. Except as otherwise required by the Certificate of Incorporation, these Bylaws or the Delaware General Corporation Law, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. Each director shall be entitled to one vote.

Section 11. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board consent thereto in writing or by electronic transmission, and if the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 12. Telephone or Electronic Meetings. Directors may participate in a meeting through use of conference telephones, electronic video screen, or similar communications equipment so long as all directors participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting.

Section 13. Reliance. Any director or member of a committee of the Board shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of this corporation and upon such information, opinions, reports, or statements presented to this corporation by any of this corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of this corporation.

Section 14. Inspection. Every director shall have the right to examine this corporation's list of members and its other books and records for a purpose reasonably related to the director's position as a director.

Section 15. Board Compensation. The Board of Directors may authorize, by resolution, the payment to a director of a reasonable fee for services and expenses as a director and for attending meetings of the Board and Board Committees. The Board may authorize the advance or reimbursement of actual reasonable expenses incurred by a director in carrying out his or her duties as a director.

Section 16. Executive Compensation. For any tax year in which this corporation is required to register and file reports with the Attorney General of the State of California, the Board of Directors (or a Board Committee) shall review any compensation packages (including all benefits) of the President or the chief executive officer and the Treasurer or chief financial officer, regardless of job title, and shall approve such compensation only after determining that the compensation is just and reasonable. This review and approval shall occur when such officer is hired, when the term of employment of such officer is renewed or extended, and when the compensation of such officer is modified, unless the modification applies to substantially all of the employees of this corporation.

## ARTICLE VI COMMITTEES

Section 1. Board Committees. The Board of Directors may, by resolution adopted by a majority of the directors then in office, create any number of Board Committees, each consisting of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Appointments to and removals from any Board Committee shall be made by any method determined by a majority of the directors then in office. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of this corporation except that no such committee shall have the power or authority to:

(a) approve or adopt, or recommend to the members, any action or matter (other than the election or removal of directors) expressly required by these Bylaws, the Certificate of Incorporation, or the Delaware General Corporation Law to be submitted to members for approval;

(b) amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;

(c) adopt, amend, or repeal any bylaw of this corporation; or

(d) adopt amendments to the Certificate of Incorporation of this corporation.

Section 2. Subcommittees. Unless otherwise provided in the resolution of the Board of Directors designating the Board committee, such committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Section 3. Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board. The members of any Advisory Committee may consist of directors or non-directors and may be appointed as the Board determines. Advisory committees may not exercise the authority of the Board to make decisions on behalf of this corporation, but shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee.

Section 4. Audit Committee. For any tax year in which this corporation is required to register and file reports with the Attorney General of the State of California and has gross revenues of \$2 million or more, this corporation shall have an Audit Committee whose members shall be appointed by the Board of Directors, and who may include both directors and non-directors, subject to the following limitations: (a) members of the finance committee, if any, shall constitute less than one-half of the membership of the Audit Committee; (b) the chair of the Audit Committee may not be a member of the Finance Committee, if any; (c) the Audit Committee may not include any member of the staff, including the President or chief executive officer and Treasurer or chief financial officer; (d) the Audit Committee may not include any person who has a material financial interest in any entity doing business with this corporation; and (e) Audit Committee members who are not directors may not receive compensation greater than the compensation paid to directors for their Board service. The Audit Committee shall: (1) recommend to the Board of Directors the retention and, when appropriate, the termination of an independent certified public accountant to serve as auditor, (2) negotiate the compensation of the auditor on behalf of the Board, (3) confer with the auditor to satisfy the Audit Committee members that the financial affairs of this corporation are in order, (4) review and determine whether to accept the audit, and (5) approve performance of any non-audit services provided to this corporation by the auditor's firm.

Section 5. Meetings.

A. Of Board Committees. Meetings and actions of Board Committees or subcommittees thereof shall be governed by and held and taken in accordance with the provisions of Article V of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees shall determine their own meeting rules and whether minutes shall be kept.

The Board of Directors may adopt rules for the governance of any Board or Advisory Committee not inconsistent with the provisions of these Bylaws.

## ARTICLE VII OFFICERS

Section 1. Officers. The officers of this corporation shall be a President, a Secretary, and a Treasurer. This corporation may also have, at the discretion of the Board of Directors, such other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person.

Section 2. Election. The officers of this corporation shall be elected annually by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3. Removal. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors or by an officer on whom such power of removal may be conferred by the Board of Directors.

Section 4. Resignation. Any officer may resign at any time by giving written notice to any member of the Board or officer of this corporation other than himself or herself or by electronic transmission addressed to any member of the Board or officer of this corporation other than himself or herself. A resignation is effective when delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

Section 6. President. The President shall be the chief executive officer of this corporation and shall, subject to control of the Board, generally supervise, direct, and control the business and other officers of this corporation. The President shall preside at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of President of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 7. Secretary. The Secretary shall supervise the keeping of a full and complete record of the proceedings of the Board of Directors, its committees and the membership of this corporation, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books of this corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. Treasurer. The Treasurer shall supervise the charge and custody of all funds of this corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

#### ARTICLE VIII INTERESTED DIRECTOR OR OFFICER TRANSACTIONS

Section 1. Voidability of Transactions. No contract or transaction between this corporation and:

(a) any of its directors or officers,

(b) any organization in which one or more of this corporation's directors or officers has or have a financial interest, or

(c) any organization for which a director or officer of this corporation also serves as a director or officer, shall be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee of the Board which authorizes the contract or transaction, or solely because any such director's or officer's vote was counted for such purpose, if:

(d) The material facts as to the director's or officer's relationship or interest, and as to the contract or transaction, are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(e) The contract or transaction is fair to this corporation as of the time it is authorized, approved, or ratified by the Board or committee.

Section 2. Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes a contract or transaction described in Section 1.

Section 3. Conflict of Interest Policy. Each director and officer of this corporation shall comply with any policies of this corporation regarding conflicts of interest.

ARTICLE IX  
INDEMNIFICATION AND INSURANCE

Section 1. Indemnification. To the fullest extent permitted by law:

(a) This corporation shall indemnify any Indemnified Person, for and against all expenses (including attorneys' fees), judgments, Fines and amounts paid in settlement actually and reasonably incurred by that Indemnified Person in connection with that Action. Notwithstanding the foregoing, this corporation will indemnify any Indemnified Person seeking indemnification in connection with an Action (or part of an Action) initiated by that person only if that Action (or part of that Action) was authorized by the Board.

(b) This corporation will pay expenses as incurred by any Indemnified Person in connection with any Action; *provided, that*, if these expenses are to be paid in advance of the final disposition of an Action, then the payment of expenses will be made only upon delivery to this corporation of an undertaking, by or on behalf of the person, to repay all amounts so advanced if it is ultimately determined that the person is not entitled to be an Indemnified Person or otherwise.

(c) This corporation may purchase and maintain insurance on behalf of any Indemnified Person against any liability asserted against that person, whether or not this corporation would have the power to indemnify the person against that liability under the provisions of this Article IX or otherwise.

(d) The provisions of this Article IX will be applicable to all Actions made or commenced after the adoption of this Article IX, whether arising from acts or omissions occurring before or after its adoption. The provisions of this Article IX will be deemed to be a contract between this corporation and each director or officer who serves in that capacity at any time while this Article and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification of this Article IX will not adversely affect any right or protection of any Indemnified Person in respect of any act or omission occurring prior to the time of the repeal or modification.

(e) If any provision of this Article IX will be found to be invalid or limited in application by reason of any law or regulation, that finding will not affect the validity of the remaining provisions of this Article IX. The rights of indemnification provided in this Article IX will neither be exclusive of, nor be deemed in limitation of, any rights to which any person described in subsection (a) of this Article IX may otherwise be entitled or permitted by contract, the Certificate of Incorporation, vote of the Board, or otherwise, or as a matter of law, both as to actions in the person's official capacity and actions in any other capacity while holding that office, it being the policy of this corporation that indemnification of any Indemnified Person will be made to the fullest extent permitted by law.

(f) This corporation may, by vote of the Board, provide indemnification and advancement of expenses to employees and agents of this corporation with the same scope and effect as the foregoing indemnification of and advancement of expenses to directors and officers.

(g) Definitions. As used in this Article IX, the following terms will have the following meanings:

"Action" means any threatened, pending, or completed action, suit, proceeding or inquiry (brought in the right of this corporation or otherwise), whether civil, criminal, administrative, or investigative, and whether formal or informal, including appeals.

"Eligible Person" means: (1) any individual who is a former or current director or officer of this corporation; (2) any former or current director or officer of this corporation, who while a director or officer of this corporation, is or was serving at the request of this corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, which includes, without limitation, employee benefit plans; and (3) the foregoing persons' heirs, executors, guardians, administrators, assigns, and any other legal representatives.

"Fines" includes, without limitation, any excise taxes assessed on a person with respect to an employee benefit plan.

"Indemnified Person" means: any Eligible Person who was, or is, a party, or is threatened to be made a party to, or is involved in (including as a witness), any Action by reason of the fact that the person is an Eligible Person.

## ARTICLE X GRANTS ADMINISTRATION

Section 1. Purpose of Grants. This corporation shall have the power to make grants and contributions and to render other financial assistance for the purposes expressed in this corporation's Certificate.

Section 2. Board of Directors Oversight. The Board, or any person or persons on whom such power may be conferred by the Board, shall make policy with regard to grants. The Board shall retain ultimate control over all grants, contributions, and other financial assistance given by this corporation.

Section 3. Refusal; Withdrawal. The Board, in its absolute discretion, shall have the right to refuse to make any grants or contributions, or to render other financial assistance, for any or all of the purposes for which the funds are requested. In addition, the Board, in its absolute discretion, shall have the right to withdraw its approval of any grant at any time and use the funds for other purposes within the scope of the purposes expressed in the Certificate, subject to any charitable trust imposed on such funds and any rights of third parties under any contract relating to such grant.

Section 4. Accounting. The Board shall determine under what circumstances to require that grantees furnish a periodic accounting to show that the funds granted by this corporation were expended for the purposes that were approved by the Board.

Section 5. Restrictions on Contributions. Unless otherwise determined by resolution of the Board in particular cases, this corporation shall retain complete control and discretion over the use of all contributions it receives, and all contributions received by this corporation from solicitations for specific grants shall be regarded as for the use of this corporation and not for any particular organization or individual mentioned in the solicitation. This corporation may accept contributions earmarked by the donor exclusively for allocation to one or more foreign organizations or individuals only if the Board of Directors of this corporation has approved in advance the charitable activity for which the donation was made.

## ARTICLE XI MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of this corporation shall end each year on December 31.

Section 2. Contracts, Notes, and Checks. All contracts entered into on behalf of this corporation must be authorized by the Board of Directors or any person or persons on whom such power may be conferred by the Board, and, except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of this corporation shall be signed by any person or person on whom such power may be conferred by the Board.

Section 3. Amendments. As provided in the Certificate of Incorporation of this corporation, the members or the Board of Directors may amend or repeal the Bylaws of this corporation; provided that, as described in Article III, Section 1(c) of these Bylaws, the Class I Member shall have the right to vote upon any amendment or repeal of these Bylaws that directly or indirectly affects the rights of members.

Section 4. Governing Law. These Bylaws shall be construed and interpreted in accordance with the laws of the State of Delaware as amended from time to time, so as to give full effect and validity to the intent and meaning of these Bylaws.



## CERTIFICATE OF SECRETARY

I, Will Fitzpatrick, certify that I am the Secretary of First Look Media Works, Inc., a Delaware nonstock corporation, and that the above Amended and Restated Bylaws, consisting of 15 pages, are the Amended and Restated Bylaws of this corporation as adopted by unanimous written consent of the Board of Directors of this corporation on August 31, 2015.

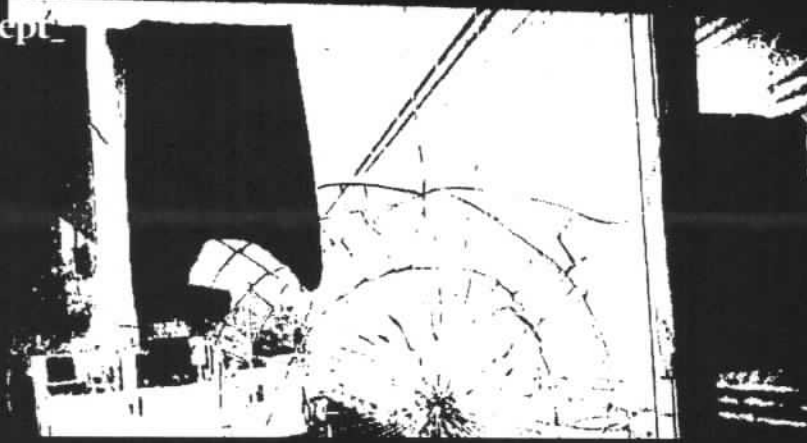
DATED: September 1, 2015

  
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Will Fitzpatrick, Secretary

**EXHIBIT C**

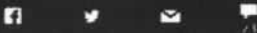
**FIRST LOOK MEDIA WORKS - SAMPLE ARTICLES**

The Intercept



## GHOSTS OF IGUALA

Mexico: How 43 Students Disappeared In The Night



Ryan Devereaux

May 17, 2014 11:00 AM

*A two-part investigation.*

*Part 2 here. Photo essay here.*

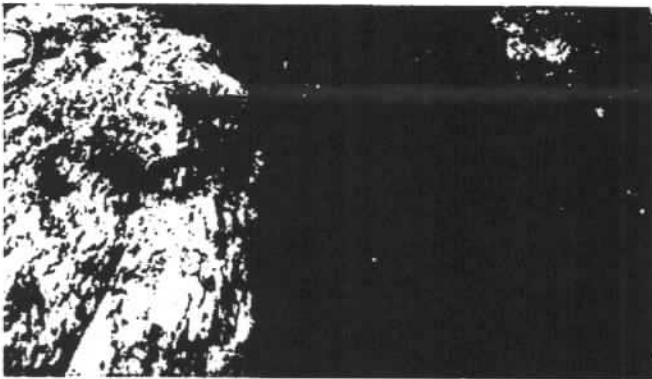
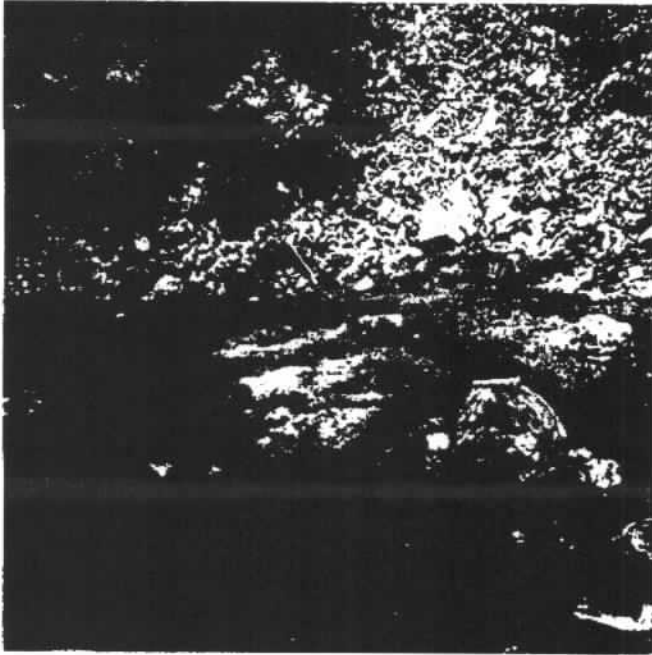


**HE NIGHTMARE BEGAN** just after sundown. At a dimly lit intersection in Iguala, police with automatic weapons surrounded three buses loaded with college students. The police opened fire. Screaming that they were unarmed, the students fled down darkened alleys, pounding on doors, desperate for shelter. Gunmen put the city on lockdown, stalking the streets in a drizzling rain.

By the time the gunfire finally stopped, two dozen people were wounded and six were dead at three locations, the youngest only 15 years old. One student was shot in the head, leaving him brain dead. A bullet ripped through the mouth of another. Two young men bled to death in the streets, left for hours without medical help. First light brought fresh horrors when the mutilated body of one of the students was discovered in the dirt.

Worse was yet to come. During the chaos, 43 students had been taken captive.

The crimes that began in Iguala on September 26, 2014 had reverberations throughout Mexico. Massive protests have roiled the country. Government buildings have been torched. Mexican President Enrique Peña Nieto was forced to launch what his administration called the largest investigation in recent memory.



Site where bodies of disappeared students were allegedly burned. (Keith Dannemiller)

More than seven months later, the country is haunted by questions. What really happened that night? Where were the students taken and what was their fate? Though the government has provided its explanation, serious doubts surround the official version of events. While scores of clandestine graves have been unearthed in the southern state of Guerrero since then, the remains of just one student – nothing more than a small chip of bone – have been identified.

Having quickly pinned the crimes on municipal officials and their gangster accomplices, Mexican authorities have been accused of attempting to prematurely close the case. Parents of the victims have pointed to what they regard as evidence of broader government complicity in the terror of that night. Human rights groups, investigative journalists and

ordinary citizens have rallied around them.

The following account is based on more than two dozen interviews with survivors of the attacks and family members of the disappeared, as well as Mexican historians, human rights activists, journalists and the statements of government officials. In addition, *The Intercept* has reviewed state and federal records, including communication reports by Mexican security forces and sealed statements from municipal police officers and gang members. The evidence reveals inconsistencies, obfuscations and omissions in the government's account.

In the wake of the attacks, the number 43 has become a potent symbol of organized crime and government collusion, of poverty and political repression sustained by decades of impunity, and of tens of thousands of similar cases of kidnapping and murder left unsolved. Popular outrage has been distilled into a simple phrase scrawled on protest signs, spray-painted in the hallways of power and shouted by protesters in the streets.

*Fue el estado.*

It was the state.



Ernesto, a first-year student, was on one of the buses that students commandeered. (Keith Dannemiller)

**E**

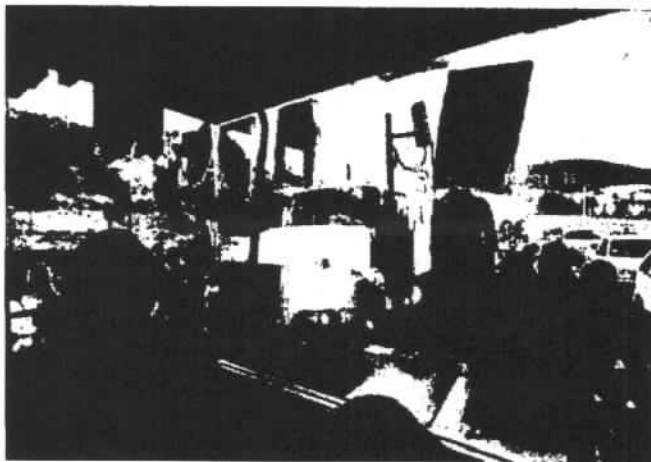
**RNESTO IS A** first-year student at the Escuela Normal Rural Raúl Isidro Burgos, a teacher-training college better known as Ayotzinapa. The all-male campus sits atop the rolling green hills of the southern Sierra Madres in the state of Guerrero. The majority of the school's students are from indigenous backgrounds, and many speak both Spanish and Nahuatl, a language with Aztec roots.

Ayotzinapa, which means "Land of the Turtles" in Nahuatl, is part of a network of *normal* schools established in 1926 to serve the sons and daughters of Mexico's most impoverished communities, providing free and secular education to young people who go on to teach in remote farming regions. With a curriculum that fuses agricultural skills and radical politics, students of these schools — known as *normalistas* — have made for natural leaders in social justice struggles. For the better part of the last century, the schools' history has been punctuated with violent, sometimes fatal, confrontations with the state.

Ernesto (the name he uses with the media) enrolled at Ayotzinapa last July. At 23, he's well-built with broad shoulders. His close-cropped hair gives him away as a first-year — all new

students at Ayotzinapa have their heads shaved when they enroll. On a late afternoon in early November, he took a seat at a picnic table on the school's basketball court. The sun, sinking behind the mountains as he started to explain what happened, was gone by the time he finished.

"On Friday, the 26 of September, we left at approximately six in the afternoon in the direction of the city of Iguala," he began. "We needed the buses."



Students take over the tollbooths at Palo Blanco on the main highway connecting Mexico City with the port and vacation city of Acapulco. (Keith Dannemiller)

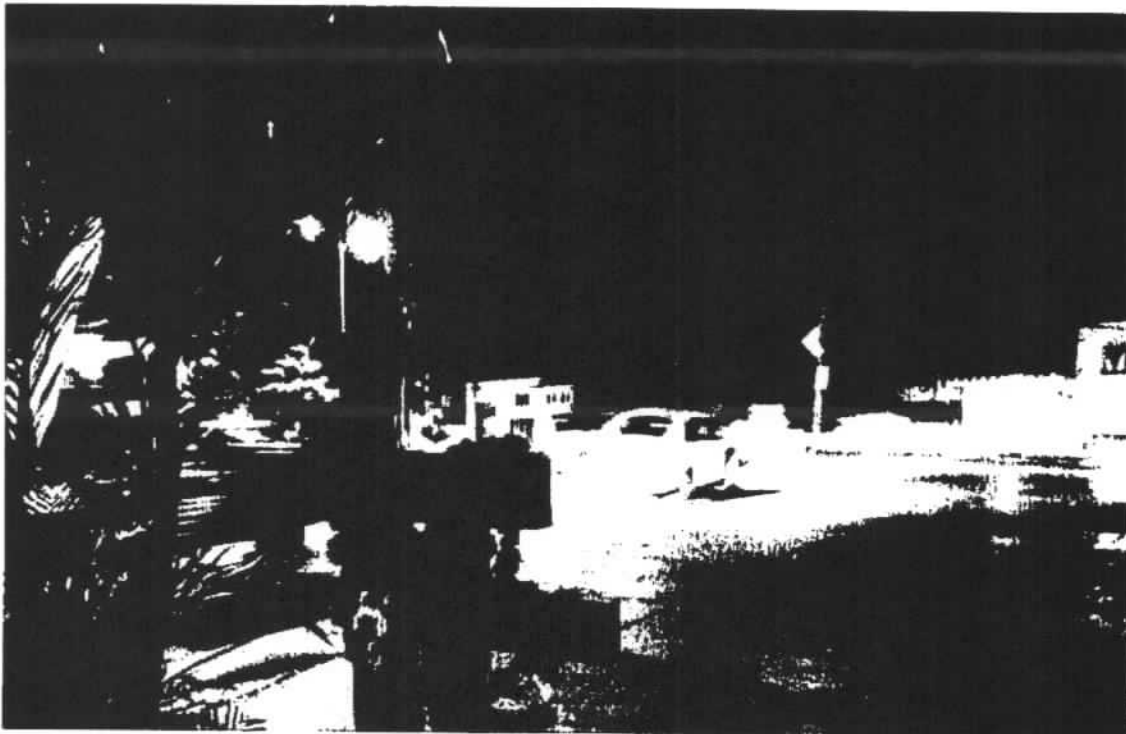
Taking commercial buses – some call it commandeering, others call it hijacking – is integral to activism, education and fundraising at Ayotzinapa. In the absence of substantive financial support from the government, Ayotzinapa has never had enough money for an adequate fleet of vehicles to transport students to remote locations to observe schoolteachers at work and to attend protests. So the students make deals with local bus drivers and companies, taking charge of large passenger buses for days or weeks, often feeding drivers on their campus. The students insist the drivers are not exploited or abused, although some drivers and bus companies have disputed this.

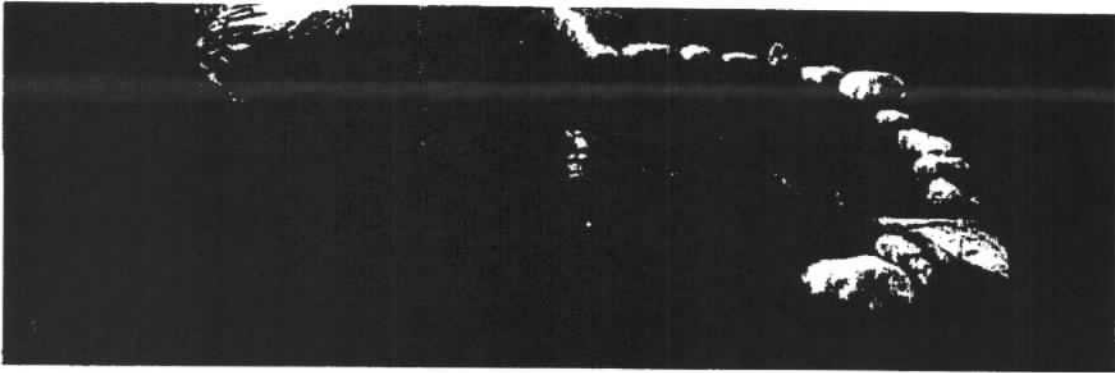
In mid-September, normalistas gathered to discuss the logistics of an upcoming action. Each year on October 2, activists converge in Mexico City to commemorate one of the darkest days in the nation's history: the 1968 massacre of students and civilians by government security forces in a section of the capital known as Tlatelolco. At the September meeting, according to *Nexus* magazine, Ayotzinapa was selected to take the lead in acquiring transportation.

On September 26, nearly 100 Ayotzinapa students, including Ernesto, were dispatched in two buses to collect more vehicles. Nearly all of them were enthusiastic first-years, and most had no idea where they were going. Their first stop was on a highway about 70 miles from campus and 20 miles outside Iguala, the third-largest city in Guerrero.

The normalistas split into two teams. One bus waited on the side of the highway, across from a restaurant called La Palma, while the other was sent to a tollbooth closer to Iguala, where the students quickly managed to stop a bus. They bargained with the driver, who

agreed to work with them on the condition that he first drop off his passengers in Iguala. To ensure he made good on his word, a group of normalistas boarded his bus. They headed into a city where the line between the state and organized crime had all but disappeared.





Intersection at which two students were killed; crosses mark the spot. (Keith Dannemiller) PHOTO COURTESY OF THE STATE OF GUERRERO

**A**

**T THE BUS** station in Iguala, the small group of students watched as their driver stepped off the vehicle. He spoke to a security guard. He made calls. The minutes ticked away. The students started to get nervous. They tried to open the bus door, but it was locked. They frantically phoned their friends. Responding to the distress calls, Ernesto and his classmates on the side of the highway and at the tollbooth got onto their buses and headed for Iguala.

Though they may not have known it, their movements were being tracked by state and

federal police. In fact, the students had been on the authorities' radar since early evening, according to records contained in the state of Guerrero's investigation. A communications record, signed by a state police coordinator, shows that at 5:59 p.m. a call came in indicating that two busloads of Ayotzinapa students had set off in the direction of Iguala.

Around 9 p.m. the first wave of student reinforcements arrived at the Iguala station. Young men with shaved heads piled out of the two arriving buses, their faces covered with bandanas and T-shirts. A window was broken and the students in the locked bus were freed. Amid the commotion, the normalistas managed to grab several more buses. Two left on a direct route toward the highway. Three others drove toward the city center and got bogged down in traffic.

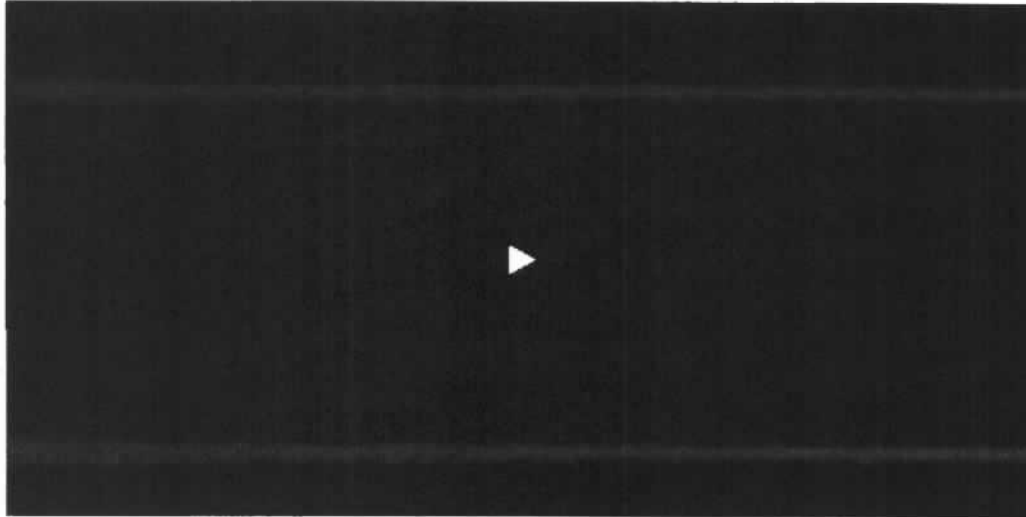
Ernesto was on one of the buses crawling through Iguala. He estimated that more than 40 other students were on board. The seats were full and some were standing in the aisle. They had passed the central plaza when they saw police lights and heard sirens. They aren't coming for us, Ernesto thought.

**“We are unarmed! What are you aiming at? ... You killed my friend! ... Call an ambulance!”**



Suddenly, a municipal police truck cut them off. The students leaped out to move it from their path. Police officers fired warning shots. The students threw rocks, smashing the window of the police truck. Pedestrians ran for cover. The students navigated their buses around the blockade. Their caravan moved on, followed by police who kept firing.

"Don't worry comrades," Ernesto remembered one of the students reassuring his classmates. "They are shooting into the air."



*The night of the disappearance of 43 students*

The streets were packed, bringing the three buses to a crawl on a two-lane road. The highway wasn't far, Ernesto recalled, but the number of police behind the buses was growing — as many as 10 patrol vehicles were now tailing them. Officers weren't shooting in the air anymore — they were shooting at the buses. Ernesto decided he had to defend himself and his classmates, so he and a number of others jumped off the bus to hurl more stones at the cops.

"Close the door and don't open it for anyone!" Ernesto yelled to the driver.

At the head of the caravan, another police truck zoomed in and cut them off; its driver got out and took off running. The normalistas moved into action. Later, in an interview with the newspaper *La Jornada*, a student recalled the words of his classmate, Aldo Gutiérrez Solano.

"If they come, we stone them," the 19-year-old Gutiérrez said.

Gutiérrez joined the others attempting to move the abandoned police truck out of the way. Shoulder to shoulder, Gutiérrez and Ernesto pushed against it in the falling rain. Automatic gunfire broke out again. A bullet punched into the side of Gutiérrez's skull. He crumpled to the ground.

"They hit one!" Ernesto screamed.

Panicked students dove for cover as Gutiérrez's blood pooled on the wet concrete. Some crawled under the buses; others ran. Ernesto and another student attempted to pull

Gutiérrez to safety, but the gunfire was too intense. Gutiérrez remained in the street, bleeding and unconscious. Tires blew out and glass shattered. One student described bullets kicking off the pavement like firecrackers.

Cellphone video recorded that night shows the students yelling at their attackers.

"We are unarmed!" the students scream. "What are you aiming at? ... You killed my friend! ... Call an ambulance!"

Left in the street, Gutiérrez was eventually taken to a hospital, where he was pronounced brain-dead. He remains in a coma.

Police began removing students who were on the last bus in the caravan. Bullets had shattered the windows. Blood soaked the seats and spread across the aisle. The students were forced to lie down on the pavement, their hands on their heads. They were then loaded onto the beds of patrol trucks, hoods placed over their heads.

Up at the front of the blocked caravan, police were barking orders at Ernesto and his classmates.

"Get out of here, motherfuckers!" an officer shouted, even though their only means of transportation were riddled with bullet holes.

"We're leaving," the officers warned. "You ought to do the same. Get on your bus and get out of here."



Former mayor José Luis Abarca (R) and his wife María de los Angeles Pineda Villa attend an event in Chilpancingo in March 2014. (Anwar Delgado/Reuters/Landov)

**B**

LOCKS AW

gunfire, thousands of people had been gathered at a public plaza for a celebration hosted by Iguala's mayor and his wife. Dubbed the "Imperial Couple,"

José Luis Abarca and María de los Ángeles Pineda Villa were characterized in the Mexican media as having a paper-thin proximity to murder and mayhem. They would become, in the government's account of what unfolded, key orchestrators of the crimes that began on September 26.

Abarca had started off as a humble vendor selling sandals for a living. Iguala residents say his 2012 election took intimidation, terror and impunity to new levels. In 2010, federal authorities had investigated Abarca and his wife for illegal enrichment, but no charges were filed. Less than a year into Abarca's term, a well-known campesino activist was

executed and his driver accused the mayor of pulling the trigger. The investigation stalled, and Abarca coasted along unscathed.

Pineda Villa had been an ever-present figure at the mayor's side, and many people believed the event in the plaza – organized to celebrate her role advancing the city's welfare program – was the unofficial kickoff of an election campaign to succeed her husband in office. "Lady Iguala," as she came to be known, hailed from a family of powerful narcos. Two of her brothers were high-level operators within the Sinaloa and Beltran Leyva cartels, at one point overseeing a team of some 200 assassins in and around Iguala, according to the news magazine *Proceso*.

## **Guerrero turned into an ever-shifting battleground where smaller groups fought for control of the lucrative heroin trade.**

In recent years, Iguala had become emblematic of broader trends across Mexico's most lawless areas. The region known as Tierra Caliente, the Hot Land – which includes the states of Guerrero and Michoacán – is a place where economic despair has collided with the militarism of Mexico's drug war. In 2006, then-President Felipe Calderón ordered Mexican

troops into the streets of Michoacán to fight drug traffickers, unleashing a wave of violence. Amid widespread allegations of human rights abuses, popular support for government security forces began to plummet, and civilians took the fight against the region's criminal groups into their own hands, forming armed community groups to protect their homes.

Guerrero is Mexico's largest producer of opium paste, growing an estimated 60 percent of the nation's poppies, making it a crucial supplier of heroin to the U.S. In 2009, the figurehead of the Beltran Leyva cartel, Arturo Beltran Leyva, was killed in a gun battle with Mexican security forces, and that same month, the two Pineda Villa brothers were assassinated. The Beltran Leyva cartel unraveled and the established order was upended. Now considered by many to be Mexico's most violent state, Guerrero turned into an ever-shifting battleground where smaller groups fought for control of the lucrative heroin trade.

In October, Mexico's attorney general described Pineda Villa as a "principal operator" of criminal activity linked to one such smaller group – Guerreros Unidos. The gang – which also raised revenue through murder, kidnapping and extortion – had staked its claim to power in 2012 by leaving 10 severed heads outside a slaughterhouse. In the years that followed, the government claimed hundreds of thousands of dollars changed hands between Abarca's office and Guerreros Unidos on a regular basis – roughly \$45,000 of which was directed to Iguala's municipal police, who were under the command of Abarca's cousin, Felipe Flores Velázquez. Abarca's alleged criminal links were hardly unique, however. In November, the newspaper *Milenio* reported that eleven other mayors across Guerrero were under federal scrutiny for suspected ties to organized crime.

The Imperial Couple also appeared to enjoy a cozy relationship with the Mexican Army. Abarca had opened a multi-million dollar mall in Iguala on land partially donated by the army. Military records obtained by *Proceso* and reviewed by *The Intercept* show that as Ernesto and his classmates set off from Ayotzinapa, two members of the army's 27th Infantry Battalion – stationed in Iguala in part to combat organized crime – were leaving their base to attend the celebration hosted by the mayor's wife. A few days after the attacks, Abarca denied responsibility. He told a radio host, "I was dancing."



Federal police officer rides atop a vehicle in town of Cocula, near Iguala, November 2, 2014. (Henry Romero/Reuters/Landov)

Once the students arrived in Iguala, communications among security forces and emergency personnel began lighting up. The first report of shots fired came in from a civilian at 9:40 p.m., according to the state communications record. Thirteen minutes later another call was registered; a young person had been wounded by gunfire. Two more calls followed in quick succession, one requesting an ambulance.

The calls were logged in a communications system called Control, Command, Communication and Computation – or C4 – which collects real-time intelligence available to security forces. The C4 centers are common across Mexico and range in sophistication, with some of the more high-tech outposts concentrated along the border between the U.S. and Mexico, subsidized by U.S. counternarcotics programs. According to *Proceso*, Iguala's C4 reports that evening were simultaneously conveyed to federal police units and the military.

News of the gunfire quickly reached municipal police in the small town of Cocula, about 13 miles southwest of Iguala. The Cocula officers' response was detailed in more than a dozen statements included in a portion of the federal case file reviewed by *The Intercept*.

Around 10 p.m., a mid-level officer said he received a call from his boss. The message was urgent, he said: *Come toward Iguala, there's a shooting and we're going to provide support. I need three units.*

Around a dozen men were assembled. They dressed in tactical equipment, kneepads and elbow pads, according to one officer, and armed themselves with assault rifles and handguns. They raced to Iguala in three patrol vehicles.

One officer recalled the scene in vivid detail. The windshield of one of the buses had been shattered. Students inside it were yelling, "Don't shoot! We have no weapons." From the right side of the bus, the officer saw an arm protruding from a window waving a white cloth.



The bullet-riddled bus of the soccer players. (Borderlandbeat.com)

**A**

**N HOUR AFTER** the first shots were fired, the violence began spilling over onto the highway outside the city. Armed men were stalking the road as the remaining two buses tried to flee. One bus was caught under a highway overpass. According to the state of Guerrero's investigation, the discovery of the vehicle was reported just after midnight. The tires were blown out and it was littered with broken glass. A short distance away, there was a pile of clothing — a sweater, a bandana, and eight shirts, one stained with blood.

Army records later released revealed that the bus had been stopped by two patrols of municipal police vehicles. At approximately 10:30 p.m., three more police patrols arrived carrying officers described in the records as hooded and dressed in black. Five minutes after the hooded police arrived, the records described them "trying" to remove the students from the bus. The students have not been seen since.

**■ The innocent people they killed were not the innocent people they set out to kill.**

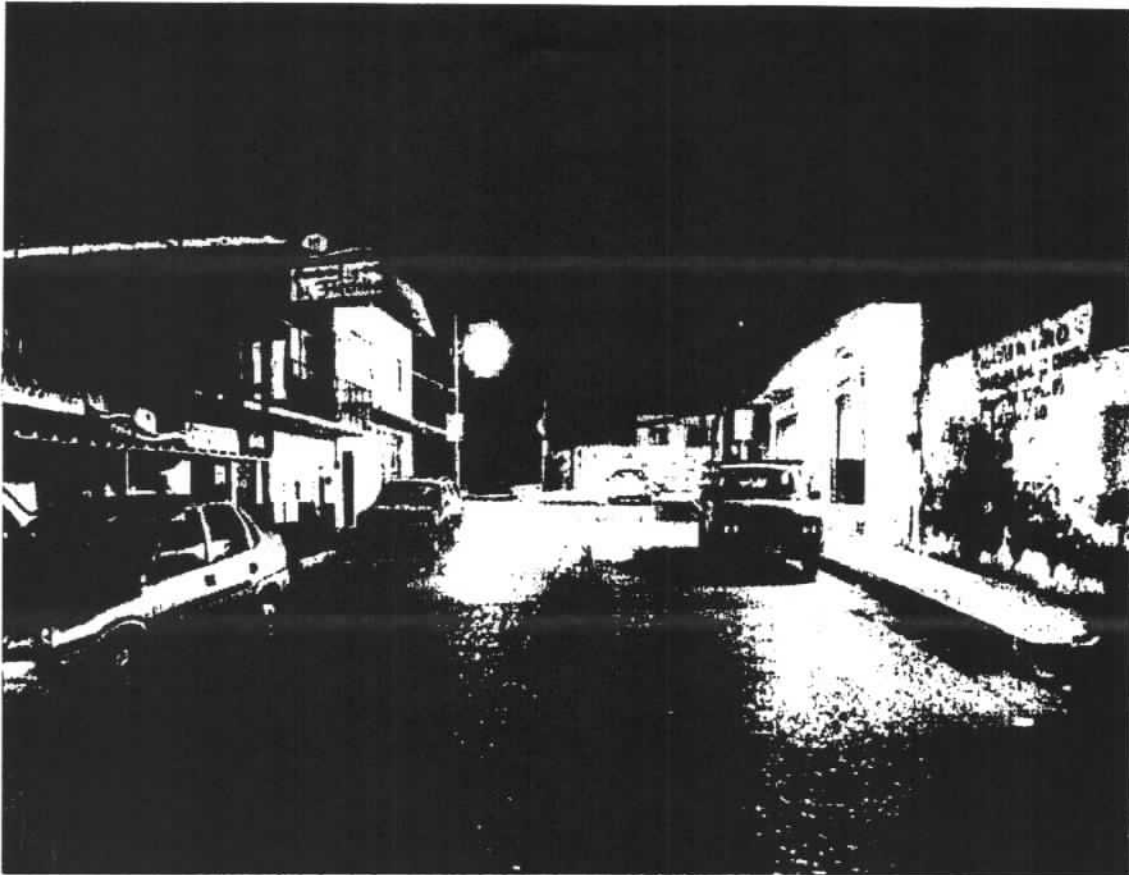
The final bus fleeing Iguala, carrying 14 students, was stopped by police on its way out of the city. Jonathan, a 20-year-old first-year who asked that his last name be withheld, was among those on board. He told *The Intercept* that as he stepped off the vehicle with his classmates, an officer yelled and pointed his pistol and flashlight at them. They began to walk away from the scene, and broke into a run as soon as they were out of the officer's sight. The group eventually found shelter with a resident of the area who took them in until the next morning.

At 12:45 a.m., the C4 communications system catalogued the aftermath of yet another attack on the highway – armed men had intercepted a bus carrying a semi-professional soccer team. Survivors told investigators the driver of the bus lost control during the assault, and the door was pinned closed by a cascade of earth. The passengers dove to the floor, screaming that they were soccer players. They said their attackers replied they "did not care" and let loose with more bullets. At least 60 shell casings were recovered from the scene, including high-powered assault rifle rounds.

After the shooting stopped, the passengers heard the sound of two vehicles taking off into the night. Fifteen-year-old David Josué García Evangelista, one of the soccer players, was dead. The driver, Víctor Manuel Lugo Ortiz, was gravely wounded and died hours later. Blanca Montiel Sánchez, riding in a taxi nearby, was also killed. Hospital records included in the state's investigation list at least eight other players and trainers admitted for injuries that night.

Some press accounts have attributed the attack on the highway to Iguala's municipal

police; others reported that members of Guerreros Unidos opened fire, too. One witness, who arrived after the assault, told state investigators the shooters were dressed in dark clothes with balaclavas pulled over their faces. Whoever the shooters were, it seems the innocent people they killed were not the innocent people they set out to kill.



The street in Iguala where the students were attacked. (Keith Dannemiller)

**B**

**ACK AT THE** scene of the first attack, midnight was approaching. The municipal police had disappeared with the hooded students in the back of their patrol trucks. Ernesto and his classmates, who had not been taken away, made calls for help to human rights workers, journalists and their classmates at Ayotzinapa. A handful of reporters arrived, and with the students cordoned off the area to preserve evidence, using rocks to mark the bullet casings left behind.

The danger had not yet passed.

As Ernesto showed reporters the damage done to the buses, Francisco Garcias, a slight first year student, noticed a patrol truck passing by.

"Now, you will see!" a man shouted from the truck.

Automatic gunfire soon erupted; the students and journalists dropped to the ground and dove behind cars.

During the barrage, two Ayotzinapa students, Daniel Solís Gallardo and Julio César Ramírez Nava, were hit. The young men bled to death in the street. Soldiers from the 27th Battalion,

stationed less than two miles away, reported discovering their bodies at 2:40 a.m., nearly three hours after the shots that killed them were fired.

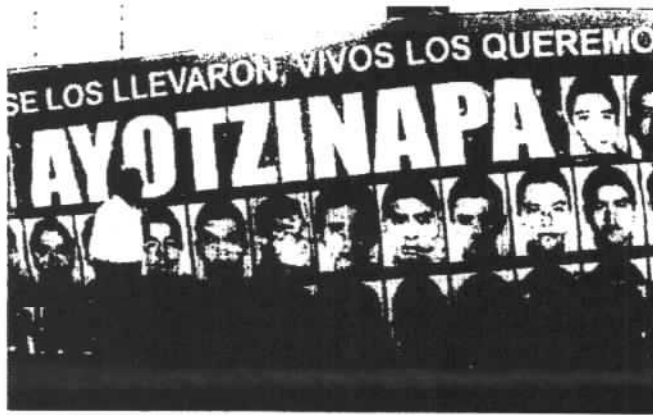
Omar García, one of the students who took cover when the shots rang out, sprinted away during a lull in the gunfire. With him was Edgar Andrés Vargas, a young man whose mouth had been lacerated by a bullet. García told *The Intercept* that he and two dozen other students ran to a private medical clinic to seek treatment for the wounded, including Andrés Vargas, whom they carried. They pounded on the door, pleading to be let in. Once inside, the frightened women working there refused to help.

The students begged for an ambulance. Instead of paramedics, patrols from the 27th Battalion showed up. With weapons raised, the soldiers forced the students to the ground, ordered them to remove their shirts and rifled through their pockets. No medical care was given to Andrés Vargas. He couldn't speak because of his mouth injury, so he used his phone to communicate with his friends, according to *Sin Embargo*, a news website.

"GET ME OUT OF HERE BECAUSE I AM DYING," he wrote.

The soldiers issued a threat before leaving the clinic.

"If you give us false names, you'll never be found," they warned.



A banner with portraits of the 43 missing students. (Jesus Guerrero/AFP/Getty)

**W**

**HEN THE SUN** rose the next morning, the extent of the carnage began to emerge. In the span of no more than five hours, according to the state's file, at least five buses, six cars and one motorcycle were wrecked, shot up, or both; and 195 shell casings were discharged in Iguala and on the highway, nearly half of them high-caliber rounds. Twenty-five people were admitted to the hospital that night. Six people had been killed.

Around seven in the morning, a photograph began to



surface online. It showed a young man splayed out on his back on a patch of dirt, amid scraps of garbage. To his right were rivulets of blood, turned deep maroon in the morning sun. He was wearing gray and white sneakers, and his blue jeans had fallen low around his hips. His red T-shirt was pulled up to his sternum, revealing heavy bruising around his torso. He had no ears and no eyes. The skin of his face had been removed from his skull. The tortured corpse had the buzzcut of a first year student.

Ernesto saw the mutilated body at the medical examiner's office, where he and a handful of classmates had gone to identify victims collected from the streets.

"The medical examiner told me that he was alive when they did that," Ernesto said. The young man's name was Julio César Mondragón.

Overnight, as word of the attacks had spread, worried mothers and fathers had raced to Ayotzinapa. Those who couldn't find a ride walked to the campus. They waited out the night with prayers and candles. In the morning many of them went to Iguala to join the surviving students searching for their friends in the city's jail cells and hospital beds.

"There were three jails, we searched inside all of them," said Margarito "Benito" Guerrero, the father of a normalista named Jhosivani Guerrero de la Cruz. "Not one prisoner in all of them."

Before returning to Ayotzinapa, the students gave state authorities a three-page, handwritten list of their missing classmates. A crowd of anxious parents and family

members met them at the campus. People cried and hugged. Mothers and fathers asked Ernesto about their sons.

"They're coming," he said about the ones he knew were safe. For the others, he struggled to answer.

The list had the names of 64 students whose whereabouts were unknown. The following day, as more came out of hiding, the number was reduced to 57.

It wasn't until September 30, four days after the attacks, that the true number emerged: 43 students were missing.

*A two-part investigation. Part 2 [here](#). Photo essay [here](#).*

*Assistant Editor Andrea Jones contributed to this report. Freelance journalist Andalusia Knoll and policy analyst Jesse Franzblau contributed research.*

*Photo of tollbooth with flyers of the missing students by Keith Dannemiller for The Intercept.*



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23 Comments (closed)

The Intercept

**THE SECRET GOVERNMENT  
RULEBOOK FOR LABELING YOU A  
TERRORIST**

Facebook, Twitter, Email, Print icons

The image shows a dark-themed article preview. At the top left, the text 'The Intercept' is visible. The main visual is a grid of surveillance-style images, including a large multi-panel grid and a smaller one to the right. Below the images, the title 'THE SECRET GOVERNMENT RULEBOOK FOR LABELING YOU A TERRORIST' is displayed in large, bold, white capital letters. At the bottom left of the preview, there are four small icons representing social media sharing options: Facebook, Twitter, Email, and Print.



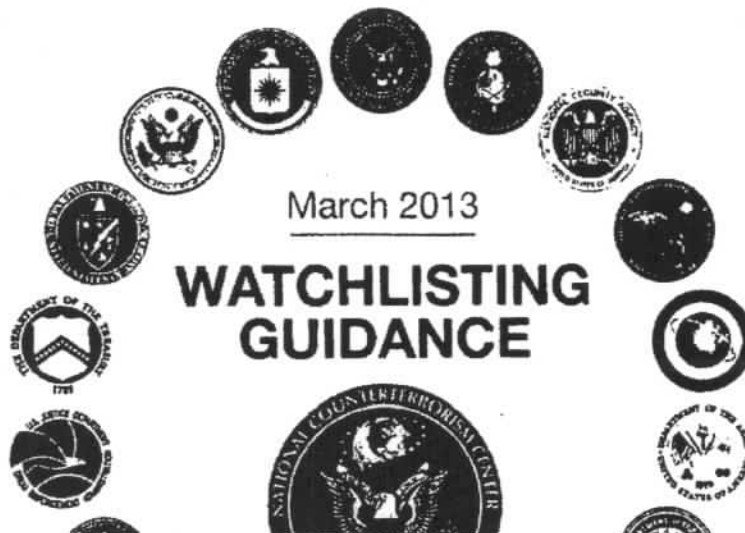
The Obama administration has quietly approved a substantial expansion of the terrorist watchlist system, authorizing a secret process that requires neither "concrete facts" nor "irrefutable evidence" to designate an American or foreigner as a terrorist, according to a key government document obtained by *The Intercept*.

The "March 2013 Watchlisting Guidance," a 166-page document issued last year by the National Counterterrorism Center, spells out the government's secret rules for putting individuals on its main terrorist database, as well as the no fly list and the selectee list, which triggers enhanced screening at airports and border crossings. The new guidelines allow individuals to be designated as representatives of terror organizations without any evidence they are actually connected to such organizations, and it gives a single White House official the unilateral authority to place entire "categories" of people the government is tracking onto the no fly and selectee lists. It broadens the authority of government officials to "nominate" people to the watchlists based on what is vaguely described as "fragmentary information." It also allows for dead people to be watchlisted.

Over the years, the Obama and Bush Administrations have fiercely resisted disclosing the criteria for placing names on the databases – though the guidelines are officially labeled as unclassified. In May, Attorney General Eric Holder even invoked the state secrets privilege to prevent watchlisting guidelines from being disclosed in litigation launched by an American who was on the no fly list. In an affidavit, Holder called them a "clear roadmap"

to the government's terrorist-tracking apparatus, adding: "The Watchlisting Guidance, although unclassified, contains national security information that, if disclosed ... could cause significant harm to national security."

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The rulebook, which *The Intercept* is publishing in full, was developed behind closed doors by representatives of the nation's intelligence, military, and law-enforcement establishment, including the Pentagon, CIA, NSA, and FBI. Emblazoned with the crests of 19 agencies, it offers the most complete and revealing look into the secret history of the government's terror list policies to date. It reveals a confounding and convoluted system filled with exceptions to its own rules, and it relies on the elastic concept of "reasonable

suspicion" as a standard for determining whether someone is a possible threat. Because the government tracks "suspected terrorists" as well as "known terrorists," individuals can be watchlisted if they are suspected of being a suspected terrorist, or if they are suspected of associating with people who are suspected of terrorism activity.

"Instead of a watchlist limited to actual, known terrorists, the government has built a vast system based on the unproven and flawed premise that it can predict if a person will commit a terrorist act in the future," says Hina Shamsi, the head of the ACLU's National Security Project. "On that dangerous theory, the government is secretly blacklisting people as suspected terrorists and giving them the impossible task of proving themselves innocent of a threat they haven't carried out." Shamsi, who reviewed the document, added, "These criteria should never have been kept secret."

The document's definition of "terrorist" activity includes actions that fall far short of bombing or hijacking. In addition to expected crimes, such as assassination or hostage-taking, the guidelines also define destruction of government property and damaging computers used by financial institutions as activities meriting placement on a list. They also define as terrorism any act that is "dangerous" to property and intended to influence government policy through intimidation.

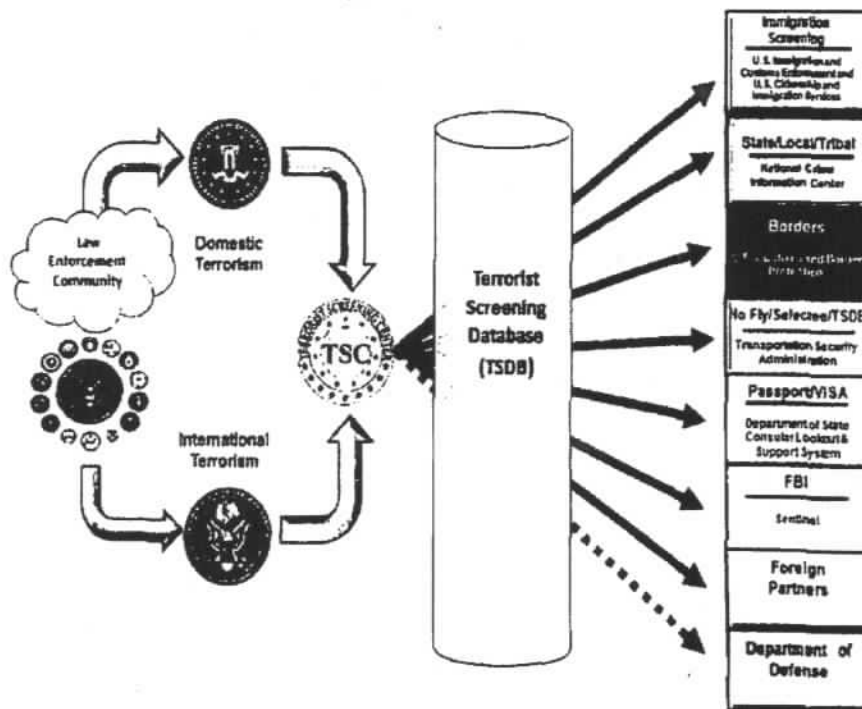
This combination — a broad definition of what constitutes terrorism and a low threshold for designating someone a terrorist — opens the way to ensnaring innocent people in secret government dragnets. It can also be counterproductive. When resources are devoted to tracking people who are not genuine risks to national security, the actual threats get fewer

resources – and might go unnoticed.

"If reasonable suspicion is the only standard you need to label somebody, then it's a slippery slope we're sliding down here, because then you can label anybody anything," says David Gomez, a former senior FBI special agent with experience running high-profile terrorism investigations. "Because you appear on a telephone list of somebody doesn't make you a terrorist. That's the kind of information that gets put in there."

The fallout is personal too. There are severe consequences for people unfairly labeled a terrorist by the U.S. government, which shares its watchlist data with local law enforcement, foreign governments, and "private entities." Once the U.S. government secretly labels you a terrorist or terrorist suspect, other institutions tend to treat you as one. It can become difficult to get a job (or simply to stay out of jail). It can become burdensome – or impossible – to travel. And routine encounters with law enforcement can turn into ordeals.

1.32 Collection, Nomination, Consolidation and the Use of the Terrorist Watchlist to Perform Screening Processes. The following is a chart depicting the collection, TERRORIST nomination, consolidation and screening processes:



### A chart from the "March 2013 Watchlisting Guidance"

In 2012 Tim Healy, the former director of the FBI's Terrorist Screening Center, described to CBS News how watchlists are used by police officers. "So if you are speeding, you get pulled over, they'll query that name," he said. "And if they are encountering a known or suspected terrorist, it will pop up and say call the Terrorist Screening Center.... So now the officer on the street knows he may be dealing with a known or suspected terrorist." Of course, the problem is that the "known or suspected terrorist" might just be an ordinary citizen who should not be treated as a menace to public safety.

Until 2001, the government did not prioritize building a watchlist system. On 9/11, the government's list of people barred from flying included just 16 names. Today, the no fly list has swelled to tens of thousands of "known or suspected terrorists" (the guidelines refer to them as KSTs). The selectee list subjects people to extra scrutiny and questioning at airports and border crossings. The government has created several other databases, too. The largest is the Terrorist Identities Datamart Environment (TIDE), which gathers terrorism information from sensitive military and intelligence sources around the world. Because it contains classified information that cannot be widely distributed, there is yet another list, the Terrorist Screening Database, or TSDB, which has been stripped of TIDE's classified data so that it can be shared. When government officials refer to "the watchlist," they are typically referring to the TSDB. (TIDE is the responsibility of the National Counterterrorism Center; the TSDB is managed by the Terrorist Screening Center at the FBI.)

In a statement, a spokesman for the National Counterterrorism Center told *The Intercept* that

"the watchlisting system is an important part of our layered defense to protect the United States against future terrorist attacks" and that "watchlisting continues to mature to meet an evolving, diffuse threat." He added that U.S. citizens are afforded extra protections to guard against improper listing, and that no one can be placed on a list solely for activities protected by the First Amendment. A representative of the Terrorist Screening Center did not respond to a request for comment.

The system has been criticized for years. In 2004, Sen. Ted Kennedy complained that he was barred from boarding flights on five separate occasions because his name resembled the alias of a suspected terrorist. Two years later, CBS News obtained a copy of the no fly list and reported that it included Bolivian president Evo Morales and Lebanese parliament head Nabih Berri. One of the watchlists snared Mikey Hicks, a Cub Scout who got his first of many airport pat-downs at age two. In 2007, the Justice Department's inspector general issued a scathing report identifying "significant weaknesses" in the system. And in 2009, after a Nigerian terrorist was able to board a passenger flight to Detroit and nearly detonated a bomb sewn into his underwear despite his name having been placed on the TIDE list, President Obama admitted that there had been a "systemic failure."

Obama hoped that his response to the "underwear bomber" would be a turning point. In 2010, he gave increased powers and responsibilities to the agencies that nominate individuals to the lists, placing pressure on them to add names. His administration also issued a set of new guidelines for the watchlists. Problems persisted, however. In 2012, the U.S. Government Accountability Office published a report that bluntly noted there was no

agency responsible for figuring out “whether watchlist-related screening or vetting is achieving intended results.” The guidelines were revised and expanded in 2013 – and a source within the intelligence community subsequently provided a copy to *The Intercept*.

**1.59 Expedited Nomination Procedures for Temporary, Threat-Based Categories.** This provision is intended to enable categories of individuals to be temporarily upgraded in watchlist status based on current and credible intelligence information or a particular threat stream that indicates a certain category of individuals may be used to conduct an act of domestic or international TERRORISM. This temporary, threat-based expedited upgrade (TBU) is made at the direction of the Assistant to the President for Homeland Security and Counterterrorism or his/her designee (Appropriate Official) and should be narrowly tailored to address the threat.

## “Concrete facts are not necessary”

The five chapters and 11 appendices of the “Watchlisting Guidance” are filled with acronyms, legal citations, and numbered paragraphs; it reads like an arcane textbook with a vocabulary all its own. Different types of data on suspected terrorists are referred to as “derogatory information,” “substantive derogatory information,” “extreme derogatory information” and “particularized derogatory information.” The names of suspected terrorists are passed along a bureaucratic ecosystem of “originators,” “nominators,” “aggregators,” “screeners,” and “encountering agencies.” And “upgrade,” usually a happy word for travellers, is repurposed to mean that an individual has been placed on a more

restrictive list.

The heart of the document revolves around the rules for placing individuals on a watchlist. “All executive departments and agencies,” the document says, are responsible for collecting and sharing information on terrorist suspects with the National Counterterrorism Center. It sets a low standard – “reasonable suspicion” – for placing names on the watchlists, and offers a multitude of vague, confusing, or contradictory instructions for gauging it. In the chapter on “Minimum Substantive Derogatory Criteria” – even the title is hard to digest – the key sentence on reasonable suspicion offers little clarity:

“To meet the REASONABLE SUSPICION standard, the NOMINATOR, based on the totality of the circumstances, must rely upon articulable intelligence or information which, taken together with rational inferences from those facts, reasonably warrants a determination that an individual is known or suspected to be or has been knowingly engaged in conduct constituting, in preparation for, in aid of, or related to TERRORISM and/or TERRORIST ACTIVITIES.”

The rulebook makes no effort to define an essential phrase in the passage – “articulable intelligence or information.” After stressing that hunches are not reasonable suspicion and that “there must be an objective factual basis” for labeling someone a terrorist, it goes on to state that no actual facts are required:

“In determining whether a REASONABLE SUSPICION exists, due weight should be given to the specific reasonable inferences that a NOMINATOR is entitled to draw

from the facts in light of his/her experience and not on unfounded suspicions or hunches. Although irrefutable evidence or concrete facts are not necessary, to be reasonable, suspicion should be as clear and as fully developed as circumstances permit."

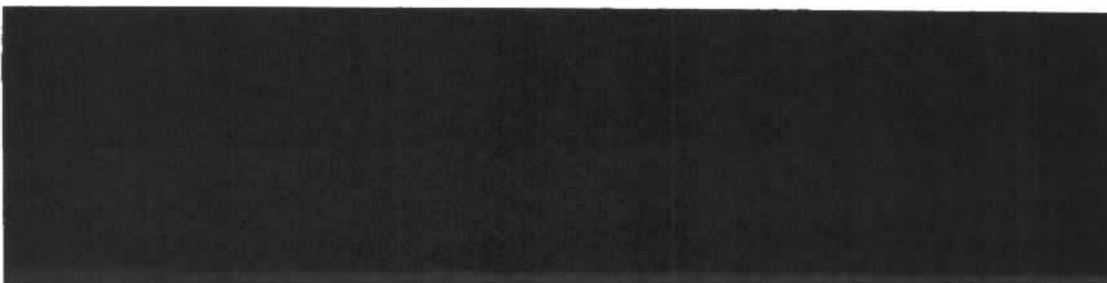
While the guidelines nominally prohibit nominations based on unreliable information, they explicitly regard "uncorroborated" Facebook or Twitter posts as sufficient grounds for putting an individual on one of the watchlists. "Single source information," the guidelines state, "including but not limited to 'walk-in,' 'write-in,' or postings on social media sites, however, should not automatically be discounted ... the NOMINATING AGENCY should evaluate the credibility of the source, as well as the nature and specificity of the information, and nominate even if that source is uncorroborated."

There are a number of loopholes for putting people onto the watchlists even if reasonable suspicion cannot be met.

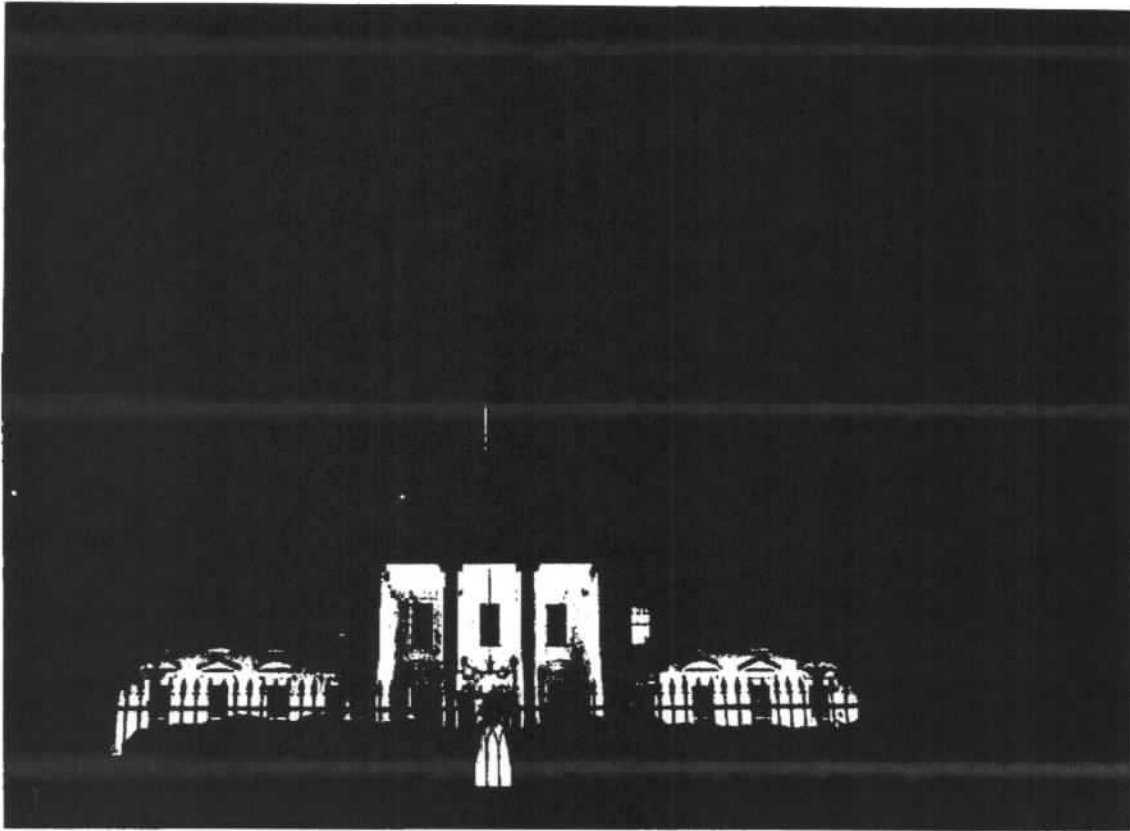
One is clearly defined: The immediate family of suspected terrorists – their spouses, children, parents, or siblings – may be watchlisted without any suspicion that they themselves are engaged in terrorist activity. But another loophole is quite broad – "associates" who have a defined relationship with a suspected terrorist, but whose involvement in terrorist activity is not known. A third loophole is broader still – individuals with "a possible nexus" to terrorism, but for whom there is not enough "derogatory information" to meet the reasonable suspicion standard.

Americans and foreigners can be nominated for the watchlists if they are associated with a terrorist group, even if that group has not been designated as a terrorist organization by the U.S. government. They can also be treated as "representatives" of a terrorist group even if they have "neither membership in nor association with the organization." The guidelines do helpfully note that certain associations, such as providing janitorial services or delivering packages, are not grounds for being watchlisted.

The nomination system appears to lack meaningful checks and balances. Although government officials have repeatedly said there is a rigorous process for making sure no one is unfairly placed in the databases, the guidelines acknowledge that all nominations of "known terrorists" are considered justified unless the National Counterterrorism Center has evidence to the contrary. In a recent court filing, the government disclosed that there were 468,749 KST nominations in 2013, of which only 4,915 were rejected—a rate of about one percent. The rulebook appears to invert the legal principle of due process, defining nominations as "presumptively valid."







## **Profiling categories of people**

While the nomination process appears methodical on paper, in practice there is a shortcut around the entire system. Known as a "threat-based expedited upgrade," it gives a single White House official the unilateral authority to elevate entire "categories of people" whose names appear in the larger databases onto the no fly or selectee lists. This can occur, the guidelines state, when there is a "particular threat stream" indicating that a certain type of individual may commit a terrorist act.

This extraordinary power for "categorical watchlisting" – otherwise known as profiling – is vested in the assistant to the president for homeland security and counterterrorism, a position formerly held by CIA Director John Brennan that does not require Senate confirmation.

The rulebook does not indicate what "categories of people" have been subjected to threat-based upgrades. It is not clear, for example, whether a category might be as broad as military-age males from Yemen. The guidelines do make clear that American citizens and green card holders are subject to such upgrades, though government officials are required to review their status in an "expedited" procedure. Upgrades can remain in effect for 72 hours before being reviewed by a small committee of senior officials. If approved, they can remain in place for 30 days before a renewal is required, and can continue "until the threat

no longer exists."

"In a set of watchlisting criteria riddled with exceptions that swallow rules, this exception is perhaps the most expansive and certainly one of the most troubling," Shamsi, the ACLU attorney, says. "It's reminiscent of the Bush administration's heavily criticized color-coded threat alerts, except that here, bureaucrats can exercise virtually standard-less authority in secret with specific negative consequences for entire categories of people."

The National Counterterrorism Center declined to provide any details on the upgrade authority, including how often it has been exercised and for what categories of people.



## Pocket litter and scuba gear

The guidelines provide the clearest explanation yet of what is happening when Americans and foreigners are pulled aside at airports and border crossings by government agents. The fifth chapter, titled "Encounter Management and Analysis," details the type of information that is targeted for collection during "encounters" with people on the watchlists, as well as the different organizations that should collect the data. The Department of Homeland Security is described as having the largest number of encounters, but other authorities, ranging from the State Department and Coast Guard to foreign governments and "certain private entities," are also involved in assembling "encounter packages" when watchlisted individuals cross their paths. The encounters can be face-to-face meetings or electronic interactions—for instance, when a watchlisted individual applies for a visa.

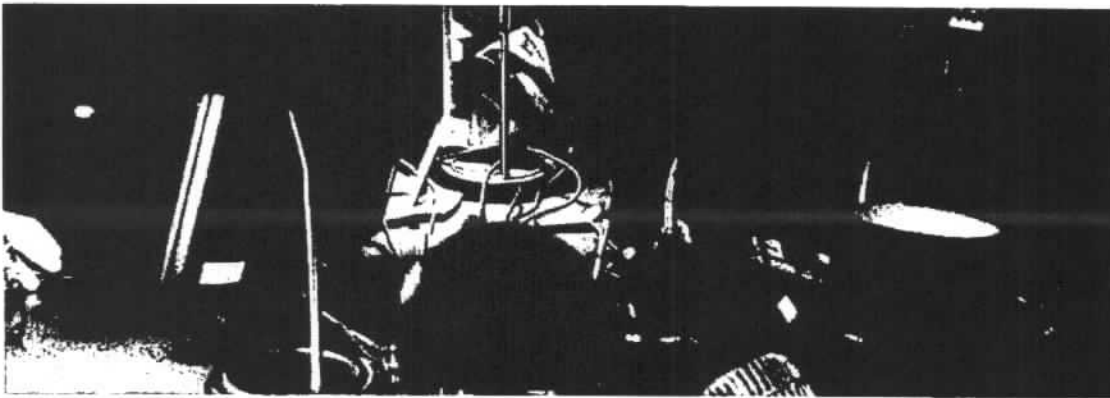
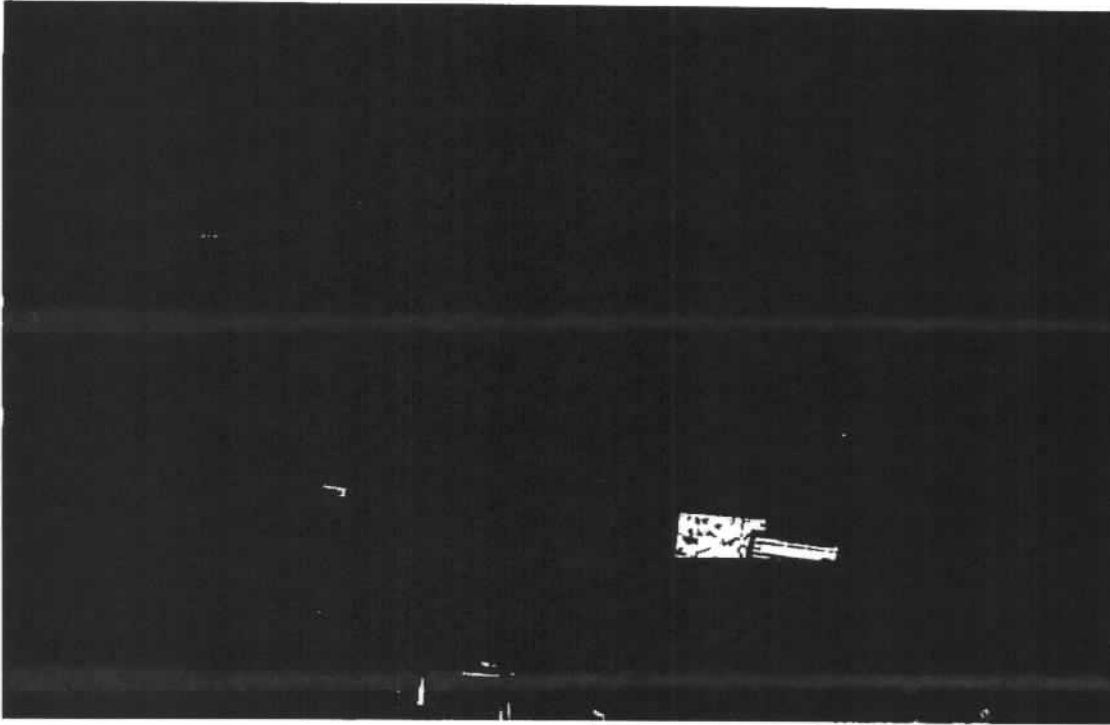
In addition to data like fingerprints, travel itineraries, identification documents and gun licenses, the rules encourage screeners to acquire health insurance information, drug prescriptions, "any cards with an electronic strip on it (hotel cards, grocery cards, gift cards, frequent flyer cards)," cellphones, email addresses, binoculars, peroxide, bank account numbers, pay stubs, academic transcripts, parking and speeding tickets, and want ads. The digital information singled out for collection includes social media accounts, cell phone lists, speed dial numbers, laptop images, thumb drives, iPods, Kindles, and cameras. All of the information is then uploaded to the TIDE database.

Screeners are also instructed to collect data on any "pocket litter," scuba gear, EZ Passes, library cards, and the titles of any books, along with information about their condition — "e.g., new, dog-eared, annotated, unopened." Business cards and conference materials are also targeted, as well as "anything with an account number" and information about any gold or jewelry worn by the watchlisted individual. Even "animal information" — details about pets from veterinarians or tracking chips — is requested. The rulebook also encourages the collection of biometric or biographical data about the travel partners of watchlisted individuals.

The list of government entities that collect this data includes the U.S. Agency for International Development, which is neither an intelligence nor law-enforcement agency. As the rulebook notes, USAID funds foreign aid programs that promote environmentalism, health care, and education. USAID, which presents itself as committed to fighting global poverty, nonetheless appears to serve as a conduit for sensitive intelligence about foreigners. According to the guidelines, "When USAID receives an application seeking financial assistance, prior to granting, these applications are subject to vetting by USAID intelligence analysts at the TSC." The guidelines do not disclose the volume of names provided by USAID, the type of information it provides, or the number and duties of the "USAID intelligence analysts."

A USAID spokesman told *The Intercept* that "in certain high risk countries, such as Afghanistan, USAID has determined that vetting potential partner organizations with the terrorist watchlist is warranted to protect U.S. taxpayer dollars and to minimize the risk of

inadvertent funding of terrorism." He stated that since 2007, the agency has checked "the names and other personal identifying information of key individuals of contractors and grantees, and sub-recipients."



## Death and the watchlist

The government has been widely criticized for making it impossible for people to know why they have been placed on a watchlist, and for making it nearly impossible to get off. The guidelines bluntly state that "the general policy of the U.S. Government is to neither confirm nor deny an individual's watchlist status." But the courts have taken exception to the official silence and footdragging: In June, a federal judge described the government's secretive removal process as unconstitutional and "wholly ineffective."

The difficulty of getting off the list is highlighted by a passage in the guidelines stating that

an individual can be kept on the watchlist, or even placed onto the watchlist, despite being acquitted of a terrorism-related crime. The rulebook justifies this by noting that conviction in U.S. courts requires evidence beyond a reasonable doubt, whereas watchlisting requires only a reasonable suspicion. Once suspicion is raised, even a jury's verdict cannot erase it.

Not even death provides a guarantee of getting off the list. The guidelines say the names of dead people will stay on the list if there is reason to believe the deceased's identity may be used by a suspected terrorist—which the National Counterterrorism Center calls a “demonstrated terrorist tactic.” In fact, for the same reason, the rules permit the deceased spouses of suspected terrorists to be placed onto the list *after* they have died.

For the living, the process of getting off the watchlist is simple yet opaque. A complaint can be filed through the Department of Homeland Security Traveler Redress Inquiry Program, which launches an internal review that is not subject to oversight by any court or entity outside the counterterrorism community. The review can result in removal from a watchlist or an adjustment of watchlist status, but the individual will not be told if he or she prevails. The guidelines highlight one of the reasons why it has been difficult to get off the list—if multiple agencies have contributed information on a watchlisted individual, all of them must agree to removing him or her.

If a U.S. citizen is placed on the no fly list while abroad and is turned away from a flight bound for the U.S., the guidelines say they should be referred to the nearest U.S. embassy or consulate, which is prohibited from informing them why they were blocked from flying. According to the rules, these individuals can be granted a “One-Time Waiver” to fly, though

they will not be told that they are traveling on a waiver. Back in the United States, they will be unable to board another flight.

The document states that nominating agencies are “under a continuing obligation” to provide exculpatory information when it emerges. It adds that the agencies are expected to conduct annual reviews of watchlisted American citizens and green card holders. It is unclear whether foreigners—or the dead—are reviewed at the same pace. As the rulebook notes, “watchlisting is not an exact science.”

*Josh Begley, Lynn Dombek, and Peter Maass contributed to this story.*

*Photo credits: TSA: G.J. McCarthy/Dallas Morning News/Corbis (2); Guidance: Josh Begley; White House: Win McNamee/Getty Images; Airport: Nick Ut/AP Photo*

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2013 Watchlisting Guidance (PDF)

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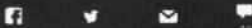
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The  
Intercept



# BARACK OBAMA'S SECRET TERRORIST-TRACKING SYSTEM, BY THE NUMBERS





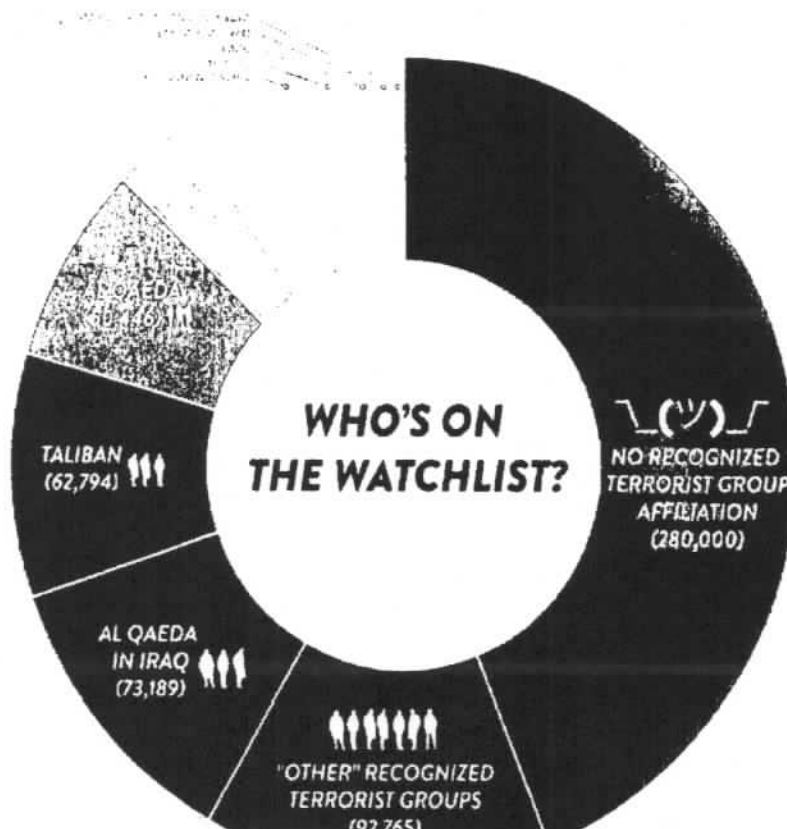
Jeremy Stahl | Ryan Devezoux

Nearly half of the people on the U.S. government's widely shared database of terrorist suspects are not connected to any known terrorist group, according to classified government documents obtained by *The Intercept*.

Of the 680,000 people caught up in the government's Terrorist Screening Database – a watchlist of “known or suspected terrorists” that is shared with local law enforcement agencies, private contractors, and foreign governments – more than 40 percent are described by the government as having “no recognized terrorist group affiliation.” That category – 280,000 people – dwarfs the number of watchlisted people suspected of ties to al Qaeda, Hamas, and Hezbollah combined.

The documents, obtained from a source in the intelligence community, also reveal that the Obama Administration has presided over an unprecedented expansion of the terrorist screening system. Since taking office, Obama has boosted the number of people on the no fly list more than ten-fold, to an all-time high of 47,000 – surpassing the number of people barred from flying under George W. Bush.

“If everything is terrorism, then nothing is terrorism,” says David Gomez, a former senior FBI special agent. The watchlisting system, he adds, is “revving out of control.”



(S)

The classified documents were prepared by the National Counterterrorism Center, the lead agency for tracking individuals with suspected links to international terrorism. Stamped "SECRET" and "NOFORN" (indicating they are not to be shared with foreign governments), they offer the most complete numerical picture of the watchlisting system to date. Among the revelations:

- The second-highest concentration of people designated as "known or suspected terrorists" by the government is in Dearborn, Mich. – a city of 96,000 that has the largest percentage of Arab-American residents in the country.
- The government adds names to its databases, or adds information on existing subjects, at a rate of 900 records each day.
- The CIA uses a previously unknown program, code-named Hydra, to secretly access databases maintained by foreign countries and extract data to add to the watchlists.


A U.S. counterterrorism official familiar with watchlisting data told *The Intercept* that as of November 2013, there were approximately 700,000 people in the Terrorist Screening Database, or TSDB, but declined to provide the current numbers. Last month, the Associated Press, citing federal court filings by government lawyers, reported that there have been 1.5 million names added to the watchlist over the past five years. The government official told *The Intercept* that was a misinterpretation of the data. "The list has grown somewhat since

that time, but is nowhere near the 1.5 million figure cited in recent news reports," he said. He added that the statistics cited by the Associated Press do not just include nominations of individuals, but also bits of intelligence or biographical information obtained on watchlisted persons.

When U.S. officials refer to "the watchlist," they typically mean the TSDB, an unclassified pool of information shared across the intelligence community and the military, as well as local law enforcement, foreign governments, and private contractors. According to the government's watchlisting guidelines, published by *The Intercept* last month, officials don't need "concrete facts" or "irrefutable evidence" to secretly place someone on the list – only a vague and elastic standard of "reasonable suspicion."

"You need some fact-basis to say a guy is a terrorist, that you know to a probable-cause standard that he is a terrorist," says Gomez, the former FBI agent. "Then I say, 'Build as big a file as you can on him.' But if you just suspect that somebody is a terrorist? Not so much."

The National Counterterrorism Center did not respond to questions about its terrorist screening system. Instead, in a statement, it praised the watchlisting system as a "critical layer in our counterterrorism defenses" and described it as superior to the pre-9/11 process for tracking threats, which relied on lists that were "typed or hand-written in card catalogues and ledgers." The White House declined to comment.





**TIDE**

**Top 5 Locations of KSTs in US**

**Persons with Revoked VISAs in TIDE: 2,300**

**Biometrics of Unknown Persons (BUPs) - 1,800**

**National CT Cases**  
A single location to work together on national level issues

- AQAP Threat to US and Western Countries
- Boston Marathon Bombing
- Foreign Fighter Travel Involving Syria
- Chechnya Dagestan Scrub

**Watchlisted by Gender**

**Top Trending Terror Groups**

Group	Persons w/ Contact Info	Passports	Alien Registration Number
AQAP - Recruitment and organization of strategic attacks	2,120	2,120	171
al Nusra - Syrian FFs attempt at governmental devastation	484	282	10
TTP - Increased chatter of plots/attacks aimed at US targets	701	229	52
AQIM - Continued attacks against US interests and facilitation of	1,129	1,141	44
al Shabaab - Internal dissension and splitting of power	2,599	1,413	472

**USPERS**

**Flight Training**

**USPERS**

**AU**

**Workforce**  
240  
Alumni: 1,000

**900-1,000**  
Recruitment

**60**  
Hours: 60

**Nominator Ratio**

1. CIA: 45%
2. DIA: 39%
3. NSA: 11%
4. FBI: 5%

**2012 FBI FD-9:**

- 2,300 new
- 2,500 modified
- 2,800 deleted
- 7,600

**730,000** Total Entries

**130,000** persons with a Biometric

- 118,000
- 70,000
- 29,000

## A milestone

Most people placed on the government's watchlist begin in a larger, classified system known as the Terrorist Identities Datamart Environment (TIDE). The TIDE database actually allows for targeting people based on far less evidence than the already lax standards used for placing people on the watchlist. A more expansive – and invasive – database. TIDE's information is shared across the U.S. intelligence community, as well as with commando units from the Special Operations Command and with domestic agencies such as the New York City Police Department.

In the summer of 2013, officials celebrated what one classified document prepared by the National Counterterrorism Center refers to as "a milestone" – boosting the number of people in the TIDE database to a total of one million, up from half a million four years earlier.

The document credits that historic achievement to the Directorate of Terrorist Identities (DTI), a secretive and virtually unknown U.S. counterterrorism unit responsible for maintaining TIDE. "This number is a testament to DTI's hard work and dedication over the

past 2.5 years," the document declares.

The number is also a testament to the Obama administration's intensified collection of personal information on individuals with suspected links to terrorism. In 2006, CBS News obtained a copy of the no fly list and reported that it included 44,000 names, including Bolivian President Evo Morales and the head of Lebanon's parliament. Faced with a widespread public backlash, the government cut the list down to just 4,000 names by late 2009.

The next year, after the so-called "underwear bomber" tried to bring down a commercial airliner bound for Detroit, Obama loosened the criteria for adding people to the no fly list. The impact was immediate. Since 2010, the classified documents note, the National Counterterrorism Center has "created more than 430,000 terrorism-related person records" while deleting only 50,000 people "whose nexus to terrorism was refuted or did not meet current watchlisting criteria." The documents reveal that more than 240 TTDE "nominations" are now processed each day.

"You might as well have a blue wand and just pretend there's magic in it, because that's what we're doing with this – pretending that it works," says former FBI agent Michael German, now a fellow at New York University's Brennan Center for Justice. "These agencies see terrorism as a winning card for them. They get more resources. They know that they can wave that card around and the American public will be very afraid and Congress and the courts will allow them to get away with whatever they're doing under the national security umbrella."



## Watchlisting by the numbers

In the documents, the government emphasizes that it seeks to add only as many people to the TIDE list "as are necessary for our nation's counterterrorism mission." With hundreds of new nominations coming in every day, the numbers provide only a momentary snapshot of a watchlist system that is in constant motion.

An August 2013 slide from the National Counterterrorism Center called "TIDE By The Numbers" lays out the scope of the Obama administration's watchlisting system, and those it is targeting. According to the document, which notes that the numbers are "approximate," 680,000 people have been watchlisted, with another 320,000 monitored in the larger TIDE database. As of August 2013, 5,000 Americans were on the watchlist while another 15,800 were targeted in TIDE.

Among the other revelations in the documents:

- 16,000 people, including 1,200 Americans, have been classified as "selectees" who are targeted for enhanced screenings at airports and border crossings.
- There are 611,000 men on the main terrorist watchlist and 39,000 women.
- The top "nominating agencies" responsible for placing people on the government's

watchlists are: the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation.

- The top five U.S. cities represented on the main watchlist for "known or suspected terrorists" are New York; Dearborn, Mich.; Houston; San Diego; and Chicago. At 96,000 residents, Dearborn is much smaller than the other cities in the top five, suggesting that its significant Muslim population – 40 percent of its population is of Arab descent, according to the U.S. Census Bureau – has been disproportionately targeted for watchlisting. Residents and civil liberties advocates have frequently argued the Muslim, Arab and Sikh communities in and around Dearborn are unfairly targeted by invasive law enforcement probes, unlawful profiling, and racism.

"To my knowledge, there have been no Muslims in Dearborn who have committed acts of terrorism against our country," Dawud Walid, executive director of the Michigan chapter of the Council on American-Islamic Relations, told *The Intercept*. Walid added that the high concentration of Dearborn residents in the watchlisting system "just confirms the type of engagement the government has with our community – as seeing us as perpetual suspects."

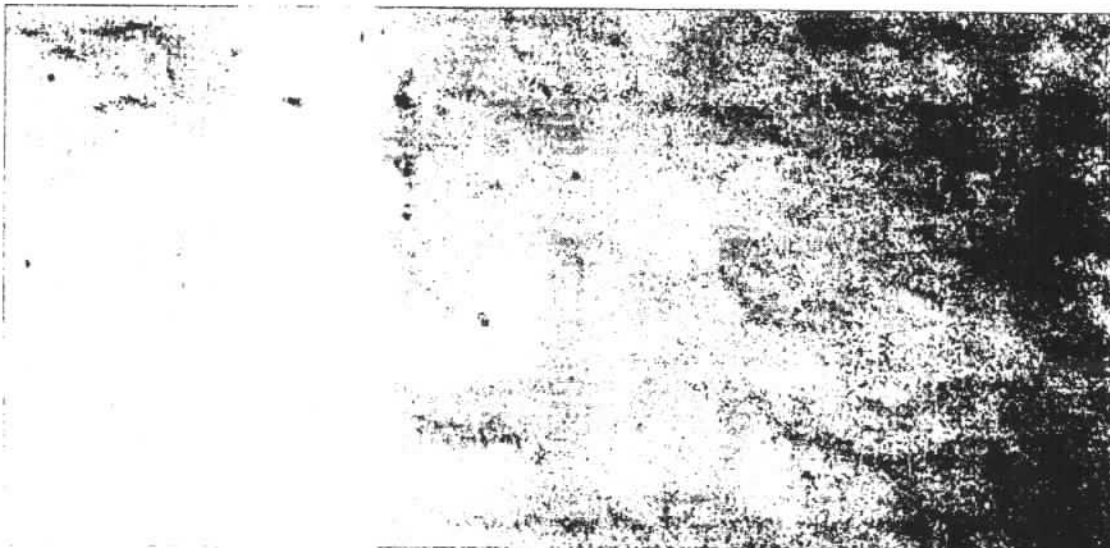


The documents also offer a glimpse into which groups the government is targeting in its counterterrorism mission. The groups with the largest number of targeted people on the main terrorism watchlist – aside from “no recognized terrorist group affiliation” – are al Qaeda in Iraq (73,189), the Taliban (62,794), and al Qaeda (50,446). Those are followed by Hamas (21,913) and Hezbollah (21,199).

Although the Obama administration has repeatedly asserted that al Qaeda in the Arabian Peninsula poses the most significant external terrorist threat to the United States, the 8,211 people identified as being tied to the group actually represent the smallest category on the list of the top ten recognized terrorist organizations. AQAP is outnumbered by people

· suspected of ties to the Pakistan-based Haqqani Network (12,491), the Colombia-based FARC (11,275,) and the Somalia-based al-Shabab (11,547).

The documents also reveal that as of last year, the U.S. had designated 3,200 people as “known or suspected terrorists” associated with the war in Syria. Among them were 715 Europeans and Canadians, as well as 41 Americans. Matt Olsen, the director of the National Counterterrorism Center, recently claimed that there are more than 12,000 foreign fighters in Syria, including more than 1,000 Westerners and roughly 100 Americans.





## Biometric data

According to the documents, the government does much more than simply stop watchlisted people at airports. It also covertly collects and analyzes a wide range of personal information about those individuals—including facial images, fingerprints, and iris scans.

In the aftermath of last year's Boston Marathon bombing, the Directorate of Terrorist Identities began an aggressive program to collect biometric data and other information on all Americans on the TIDE list. "This project includes record by record research of each person in relevant Department of State and [intelligence community] databases, as well as bulk data requests for information," the documents note.

The DTI also worked on the subsequent Chicago Marathon, performing "deep dives" for biometric and other data on people in the Midwest whose names were on the TIDE list. In the process, the directorate pulled the TIDE records of every person with an Illinois, Indiana, or Wisconsin driver license.

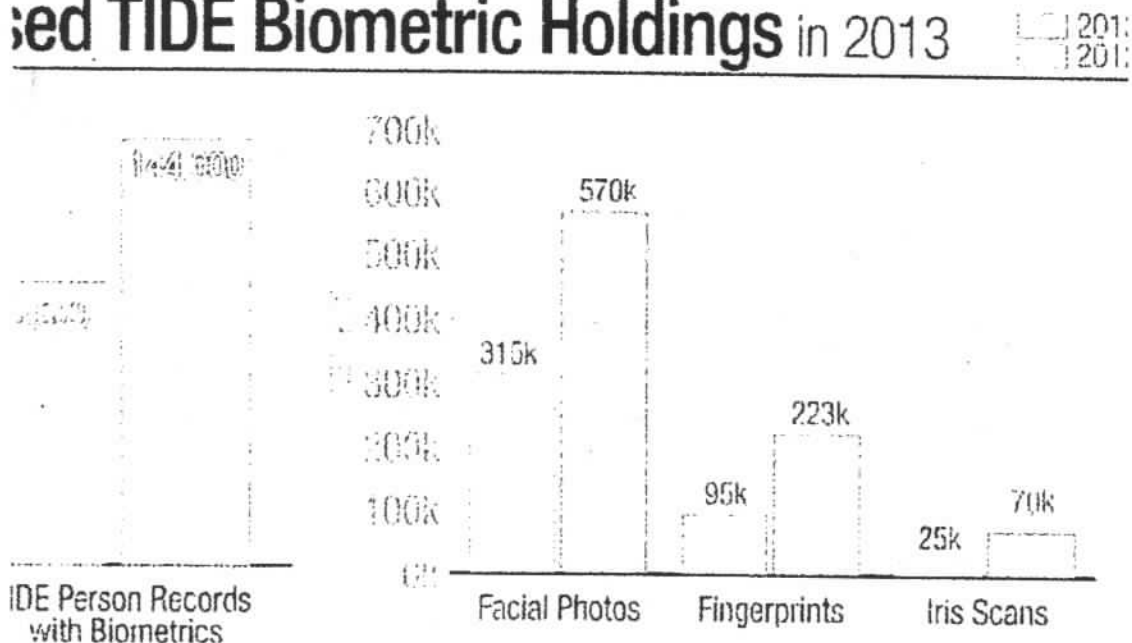
DTI's efforts in Boston and Chicago are part of a broader push to obtain biometric information on the more than one million people targeted in its secret database. This includes hundreds of thousands of people who are not watchlisted. In 2013, the directorate's Biometric Analysis Branch (BAB) launched an initiative to obtain biometric data from driver's license records across the country. At least 15 states and the District of Columbia are working with the directorate to facilitate access to facial images from driver's licenses. In fiscal year 2013, 2,400 such images were provided for inclusion in the secret TIDE database.

According to the documents, BAB offers its "unique skill of facial identification support" to a "broad customer base." Last year its analysts produced more than 290 reports for other government entities, including the CIA, the New York City Police Department, and the military's elite Special Operations Command.

All told, the classified documents show, the government compiles strikingly detailed dossiers of data on individuals who have been swept up in its databases. Though some of the documents obtained by *The Intercept* offer conflicting information on how much biometric data the government collects, the most detailed report shows that:

- In 2013, the main terrorism database included more than 860,000 biometric files on 144,000 people.
- The database contains more than a half a million facial images, nearly a quarter of a million fingerprints and 70,000 iris scans.
- The government maintains biometric data on people that it hasn't identified—TIDE contains 1,800 "BUPs," or "biometrics of unknown persons."
- In a single year, the government expanded its collection of "non-traditional" biometric data, including dramatic increases in handwriting samples (32 percent), signatures (52 percent), scars, marks, and tattoos (70 percent), and DNA strands (90 percent).

## Expanded TIDE Biometric Holdings in 2013



"We're getting into *Minority Report* territory when being friends with the wrong person can mean the government puts you in a database and adds DMV photos, iris scans, and face

recognition technology to track you secretly and without your knowledge," says Hina Shamsi, director of the American Civil Liberties Union's National Security Project. "The fact that this information can be shared with agencies from the CIA to the NYPD, which are not known for protecting civil liberties, brings us closer to an invasive and rights-violating government surveillance society at home and abroad."

The DTI also goes far beyond accessing information from state driver's licenses. In managing the main terrorism database, the directorate coordinates with the CIA and the National Media Exploitation Center, a Pentagon wing responsible for analyzing and disseminating "paper documents, electronic media, videotapes, audiotapes, and electronic equipment" seized abroad in military or intelligence operations.

By sharing information with the military, the National Counterterrorism Center asserts, the DTI is able to "obtain additional data fusion points by accessing and exploiting NMEC data holdings." In return, the directorate "provides NMEC with a classified biometric search capability against TIDE through automated and manual facial identification support."

The DTI also harvests information from CIA sources, including a secret database called CINEMA – short for CIA Information Needs Management – and a secret CIA program called "Hydra," which utilizes "clandestinely acquired foreign government information" to enhance the quality of "select populations" in TIDE.

In 2013, DTI and the CIA ran a "proof of concept" for Hydra, using Pakistan as a guinea pig. The DTI provided the CIA with a list of 555 Pakistanis in the TIDE database. After

inputting the names into Hydra, the CIA "vetted these names against Pakistani Passports" and provided biographic and biometric identifiers to the DTI.

Pleased with its initial success, the government plans to expand its clandestine data-mining operation. "Future initiatives," the documents note, "will include additional targeted countries." The CIA declined to comment on the program.

*Josh Begley contributed to this story.*

*Photo credits: Obama: Jewel Sainad/AFP/Getty Images; Crowd: Mario Tama/Getty Images; Iris Scan: Mauricio Lima/AFP/Getty Images*

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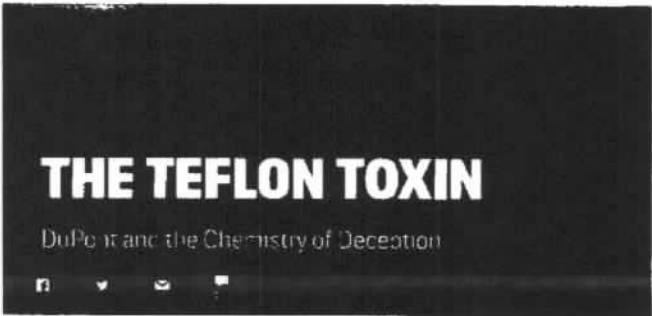
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Wanda Tether

**K**

**EN WANSLEY SOMETIMES DREAMS** that he's playing softball again. He'll be at center field, just like when he played slow pitch back in his teens, or pounding the ball over the fence as the crowd goes wild. Other times, he's somehow inexplicably back at work in the lab.



Wamsley calls them nightmares, these stories that play out in his sleep, but really the only scary part is the end, when "I wake up and I have no rectum anymore."

Wamsley is 73. After developing rectal cancer and having surgery to treat it in 2002, he walks slowly and gets up from the bench in his small backyard slowly. His voice, which has a gentle Appalachian lilt, is still animated, though, especially when he talks about his happier days. There were many. While Wamsley knew plenty of people in Parkersburg, West Virginia, who struggled to stay employed, he made an enviable wage for almost four decades at the DuPont plant here. The company was generous, helping him pay for college courses and training him to become a lab analyst in the Teflon division.

He enjoyed the work, particularly the precision and care it required. For years, he measured levels of a chemical called C8 in various products. The chemical "was everywhere," as Wamsley remembers it, bubbling out of the glass flasks he used to transport it, wafting into a smelly vapor that formed when he heated it. A fine powder, possibly C8, dusted the laboratory drawers and floated in the hazy lab air.

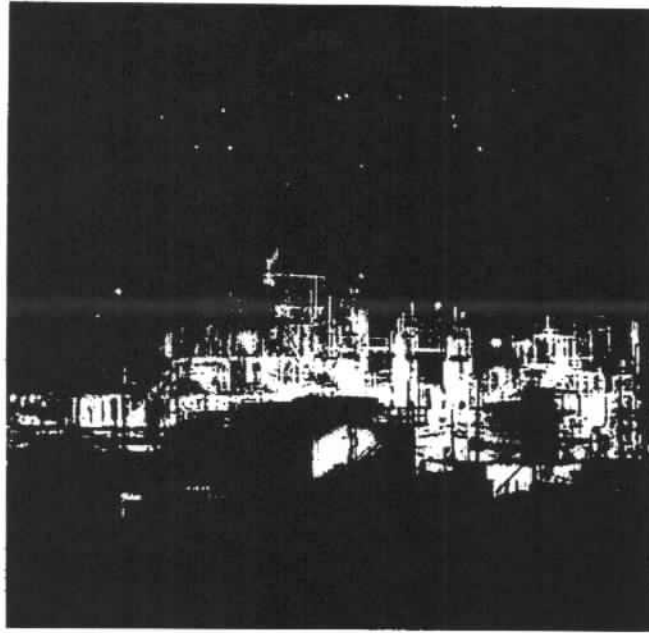
At the time, Wamsley and his coworkers weren't particularly concerned about the strange stuff. "We never thought about it, never worried about it," he said recently. He believed it was harmless, "like a soap. Wash your hands [with it], your face, take a bath."

Today Wamsley suffers from ulcerative colitis, a bowel condition that causes him sudden bouts of diarrhea. The disease also can — and his case, did — lead to rectal cancer. Between the surgery,

which left him reliant on plastic pouches that collect his waste outside his body and have to be changed regularly, and his ongoing digestive problems, Wamsley finds it difficult to be away from his home for long.

Sometimes, between napping or watching baseball on TV, Wamsley's mind drifts back to his DuPont days and he wonders not just about the dust that coated his old workplace but also about his bosses who offered their casual assurances about the chemical years ago.

"Who knew?" he asked. "When did they know? Did they lie?"



The Washington Works DuPont plant in Parkersburg, West Virginia, on Wednesday, August 5, 2015.

**U**

**UNTIL RECENTLY, FEW PEOPLE** had heard much about chemicals like C8. One of tens of thousands of unregulated industrial chemicals, perfluorooctanoic acid, or PFDA – also called C8 because of the eight-carbon chain that makes up its chemical backbone – had gone unnoticed for most of its eight or so decades on earth, even as it helped cement the success of one of the world's largest corporations.

Several blockbuster discoveries, including nylon, Lycra, and Tyvek, helped transform the E. I. du Pont de Nemours company from a 19th-century gunpowder mill into "one of the most successful and sustained industrial enterprises in the world," as its corporate website puts it. Indeed, in 2014, the company reaped more than \$95 million in sales each day. Perhaps no product is as responsible for its dominance as Teflon, which was introduced in 1946, and for more than 60 years C8 was an essential ingredient of Teflon.

Called a "surfactant" because it reduces the surface tension of water, the slippery, stable compound was eventually used in hundreds of products, including Gore-Tex and other waterproof clothing; coatings for eye glasses and tennis rackets; stain-proof

coatings for carpets and furniture; fire-fighting foam; fast food wrappers; microwave popcorn bags; bicycle lubricants; satellite components; ski wax; communications cables; and pizza boxes.

Concerns about the safety of Teflon, C8, and other long-chain perfluorinated chemicals first came to wide public attention more than a decade ago, but the story of DuPont's long involvement with C8 has never been fully told. Over the past 15 years, as lawyers have been waging an epic legal battle – culminating as the first of approximately 3,500 personal injury claims comes to trial in September – a long trail of documents has emerged that casts new light on C8, DuPont, and the fitful attempts of the Environmental Protection Agency to deal with a threat to public health.

This story is based on many of those documents, which until they were entered into evidence for these trials had been hidden away in DuPont's files. Among them are write-ups of experiments on rats, dogs, and rabbits showing that C8 was associated with a wide range of health problems that sometimes killed the lab animals. Many thousands of pages of expert testimony and depositions have been prepared by attorneys for the plaintiffs. And through the process of legal discovery they have uncovered hundreds of internal communications revealing that DuPont employees for many years suspected that C8 was harmful and yet continued to use it, putting the company's workers and the people who lived near its plants at risk.

The best evidence of how C8 affects humans has also come out through the legal battle over the chemical, though in a more public form. As part of a 2005 settlement over contamination around the West Virginia plant where Wamsley worked, lawyers for both

DuPont and the plaintiffs approved a team of three scientists, who were charged with determining if and how the chemical affects people.

In 2011 and 2012, after seven years of research, the science panel found that C8 was "more likely than not" linked to ulcerative colitis –

Wamsley's condition – as well as to high cholesterol; pregnancy-induced hypertension; thyroid disease; testicular cancer; and kidney cancer. The scientists' findings, published in more than three dozen peer-reviewed articles, were striking, because the chemical's effects were so widespread throughout the body and because even very low exposure levels were associated with health effects.

We know, too, from internal DuPont documents that emerged through the lawsuit, that Wamsley's fears of being lied to are well-founded. DuPont scientists had closely studied the chemical for decades and through their own research knew about some of the dangers it posed. Yet rather than inform workers, people living near the plant, the general public, or government agencies responsible for regulating chemicals, DuPont repeatedly kept its knowledge secret.

Another revelation about C8 makes all of this more disturbing and gives the upcoming trials, the first of which will be held this fall in Columbus, Ohio, global significance: This deadly chemical that



Ken Wamsley, 73, stands outside of his home in Parkersburg, West Virginia, on Tuesday, August 4, 2015.

DuPont continued to use well after it knew it was linked to health problems is now practically everywhere.

A man-made compound that didn't exist a century ago, C8 is in the blood of 99.7 percent of Americans, according to a 2007 analysis of data from the Centers for Disease Control, as well as in newborn human babies, breast milk, and umbilical cord blood. A growing group of scientists have been tracking the chemical's spread through the environment, documenting its presence in a wide range of wildlife, including loggerhead sea turtles, bottlenose dolphins, harbor seals, polar bears, caribou, walruses, bald eagles, lions, tigers, and arctic birds. Although DuPont no longer uses C8, fully removing the chemical from all the bodies of water and bloodstreams it pollutes is now impossible. And, because it is so chemically stable – in fact, as far as scientists can determine, it never breaks down – C8 is expected to remain on the planet well after humans are gone from it.

**■ In some ways, C8 already is the tobacco of the chemical industry — a substance whose health effects were the subject of a decades-long corporate cover-up.**

Eight companies are responsible for C8 contamination in the U.S. (In addition to DuPont, the leader by far in terms of both use and

emissions, seven others had a role, including 3M, which produced C8 and sold it to DuPont for years.) If these polluters were ever forced to clean up the chemical, which has been detected by the EPA 716 times across water systems in 29 states, and in some areas may be present at dangerous levels, the costs could be astronomical – and C8 cases could enter the storied realm of tobacco litigation, forever changing how the public thinks about these products and how a powerful industry does business.

In some ways, C8 already is the tobacco of the chemical industry – a substance whose health effects were the subject of a decades-long corporate cover-up. As with tobacco, public health organizations have taken up the cause – and numerous reporters have dived into the mammoth story. Like the tobacco litigation, the lawsuits around C8 also involve huge amounts of money. And, like tobacco, C8 is a symbol of how difficult it is to hold companies responsible, even when mounting scientific evidence links their products to cancer and other diseases.

There is at least one sense in which the tobacco analogy fails. Exposure to tobacco usually contains an element of volition, and most people who smoked it in the past half century knew about some of the risks involved. But the vast majority of Americans – along with most people on the planet – now have C8 in their bodies. And we've had no choice in the matter.

**F**

**OR ITS FIRST HUNDRED YEARS,**

DuPont mostly made explosives, which, while hazardous, were at least well understood. But by the 1930s, the company had expanded into new products that brought new mysterious health problems. Leaded gasoline, which DuPont made in its New Jersey plant, for instance,

wound up causing madness and

violent deaths and life-long institutionalization of workers. And certain rubber and industrial chemicals inexplicably turned the skin of exposed workers blue.

Perhaps most troubling, at least to a DuPont doctor named George Gehrman, was a number of bladder cancers that had recently begun to crop up among many dye workers. Worried over "the tendency to believe [chemicals] are harmless until proven otherwise," Gehrman pushed DuPont to create Haskell Laboratories in 1935. Haskell was one of the first in-house toxicology facilities and its first project was to address the bladder cancers. But the inherent problems of assigning staff scientists to study a company's own employees and products became clear from the outset.

One of Haskell's first employees, a pathologist named Wilhelm

Hueper, helped crack the bladder cancer case by developing a model of how the dye chemicals led to disease. But the company forbade him from publishing some of his research and, according to epidemiologist and public health scholar David Michaels, fired him in 1937 before going on to use the chemicals in question for decades.

C8 would prove to be arguably even more ethically and scientifically challenging for Haskell from the beginning. DuPont scientists approached the chemical's potential dangers with rigor. In 1954, the very year a French engineer first applied the slick coating to a frying pan, a

**DuPont elected not to disclose its findings to regulators.**

DuPont employee named R. A. Dickison noted that he had received an inquiry regarding C8's "possible toxicity." In 1961, just seven years later, in-house researchers already had the short answer to Dickison's question: C8 was indeed toxic and should be "handled with extreme care," according to a report filed by plaintiffs. By the next year experiments had honed these broad concerns into clear, bright red flags that pointed to specific organs: C8 exposure was linked to the enlargement of rats' testes, adrenal glands, and kidneys. In 1965, 14 employees, including Haskell's then-director, John Zapp, received a memo describing preliminary studies that showed that even low doses of a related surfactant could increase the size of rats' livers, a classic response to exposure to a poison.

The company even conducted a human C8 experiment, a deposition revealed. In 1962, DuPont scientists asked volunteers to smoke cigarettes laced with the chemical and observed that "Nine out of ten people in the highest-dosed group were noticeably ill for an average of nine hours with flu-like symptoms that included chills, backache, fever, and coughing."

Because of its toxicity, C8 disposal presented a problem. In the early 1960s, the company buried about 200 drums of the chemical on the banks of the Ohio River near the plant. An internal DuPont document from 1975 about "Teflon Waste Disposal" detailed how the company began packing the waste in drums, shipping the drums on barges out to sea, and dumping them into the ocean, adding stones to make the drums sink. Though the practice resulted in a moment of unfavorable publicity when a fisherman caught one of the drums in his net, no one outside the company realized the danger the chemical presented. At some point before 1965, ocean dumping ceased, and DuPont began disposing of its Teflon waste in landfills instead.



A view of Parkersburg, West Virginia, from Fort Boreman Park on Wednesday, August 5, 1915.



**I** **N 1978, BRUCE KARRH**, DuPont's corporate medical director, was outspoken about the company's duty "to discover and reveal the unvarnished facts about health hazards," as he wrote in the *Bulletin of the New York Academy of Medicine* at the time. When deposed in 2004, Karrh emphasized that DuPont's internal health and safety rules often went

further than the government's and that the company's policy was to comply with either laws or the company's internal health and safety standards, "whichever was the more strict." In his 1978 article, Karrh also insisted that a company "should be candid, and lay all the facts on the table. This is the only responsible and ethical way to go."

Yet DuPont only laid out some of its facts. In 1978, for instance, DuPont alerted workers to the results of a study done by 3M showing that its employees were accumulating C8 in their blood. Later that year, Karrh and his colleagues began reviewing employee medical records and measuring the level of C8 in the blood of the company's own workers in Parkersburg, as well as at another DuPont plant in Deepwater, New Jersey, where the company had been using C8 and related chemicals since the 1950s.

They found that exposed workers at the New Jersey plant had increased rates of endocrine disorders. Another notable pattern was that, like dogs and rats, people employed at the DuPont plants more frequently had abnormal liver function tests after C8 exposure.

DuPont elected not to disclose its findings to regulators. The reasoning, according to Karrh, was that the abnormal test results weren't proven to be adverse health effects related to C8. When asked about the decision in deposition, Karrh said that "at that point in time, we saw no substantial risk, so therefore we saw no obligation to report."

Nor long after the decision was made not to alert the EPA, in 1981, another study of DuPont workers by a staff epidemiologist declared that liver test data collected in Parkersburg lacked "conclusive evidence of an occupationally related health problem among workers exposed to C-8." Yet the research might have reasonably led to more testing. An assistant medical director named Vann Brewster suggested that an early draft of the study he edited to state that DuPont should conduct further liver test monitoring. Years later, a proposal for a follow-up study was rejected.

If the health effects on humans could still be debated in 1979, C8's effects on animals continued to be apparent. A report prepared for plaintiffs stated that by then, DuPont was aware of studies showing that exposed beagles had abnormal enzyme levels "indicative of cellular damage." Given enough of the stuff, the dogs died.

DuPont employees knew in 1979 about a recent 3M study showing that some rhesus monkeys also died when exposed to C8.

according to documents submitted by plaintiffs. Scientists divided the primates into five groups and exposed them to different amounts of C8 over 90 days. Those given the highest dose all died within five weeks. More notable was that three of the monkeys who received less than half that amount also died, their faces and gums growing pale and their eyes swelling before they wasted away. Some of the monkeys given the lower dose began losing weight in the first week it was administered. C8 also appeared to affect some monkeys' kidneys.

Of course, enough of anything can be deadly. Even a certain amount of table salt would kill a lab animal, a DuPont employee named C. E. Steiner noted in a confidential 1980 communications meeting. For C8, the lethal oral dose was listed as one ounce per 150 pounds, although the document stated that the chemical was most toxic when inhaled. The harder question was to determine a maximum safe dosage. How much could an animal — or a person — be exposed to without having any effects at all? The 1965 DuPont study of rats suggested that even a single dose of a similar surfactant could have a prolonged effect. Nearly two months after being exposed, the rats' livers were still three times larger than normal.

Steiner declared that there was no "conclusive evidence" that C8 harmed workers, yet he also stated that "continued exposure is not tolerable." Because C8 accumulated in bodies, the potential for harm was there, and Steiner predicted the company would continue medical and toxicological monitoring and described plans to supply workers who were directly exposed to the chemical with protective clothing.

Two years after DuPont learned of the monkey study, in 1981, 3M shared the results of another study it had done, this one on pregnant rats, whose unborn pups were more likely to have eye defects after they were exposed to C8. The EPA was also informed of the results. After 3M's rat study came out, DuPont transferred all women out of work assignments with potential for exposure to C8. DuPont doctors then began tracking a small group of women who had been exposed to C8 and had recently been pregnant. If even one in five women gave birth to children who had craniofacial deformities, a DuPont epidemiologist named Fayerweather warned, the results should be considered significant enough to suggest that C8 exposure caused the problems.

As it turned out, at least one of eight babies born to women who worked in the Teflon division did have birth defects. A little boy named Bucky Bailey, whose mother, Sue, had worked in Teflon early in her pregnancy, was born with tear duct deformities, only one nostril, an eyelid that started down by his nose, and a condition



Photos of Bucky Bailey as a baby, as well as article clippings his mother, Sue, saved over the years.

known as "keyhole pupil," which looked like a tear in his iris. Another child, who was two years old when the rat study was published in 1981, had an "unconfirmed eye and tear duct defect," according to a DuPont document that was marked confidential.

Like Wamsley, Sue Bailey, one of the plaintiffs whose personal



injury suits are scheduled to come to trial in the fall, remembers having plenty of contact with C8. When she started at DuPont in 1978, she worked first in the Nylon division and then in Lucite, she told me in an interview. But in 1980, when she was in the first trimester of her pregnancy with Bucky, she moved to Teflon where she often sat watch over a large pipe that periodically filled up with liquid, which she had to pump to a pond in back of the plant. Occasionally some of the bubbly stuff would overflow from a nearby holding tank, and her supervisor taught her how to squeegee the excess into a drain.

Soon after Bucky was born, Bailey received a call from a DuPont doctor. "I thought it was just a compassion call, you know: can we do anything or do you need anything?" Bailey recalled. "Shoot, I should have known better." In fact, the doctor didn't express his sympathies, Bailey said, and instead asked her whether her child had any birth defects, explaining that it was standard to record such problems in employees' newborns.

While Bailey was still on maternity leave, she learned that the company was removing its female workers from the Teflon division. She remembers the moment — and that it made her feel deceived. "It sure was a big eye-opener," said Bailey, who still lives in West Virginia but left DuPont a few years after Bucky's birth.



Bucky Bailey stands inside his mother's home in Bluerent, Virginia, on Thursday, August 6, 2015.

**T**

#### **THE FEDERAL TOXIC SUBSTANCES**

Control Act requires companies that work with chemicals to report to the Environmental Protection Agency any evidence they find that shows or even suggests that they are harmful. In keeping with this requirement, 3M submitted its rat study to the EPA, and later DuPont scientists wound up discussing the study with the federal

agency, saying they believed it was flawed. DuPont scientists neglected to inform the EPA about what they had found in tracking their own workers.

When DuPont began transferring women workers out of Teflon, the company did send out a flier alerting them to the results of the JM study. When Sue Bailey saw the notice on the bench of the locker room and read about the rat study, she immediately thought of Bucky.

Yet when she went in to request a blood test, the results of which the doctor carefully noted to the thousandth decimal point, and asked if there might be a connection between Bucky's birth defects and the rat study she had read about. Bailey recalls that Dr. Younger Lovelace Power, the plant doctor, said no. According to Karrh's deposition, he told Karrh the same. "We went back to him and asked him to follow up on it, and he did, and came back saying that he did not think it was related."

"I said, 'I was in Teflon. Is this what happened to my baby?'" Bailey remembered. "And he said, 'No, no.'" Power also told Bailey that the company had no record of her having worked in Teflon. Shortly afterward, she considered suing DuPont and even contacted a lawyer in Parkersburg, who she says wasn't interested in taking her case against the town's biggest employer. When contacted for his response to Bailey's recollections, Power declined to comment.

By testing the blood of female Teflon workers who had given birth, DuPont researchers, who then reported their findings to Karrh, documented for the first time that C8 had moved across the human placenta.

In 2005, when the EPA fined the company for withholding this information, attorneys for DuPont argued that because the agency already had evidence of the connection between C8 and birth

defects in rats, the evidence it had withheld was "merely confirmatory" and not of great significance, according to the agency's consent agreement on the matter.

Ken Wamsley also remembers when his supervisor told him they had taken female workers out of Teflon. "I said, 'Why'd you send all the women home?' He said, 'Well, we're afraid, we think maybe it hurts the pregnancies in some of the women.'" recalled Wamsley. "They said, 'Ken, it won't hurt the men.'"

**W**

#### **HILE SOME DUPONT SCIENTISTS**

were carefully studying the chemical's effect on the body, others were quietly tracking its steady spread into the water surrounding the Parkersburg plant. After it ceased dumping C8 in the ocean, DuPont apparently relied on disposal in unlined landfills and ponds, as well as putting C8 into the air through

smokestacks and pouring waste water containing it directly into the Ohio River, as detailed in a 2007 study by Dennis Paustenbach published in the *Journal of Toxicology and Environmental Health*.

By 1982, Karrh had become worried about the possibility of "current or future exposure of members of the local community from emissions leaving the plant's perimeter," as he explained in a letter to a colleague in the plastics department. After noting that C8 stays in the blood for a long time — and might be passed to others through blood donations — and that the company had only limited knowledge of its long-term effects, Karrh recommended

that "available practical steps be taken to reduce that exposure."

To get a sense of exactly how extensive that exposure was, in March 1984 an employee was sent out to collect samples, according to a memo by a DuPont staffer named Doughty. The employee went into general stores, markets, and gas stations, in local communities as far as 79 miles downriver from the Parkersburg plant, asking to fill plastic jugs with water, which he then took back for testing. The results of those tests confirmed C8's presence at elevated levels.

Faced with the evidence that C8 had now spread far beyond the Parkersburg plant, internal documents show, DuPont was at a crossroads. Could the company find a way to reduce emissions? Should it switch to a new surfactant? Or stop using the chemical altogether? In May 1984, DuPont convened a meeting of 10 of its corporate business managers at the company's headquarters in Wilmington, Delaware, to tackle some of these questions. Results from an engineering study the group reviewed that day described two methods for reducing C8 emissions, including thermal destruction and a scrubbing system.

"None of the options developed are . . . economically attractive and would essentially put the long term viability of this business segment on the line," someone named J. A. Schmid summarized in notes from the meeting, which are marked "personal and confidential."

The executives considered C8 from the perspective of various divisions of the company, including the medical and legal departments, which, they predicted, "will likely take a position of total elimination," according to Schmid's summary. Yet the group

nevertheless decided that "corporate image and corporate liability" — rather than health concerns or fears about suits — would drive their decisions about the chemical. Also, as Schmid noted, "There was a consensus that C-8, based on all the information available from within the company and 3M, does not pose a health hazard at low level chronic exposure."

Though they already knew that it had been detected in two local drinking water systems and that moving ahead would only increase emissions, DuPont decided to keep using C8.

**■ A DuPont lawyer referred to C8 as "the material 3M sells us that we poop to the river and into drinking water along the Ohio River."**

In fact, from that point on, DuPont increased its use and emissions of the chemical, according to Paustenbach's 2007 study, which was based on the company's purchasing records, interviews with employees, and historical emissions from the Parkersburg plant. According to the study, the plant put an estimated 19,000 pounds of C8 into the air in 1984, the year of the meeting. By 1999, the

peak of its air emissions, the West Virginia plant put some 87,000 pounds of C8 into local air and water. That same year, the company emitted more than 25,000 pounds of the chemical into the air and water around its New Jersey plant, as noted in a confidential

presentation DuPont made to the New Jersey Department of Environmental Protection in 2006. All told, according to Paustenbach's estimate, between 1951 and 2003 the West Virginia plant eventually spread nearly 2.5 million pounds of the chemical into the area around Parkersburg.

Essentially, DuPont decided to double-down on C8, betting that somewhere down the line the company would somehow be able to "eliminate all C8 emissions in a way yet to be developed that would not economically penalize the business [sic]," as Schmid wrote in his 1984 meeting notes. The executives, while conscious of probable future liability, did not act with great urgency about the potential legal predicament they faced. If they did decide to reduce emissions or stop using the chemical altogether, they still couldn't undo the years of damage already done. As the meeting summary noted, "We are already liable for the past 32 years of operation."

When contacted by *The Intercept* for comment, 3M provided the following statement: "In more than 30 years of medical surveillance we have observed no adverse health effects in our employees resulting from their exposure to PFOS or PFOA. This is very important since the level of exposure in the general population is much lower than that of production employees who worked directly with these materials," said Dr. Carol Ley, 3M vice president and corporate medical director. "3M believes the chemical compounds in question present no harm to human health at levels they are typically found in the environment or in human blood." In May 2000, 3M announced that it would phase out its use of C8.

**D**

**UPONT CONFRONTED ITS** potential liability in part by rehearsing the media strategy it would take if word of the contamination somehow got out. In the weeks after the 1984 meeting, an internal public relations team drafted the first of several "standby press releases." The guide for dealing with the imagined press offered assurances that only "small

quantities of [C8] are discharged to the Ohio River" and that "these extremely low levels would have no adverse effects." When a hypothetical reporter, who presumably learned that DuPont was choosing not to invest in a system to reduce emissions, asks whether the company's decision was based on money, the document advises answering "No."

The company went on to draft these just-in-case press releases at several difficult junctures, and even the hypothetical scenarios they play out can be uncomfortable. In one, drafted in 1989, after DuPont had bought local fields that contained wells it knew to be contaminated, the company spokesperson in the script winds up in an outright lie. Although internal documents list "the interests of protecting our plant site from public liability" as one of the reasons for the purchase, when the hypothetical reporter asks whether DuPont purchased the land because of the water contamination, the suggested answer listed in the 1989 standby release was to deny this and to state instead that "it made good business sense to do so."

DuPont drafted another contingency press release in 1991, after it discovered that C8 was present in a landfill near the plant, which it estimated could produce an exit stream containing 100 times its internal maximum safety level. Fears about the possible health consequences were enough to spur the company to once again rehearse its media strategy. ("What would be the effect of cows drinking water from the ... stream?" the agenda from a C8 review meeting that year asked.) Yet other recent and disturbing discoveries had also provoked corporate anxieties.

In 1989, DuPont employees found an elevated number of leukemia deaths at the West Virginia plant. Several months later, they measured an unexpectedly high number of kidney cancers among male workers. Both elevations were plant-wide and not specific to workers who handled C8. But, the following year, the scientists clarified how C8 might cause at least one form of cancer in humans. In 1991, it became clear not just that C8-exposed rats had elevated chances of developing testicular tumors – something 3M had also recently observed – but, worse still, that the mechanism by which they developed the tumors could apply to humans.

Nevertheless, the 1991 draft press release said that "DuPont and 3M studies show that C-8 has no known toxic or ill health effects in humans at the concentrations detected" and included this reassuring note: "As for most chemicals, exposure limits for C-8 have been established with sufficient safety factors to ensure there is no health concern."

Yet even this prettified version of reality in Parkersburg never saw the light of day. The standby releases were only to be used to guide

the company's media response if its bad news somehow leaked to the public. It would be almost 20 years after the first standby release was drafted before anyone outside the company understood the dangers of the chemical and how far it had spread beyond the plant.



**IN THE MEANTIME**, fears about liability mounted along with the bad news. In 1991, DuPont researchers recommended another study of workers' liver enzymes to follow up on the one that showed elevated levels more than a decade before. But Karrh and others decided against the project, which was predicted to cost \$45,000. When asked about it in a

deposition, Karrh characterized the decision as the choice to focus resources on other worthy scientific projects. But notes taken on a discussion of whether or not to carry out the proposed study included the bullet point "liability" and the hand-written suggestion: "Do the study after we are sued."

In a 2014 deposition, Karrh denied that the notes were his and said that the company would never have endorsed such a comment. Although notes from the 1991 meeting describe the presence of someone named "Karrh," Karrh said that he had no idea who that person was and didn't recall being present for the meeting. When contacted by *The Intercept*, Karrh declined to comment.

As the secrets mounted so too did anxiety about C8, which DuPont was by now using and emitting not just in West Virginia and New

Jersey, but also in its facilities in Japan and the Netherlands. By the time a small committee drafted a "white paper" about C8 strategies and plans in 1994, the subject was considered so sensitive that each copy was numbered and tracked. The top-secret document, which was distributed to high-level DuPont employees around the world, discussed the need to "evaluate replacement of C-8 with other more environmentally safe materials" and presented evidence of toxicity, including a paper published in the *Journal of Occupational Medicine* that found elevated levels of prostate cancer death rates for employees who worked in jobs where they were exposed to C8. After they reviewed drafts, recipients were asked to return them for destruction.

In 1999, when a farmer suspected that DuPont had poisoned his cows (after they drank from the very C8-polluted stream DuPont employees had worried over in their draft press release eight years earlier) and filed a lawsuit seeking damages, the truth finally began to seep out. The next year, an in-house DuPont attorney named Bernard Reilly helped open an internal workshop on C8 by giving "a short summary of the right things to document and not to document." But Reilly — whose own emails about C8 would later fuel the legal battle that eventually included thousands of people, including Ken Wamsley and Sue Bailey — didn't heed his own advice.

Reilly clearly made the wrong choice when he used the company's computers to write about C8, which he revealingly called the "the material 3M sells us that we poop to the river and into drinking water along the Ohio River." But the DuPont attorney was right about two things. If C8 was proven to be harmful, Reilly predicted in 2000, "we are really in the soup because essentially everyone is

exposed one way or another." Also, as he noted in another prescient email sent 15 years ago: "This will be an interesting saga before it's thru."

*EDITORS NOTE: DuPont, asked to respond to the allegations contained in this article, declined to comment due to pending litigation.*

*In previous statements and court filings, however, DuPont has consistently denied that it did anything wrong or broke any laws. In settlements reached with regulatory authorities and in a class-action suit, DuPont has made clear that those agreements were compromise settlements regarding disputed claims and that the settlements did not constitute an admission of guilt or wrongdoing. Likewise, in response to the personal injury claims of Ken Wamsley, Sue Bailey, and others, DuPont has rejected all charges of wrongdoing and maintained that their injuries were "proximately caused by acts of God and/or by intervening and/or superseding actions by others, over which DuPont had no control." DuPont also claimed that it "neither knew, nor should have known, that any of the substances to which Plaintiff was allegedly exposed were hazardous or constituted a reasonable or foreseeable risk of physical harm by virtue of the prevailing state of the medical, scientific and/or industrial knowledge available to DuPont at all times relevant to the claims or causes of action asserted by Plaintiff."*

## **Part 2: The Case Against DuPont**

### **Part 3: How DuPont Slipped Past the EPA**

*This article was reported in partnership with The Investigative Fund at The Nation Institute.*

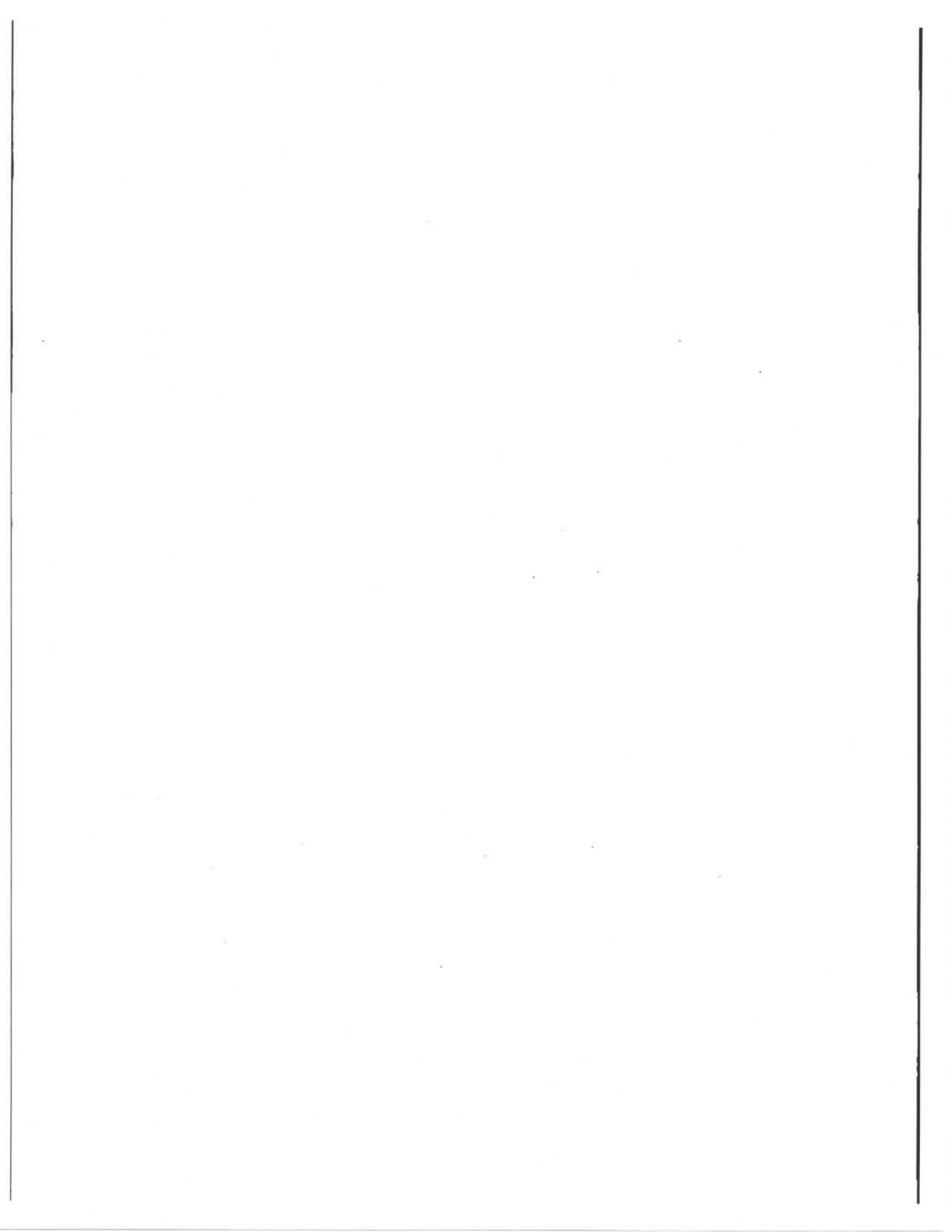
*Allison Brown, Hannah Gold, and Sheelagh McNeill contributed to this story.*

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133 Comments (closed)





**EXHIBIT D**

**CONFLICT OF INTEREST POLICY**

## FIRST LOOK MEDIA, INC.

### CONFLICT OF INTEREST POLICY

#### Article I: Purpose

This conflict of interest policy is designed to foster public confidence in the integrity of First Look Media, Inc. ("FLM") and to protect FLM's interest when it is contemplating entering a transaction (defined below) that might benefit the private interest of a director, a corporate officer, the top management or top financial official, a person with substantial influence over FLM, or other disqualified person.

#### Article II: Definitions

As used throughout this policy, the terms below shall be defined as follows:

*Insider* means a person with substantial influence over FLM. The following four categories of persons are deemed to have substantial influence over FLM, and therefore are considered "insiders" for the purposes of this policy:

1. Each member of the Board of Directors or other governing body.
2. The president, chief executive officer, chief operating officer, treasurer and chief financial officer, executive director, or any person with the responsibilities of any of these positions (whether or not the person is an officer of FLM under FLM's Bylaws and the Delaware General Corporation Law ("DCGL")).
3. Any other person whom the Board, based on the facts and circumstances, determines to have substantial influence over FLM. Such persons may include a founder of or a substantial contributor to FLM, a person with managerial authority over FLM, or a person with control over a significant portion of FLM's budget.
4. Any person who met any of the above definitions at any time during the five years before the proposed transaction.

*Disqualified person* includes insiders in any of the four categories above and any person described in either of the two categories below.

5. Spouses, ancestors, children, grandchildren, great-grandchildren, and the spouses of the children, grandchildren, and great-grandchildren of any individual listed in categories 1 – 4 above.
6. Any entity in which any combination of persons listed above in categories 1 – 3 holds more than 35 percent of the combined voting power, if the entity is a business corporation; profits interests, if a partnership; or beneficial interest, if a trust or estate.

*Interest* means any financial commitments, investments, obligations, economic benefits, or other relationships between a disqualified person and FLM, that are subject to Internal Revenue Code ("IRC") Section 4958, DGCL Section 144, or any other applicable federal, state or local law or regulation governing conflicts of interest or fiduciary duties that requires action by FLM.

A *conflict of interest* is present when, in the judgment of the body or individual determining whether a conflict exists, a disqualified person's financial stake in the transaction is such that it reduces the likelihood that an insider's influence can be exercised impartially in the best interests of FLM (or as may otherwise be defined by applicable law).

*Person* means any individual or entity, including a trust, estate, partnership, association, company, or corporation.

*Transaction* means any transaction, agreement, or arrangement between a disqualified person and FLM, or between FLM and any third party where a disqualified person has an interest in the transaction or any party to it. Transactions specifically identified as presenting no conflict of interest by applicable law, or under a corporate policy adopted by the Board of Directors to govern certain similar transactions and impartially administered, are excepted from the term transaction for purposes of this policy. Nothing in this policy permits FLM to engage in a transaction prohibited by law.

### **Article III: Procedures**

#### *1. Duty to Disclose*

Each disqualified person shall disclose to the Board, or to the Executive Committee or other Board Committee empowered to approve a specific transaction or type of transaction ("Committee"), all material facts regarding his, her, or its interest (including relevant affiliations) in the transaction. The disqualified person shall make that disclosure promptly upon learning of the proposed transaction. Insiders shall make disclosures on behalf of disqualified persons related to them unless the related disqualified person does so. The Committee responsible for reviewing transactions between FLM and its affiliates, including but not limited to First Look Productions, Inc. and First Look Technologies, Inc., shall be the Affiliate Transactions Committee. The Committee responsible for reviewing transactions involving the compensation of an FLM director shall be the Director Compensation Committee. (Committee powers and procedures depend on state corporate law and the authority properly delegated to the Committee by the Board. Committee actions taken under this policy must also comply with such law and authority.)

#### *2. Determining Whether a Conflict of Interest Exists*

With regard to a disqualified person, the Board or Committee shall determine if a conflict of interest exists. The insider(s) and any other disqualified person(s) involved with the transaction shall not be present during the Board or Committee's discussion or determination of whether a conflict of interest exists, except as provided in Article IV below.

#### *3. Procedures for Addressing a Conflict of Interest*

Once a conflict of interest has been found:

The Board or Committee shall follow the procedures set forth in Article IV in order to decide what measures are needed to protect FLM's interests in light of the nature and seriousness of the conflict, to decide whether to enter into the transaction and, if so, to ensure that the terms of the transaction are appropriate. In the case of an insider who is a director, the director shall not vote on any transaction in which the director has an interest, and the remaining Board or Committee members shall decide the matter.

#### **Article IV: Review by the Board or Committee**

The Board or Committee may ask questions of and receive presentation(s) from the insider(s) and any other disqualified person(s), but shall deliberate and vote on the transaction in their absence. The Board or Committee shall ascertain that all material facts regarding the transaction and the disqualified person's conflict of interest have been disclosed to the Board or Committee, and shall compile appropriate data to ascertain whether the proposed transaction is fair and reasonable to FLM

After exercising due diligence, which may include investigating alternatives that present no conflict, the Board or Committee shall determine whether the transaction is in FLM's best interest, for its own benefit, and whether it is fair and reasonable to FLM. Following such determination, the majority of disinterested members of the Board or Committee then in office may approve the transaction by an affirmative vote.

#### **Article V: Records of Proceedings**

The minutes of any meeting of the Board and any Committee pursuant to this policy shall contain the name of each disqualified person who disclosed or was otherwise determined to have an interest in a transaction; the nature of the interest and whether it was determined to constitute a conflict of interest; any alternative transactions considered; the members of the Board or Committee who were present during the debate on the transaction, those who voted on it, and to what extent disqualified persons were excluded from the deliberations; any comparability data or other information obtained and relied upon by the Board or Committee and how the information was obtained; and the result of the vote, including, if applicable, the terms of the transaction that was approved and the date it was approved.

The records must be prepared by the later of the next meeting of the Board or Committee or 60 days after the final action of the Board or Committee with respect to the transaction, and must be approved by the Board or Committee within a reasonable time afterwards.

#### **Article VI: Annual Disclosure and Compliance Statements**

Each director, each corporate officer, the top management official, the top financial official, and each key employee of FLM, and others that FLM may identify, shall annually sign a statement, that:

- affirms that the person has received a copy of this conflict of interest policy, has read and understood the policy, and has agreed to comply with the policy; and
- for certain individuals, discloses the person's financial interests and family relationships that could give rise to conflicts of interest,

in the form attached to this policy. All such statements by directors and officers shall be filed with the minutes of the meetings of the Board or Committee; statements by others shall be retained in their personnel files.

#### **Article VII: Past Transactions; Violations**

If the Board has reasonable cause to believe that an insider of FLM has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related disqualified person, it shall inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after hearing the insider's response and making further investigation as warranted by the circumstances, the Board or Committee determines that the insider has failed to disclose an actual or possible conflict of interest, the Board or Committee shall take appropriate disciplinary and corrective action.

In situations where a transaction involving a conflict of interest is discovered after it has already occurred or begun (because, for example, the interest was inadvertently not disclosed prior to the transaction, or FLM's leadership did not realize that a review was necessary or advantageous), the Board or Committee shall conduct a review as described above in Article IV, and determine whether disciplinary or corrective action is possible or warranted. In appropriate cases, the Board or Committee may determine, upon completion of the review, that ratification of the transaction is in FLM's best interest, for its own benefit, and is fair and reasonable to FLM.

#### **Article VIII: Annual Reviews**

To ensure that FLM operates in a manner consistent with its charitable purposes and its status as an organization exempt from federal income tax, the Board shall authorize and oversee an annual review of the administration of this conflict of interest policy. The review may be written or oral. The review shall consider the level of compliance with the policy, the continuing suitability of the policy, and whether the policy should be modified and improved.

Version dated \_\_\_\_\_

**FIRST LOOK MEDIA, INC.**

**CONFLICT OF INTEREST POLICY:  
ACKNOWLEDGMENT AND FINANCIAL INTEREST DISCLOSURE STATEMENT**

First Look Media, Inc. ("FLM") follows a conflict of interest policy designed to foster public confidence in our integrity and to protect our interest when we are contemplating entering a transaction or arrangement that might benefit the private interest of a director, a corporate officer, our top management official and top financial official, any of our key employees, any person with substantial influence over FLM, or other disqualified persons.

**Part I. Acknowledgment of Receipt**

I hereby acknowledge that I have received a copy of the conflict of interest policy of FLM, have read and understood it, and agree to comply with its terms.	
_____	_____
Signature	Date
_____	
Printed Name	

**Part II. Disclosure of Financial Interests (directors, corporate officers, top management official, top financial official, and key employees only)**

We are required annually to file Form 990 with the Internal Revenue Service, and the form we file is available to the public. In order to complete Form 990 fully and accurately, we need each officer, director, and key employee to disclose the information requested in this Part II. If you are not an officer or director of FLM, we have determined that you qualify as a key employee under IRS definitions.

A "conflict of interest," for purposes of Form 990, arises when a person in a position of authority over an organization, such as an officer, director, or key employee, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.<sup>1</sup> Only financial interests must be listed on this disclosure form.

The purpose of this disclosure is to provide the Board of Directors or other governing body with a meaningful opportunity to determine whether a conflict of interest exists, by disclosing any interest that could give rise to a conflict of interest. Complete, accurate disclosure gives the governing body information it needs to fulfill its fiduciary obligations and to make decisions that are in the best interest of the organization.

<sup>1</sup> This definition applies for purposes of this Part II disclosure form and is more limited than the definition of a conflict of interest under FLM's policy.  
{00694381.DOCX; 1}

**Part II** Please check ONE of the following boxes:

My interests and relationships have not changed since my last disclosure of interests. [Proceed to signature block below. Do not complete the tables.]

**OR**

I hereby disclose or update my interests and relationships that could give rise to a conflict of interest: [Complete the table below. Use additional pages as needed.]

Family Relationships	Names of those presenting a potential conflict of interest
Include spouse/domestic partner, living ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great grandchildren, and spouses/domestic partners of brothers, sisters, children, grandchildren, and great grandchildren	

Type of interest	Description of interest that could lead to a conflict of interest
Transactions or arrangements with FLM	
Transactions or affiliations with other organizations	
Substantial business or investment holdings	
Transactions or affiliations with businesses	

I am not aware of any financial interest involving me or a family member that could present a conflict of interest that I have not disclosed either above or in a previous disclosure statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**EXHIBIT E**

**RESOURCE SHARING AGREEMENT**



## RESOURCE SHARING AGREEMENT

This Resource Sharing Agreement (the "Agreement") is made as of January 1, 2014 by and between First Look Media, Inc. ("FLM"), a Delaware nonprofit nonstock corporation, and First Look Productions, Inc. ("FLP"), a Delaware stock corporation.

### RECITALS

A. FLM is organized and operated to engage in charitable and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code (the "Code"), and is in the process of applying to the Internal Revenue Service ("IRS") for recognition of tax-exempt status under Section 501(c)(3) of the Code and for classification as other than a private foundation under Section 509(a) of the Code.

B. FLP is a for-profit corporation that meets the definition of a "disqualified person" with respect to FLM under Section 4958 of the Code.

C. The parties intend to share certain non-human resources, including office space, furniture, and equipment, and to jointly employ certain human resources.

D. In order for each party to conduct activities in the most economical fashion, the parties desire to enter into a contractual relationship to govern which party will provide certain payroll, benefits, and other administrative functions, and to agree to a method, based on each party's actual use of resources, for the reasonable allocation between the parties of the expenses associated with use of shared or joint resources. The parties intend that FLM not pay more than fair market value for any resources provided to it by FLP, and that FLP not pay less than fair market value for any resources provided to it by FLM.

### **NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Specific Goods and Services. Each party will purchase its own goods and services and pay its own obligations (including taxes) separately whenever practical. In the event that an item is incorrectly charged to either of the parties, the party incurring the charge will correct the billing with the vendor, pay directly, or reimburse the other party, as soon as practical after the error is discovered.

2. Employees.

(a) Definitions. Individuals who are employed by only one party are referred to herein as "Exclusive Employees," or as applicable, "FLM Exclusive Employees" or "FLP Exclusive Employees." Individuals who enter into an employment relationship with both parties are referred to herein as "Dual Employees."

(b) Dual Employee Compensation and Supervision. Each party retains the right to hire, compensate, supervise, discipline, and discharge its own Exclusive Employees. Each party agrees that whenever it requires the services of an individual that is employed by either party, the requiring party will have the responsibility of communicating such need to such individual. If at such time the individual is an Exclusive Employee of the other party, the requiring party will inform the individual that he or she is becoming an employee of the requiring party and will thereafter be a Dual Employee. The requiring party may establish employment verbally or through formal offer letters or employment contracts. Dual Employees will have an employment relationship with both parties, but with respect to any particular task, will report to and conduct themselves under the direction and control of the Board of Directors of the party for whom they are performing that task. Neither party may interfere with the other party's direction and control of any employee performing a task for such other party.

(c) FLM Payroll Services. With respect to Dual Employees, FLP will act as the common paymaster within the meaning of Treasury Regulations Section 31.3121(s)-1(b)(2) and fulfill its obligations as such under the Code and applicable Treasury Regulations. With respect to any FLM Exclusive Employees, FLP will act as the payroll agent for FLM. FLM will disclose to FLP the full details of its compensation arrangement with each FLM Exclusive Employee and each Dual Employee. In its role as common paymaster or payroll agent, FLP may be required to withhold and pay to the appropriate taxing authorities certain payroll taxes attributable to FLM Exclusive Employees or to Dual Employees acting under direction of FLM; FLM will reimburse FLP for any such payroll taxes. FLP will have administrative responsibilities as a result of serving as a common paymaster or payroll agent, and any time spent by FLP employees in connection with calculating, withholding, paying, and preparing or filing returns of the payroll taxes of FLM Exclusive Employees or Dual Employees acting under direction of FLM will be allocated in full to FLM; provided, however, that FLM will not reimburse FLP under this Section 2 for the time of a Dual Employee that is accounted for as overhead under Section 5.

(d) Exclusive Employee Reimbursement. FLM will reimburse FLP for any and all salary or wage amounts that FLP pays to any FLM Exclusive Employees during a particular pay period pursuant to paragraph (c) above.

(e) Dual Employee Reimbursement. FLM will reimburse FLP for salary or wage amounts allocable to FLM that FLP pays to Dual Employees pursuant to paragraph (c) above; the reimbursement will be determined on a per-employee basis and will be based on the percentage of time that the Dual Employee worked for FLM in that pay period (for salaried Dual Employees) or based on the actual hours worked for FLM (for Dual Employees earning hourly wages). In each pay period that an individual serves as a Dual Employee, the parties will require such Dual Employee to maintain time records showing the time worked for each party. The parties may require Dual Employees to use any reasonable method for determining the time spent on activities for each party.

3. Employee Benefits.

(a) Exclusive Employees. Each party will be financially responsible for providing benefits and workers' compensation coverage to its respective Exclusive Employees. FLP will administer benefits and workers' compensation coverage with respect to FLM Exclusive Employees.

(b) Dual Employees. FLP will, only to the extent permissible by law and by the terms of any applicable benefit plan, provide all Dual Employees with the same benefits package and workers' compensation coverage as it provides to FLP Exclusive Employees. To the extent FLP is not able to provide one or more Dual Employees with benefits equal to those of FLP Exclusive Employees, the parties will, with respect to such Dual Employees, mutually agree on one of the following options: either (i) FLP will provide the maximum permissible benefits, and FLM will be responsible for providing, contracting with another party to provide, or paying amounts to such Dual Employees that would enable such Dual Employees to enjoy benefits substantially similar to those enjoyed by FLP Exclusive Employees (taking into account any benefits provided by FLM); or (ii) FLP will have no obligation to such Dual Employees and FLM will be solely responsible for providing, contracting with another party to provide, or paying amounts to such Dual Employees that would enable such Dual Employees to enjoy benefits substantially similar to those enjoyed by FLP Exclusive Employees.

(c) Reimbursement. FLM will reimburse FLP for FLP's costs of (i) administering benefits and workers' compensation coverage for FLM Exclusive Employees; (ii) providing benefits and workers' compensation coverage allocable to FLM for Dual Employees; and (iii) time spent by FLP employees or contractors in connection with administering or providing benefits or workers' compensation coverage to FLM Exclusive Employees and Dual Employees (to the extent allocable to FLM); provided, however, that FLM will not reimburse FLP under this Section 3 for the time of any Dual Employee that is accounted for as overhead under Section 5.

(d) Legal Compliance. The parties intend that this Section 3 will conform in all material respects with all requirements of the Employment Retirement Income Security Act of 1974, as amended to date. In the event that either party is advised by counsel or other advisor that any provision set forth in this Section 3 no longer conforms with such requirements, the parties will amend the Agreement to conform with all such requirements.

4. Independent Contractors. Each party retains the right to hire, compensate, supervise, and discharge its own independent contractors. Upon the mutual consent of the parties, any contractor of one party (the "Contracting Party") may perform services for the other party, in which case the Contracting Party may require the other party to reimburse the Contracting Party for the use of the contractor's time spent performing such services. Any such reimbursement will be based on the proportion of the independent contractor's time spent working on the other party's business as a proportion of the contractor's total time billed to the Contracting Party in the same month. In any month that a contractor works for both parties, the

Contracting Party will require the contractor to maintain time records showing the time worked for each party. If FLP is the Contracting Party, FLM will not reimburse FLP's independent contractor expenses at a rate that exceeds FLM's allocable share of such expenses. If FLM is the Contracting Party, FLP will reimburse FLM's independent contractor expenses at a rate that is no less than FLP's allocable share of such expenses, plus FLM's cost (if any) of administering the sharing of independent contractor time and allocating of independent contractor expenses. Nothing in this Agreement prevents either party from contracting directly with any independent contractor of the other party.

5. Office Space and Overhead Expenses. Either party (the "Using Party") may use office space (the "Shared Space") or equipment (the "Shared Equipment") that is leased or owned by the other party (the "Providing Party") to house records, materials, and the employees and contractors of the Using Party, as applicable. If FLP is the Providing Party, FLM will reimburse FLP's Shared Space expenses or (except as otherwise noted below) FLP's Shared Equipment expenses at a rate that is no more than FLM's allocable share of such expenses, calculated using a labor-based allocation. If FLM is the Providing Party, FLP will reimburse FLM's Shared Space expenses or (except as otherwise noted below) FLM's Shared Equipment expenses at a rate that is no less than FLP's allocable share of such expenses, calculated using a labor-based allocation, plus FLM's cost of administering such sharing of resources and allocation of expenses. Each month, the Providing Party will compute the amount of total time that the Using Party's Exclusive Employees and Dual Employees spent in the Shared Space performing tasks for the Using Party as a percentage of the total time that Dual Employees, FLM Exclusive Employees, and FLP Exclusive Employees spent in the Shared Space performing tasks for either of the parties. That percentage will be applied to the Providing Party's total overhead costs incurred that month to provide Shared Space and Shared Equipment. Overhead costs to be allocated under this Section 5 may include, but are not limited to, the following items:

- Occupancy
- Telephone (except as provided in Section 6 below)
- Utilities
- Payroll accounting and administration costs not accounted for under Section 2 or Section 3 above
- Any software license fees, computer consulting, and technical support not otherwise provided for under licenses or other agreements between the parties
- General office supplies
- Computer and word processing supplies
- Photocopying expenses not accounted for under Section 7 below
- Premiums for any liability and other insurance policies that cover both parties
- Equipment rental, repair, and maintenance (except as provided in Section 7 below)
- Storage (physical and virtual)
- Depreciation, except as provided in Section 6 below

- Costs of staff (including contractors) devoted to administrative matters, including but not limited to clerical, reception, and accounting activities, to the extent such costs are not accounted for under Section 2 above
- Staff travel expenses not accounted for under Section 2 above
- Subscriptions, publications, and membership fees
- Any taxes properly allocable between the parties

The following expenses will not be included in the overhead allocated to the Using Party, since they relate exclusively to the Providing Party's work:

- Board expenses
- Accounting services (audit)

In addition to charging the Using Party for its allocable share of Providing Party overhead, in exceptional circumstances not adequately covered by this Section 5 (e.g., if the Providing Party provides dedicated, exclusive space to the Using Party's contractors), the Using Party will pay the Providing Party an additional amount for the applicable periods of use as rental of the Shared Space. If FLP is the Providing Party, it may choose to donate the use of the Shared Space or it may charge rental rates that are no greater than prevailing fair market rental value. If FLM is the Providing Party, FLP will pay rental rates that are no less than the prevailing fair market rental value.

6. Telephone Expenses. The parties will make every reasonable effort to separately identify each long distance telephone call so that each party will be responsible for the costs of its own long distance calls. Billing codes or telephone logs kept by staff members may be used for this purpose. The Providing Party may allocate local telephone costs to the Using Party as part of the overhead allocation in Section 5.

7. Metered Equipment. The Providing Party may purchase or lease certain items of office equipment, such as photocopiers, facsimile transmission machines, and postage meters, that are capable of metered usage, so that each instance of use may be separately measured and the cost of each use may be allocated to the Using Party. If the Using Party makes a substantial use of such equipment, the Providing Party may allocate costs to the Using Party for each instance of use on a metered basis (e.g., per page) at no more than fair market value. If commercial rates are unreasonably high compared to the Providing Party's actual costs associated with the equipment, the parties may mutually agree to a discounted fair market value, or the Providing Party may allocate to the Using Party an amount that is based on the Providing Party's actual cost and is proportionate to the Using Party's actual use of the equipment. To the extent a Using Party pays a Providing Party for use of any equipment on a metered basis, no costs associated with that equipment will be included in the overhead allocation in Section 5. If the Using Party's use is not substantial, the Providing Party may allocate these equipment costs to the Using Party as part of the overhead allocation in Section 5.

8. Intellectual Property. This Agreement does not cover the allocation or use of any intellectual property owned by either party and covered by any other agreement between the parties, including without limitation that certain Trademark License Agreement dated January 1, 2014.

9. Payment and Reimbursement of Expenses. As FLM incurs expenses attributable at least in part to FLP and its activities, FLM will pay FLP's share of such expenses and vice versa. Each month during the term of this Agreement, FLM will calculate the amount of expenditures incurred by FLM that are allocable to FLP under this Agreement, including expenses directly attributable to FLP as well as overhead and other indirectly attributable expenses, and will invoice FLP therefor, providing an itemized list of both directly and indirectly attributable expenses paid, and including documentation for all itemized expenses. FLP will pay each invoice within thirty days of receipt. Any amount that is not paid within thirty days will bear interest at a rate that is no less than a prevailing market rate for similar situations, as determined by FLM in its reasonable discretion. FLP will follow the same procedures to the extent FLP has incurred expenses for FLM, except that any amounts owed by FLM for more than thirty days will not bear interest.

10. Records: Tracking and Billing. Each party will maintain records sufficient to substantiate all amounts allocable to the other party under this Agreement, and will make such records available to the other party upon reasonable request for review and audit. Each party will maintain a copy of each invoice to the other party for at least four years after payment of such invoice, and will maintain a copy of all relevant records for at least four years after payment of the last invoice to which such records relate.

11. Failure to Bill. If FLP fails to invoice FLM for costs that are payable by FLM under this Agreement on or before the last day of the tenth month after the end of FLP's fiscal year in which the expenses were incurred, the failure to invoice or failure to bring actions for collections will be deemed a waiver of the right to reimbursement and interest, and the parties will treat such amounts as unrestricted contributions to FLM.

12. Protection of Tax-Exempt Status. FLP agrees to operate and to conduct its joint use of the resources described herein in a manner so as (a) not to interfere with FLM's accomplishment of its tax-exempt purposes, (b) not to jeopardize FLM's compliance with federal and state laws governing nonprofit, tax-exempt organizations, and (c) not to cause any inurement or any improper private benefit from such joint use of resources.

13. Additional Payment in Event of Adverse IRS Determinations. In the event that the IRS determines that FLM has provided any excess benefit (within the meaning of Section 4958 of the Code) to FLP pursuant to this Agreement, then FLP will pay to FLM the amount of such excess, as determined by the IRS. In addition, in the event that the IRS determines that all or any part of the amounts paid by FLP to FLM pursuant to this Agreement constitute unrelated business taxable income (within the meaning of Sections 511-513 of the

Code), FLP will pay to FLM the amount of taxes, penalties, and interest, if any, determined by the IRS to be owed by FLM in respect of such income.

14. Change in Law. The parties intend that the method of calculating FLP's share of any expenses incurred by FLM on FLP's behalf will conform with all legal requirements and will not be characterized as the provision of services by FLM to FLP. In the event that FLM is advised by counsel or other tax advisor that the method of calculating FLP's share of expenses set forth in this Agreement no longer conforms with such requirements, the parties will amend the Agreement to conform with all such requirements.

15. Neither Party Agent for the Other. Except as expressly provided to the contrary in this Agreement, nothing in this Agreement will constitute the naming of one party as an agent or legal representative of the other for any purpose whatsoever. This Agreement will not be deemed to create any relationship of general agency, partnership, or joint venture between the parties hereto. This Agreement is not a management contract, and neither party is hereby delegating management of its own affairs to the other.

16. Termination.

(a) The term of this Agreement will begin on the effective date indicated above and will continue in force until terminated.

(b) This Agreement may be terminated by mutual written consent of the parties at any time.

(c) In the event of a material and continuing breach of this Agreement, the non-breaching party will have the right to terminate this Agreement upon thirty days' written notice to the breaching party, but only if the violation has not been fully remedied during such thirty-day period.

(d) In the event that FLP breaches any other agreement between the parties, if such breach (i) gives FLM the right to terminate such other agreement and (ii) does not relate solely to a payment obligation under such other agreement, then FLM will have the right to terminate this Agreement by written notice to FLP in the same time and manner as permitted under such other agreement. FLM may exercise its right to terminate this Agreement without exercising its right to terminate such other agreement.

(e) Upon termination of this Agreement: (i) within thirty days of the termination date, each party will remit to the other any amounts due for expenses allocable to such remitting party through the termination date, and (ii) each party will return to the other party any of the other party's books, records, documents, data, and other property that are in the returning party's possession.

17. Indemnification. FLP will indemnify and hold harmless FLM, its directors, officers, employees, agents, and affiliates, from and against any losses, liabilities, damages, and expenses (including attorneys' fees), whether the same be now known or unknown, anticipated or unanticipated, which they or any of them may incur or be obligated to pay in any action, claim, or proceeding against them or any of them, in connection with the sharing of resources under this Agreement, for or by reason of (a) any acts, whether of omission or commission, of FLP or any of its officers, directors, servants, agents, or employees, or (b) a legislative change in any California or federal tax statute, or a precedential change in the interpretation of such a statute by the applicable California or federal taxing authority or agency, as the case may be. The provisions of this Section 17 and FLP's obligations hereunder will survive any expiration, termination, or rescission of this Agreement. If either FLM or FLP becomes aware of any suit or claim against FLM (which term includes any director, officer, employee, agent, or affiliate of FLM, acting in his, her, or its capacity as such) covered by this Section 17, such party will promptly notify the other party in writing. In the event that a judgment, levy, attachment, or other seizure is entered against FLM arising from any claim covered by the indemnification provided hereunder, FLP will promptly post the necessary bond to prevent execution against any property of FLM.

18. Further Assurances. Each party will cooperate and will take such further actions and will execute and deliver such further documents as may be reasonably required by the other party in order to carry out the provisions of this Agreement.

19. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied will give or be construed to give any person, other than the parties hereto and such assigns, any legal or equitable rights under this Agreement.

20. Non-Waiver. Except as provided in Section 11, the failure of either party to enforce at any time any term, provision, or condition of this Agreement, or to exercise any right or option herein, will in no way operate as a waiver thereof, nor will any single or partial waiver or exercise hereunder preclude any other waiver or right or option herein; and no waiver whatsoever will be valid unless in writing, signed by the waiving party, and only to the extent therein set forth.

21. Assignment. The rights and duties contained in this Agreement are personal in nature, and neither party may sell, transfer, lease, or assign this Agreement or its rights, obligations, and interests hereunder, or any part hereof, by operation of law or otherwise, without the prior written consent of the other party.

22. Notices. All approvals and notices required or permitted to be given under this Agreement will be valid only if delivered to an officer of the other party. If notices are sent to a party at its address as set forth at the end of this Agreement (or at such other address as the party may from time to time designate by notice in writing to the other party) by express delivery service providing a delivery receipt, or mailed by registered or certified mail, postage prepaid



and return receipt requested, then the notice will be deemed received on the date shown on the receipt upon which delivery was accepted or refused.

23. Applicable Law. This Agreement will be governed by, and interpreted and construed in accordance with, the laws of the State of California applicable to agreements made and to be performed in said state.

24. Dispute Resolution. Any controversy, claim, or dispute arising out of this Agreement ("Dispute") will be subject to resolution as provided in this Section 24. If a Dispute arises, the parties will first attempt to resolve the Dispute through good faith negotiations between authorized representatives of the parties (which will, if so requested by either party, include the President or Chief Executive Officer of each party). Either party may initiate such negotiation by written notice to the other party (a "Dispute Notice"). If the Dispute is not resolved within thirty (30) days of the Dispute Notice, then the parties will submit the Dispute to a committee consisting of one (1) independent member of each party's Board of Directors, and an individual, not a member of either party's Board of Directors, to be determined by the parties no later than ten (10) business days from the date of the Dispute Notice (such committee, the "Special Committee" and such designated individual, the "Designated Committee Member"). If the Designated Committee Member is not available, then the other members of the Special Committee will by majority vote select a replacement to serve as the Designated Committee Member. The Special Committee will be empowered to resolve the Dispute and the Designated Committee Member will be empowered to make the final decision in the event of any impasse.

25. Confidentiality. The parties hereby agree that the terms of this Agreement are confidential and that neither party may disclose any term of this Agreement to any third party without prior written approval of the other, except as necessary or appropriate to federal or state agencies or to obtain the assistance of accountants or other professionals in order to accomplish the purposes of this Agreement. Neither party may disclose any term of this agreement to any person without imposing this confidentiality obligation on such person.

26. Attorneys' Fees. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party will, in addition to any other relief, be entitled to recover its reasonable attorneys' fees for discovery, appeal, and all other phases of litigation, and costs of litigation.

27. Entire Agreement. This Agreement constitutes the sole, full, and complete Agreement between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous promise, representation, agreement, or understanding between the parties with respect to such subject matter, whether written or oral, all of which will be deemed to have been merged herein.

28. Severability. Each provision of this Agreement will be separately enforceable and the invalidity of one provision will not affect the validity or enforceability of any other provision.

29. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.


30. Amendment. This Agreement may not be amended or modified, except in a writing signed by both parties hereto.


IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

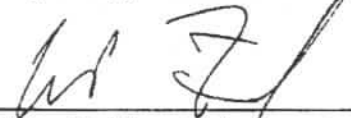
FIRST LOOK MEDIA, INC.

FIRST LOOK PRODUCTIONS, INC.

By: \_\_\_\_\_  
Pierre M. Omidyar, President

By:  \_\_\_\_\_  
Randy Chang, President

By:  \_\_\_\_\_  
William P. Fitzpatrick, Secretary

By:  \_\_\_\_\_  
William P. Fitzpatrick, Secretary


Address:  
720 University Avenue, Suite 200  
Los Gatos, California 95032

Address:  
720 University Avenue, Suite 200  
Los Gatos, California 95032

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

FIRST LOOK MEDIA, INC.

FIRST LOOK PRODUCTIONS, INC.

By:   
\_\_\_\_\_  
Pierre M. Omidyar, President

By: \_\_\_\_\_  
Randy Ching, President

By: \_\_\_\_\_  
William P. Fitzpatrick, Secretary

By: \_\_\_\_\_  
William P. Fitzpatrick, Secretary

Address:  
720 University Avenue, Suite 200  
Los Gatos, California 95032

Address:  
720 University Avenue, Suite 200  
Los Gatos, California 95032

**EXHIBIT F**

**TRADEMARK LICENSE AGREEMENT**

## TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (this “**Agreement**”) is entered into as of January 1, 2014 (“**Effective Date**”) by and among First Look Media, Inc., a Delaware not-for-profit non-stock corporation (“**FL Media**”), with an address at 720 University Avenue, Los Gatos, CA 95032; First Look Technology, Inc., a Delaware corporation (“**FL Technology**”), with an address at 720 University Avenue, Los Gatos, CA 95032; and First Look Productions, Inc., a Delaware Corporation (“**FL Productions**”), with an address at 720 University Avenue, Los Gatos, CA 95032.

A. FL Media is organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code with the primary mission to promote the dissemination of quality independent and transparent journalism on-line and through other digital and media sources (the “**Mission**”).

B. FL Media owns and has applied to register the trademark FIRST LOOK in the United States and other jurisdictions around the world for use in connection with various goods and services, including downloadable audio and video files and downloadable software and mobile applications; providing websites, online software and network-based services; and advocating on behalf of others in the public interest (the “**Licensed Mark**”).

C. FL Technology and FL Productions and (each a “**Licensee**” and, collectively, the “**Licensees**”) are organized under the laws of Delaware and are engaged in the business of developing, licensing and distributing technology for use in (a) operating websites, (b) dissemination of digital content, and (c) security and encryption (collectively, the “**Licensee Technology**”).

D. FL Media and the Licensees have determined that it is in their mutual interests for FL Media to grant a license to each of the Licensees to use the Licensed Mark in each of the Licensee’s company names, respectively, and in connection with the Licensee Technology, in furtherance of the Mission and as otherwise set forth in this Agreement.

Now, therefore, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FL Media and the Licensees hereby agree as follows:

1. **License Grant.** Subject to the terms and conditions of this Agreement, FL Media hereby grants to the Licensees a non-exclusive, worldwide license to use the Licensed Mark (a) in each of the Licensee’s company names, respectively; and (b) in connection with the Licensee Technology, in each case consistent with and in furtherance of the Mission. The license granted to the Licensees herein includes the right to use the domain name firstlook.org for FL Technology’s website and the domain name firstlook.org for FL Productions’ website. For avoidance of doubt, the Licensees will not (and will have no right to) register such domain name itself (and any such registration will be handled as set forth in Section 5).

2. **Limitations.** The Licensees will use the Licensed Mark only in furtherance of, and in a manner that is consistent with, the Mission. All uses of the Licensed Mark will comply with such reasonable trademark guidelines (including with respect to notices and marking requirements) as FL Media may provide to the Licensees from time to time. The Licensees acknowledge that they have not acquired, and will not acquire, any right, title or interest in or to the Licensed Mark except the right to use the Licensed Mark as expressly set forth in this Agreement, and agree that all such use and all associated goodwill will inure to the sole benefit of FL Media.

**3. Quality Control; Conduct of Business.** The Licensee Technology in connection with which the Licensees use the Licensed Mark will be of such quality as will, in FL Media's reasonable judgment, contribute to the Mission and protect and enhance the goodwill, image and reputation adhering to the Licensed Mark, and will be consistent with the reasonable quality requirements communicated by FL Media to the Licensees from time to time. The Licensees will conduct their respective businesses in a manner that contributes to the Mission and reflects positively on the Mission and the Licensed Mark.

#### **4. Payments**

**4.1 Adjusted Revenues.** "Adjusted Revenues" means the respective gross revenues received by each of the Licensees from the sale, licensing, distribution or other provision of the Licensee Technology and associated services (including development, support and maintenance services), less (a) sales, use and other excise taxes and duties actually paid; (b) shipping and delivery costs; and (c) refunds and credits due to returns of defective goods or services (not to exceed the original billing or invoice amount).

**4.2 Royalties.** In consideration for the license granted hereunder with respect to the Licensed Mark, each of the Licensees will pay to FL Media royalties as follows (the "Royalties"):

- (a) From the Effective Date until such time as the Licensee's Adjusted Revenues equal US\$1,000,000, the Royalties will be two percent (2%) of such Adjusted Revenues.
- (b) From such time as the Licensee's Adjusted Revenues equal US\$1,000,001 until such time as its Adjusted Revenues equal US\$5,000,000, the Royalties will be three percent (3%) of such Adjusted Revenues.
- (c) From such time as the Licensee's Adjusted Revenues equal US\$5,000,001 and thereafter for the remainder of the Term, the Royalties will be five percent (5%) of such Adjusted Revenues.

**4.3 Statements.** Each of the Licensees will render to FL Media, on a quarterly basis, a written statement of the Royalties due by it to FL Media for such quarter. Concurrent with the rendering of such statement, each of the Licensees will remit in U.S. Dollars any payment due by it to FL Media for such quarter. Each statement and the accompanying payment will be delivered to FL Media within thirty (30) days following the end of each quarterly period.

**4.4 Taxes.** If the Licensees are required by applicable law to deduct or withhold taxes from the amounts payable to FL Media hereunder, then the Licensees will duly withhold such taxes and will remit the remaining net amount to FL Media.

**4.5 Books and Records.** The Licensees will maintain complete and accurate books and records relating to each statement rendered pursuant to Section 4.3. FL Media may, upon one (1) week advance notice, examine and inspect such books and records for the purpose of determining the accuracy of statements and/or payments rendered by the Licensees. Any such audit will be conducted during the Licensee's regular business hours in such a manner so as not to interfere with the Licensee's normal business activities, and will be at FL Media's expense. However, if such audit reveals that the Licensee has failed to properly account for and pay Royalties owed FL Media by more than five percent (5%) of the Royalties actually due in any given quarter, the Licensee will bear the expenses reasonably incurred by FL Media in connection with such audit.

**4.6 Liquidated Damages.** If a Licensee's use of the Licensed Mark fails to comply with this Agreement, including if the Licensee uses the Licensed Mark in a manner inconsistent with the Mission, then FL Media may give such Licensee notice requiring that such Licensee promptly cease the non-compliant use. If the Licensee does not cease the non-compliant use within thirty (30) days of such notice, then the Royalties applicable to such Licensee at such time will be doubled. Such increased Royalties will remain in effect until the Licensee ceases the non-compliant use or FL Media terminates the Agreement with respect to such Licensee pursuant to Section 7. The parties acknowledge and agree that FL Media's actual damages likely to result from a Licensee's non-compliant use of the Licensed Mark are difficult to estimate as of the Effective Date and would be difficult for FL Media to prove. The parties intend that the Licensee's payment of the increased Royalties would serve as reasonable compensation to FL Media for such non-compliant use of the Licensed Mark, and they do not intend for the increased Royalties to serve as a penalty.

**5. Registration and Enforcement.** FL Media will use commercially reasonable efforts to register, maintain and enforce the Licensed Mark at its own expense in appropriate jurisdictions around the world. If the Licensed Mark is not yet registered in a jurisdiction where a Licensee uses or intends to use the Licensed Mark, then such Licensee may request that FL Media file an application and take other appropriate steps to register the Licensed Mark in such jurisdiction to the extent practicable. FL Media will consider in good faith, and will not unreasonably deny, such requests. If a Licensee informs FL Media of any actual or threatened infringement or unauthorized use of the Licensed Mark by third parties, then FL Media will take such steps as it determines are commercially reasonable to enforce the Licensed Mark and stop such infringement or unauthorized use to the extent practicable. Subject to the foregoing, FL Media will have the right to make decisions regarding the registration, maintenance and enforcement of the Licensed Mark in its reasonable discretion. Each Licensee will, as requested by FL Media, reasonably cooperate with FL Media's efforts to register, maintain and enforce the Licensed Mark. FL Media will also register the domain names identified in Section 1 and make such domain names available for use by the Licensees.

## **6. CONFIDENTIAL INFORMATION**

**6.1 Definition.** "Confidential Information" means all information disclosed by one party ("Discloser") to the other party ("Recipient") (in writing, orally or in any other form) that is designated, at or before the time of disclosure, as confidential, or provided under circumstances reasonably indicating that the information is confidential. Confidential Information of a Licensee includes any non-public information contained in the statements submitted to FL Media pursuant to Section 4.3 and any information disclosed to FL Media in connection with any audit pursuant to Section 4.5. Confidential Information does not include information or material that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient at or before the time such information or material was received from the Discloser, as evidenced by the Recipient's tangible (including written or electronic) records; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (d) is independently developed by the Recipient without any breach of this Agreement, as evidenced by the Recipient's contemporaneous tangible (including written or electronic) records.

**6.2 Restrictions.** Each party will take all reasonable measures to protect the confidentiality of the other party's Confidential Information in a manner that is at least protective as the measures it uses to maintain the confidentiality of its own confidential and proprietary information of similar importance. Recipient will hold Confidential Information in strict confidence and will not disclose, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of such information, or give or disclose such information to third parties, or use such information for any purposes whatsoever other than as necessary



in order to fulfill its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, Recipient may disclose the other party's Confidential Information (a) to employees and consultants that have a need to know such information, provided that Recipient will advise each such employee and consultant of their obligations to keep such information confidential and will require that each such employee and consultant sign a written nondisclosure agreement consistent with the confidentiality and nondisclosure provisions herein, and (b) to the extent Recipient is legally compelled to disclose such Confidential Information, provided that Recipient will give advance notice of such compelled disclosure to the other party, and will cooperate with the other party in connection with any efforts to prevent or limit the scope of such disclosure and/or use of the Confidential Information.

## 7. Term and Termination

**7.1 Term.** This Agreement will commence upon the Effective Date and will continue in full force and effect thereafter until terminated as set forth herein (the "Term").

**7.2 Termination for Breach.** FL Media may terminate this Agreement with respect to any Licensee upon written notice to such Licensee if such Licensee materially breaches this Agreement and fails to correct such breach within thirty (30) days following written notice specifying such breach, except that, if the breach at issue is the Licensee's non-compliant use of the Licensed Mark as described in Section 4.6, then FL Media will not have a right to terminate this Agreement based on such breach unless the Licensee fails to correct such breach within ninety (90) days following FL Media's written notice specifying such non-compliance under Section 4.6. Any Licensee may terminate this Agreement with respect to itself upon written notice to FL Media if FL Media materially breaches this Agreement and fails to correct such breach within thirty (30) days following written notice specifying such breach.

**7.3 Termination Based on Tax Exempt Status.** Notwithstanding anything to the contrary herein, if FL Media determines in its good faith business judgment that this Agreement or the activities hereunder, including any Licensee's use of the Licensed Mark and payment to FL Media of Royalties, is likely to jeopardize or result in the loss of FL Media's tax-exempt status, cause the Agreement or any payment hereunder to be characterized by the IRS as an excess benefit transactions, or generate excessive unrelated business income tax for FL Media, then FL Media may immediately terminate this Agreement in its entirety or with respect to the applicable Licensee(s) by notice to such Licensee(s).

**7.4 Termination for Change of Control.** FL Media may terminate this Agreement with respect to a Licensee by notice to such Licensee if the Licensee undergoes a Change of Control. A Licensee will be deemed to have undergone a "Change of Control" upon the occurrence of any of the following events: (a) the acquisition by any other person or entity, through any transaction or series of related transactions, of Control of the Licensee; (b) the Licensee consolidates with or merges with or into another corporation, partnership or other entity, whether or not the Licensee is the surviving entity of such transaction; or (c) a sale or other transfer of all or a substantial portion of the assets or business of the Licensee. "Control," as used above, means beneficial ownership, directly or indirectly, of securities representing fifty percent (50%) or more of the total voting power entitled to vote in elections of the Licensee's board of directors or other governing authority.

**7.5 Effect of Termination.** Upon any termination of this Agreement by or with respect to a Licensee, (a) such Licensee will promptly cease all use of the Licensed Mark, (b) the Licensee will take all necessary steps to change its company name to a new name that does not include (and is not confusingly similar to) the Licensed Mark, (c) the Licensee will return to FL Media (or, if so directed by the other FL Media, destroy), and FL Media will return to the Licensee (or, if so directed by the Licensee, destroy) all Confidential Information of the other party, and (c) the following provisions of this Agreement will survive and continue in effect: Sections 2 (only with respect to the final sentence), 4 (with

respect to amounts owed as of termination), 5 (only with respect to the penultimate sentence), 6, 7.5, 8, 9, 10, and 11. For clarity, if this Agreement is terminated with respect to any Licensee, whether by FL Media or by such Licensee, such termination will not affect the remaining Licensees and the Agreement will remain in effect as between FL Media and such remaining Licensees until terminated pursuant to its terms.

**8. Indemnification.** FL Media will defend each Licensee and its directors, officers, employees and agents against any third party claim, demand or action based upon or arising out of an allegation that the Licensed Mark, when used by such Licensee in accordance with this Agreement in a jurisdiction where FL Media has registered the Licensed Mark, infringes the trademark rights of such third party, and will pay all associated expenses, damages, judgments, awards and settlements finally awarded to the third party by a court of competent jurisdiction. If a Licensee seeks indemnification under this Section 8, then the Licensee will notify FL Media of the claim, demand or action for which indemnification is sought, but the failure to give such notice will not relieve FL Media of its obligations hereunder except to the extent that FL Media was actually and materially prejudiced by such failure. FL Media will have the right to control the defense and settlement of the claim, demand or action, but the Licensee may, at its option and expense, participate and appear on an equal footing with FL Media. FL Media will not settle the claim, demand or action without the prior written approval of the Licensee, which approval will not be unreasonably withheld or delayed. Without limitation of the foregoing, if a third party asserts a claim that the Licensed Mark infringes the rights of such third party in a particular jurisdiction or FL Media reasonably believes that such a claim is likely, and FL Media is unable to obtain for the Licensee the right to continue using the Licensed Mark in such jurisdiction on commercially reasonable terms, then FL Media may give written notice to the Licensee proposing that the Licensee cease the allegedly infringing use of the Licensed Mark in the relevant jurisdiction. If, following such proposal, the Licensee refuses to cease the allegedly infringing use of the Licensed Mark in the relevant jurisdiction, then notwithstanding anything to the contrary in this Section 8, FL Media will have no obligation to defend or indemnify the Licensee with respect to claims or allegations by the applicable third party to the extent based on or arising from the Licensee's continued use of the Licensed Mark in the applicable jurisdiction after such proposal.

#### **9. Disclaimer**

NO PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ALL OTHER WARRANTIES THAT MAY OTHERWISE ARISE FROM COURSE OF DEALING, USAGE OF TRADE OR CUSTOM.

**10. Limitation of Liability.** EXCEPT FOR A LICENSEE'S BREACH OF SECTION 2 OR SECTION 3, LIQUIDATED DAMAGES AS SET FORTH IN SECTION 4.6, ANY PARTY'S BREACH OF SECTION 6, AND FL MEDIA'S OBLIGATIONS UNDER SECTION 8, IN NO EVENT WILL ANY PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR DAMAGES FOR LOST PROFITS OR LOSS OF GOODWILL, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE LICENSED MARK, WHETHER LIABILITY IS BASED IN CONTRACT, TORT, PRODUCT LIABILITY OR ANY OTHER THEORY OF LIABILITY. IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF (A) \$1,000,000 OR (B) THE TOTAL ROYALTIES PAID OR PAYABLE HEREUNDER. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF WHETHER SUCH PARTY KNOWS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 11. Miscellaneous

**11.1 Governing Law.** This Agreement will be interpreted under the laws of the State of Delaware without reference to conflicts of law principles.

**11.2 Dispute Resolution.** Any controversy, claim or dispute arising out of this Agreement ("Dispute") will be subject to resolution as provided in this Section 11.2. If a Dispute arises, the parties will first attempt to resolve the Dispute through good faith negotiations between authorized representatives of the parties in Dispute (which will, if so requested by any party involved in the Dispute, include the President or Chief Executive Officer of each such party). Each party may initiate such negotiation by written notice to the other party (a "Dispute Notice"). If the Dispute is not resolved within thirty (30) days of the Dispute Notice, then the parties will submit the Dispute to a committee consisting of one (1) independent member of each party's Board of Directors, and an individual, not a member of any party's Board of Directors, to be determined by the parties no later than ten (10) business days from the date of the Dispute Notice (such committee, the "Special Committee" and such designated individual, the "Designated Committee Member"). If the Designated Committee Member is not available, then the other members of the Special Committee will by majority vote select a replacement to serve as the Designated Committee Member. The Special Committee will be empowered to resolve the Dispute and the Designated Committee Member will be empowered to make the final decision in the event of any impasse.

**11.3 Assignment.** No Licensee will assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the written consent of FL Media, and any purported assignment, delegation or other transfer, except as permitted herein, will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

**11.4 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements and understandings among or between the parties relating to such subject matter. This Agreement may not be modified except in writing, signed by all parties.

**11.5 Severability.** If any provision of this Agreement should be determined by a court of competent jurisdiction to be invalid or unenforceable, that decision will not affect or impair the validity or enforceability of any of the remaining provisions of this Agreement.

**11.6 No Waiver.** No waiver of any term or condition of this Agreement will be valid or binding on a party unless agreed to in writing by the waiving party.

**11.7 Notices.** Any notice or other communication required or permitted hereunder will be in writing, delivered to the applicable party at the address set forth above or to such other address as the such party may from time to time designate in a writing delivered pursuant to this sentence, and will be deemed properly given upon receipt.

**11.8 Construction.** Sections and section headings contained in this Agreement are for reference purposes only and will not affect in any manner the meaning of interpretation of this Agreement. Whenever the context requires, references to the singular will include the plural and the plural the singular and any gender will include any other gender. Each party and its legal counsel have reviewed this Agreement, and no provision of this Agreement will be interpreted for or against a party because such party or its representative drafted such provision. The word "including," when used herein, is illustrative rather than exclusive and means "including, without limitation."

11.9 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and which together will constitute one instrument.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date written above.

**FIRST LOOK MEDIA, INC.**

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FIRST LOOK TECHNOLOGY, INC.**

\_\_\_\_\_  
Signature

Name: Will Fitzpatrick

Title: General Counsel

**FIRST LOOK PRODUCTIONS, INC.**

\_\_\_\_\_  
Signature

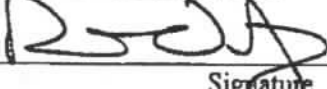
Name: Randy Ching

Title: COO

11.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date written above.

FIRST LOOK MEDIA, INC.

  
\_\_\_\_\_  
Signature

Name: PIERRE OMAYEM

Title: CEO

FIRST LOOK TECHNOLOGY, INC.

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FIRST LOOK PRODUCTIONS, INC.

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**GRANT AGREEMENTS**

## GRANT AGREEMENT

This Grant Agreement (this "Agreement") is made by and between FIRST LOOK MEDIA, INC., a nonprofit corporation organized under the laws of the State of Delaware ("Grantor"), and THE ELECTRONIC FRONTIER FOUNDATION, INC., a nonprofit corporation organized under the laws of The Commonwealth of Massachusetts ("Grantee"), effective as of May 1, 2014 (the "Effective Date").

### RECITALS

A. Grantor is organized and operated for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "U.S. Internal Revenue Code"), and more specifically, Grantor seeks to promote positive social change and support other organizations with the same purposes.

B. Grantee is organized and operated for charitable, educational and/or scientific purposes within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code.

C. Grantor wishes to make a grant to Grantee, subject to the terms and conditions stated in this Agreement.

NOW WHEREFORE, the parties hereto agree as follows:

### AGREEMENT

1. **Grant Amount and Purpose.** Subject to the terms and conditions herein, Grantor agrees to grant to Grantee One Hundred Thousand Dollars (\$100,000) (the "Grant") payable in US Dollars for Grantee's general charitable, education and/or scientific purposes as described in Grantee's charter documents (the "Purpose") and is not otherwise restricted as to purpose. The Grant will be disbursed in accordance with Exhibit B.

2. **Use of Funds.** Grantee shall use the Grant only for the Purpose described above, and shall repay to Grantor any part of the Grant that is used for any purpose other than the Purpose, unless Grantor provides prior written consent for such use. Grantee intends to spend the Grant in full by 30 April 2015 ("Grant Expiration Date"), and Grantee shall promptly notify Grantor if Grantee expects at any time that any portion of the Grant will not be spent by the Grant Expiration Date, in which event the parties will meet within twenty (20) business days of such notification to discuss the status of the Grant, including without limitation any adjustments needed to the Grant Expiration Date and/or Purpose. If no adjustment to the Grant Expiration Date is mutually agreed upon by the parties, Grantee shall repay to Grantor any portion of the Grant which is not spent by the Grant Expiration Date.

Grantee is solely responsible for: (a) all activities supported by the Grant, (b) the content of any product or service created with the Grant, and (c) the manner in which such products or services may be disseminated.

4. **No Pledge.** Neither this Agreement nor any other statement, oral or written, express or implied, nor the making of any contribution or grant to Grantee, shall be interpreted to create any pledge or any commitment by Grantor or by any related person or entity to make any other grant or contribution to Grantee or any other entity for this or any other project. The Grant shall be a separate and independent transaction from any other transaction between Grantor and Grantee or any other entity.

5. **Reporting.**

a. **Reporting Obligations.** Grantee agrees to provide to Grantor the reports described in Exhibit C. All reports should be provided to the Grantor contact listed on the signature page to this Agreement, and a copy should be provided to [grants@firstlook.org](mailto:grants@firstlook.org). All reports shall be in writing and signed by an authorized officer, director or trustee of Grantee.

b. **Additional Evaluation Activities; Additional Reports.** From time to time during and after the end of the Grant Term, Grantor may request that Grantee participate in additional evaluation activities to assist Grantor in evaluating its grant programs. If Grantee believes in good faith that such additional evaluation activities will place a material financial burden on Grantee or interfere with the timely performance of Grantee's regular activities, Grantee shall notify Grantor and the parties will agree in advance on terms under which Grantor will reimburse Grantee for the reasonable costs incurred by Grantee as a result of Grantee's participation and/or assist Grantee in obtaining the resources necessary to allow Grantee to participate effectively. In addition, Grantee shall provide additional reports and information as reasonably requested by Grantor from time to time during and after the end of the Grant Term.

6. **Intentionally Not Used.**

a. **Recordkeeping and Accounting.** Grantee shall maintain a complete and accurate record of the Grant received and expenses incurred pursuant to the Grant, and shall conduct such internal audits as are reasonably required to verify full compliance with this Agreement. Grantee shall retain such books and records for at least four (4) years after the end of the Grant Term, and upon request, shall submit files and records to Grantor and make available personnel for the purpose of making such financial audits, program evaluations or verifications concerning the Grant or this Agreement.

7. **No Earmarking.**

a. **No Earmarking for Lobbying.** Grantor is making this grant to support the project described in Exhibit A. This Grant is not earmarked for carrying on propaganda or otherwise attempting to influence legislation within the meaning of Section 4945(d)(1) of the U.S. Internal Revenue Code ("Lobbying"). Grantor and Grantee acknowledge and agree that (i) there is no agreement, oral or written, that obligates Grantee to use Grant funds for lobbying, even if Grantee's proposal or other communications between Grantor and Grantee express an intent to use Grant funds for lobbying, and (ii) any use of Grant funds by Grantee for lobbying constitutes a decision of Grantee that is completely independent of Grantor.



F. No earmarking for Re-Grants. This Grant is not earmarked for re-grant to individuals or organizations (collectively, "Re-Grants"). Grantor and Grantee acknowledge and agree that (i) there is no agreement, oral or written, that obligates Grantee to use Grant funds for Re-Grants, (ii) there is no agreement, oral or written, whereby Grantor may cause the selection of Re-Grants, and (iii) any use of Grant funds by Grantee for Re-Grants constitutes a decision of Grantee that is controlled by Grantee and made completely independently of Grantor.

8. Prohibited Uses. Notwithstanding anything to the contrary in this Agreement or any other documents relating to the Grant, Grantee shall not use any portion of the Grant for any of the following purposes, and shall implement policies and procedures to prevent diversion of the Grant for any of the following purposes:

a. Public Election; Voter Registration Drive. To influence the outcome of any specific election for candidates to public office, or to carry on, directly or indirectly, any voter registration drive, within the meaning of Section 4945(d)(2) of the US Internal Revenue Code;

b. Any Other Purpose. To undertake any activity for any purpose other than a charitable, scientific or educational purpose within the meaning of Section 170(c)(2)(B) of the US Internal Revenue Code; or

c. Violation; Private Inurement; Inconsistent Action. To induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

6. Term and Termination.

a. Term. Unless otherwise terminated as set forth herein, this Agreement shall commence on the Effective Date and continue until the earlier of (i) the date on which all Grant funds have been expended, or (ii) the Grant Expiration Date (the "Grant Term").

b. Termination for Cause. If Grantor determines, in its sole discretion, that Grantee has failed to comply with or otherwise breached any term or condition of this Agreement (including without limitation any reporting requirements), Grantor may, upon written notice to Grantee, withhold further Grant payments to Grantee and/or terminate this Agreement.

c. Effect of Termination; Survival. Upon termination of this Agreement, Grantor may demand the return of all or part of the Grant funds remaining in Grantee's possession or control and/or the Grant funds spent in violation of this Agreement. In the event of such demand, Grantee shall immediately repay the requested funds to Grantor. Grantor shall have no liability to Grantee as a result of termination of this Agreement in accordance with this Section 9. The rights and obligations of the parties pursuant to Sections 4(a) (with respect to the Final Report), 4(b), 6, 7, 8, 9 and 15 to 24 shall survive the termination, rescission or expiration of this Agreement.

10. **Tax-exempt Status.** Grantee represents and warrants that it is an organization exempt from federal income tax under Section 501(c)(3) of the US Internal Revenue Code, and that it is classified as a public charity for federal income tax purposes. Grantee shall use its best efforts to ensure that it remains an organization exempt from federal income tax under Section 501(c)(3) of the US Internal Revenue Code and shall remain classified as a public charity for federal income tax purposes, for the duration of the Grant Term.

11. **Notice of Changes.** Grantee shall notify Grantor immediately of any change in Grantee's legal or tax status.

12. **Control.** Grantor and Grantee acknowledge and agree that neither Grantor nor any "disqualified person" with respect to Grantor (within the meaning of Section 4946(a) of the US Internal Revenue Code) controls the Grantee within the meaning of Section 4942 of the US Internal Revenue Code.

13. **Compliance with Laws.** Grantee agrees to comply with all applicable laws and regulations during the Grant Term. In addition, Grantee agrees to comply with the terms and conditions set forth in Exhibit E.

14. **Intentionally Not Used.**

15. **Indemnity.** Grantee irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Grantor, its officers, directors, trustees, employees, and agents, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of Grantee, its officers, directors, trustees, employees or agents, in applying for or accepting the Grant, in expending or applying the Grant or in carrying out any program or project funded or financed by the Grant, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any gross negligence or willful misconduct of Grantor, its officers, directors, trustees, employees or agents.

16. **Publications; License.** Upon Grantor's request, any publications, studies, or research funded by this Grant shall be made available to the public, and shall include the following acknowledgment: "Supported by a grant from First Look Media". Grantee grants and agrees to grant to Grantor an irrevocable, perpetual, royalty-free, nonexclusive license to copy, publish and distribute any publications, studies, or research funded by this Grant.

17. **Publicity.**

a. Grantee.

i. Grantor encourages Grantee to refer to First Look Media when identifying Grantee's donors and supporters in public forums (e.g., speaking events, press interviews, etc.). However, any public announcement of the Grant by Grantee shall be subject to mutual agreement by Grantor and Grantee with respect to the announcement's content, timing and outreach strategy.

ii. Grantee may include First Look Media's name and logo in a general list of Grantee's donors and supporters without prior permission, provided that Grantee treats Grantor in the same manner that it treats its other similarly situated donors and supporters, and provided further that Grantee complies with the terms of Grantor's trademark usage guidelines as provided by Grantor from time to time.

iii. Grantee may disclose the Grant as required by IRS requirements such as disclosure on Grantee's Form 990.

iv. Grantee may disclose the Grant as otherwise required by law, provided that Grantee provides Grantor with at least three (3) business days' advance notice of any such disclosure and agrees to cooperate with Grantor to revise such disclosure as reasonably requested by Grantor.

v. Except as otherwise set forth above, Grantee shall use the name or logo of First Look Media, Grantor or its affiliates or refer or link to First Look Media, Grantor or its affiliates directly or indirectly in any press release, professional or trade publication, website, advertisement or other public document or announcement, only after receiving prior written consent from Grantor for such use, reference or link. Grantee shall seek such consent at least three (3) business days in advance of Grantee's proposed publicity, and shall provide the content to be approved as well as the timing and outreach strategy. Grantee shall send all such information to [media@firstlook.org](mailto:media@firstlook.org) and shall designate a Grantee point of contact with email address and telephone number for such request and future requests.

b. Grantor. Grantee acknowledges that Grantor shall have the right to use the name and logo of Grantee and refer or link to Grantee and the Grant in its reasonable discretion in any press release, professional or trade publication, website, advertisement or other public document or announcement, including without limitation, in a general list of Grantor's portfolio companies and supported organizations, in Grantor's Form 990-PF, and as otherwise required by law.

c. Trademarks. Any right granted to Grantor or Grantee to use the other party's logo or any other trademark shall be revocable, non-exclusive and non-transferable, and such party agrees to use such logo or trademark only in accordance with any trademark usage guidelines that the other party may provide from time to time. Each party agrees, upon request, to provide samples of such party's usage of the other party's logo or trademarks, and each party agrees to terminate usage of any such logo or trademark if such usage fails to meet the other party's trademark usage guidelines or quality standards or otherwise upon the other party's reasonable request. Each party agrees that any goodwill arising from use of the other party's logo or trademarks shall inure only to the benefit of the other party.

15. **Relationship of the Parties**. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and Grantee shall make no such representation to anyone. Neither party shall have any right or authority, express or implied, to assume or create any obligation of any

find, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without reference to its conflict of laws provisions.

20. **Arbitration.** Any controversy, claim or dispute arising out of or relating to this Agreement or the breach hereof, whether based on contract, tort, statute or other legal or equitable theory shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its applicable rules then in effect. The arbitration shall be conducted in San Mateo County, California, USA, by a sole arbitrator and the award of the arbitrator shall be final and binding, and judgment on the award may be entered, confirmed and enforced in any court having jurisdiction thereof. Except as required by judicial process or by law, no party or arbitrator may disclose the existence, contents or results of any arbitration hereunder without the prior written consent of Grantor and Grantee. Subject to reapportionment by the arbitrator, the parties shall share equally in payment of the expenses of the arbitrator and the arbitration. Nothing in this Section shall preclude any party from seeking interim or provisional injunctive relief, including a preliminary injunction, either prior to or during arbitration, if necessary to protect the interests of such party.

21. **Notice.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by email, with email confirmation of receipt by the receiving party; (c) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (d) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (e) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the signature page of this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section).

22. **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

23. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, and the remainder of this Agreement shall remain in full force and effect.

24. **Assignment; No Third Party Beneficiaries.** Grantee shall not and shall not have the right to assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Grantor. Any purported assignment, sale, transfer, delegation or other disposition by Grantee, except as permitted herein, shall be null and void. Grantor may assign, transfer, delegate or otherwise dispose of this Agreement and any of

its rights or obligations or this Agreement without the prior written consent of Grantee. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer, nor shall anything herein confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

25. **Remedies; Injunctive Relief.** Any specific right or remedy provided in this Agreement shall not be exclusive but shall be in addition to all other rights and remedies set forth in this Agreement and permitted under applicable law. Grantee acknowledges and agrees that there can be no adequate remedy at law for any breach by Grantee of this Agreement, that any such breach may result in irreparable harm to Grantor for which monetary damages would be inadequate to compensate Grantor, and that Grantor shall have the right, in addition to any other rights available under applicable law, to obtain from any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of, or otherwise to specifically enforce, any covenant or obligation of Grantee under this Agreement, without the necessity of posting any bond or security.

26. **Acknowledgment.** Grantee acknowledges that it understands its obligations imposed by this Agreement, including but not limited to those obligations imposed by specific reference to the U.S. Internal Revenue Code. Grantee agrees that if Grantee has any questions about its obligations under this Agreement, including those incorporated by reference to the U.S. Internal Revenue Code, Grantee will promptly contact its own legal counsel.

27. **Captions; Interpretation.** All captions and headings in this Agreement are for the purposes of reference and convenience only, and shall not limit or expand the provisions of this Agreement. This Agreement shall be deemed to have been drafted by all parties, and in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.

28. **Counterparts.** This Agreement may be executed (including, without limitation, by facsimile signature) in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

29. **Entire Agreement.** This Agreement (including any Exhibits attached hereto which are hereby incorporated by reference) constitutes the entire agreement with respect to the subject matter hereof, and shall supersede any prior or contemporaneous oral or written agreements, understandings or communications or past courses of dealing between Grantor and Grantee with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by duly authorized representatives of both parties.

[remainder of page intentionally left blank]

Authorized representatives of each party have executed this Agreement on the date set forth below.

GRANTOR:

GRANTEE:

FIRST LOOK MEDIA, INC.

ELECTRONIC FRONTIER FOUNDATION,  
INC

By: 

By: 

Name: Lynn Oberlander

Name: RICHARD ESGUERRA

Title: Executive Director Title: DEVELOPMENT DIRECTOR

Date: May 13, 2014

Date: 05/09/2014

Address:

Address:

Attention: Lynn Oberlander

ELECTRONIC FRONTIER FOUNDATION

Post Office Box 3838

815 EDDY ST

Redwood City, CA 94064

SAN FRANCISCO, CA 94109

USA

USA

Fax:

Email: lynn.oberlander@firstlook.org

Email: richard@eff.org

*with a copy of reports only to:*

Email: grants@firstlook.org

*and with a copy of notices other than reports to*

Attention: Legal Department

PO Box 3838

Redwood City, CA 94064, USA

Email: legal@firstlook.org

Exhibit A

Intentionally Not Used

Exhibit B  
Disbursement Schedule

#	Amount	Disbursement Condition	Target Payment Date
#1	\$100,000	Unconditional.	15 May 2014

Additional Disbursement Terms and Conditions:

1. In connection with each disbursement, Grantee shall provide a signed wire transfer request to Grantor in the form attached hereto as Exhibit C.



**Exhibit C**

**Reporting Obligations**

	2014	2015
<b>Quarterly Financials:</b>		Q1 2015 (due 30 Apr 2015)
	Q2 2014 (due 31 Jul 2014)	
	Q3 2014 (due 31 Oct 2014)	
	Q4 2014 (due 31 Jan 2015)	
<b>Annual Audited Financials:</b>	FY 2014 (due 30 Jun 2015)	FY 2015 (due 30 Jun 2016)
<b>Semi-Annual Report:</b>	H1 2014 (due 31 Jul 2014)	
<b>Annual Report:</b>	2014 (due 28 Feb 2015)	2015 (due 28 Feb 2016)
<b>Final Report:</b>		

a. Annual Accounting Period. Grantee's annual accounting period ends on: June 30th ("Grantee's Fiscal Year End").

b. Quarterly Financial Report. Within one (1) month following the end of each fiscal quarter of the Grantee, Grantee shall provide Grantor with an unaudited statement of operations for the project supported by the Grant for the quarterly and year-to-date period, with comparison to the budget ("Quarterly Financial Report").

c. Annual Audited Financials. For each fiscal year, Grantee shall have its financial statements audited on an annual basis by an independent third party auditor, and shall provide a copy of such audited financials to Grantor within one (1) month following completion of each such audit (which shall be completed no later than six (6) months after the end of each fiscal year).

d. Semi-Annual Report. Within one (1) month following June 30 and December 31 of each year, Grantee shall provide Grantor with a semi-annual report ("Semi-Annual Report") that summarizes Grantee's activities and progress toward the goals described in Exhibit D hereto.

e. Annual Report. Within two (2) months following the Grantee's Fiscal Year End of each year, Grantee shall provide Grantor with an annual report ("Annual Report") that includes:

- i. a full and complete narrative of Grantee's activities and use of the Grant;

- ii. Grantee's progress toward the goals described in Exhibit D hereto;
- iii. copies of any publications resulting from the Grant; and

f. Final Report. Within two (2) months following the Grant Expiration Date, Grantee shall submit a final report ("Final Report") to Grantor that includes (i) an update to the most recent Annual Report, covering the period between the end of the last Annual Report and the end of the Grant Term, and (ii) a final summary of the Grantee's use of the Grant.

Exhibit D

Goals

Targets	Metric 2014
Output	Counsel to Freedom of the Press Foundation around technology-related issues. Continue evaluating impact-maximizing opportunities to advise pioneers in free expression and press freedom.
Surveillance Self-Defense project output	Redeveloped SSD website launched by August 2014 500,000 uniques within one year of release. Launch with translation and localization to Arabic, with technical infrastructure for additional languages.
Encryption usability Prize output	Objective metrics and criteria established by August 9, 2014—one month after the 2014 EFF Crypto Usability Prize (EFF CUP) Workshop at Symposium on Usable Privacy and Security (SOUPS). Assemble standards and judging committee by December 2014.

## Exhibit E

### Terrorist Activity, Sanctions, Anti-Money Laundering, and Foreign Corrupt Practices

#### 1. Terrorist Activity.

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, terrorist activity of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity; and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity.

b. Grantee represents and warrants that Grantee is not listed in the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of Treasury (the "SDN List").

#### 2. Sanctions.

a. Grantee represents and warrants that Grantee is not engaged, directly or indirectly, in transactions with any individual or entity listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury.

#### 3. Anti-Money Laundering.

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, money laundering of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know engages in money laundering; and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know engages in money laundering.

#### 4. Foreign Corrupt Practices.

a. Grantee represents and warrants that Grantee and its officers, directors, employees, or agents thereof have not and will not pay, offer or promise to pay, or authorize the payment directly or indirectly, of any money, gift or anything of value to any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to Grantee.

#### 5. Ongoing Compliance; Remedies.

a. Grantee agrees to use its best efforts to ensure that the representations and warranties in this Exhibit E remain true and accurate during the Grant Term, and Grantee agrees to promptly

notify Grantor if any such representation or warranty ceases to be true and accurate during the Grant Term.

b. Grantee acknowledges that Grantor is required by U.S. law to ensure that none of Grantor's funds are used directly or indirectly (i) to conduct or support terrorist activity, (ii) to support individuals or entities identified as terrorists, (iii) to support persons or organizations listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury, (iv) to conduct or support money laundering, or (v) to make corrupt payments to government officials. Grantee shall use its best efforts to ensure that Grantor's funds are not so used.

c. To assist Grantor in complying with all applicable laws and regulations, Grantee agrees to provide Grantor such information as Grantor may reasonably request, including without limitation, information about persons or organizations receiving funds from Grantee.

d. In the event Grantor has reason to believe that a breach of the terms and conditions of this Exhibit F has occurred or may occur, Grantor may immediately terminate this Agreement or withhold further payments until such time as it has received confirmation to its satisfaction that no breach has occurred or will occur. In no event shall Grantor be obligated under this Agreement to take any action or omit to take any action that Grantor believes in good faith would cause it to be in violation of any U.S. laws.

## GRANT AGREEMENT

This Grant Agreement (this "Agreement") is made by and between FIRST LOOK MEDIA, INC., a nonprofit corporation organized under the laws of the State of Delaware ("Grantor"), and FREEDOM OF THE PRESS FOUNDATION, a public benefit corporation organized under the laws of California ("Grantee"), effective as of May 1, 2014 (the "Effective Date").

### RECITALS

A. Grantor is organized and operated for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "U.S. Internal Revenue Code"), and more specifically, Grantor seeks to promote positive social change and support other organizations with the same purposes.

B. Grantee is organized and operated for charitable, educational and/or scientific purposes within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code.

C. Grantor wishes to make a grant to Grantee, subject to the terms and conditions stated in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

### AGREEMENT

1. **Grant Amount and Purpose.** Subject to the terms and conditions herein, Grantor agrees to grant to Grantee up to Three Hundred and Fifty Thousand Dollars (\$350,000) (the "Grant") payable in US Dollars for Grantee's general charitable, educational and/or scientific purposes as described in Grantee's charter documents (the "Purpose"), and is not otherwise restricted as to purpose. The Grant will be disbursed in accordance with Exhibit B.

2. **Use of Funds.** Grantee shall use the Grant only for the Purpose described above, and shall repay to Grantor any part of the Grant that is used for any purpose other than the Purpose. Grantee intends to spend the Grant in full by April 30, 2016 ("Grant Expiration Date"), and Grantee shall promptly notify Grantor if Grantee expects at any time that any portion of the Grant will not be spent by the Grant Expiration Date, in which event the parties will meet within twenty (20) business days of such notification to discuss the status of the Grant, including without limitation any adjustments needed to the Grant Expiration Date and/or Purpose. If no adjustment to the Grant Expiration Date is mutually agreed upon by the parties, Grantee shall repay to Grantor any portion of the Grant which is not spent by the Grant Expiration Date.

Grantee is solely responsible for: (a) all activities supported by the Grant, (b) the content of any product or service created with the Grant, and (c) the manner in which such products or services may be disseminated.

3. **No Pledge.** *Neither this Agreement nor any other statement, oral or written, express or implied, nor the making of any contribution or grant to Grantee, shall be interpreted to create any pledge or any commitment by Grantor or by any related person or entity to make any other grant or contribution to Grantee or any other entity for this or any other project. The Grant shall be a separate and independent transaction from any other transaction between Grantor and Grantee or any other entity.*

4. **Reporting.**

a. **Reporting Obligations.** Grantee agrees to provide to Grantor the reports described in Exhibit C. All reports should be provided to the Grantor contact listed on the signature page to this Agreement, and a copy should be provided to [grants@firstlook.org](mailto:grants@firstlook.org). All reports shall be in writing and signed by an authorized officer, director or trustee of Grantee.

b. **Additional Evaluation Activities; Additional Reports.** From time to time during and after the end of the Grant Term, Grantor may request that Grantee participate in additional evaluation activities to assist Grantor in evaluating its grant programs. If Grantee believes in good faith that such additional evaluation activities will place a material financial burden on Grantee or interfere with the timely performance of Grantee's regular activities, Grantee shall notify Grantor and the parties will agree in advance on terms under which Grantor will reimburse Grantee for the reasonable costs incurred by Grantee as a result of Grantee's participation and/or assist Grantee in obtaining the resources necessary to allow Grantee to participate effectively. In addition, Grantee shall provide additional reports and information as reasonably requested by Grantor from time to time during and after the end of the Grant Term.

5. **Intentionally Not Used.**

6. **Recordkeeping and Accounting.** Grantee shall maintain a complete and accurate record of the Grant received and expenses incurred pursuant to the Grant, and shall conduct such internal audits as are reasonably required to verify full compliance with this Agreement. Grantee shall retain such books and records for at least four (4) years after the end of the Grant Term, and shall permit Grantor to have reasonable access to its files, records and personnel for the purpose of making such financial audits, program evaluations or verifications concerning the Grant or this Agreement as Grantor deems necessary.

7. **No Earmarking.**

a. **No Earmarking for Lobbying.** Grantor is making this Grant to support Grantee's charitable purposes generally, and Grantee may apply the Grant funds toward those purposes as Grantee may decide.

b. **No Earmarking for Re-Grants.** This Grant is not earmarked for re-grant to individuals or organizations (collectively, "Re-Grants"). Grantor and Grantee acknowledge and agree that (i) there is no agreement, oral or written, that obligates Grantee to use Grant funds for Re-Grants, (ii) there is no agreement, oral or written, whereby Grantor may cause the selection of Re-Grants, and (iii) any use of Grant funds by Grantee for Re-Grants constitutes a decision of Grantee that is controlled by Grantee and made completely independently of Grantor.

8. **Prohibited Uses.** Notwithstanding anything to the contrary in this Agreement or any other documents relating to the Grant, Grantee shall not use any portion of the Grant for any of the following purposes, and shall implement policies and procedures to prevent diversion of the Grant for any of the following purposes:

a. **Public Election; Voter Registration Drive.** To influence the outcome of any specific election for candidates to public office, or to carry on, directly or indirectly, any voter registration drive, within the meaning of Section 4945(d)(2) of the US Internal Revenue Code;

b. **Any Other Purpose.** To undertake any activity for any purpose other than a charitable, scientific or educational purpose within the meaning of Section 170(c)(2)(B) of the US Internal Revenue Code; or

c. **Violation; Private Inurement; Inconsistent Action.** To induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

9. **Term and Termination.**

a. **Term.** Unless otherwise terminated as set forth herein, this Agreement shall commence on the Effective Date and continue until the earlier of (i) the date on which all Grant funds have been expended, or (ii) the Grant Expiration Date (the "Grant Term").

b. **Termination for Cause.** If Grantor determines, in its sole discretion, that Grantee has failed to comply with or otherwise breached any term or condition of this Agreement (including without limitation any reporting requirements), Grantor may, upon written notice to Grantee, withhold further Grant payments to Grantee and/or terminate this Agreement.

c. **Effect of Termination; Survival.** Upon termination of this Agreement, Grantor may demand the return of all or part of the Grant funds remaining in Grantee's possession or control and/or the Grant funds spent in violation of this Agreement. In the event of such demand, Grantee shall immediately repay the requested funds to Grantor. Grantor shall have no liability to Grantee as a result of termination of this Agreement in accordance with this Section 9. The rights and obligations of the parties pursuant to Sections 4(a) (with respect to the Final Report), 4(b), 6, 7, 8, 9 and 15 to 29 shall survive the termination, rescission or expiration of this Agreement.

d. **Key-Person Termination.** If (i) Trevor Timm, Executive Director of Grantee (the "Key Person") ceases to devote substantially all of his or her business time to the activities of Grantee, (ii) Key Person is terminated, whether voluntarily or involuntarily, with cause or without cause, or (iii) Key Person resigns from Grantee, and Grantee does not find a replacement to the satisfaction of Grantor, then Grantor may, upon written notice to Grantee, withhold further Grant payments to Grantee and/or terminate this Agreement.



10. **Tax-exempt Status.** Grantee represents and warrants that it is an organization exempt from federal income tax under Section 501(c)(3) of the *US Internal Revenue Code*, and that it is classified as a public charity for federal income tax purposes. Grantee shall use its best efforts to ensure that it remains an organization exempt from federal income tax under Section 501(c)(3) of the *US Internal Revenue Code* and shall remain classified as a public charity for federal income tax purposes, for the duration of the Grant Term.

11. **Notice of Changes** Grantee shall notify Grantor immediately of any change in Grantee's legal or tax status.

12. **Control.** Grantor and Grantee acknowledge and agree that neither Grantor nor any "disqualified person" with respect to Grantor (within the meaning of Section 4946(a) of the *US Internal Revenue Code*) controls the Grantee within the meaning of Section 4942 of the *US Internal Revenue Code*.

13. **Compliance with Laws.** Grantee agrees to comply with all applicable laws and regulations during the Grant Term. In addition, Grantee agrees to comply with the terms and conditions set forth in Exhibit E.

14. **Intentionally Not Used.**

15. **Indemnity.** Grantee irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Grantor, its officers, directors, trustees, employees, and agents, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of Grantee, its officers, directors, trustees, employees or agents, in applying for or accepting the Grant, in expending or applying the Grant or in carrying out any program or project funded or financed by the Grant, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any gross negligence or willful misconduct of Grantor, its officers, directors, trustees, employees or agents.

16. **Publications; License.** Upon Grantor's request, any publications, studies, or research funded by this Grant shall be made available to the public, and shall include the following acknowledgment: "Supported by a grant from First Look Media". Grantee grants and agrees to grant to Grantor an irrevocable, perpetual, royalty-free, nonexclusive license to copy, publish and distribute any publications, studies, or research funded by this Grant.

17. **Publicity.**

a. Grantee.

i. Grantor encourages Grantee to refer to First Look Media when identifying Grantee's donors and supporters in public forums (e.g., speaking events, press interviews, etc.). However, any public announcement of the Grant by Grantee shall be subject to mutual agreement by Grantor and Grantee with respect to the announcement's content, timing and outreach strategy.

ii. Grantee may include First Look Media's name and logo in a general list of Grantee's donors and supporters without prior permission, provided that Grantee treats Grantor in the same manner that it treats its other similarly situated donors and supporters, and provided further that Grantee complies with the terms of Grantor's trademark usage guidelines as provided by Grantor from time to time.

iii. Grantee may disclose the Grant as required by IRS requirements such as disclosure in Grantee's Form 990.

iv. Grantee may disclose the Grant as otherwise required by law, provided that Grantee provides Grantor with at least three (3) business days' advance notice of any such disclosure and agrees to cooperate with Grantor to revise such disclosure as reasonably requested by Grantor.

v. Except as otherwise set forth above, Grantee shall use the name or logo of First Look Media, Grantor or its affiliates or refer or link to First Look Media, Grantor or its affiliates directly or indirectly in any press release, professional or trade publication, website, advertisement or other public document or announcement, only after receiving prior written consent from Grantor for such use, reference or link. Grantee shall seek such consent at least three (3) business days in advance of Grantee's proposed publicity, and shall provide the content to be approved as well as the timing and outreach strategy. Grantee shall send all such information to [media@firstlook.org](mailto:media@firstlook.org) and shall designate a Grantee point of contact with email address and telephone number for such request and future requests.

b. Grantor. Grantee acknowledges that Grantor shall have the right to use the name and logo of Grantee and refer or link to Grantee and the Grant in its reasonable discretion in any press release, professional or trade publication, website, advertisement or other public document or announcement, including without limitation, in a general list of Grantor's portfolio companies and supported organizations, in Grantor's Form 990-PF, and as otherwise required by law.

c. Trademarks. Any right granted to Grantor or Grantee to use the other party's logo or any other trademark shall be revocable, non-exclusive and non-transferable, and such party agrees to use such logo or trademark only in accordance with any trademark usage guidelines that the other party may provide from time to time. Each party agrees, upon request, to provide samples of such party's usage of the other party's logo or trademarks, and each party agrees to terminate usage of any such logo or trademark if such usage fails to meet the other party's trademark usage guidelines or quality standards or otherwise upon the other party's reasonable request. Each party agrees that any goodwill arising from use of the other party's logo or trademarks shall inure only to the benefit of the other party.

18. **Relationship of the Parties**. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and Grantee shall make no such representation to anyone. Neither party shall have any right or authority, express or implied, to assume or create any obligation of any

kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without reference to its conflict of laws provisions.

20. **Arbitration.** Any controversy, claim or dispute arising out of or relating to this Agreement or the breach hereof, whether based on contract, tort, statute or other legal or equitable theory shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its applicable rules then in effect. The arbitration shall be conducted in San Mateo County, California, USA, by a sole arbitrator and the award of the arbitrator shall be final and binding, and judgment on the award may be entered, confirmed and enforced in any court having jurisdiction thereof. Except as required by judicial process or by law, no party or arbitrator may disclose the existence, contents or results of any arbitration hereunder without the prior written consent of Grantor and Grantee. Subject to reapportionment by the arbitrator, the parties shall share equally in payment of the expenses of the arbitrator and the arbitration. Nothing in this Section shall preclude any party from seeking interim or provisional injunctive relief, including a preliminary injunction, either prior to or during arbitration, if necessary to protect the interests of such party.

21. **Notice.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by email, with email confirmation of receipt by the receiving party; (c) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (d) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (e) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the signature page of this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section).

22. **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

23. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, and the remainder of this Agreement shall remain in full force and effect.

24. **Assignment; No Third Party Beneficiaries.** Grantee shall not and shall not have the right to assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Grantor. Any purported assignment, sale, transfer, delegation or other disposition by Grantee, except as permitted herein, shall be null and void. Grantor may assign, transfer, delegate or otherwise dispose of this Agreement and any of

its rights or obligations of this Agreement without the prior written consent of Grantee. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer, nor shall anything herein confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

25. **Remedies; Injunctive Relief.** Any specific right or remedy provided in this Agreement shall not be exclusive but shall be in addition to all other rights and remedies set forth in this Agreement and permitted under applicable law. Grantee acknowledges and agrees that there can be no adequate remedy at law for any breach by Grantee of this Agreement, that any such breach may result in irreparable harm to Grantor for which monetary damages would be inadequate to compensate Grantor, and that Grantor shall have the right, in addition to any other rights available under applicable law, to obtain from any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of, or otherwise to specifically enforce, any covenant or obligation of Grantee under this Agreement, without the necessity of posting any bond or security.

26. **Acknowledgment.** Grantee acknowledges that it understands its obligations imposed by this Agreement, including but not limited to those obligations imposed by specific reference to the US Internal Revenue Code. Grantee agrees that if Grantee has any questions about its obligations under this Agreement, including those incorporated by reference to the US Internal Revenue Code, Grantee will promptly contact its own legal counsel.

27. **Captions; Interpretation.** All captions and headings in this Agreement are for the purposes of reference and convenience only, and shall not limit or expand the provisions of this Agreement. This Agreement shall be deemed to have been drafted by all parties and, in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.

28. **Counterparts.** This Agreement may be executed (including, without limitation, by facsimile signature) in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

29. **Entire Agreement.** This Agreement (including any Exhibits attached hereto which are hereby incorporated by reference) constitutes the entire agreement with respect to the subject matter hereof, and shall supersede any prior or contemporaneous oral or written agreements, understandings or communications or past courses of dealing between Grantor and Grantee with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by duly authorized representatives of both parties.

[remainder of page intentionally left blank]

Authorized representatives of each party have executed this Agreement on the date set forth below.

GRANTOR:

GRANTEE:

FIRST LOOK MEDIA, INC.

FREEDOM OF THE PRESS FOUNDATION

By: 

By: 

Name: Lynn Oberlander

Name: Trevor Timm

Title: ~~Executive Director~~

Title: Executive Director

Date: August 2014

Date: 5/6/2014

Address:

Address:

Attention: lynn.oberlander@firstlook.org

601 Van Ness Ave Suite E731

Post Office Box 3838

San Francisco, CA 94102

Redwood City, CA 94063

USA

Fax: n/a

Email: lynn.oberlander@firstlook.org

Email: trevor@pressfreedomfoundation.org

with a copy of reports only to:

Email: grants@firstlook.org

and with a copy of notices other than reports to:

Attention: Legal Department

Address:

PO Box 3838

Redwood City, CA 94064

Email: legal@firstlook.org

Exhibit A

Intentionally Not Used

Exhibit B

Disbursement Schedule

#	Amount	Disbursement Condition	Target Payment Date
#1	\$150,000	Unconditional.	May 15 2014
#2	\$100,000	Achievement of applicable disbursement metrics set forth in Exhibit B for the period ending 30 April 2015. Supporting documentation must be provided no later than 30 May 2015.	30 May 2015
#3	\$100,000	Receipt of \$100,000 of Matched Grants (as defined below) between 1 May 2014 and 30 April 2015. Supporting documentation must be provided no later than 30 May 2015.	30 May 2015

Disbursement #2:

Hiring of full-time legal director, operations/development manager and CTO and agreement of metrics for year 2 of the grant. Metrics shall be mutually agreed upon by Grantor and Grantee in writing no later than 30 April 2015. If Grantor and Grantee have not mutually agreed upon the applicable metrics in writing by such date, then this disbursement shall automatically expire.

Disbursement #3:

"Matched Grants" is defined as cash grants or donations received by Grantee, excluding the Grant and any other amounts provided by Grantor or its affiliates. Matched Grants shall not include in-kind grants or donations, commitments already made by Participant Media prior to 1 May 2014 or other commitments to provide cash grants or donations to Grantee.

A partial disbursement is permitted in the event that Grantee raises less than the full amount of Matched Grants. Any such partial disbursement shall be pro rata to the amount of Matched Grants actually received by Grantee, and any unpaid portion of this disbursement shall automatically expire at such time.

Additional Disbursement Terms and Conditions:

1. With respect to each conditional disbursement, Grantee shall provide supporting documentation for Grantor to verify the achievement of the applicable conditions. Please

contact Grantor to determine what supporting documentation will be considered *sufficient*. If Grantee fails to provide Grantor with sufficient supporting documentation by the date specified above or Grantor has determined that Grantee has not achieved the applicable condition(s), then such disbursement shall automatically expire.

2. Upon expiration of any disbursement (or portion thereof), the Grant shall automatically be reduced by any such amount.

3. Grantor shall have the right to withhold disbursements under the Grant for Grantees who fail to meet the reporting requirements set forth in the Agreement.

4. In connection with each disbursement, Grantee shall provide a signed wire transfer request to Grantor in the form attached hereto as Exhibit G.



**Exhibit C**

**Reporting Obligations**

	2014	2015	2016
<b>Quarterly Financials:</b>		Q1 2015 (due 30 Apr 2015)	Q1 2016 (due 30 Apr 2016)
	Q2 2014 (due 31 Jul 2014)	Q2 2015 (due 31 Jul 2015)	
	Q3 2014 (due 31 Oct 2014)	Q3 2015 (due 31 Oct 2015)	
	Q4 2014 (due 31 Jan 2015)	Q4 2015 (due 31 Jan 2016)	
<b>Annual Audited Financials:</b>	FY2014 (due 30 Jun 2015)	FY2015 (due 30 Jun 2016)	
<b>Semi-Annual Report:</b>	H1 2014 (due 31 Jul 2014)	H1 2015 (due 31 Jul 2015)	
<b>Annual Report:</b>	2014 (due 28 Feb 2015)	2015 (due 28 Feb 2016)	
<b>Final Report:</b>			Final Report (due 31 Aug 2016)

- a. **Annual Accounting Period.** Grantee's annual accounting period ends on: December 31st ("Grantee's Fiscal Year End").
- b. **Quarterly Financial Report.** Within one (1) month following the end of each fiscal quarter of the Grantee, Grantee shall provide Grantor with unaudited financial statements for Grantee for such fiscal quarter, including an unaudited balance sheet and unaudited statements of operations and cash flows for the quarterly and year-to-date period, with comparison to the prior year period and the budget ("Quarterly Financial Report").
- c. **Annual Audited Financials.** For each fiscal year, Grantee shall have its financial statements audited on an annual basis by an independent third party auditor, and shall provide a copy of such audited financials to Grantor within one (1) month following completion of each such audit (which shall be completed no later than six (6) months after the end of each fiscal year).
- d. **Semi-Annual Report.** Within one (1) month following June 30 of each year, Grantee shall provide Grantor with a semi-annual report ("Semi-Annual Report") that summarizes Grantee's activities and progress toward the goals described in Exhibit D hereto.
- e. **Annual Report.** Within two (2) months following the Grantee's Fiscal Year End of each year, Grantee shall provide Grantor with an annual report ("Annual Report") that includes:

- i. a full and complete narrative of Grantee's activities and use of the Grant;
- ii. Grantee's progress toward the goals described in Exhibit D hereto;
- iii. copies of any publications resulting from the Grant; and
- iv. an annual operating plan and budget for Grantee for the following year.

f. Final Report. Within two (2) months following the Grant Expiration Date, Grantee shall submit a final report ("Final Report") to Grantor that includes (i) an update to the most recent Annual Report, covering the period between the end of the last Annual Report and the end of the Grant Term, and (ii) a final summary of the Grantee's use of the Grant.

For General Operating Support Grant:

Exhibit D)

Content of Reports

Grantor requires Grantee to report its progress toward the following goals. The Grant is not earmarked for the achievement of any of these goals, and Grantee has complete discretion over expenditures of Grant funds.

Metric	Status Jan 2014	2014	2015
<i>Organizational Development</i>	Fulltime Executive Director	Fulltime legal director, operations/development manager and CIO hired (Gating Metric)	IBD

Awareness

Metric	Status Jan 2014	2014	2015	Notes
Twitter followers	35,000	60,000	To be confirmed at end of 2014	
Listserv members	6,000	15,000	To be confirmed at end of 2014	FPF's strict privacy policy does not allow trading listserv members to grow the list.
Active donors	approx. 3000	4000	To be confirmed at end of 2014	In the next year FPF may decide to become a membership organization to incentivize supporters.

Engagement:

Metric	Status Jan 2014	2014	2015	Notes

Crowdfunding raised	\$581K	\$250K	To be confirmed at end of 2014	2013 was a unique year for crowd funding because of WikiLeaks and the Manning transcripts. They don't expect to raise as much as they did in 2014 as they will be focusing on other aspects of their organization.
No. of installs of SecureDrop for clients	5	15	To be confirmed at end of 2014	

Influence:

Metric	2014	2015	Notes
No. of Amici authored/co-authored	3	6-10	FPF had plans to file in the Barrett Brown case now on ice given DOJ's dismissal of charges.
FOIA requests	1	15	This will begin once FPF hires a legal director.
Other press freedom legal actions	1	1	This will likely be a legal action to unseal the NYT grand jury related to the Pentagon Papers

## Exhibit E

### Terrorist Activity, Sanctions, Anti-Money Laundering, and Foreign Corrupt Practices

#### 1. Terrorist Activity.

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, terrorist activity of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity, and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity.

b. Grantee represents and warrants that Grantee is not listed in the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of Treasury (the "SDN List").

#### 2. Sanctions.

a. Grantee represents and warrants that Grantee is not engaged, directly or indirectly, in transactions with any individual or entity listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury.

#### 3. Anti-Money Laundering.

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, money laundering of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know engages in money laundering, and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know engages in money laundering.

#### 4. Foreign Corrupt Practices.

a. Grantee represents and warrants that Grantee and its officers, directors, employees, or agents thereof have not and will not pay, offer or promise to pay, or authorize the payment directly or indirectly, of any money, gift or anything of value to any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to Grantee.

#### 5. Ongoing Compliance; Remedies.

a. Grantee agrees to use its best efforts to ensure that the representations and warranties in this Exhibit E remain true and accurate during the Grant Term, and Grantee agrees to promptly

notify Grantor if any such representation or warranty ceases to be true and accurate during the Grant Term.

b. Grantee acknowledges that Grantor is required by U.S. law to ensure that none of Grantor's funds are used directly or indirectly (i) to conduct or support terrorist activity, (ii) to support individuals or entities identified as terrorists, (iii) to support persons or organizations listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury, (iv) to conduct or support money laundering, or (v) to make corrupt payments to government officials. Grantee shall use its best efforts to ensure that Grantor's funds are not so used.

c. To assist Grantor in complying with all applicable laws and regulations, Grantee agrees to provide Grantor such information as Grantor may reasonably request, including without limitation, information about persons or organizations receiving funds from Grantee.

d. In the event Grantor has reason to believe that a breach of the terms and conditions of this Exhibit E has occurred or may occur, Grantor may immediately terminate this Agreement or withhold further payments until such time as it has received confirmation to its satisfaction that no breach has occurred or will occur. In no event shall Grantor be obligated under this Agreement to take any action or omit to take any action that Grantor believes in good faith would cause it to be in violation of any U.S. laws.

## GRANT AGREEMENT

This Grant Agreement (this "Agreement") is made by and between FIRST LOOK MEDIA, INC., a nonprofit corporation organized under the laws of the State of Delaware ("Grantor"), and REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, an unincorporated voluntary association organized under the laws of District of Columbia ("Grantee"), effective as of May 1, 2014 (the "Effective Date").

### RECITALS

A. Grantor is organized and operated for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the "US Internal Revenue Code"), and more specifically, Grantor seeks to promote positive social change and support other organizations with the same purposes.

B. Grantee is organized and operated for charitable, educational and/or scientific purposes within the meaning of Section 501(c)(3) of the US Internal Revenue Code.

C. Grantor wishes to make a grant to Grantee, subject to the terms and conditions stated in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

### AGREEMENT

1. **Grant Amount and Purpose.** Subject to the terms and conditions herein, Grantor agrees to grant to Grantee One Hundred Thousand Dollars (\$100,000) (the "Grant") payable in US Dollars for a media technology fellowship as more fully described in Exhibit A attached hereto (the "Purpose"). The Grant will be disbursed in accordance with Exhibit B.

2. **Use of Funds.** Grantee shall use the Grant only for the Purpose described above, and shall repay to Grantor any part of the Grant that is used for any purpose other than the Purpose, unless Grantor provides prior written consent for such use. Grantee intends to spend the Grant in full by April 30, 2015 ("Grant Expiration Date"), and Grantee shall promptly notify Grantor if Grantee expects at any time that any portion of the Grant will not be spent by the Grant Expiration Date, in which event the parties will meet within twenty (20) business days of such notification to discuss the status of the Grant, including without limitation any adjustments needed to the Grant Expiration Date and/or Purpose. If no adjustment to the Grant Expiration Date is mutually agreed upon by the parties, Grantee shall repay to Grantor any portion of the Grant which is not spent by the Grant Expiration Date.

Grantee is solely responsible for: (a) all activities supported by the Grant, (b) the content of any product or service created with the Grant, and (c) the manner in which such products or services may be disseminated.

3. **No Pledge.** Neither this Agreement nor any other statement, oral or written, express or implied, nor the making of any contribution or grant to Grantee, shall be interpreted to create any pledge or any commitment by Grantor or by any related person or entity to make any other grant or contribution to Grantee or any other entity for this or any other project. The Grant shall be a separate and independent transaction from any other transaction between Grantor and Grantee or any other entity.

4. **Reporting.**

a. **Reporting Obligations.** Grantee agrees to provide to Grantor the reports described in Exhibit C. All reports should be provided to the Grantor contact listed on the signature page to this Agreement, and a copy should be provided to [grants@firstlook.org](mailto:grants@firstlook.org). All reports shall be in writing and signed by an authorized officer, director or trustee of Grantee.

b. **Additional Evaluation Activities; Additional Reports.** From time to time during and after the end of the Grant Term, Grantor may request that Grantee participate in additional evaluation activities to assist Grantor in evaluating its grant programs. If Grantee believes in good faith that such additional evaluation activities will place a material financial burden on Grantee or interfere with the timely performance of Grantee's regular activities, Grantee shall notify Grantor and the parties will agree in advance on terms under which Grantor will reimburse Grantee for the reasonable costs incurred by Grantee as a result of Grantee's participation and/or assist Grantee in obtaining the resources necessary to allow Grantee to participate effectively. In addition, Grantee shall provide additional reports and information as reasonably requested by Grantor from time to time during and after the end of the Grant Term.

5. **Goals.** In addition to the other obligations set forth herein, Grantee also agrees to use its best efforts to accomplish the goals described in Exhibit D hereto.

6. **Recordkeeping and Accounting.** Grantee shall maintain a complete and accurate record of the Grant received and expenses incurred pursuant to the Grant, and shall conduct such internal audits as are reasonably required to verify full compliance with this Agreement. Grantee shall retain such books and records for at least four (4) years after the end of the Grant Term, and shall permit Grantor to have reasonable access to its files, records and personnel for the purpose of making such financial audits, program evaluations or verifications concerning the Grant or this Agreement as Grantor deems necessary.

7. **No Earmarking.**

a. **No Earmarking for Lobbying.** Grantor is making this Grant to support the project described in Exhibit A. This Grant is not earmarked for carrying on propaganda or otherwise attempting to influence legislation within the meaning of Section 4945(d)(1) of the US Internal Revenue Code ("Lobbying"). Grantor and Grantee acknowledge and agree that (i) there is no agreement, oral or written, that obligates Grantee to use Grant funds for Lobbying, even if Grantee's proposal or other communications between Grantor and Grantee express an intent to use Grant funds for Lobbying, and (ii) any use of Grant funds by Grantee for Lobbying constitutes a decision of Grantee that is completely independent of Grantor.



b. No Earmarking for Re-Grants. This Grant is not earmarked for re-grant to individuals or organizations (collectively, "Re-Grants"). Grantor and Grantee acknowledge and agree that (i) there is no agreement, oral or written, that obligates Grantee to use Grant funds for Re-Grants, (ii) there is no agreement, oral or written, whereby Grantor may cause the selection of Re-Grants, and (iii) any use of Grant funds by Grantee for Re-Grants constitutes a decision of Grantee that is controlled by Grantee and made completely independently of Grantor.

8. **Prohibited Uses.** Notwithstanding anything to the contrary in this Agreement or any other documents relating to the Grant, Grantee shall not use any portion of the Grant for any of the following purposes, and shall implement policies and procedures to prevent diversion of the Grant for any of the following purposes:

a. Public Election; Voter Registration Drive. To influence the outcome of any specific election for candidates to public office, or to carry on, directly or indirectly, any voter registration drive, within the meaning of Section 4945(d)(2) of the US Internal Revenue Code;

b. Any Other Purpose. To undertake any activity for any purpose other than a charitable, scientific or educational purpose within the meaning of Section 170(c)(2)(B) of the US Internal Revenue Code; or

c. Violation; Private Inurement; Inconsistent Action. To induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

9. **Term and Termination.**

a. Term. Unless otherwise terminated as set forth herein, this Agreement shall commence on the Effective Date and continue until the earlier of (i) the date on which all Grant funds have been expended, or (ii) the Grant Expiration Date (the "Grant Term").

b. Termination for Cause. If Grantor determines, in its sole discretion, that Grantee has failed to comply with or otherwise breached any term or condition of this Agreement (including without limitation any reporting requirements), Grantor may, upon written notice to Grantee, withhold further Grant payments to Grantee and/or terminate this Agreement.

c. Effect of Termination; Survival. Upon termination of this Agreement, Grantor may demand the return of all or part of the Grant funds remaining in Grantee's possession or control and/or the Grant funds spent in violation of this Agreement. In the event of such demand, Grantee shall immediately repay the requested funds to Grantor. Grantor shall have no liability to Grantee as a result of termination of this Agreement in accordance with this Section 9. The rights and obligations of the parties pursuant to Sections 4(a) (with respect to the Final Report), 4(b), 6, 7, 8, 9 and 15 to 29 shall survive the termination, rescission or expiration of this Agreement.

10. **Tax-exempt Status.** Grantee represents and warrants that it is an organization exempt from federal income tax under Section 501(c)(3) of the US Internal Revenue Code, and that it is classified as a public charity for federal income tax purposes. Grantee shall use its best efforts to ensure that it remains an organization exempt from federal income tax under Section 501(c)(3) of the US Internal Revenue Code and shall remain classified as a public charity for federal income tax purposes for the duration of the Grant Term.

11. **Notice of Changes.** Grantee shall notify Grantor immediately of any change in Grantee's legal or tax status.

12. **Control.** Grantor and Grantee acknowledge and agree that neither Grantor nor any "disqualified person" with respect to Grantor (within the meaning of Section 4946(a) of the US Internal Revenue Code) controls the Grantee within the meaning of Section 4942 of the US Internal Revenue Code.

13. **Compliance with Laws.** Grantee agrees to comply with all applicable laws and regulations during the Grant Term. In addition, Grantee agrees to comply with the terms and conditions set forth in Exhibit E.

14. **Intentionally Not Used.**

15. **Indemnity.** Grantee irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Grantor, its officers, directors, trustees, employees, and agents, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of Grantee, its officers, directors, trustees, employees or agents, in applying for or accepting the Grant, in expending or applying the Grant or in carrying out any program or project funded or financed by the Grant, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any gross negligence or willful misconduct of Grantor, its officers, directors, trustees, employees or agents.

16. **Publications; License.** Upon Grantor's request, any publications, studies, or research funded by this Grant shall be made available to the public, and shall include the following acknowledgment: "Supported by a grant from First Look Media" Grantee grants and agrees to grant to Grantor an irrevocable, perpetual, royalty-free, nonexclusive license to copy, publish and distribute any publications, studies, or research funded by this Grant.

17. **Publicity.**

a. Grantee.

i. Grantor encourages Grantee to refer to First Look Media when identifying Grantee's donors and supporters in public forums (e.g., speaking events, press interviews, etc.). However, any public announcement of the Grant by Grantee shall be subject to mutual agreement by Grantor and Grantee with respect to the announcement's content, timing and outreach strategy.

ii. Grantee may include First Look Media's name and logo in a general list of Grantee's donors and supporters without prior permission, provided that Grantee treats Grantor in the same manner that it treats its other similarly situated donors and supporters, and provided further that Grantee complies with the terms of Grantor's trademark usage guidelines as provided by Grantor from time to time.

iii. Grantee may disclose the Grant as required by IRS requirements such as disclosure in Grantee's Form 990.

iv. Grantee may disclose the Grant as otherwise required by law, provided that Grantee provides Grantor with at least three (3) business days' advance notice of any such disclosure and agrees to cooperate with Grantor to revise such disclosure as reasonably requested by Grantor.

v. Except as otherwise set forth above, Grantee shall use the name or logo of First Look Media, Grantor or its affiliates or refer or link to First Look Media, Grantor or its affiliates directly or indirectly in any press release, professional or trade publication, website, advertisement or other public document or announcement, only after receiving prior written consent from Grantor for such use, reference or link. Grantee shall seek such consent at least three (3) business days in advance of Grantee's proposed publicity, and shall provide the content to be approved as well as the timing and outreach strategy. Grantee shall send all such information to [media@firstlook.org](mailto:media@firstlook.org) and shall designate a Grantee point of contact with email address and telephone number for such request and future requests.

h. Grantor. Grantee acknowledges that Grantor shall have the right to use the name and logo of Grantee and refer or link to Grantee and the Grant in its reasonable discretion in any press release, professional or trade publication, website, advertisement or other public document or announcement, including without limitation, in a general list of Grantor's portfolio companies and supported organizations, in Grantor's Form 990-PF, and as otherwise required by law.

c. Trademarks. Any right granted to Grantor or Grantee to use the other party's logo or any other trademark shall be revocable, non-exclusive and non-transferable, and such party agrees to use such logo or trademark only in accordance with any trademark usage guidelines that the other party may provide from time to time. Each party agrees, upon request, to provide samples of such party's usage of the other party's logo or trademarks, and each party agrees to terminate usage of any such logo or trademark if such usage fails to meet the other party's trademark usage guidelines or quality standards or otherwise upon the other party's reasonable request. Each party agrees that any goodwill arising from use of the other party's logo or trademarks shall inure only to the benefit of the other party.

18. **Relationship of the Parties**. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and Grantee shall make no such representation to anyone. Neither party shall have any right or authority, express or implied, to assume or create any obligation of any

kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without reference to its conflict of laws provisions.

20. **Arbitration.** Any controversy, claim or dispute arising out of or relating to this Agreement or the breach hereof, whether based on contract, tort, statute or other legal or equitable theory shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its applicable rules then in effect. The arbitration shall be conducted in San Mateo County, California, USA, by a sole arbitrator and the award of the arbitrator shall be final and binding, and judgment on the award may be entered, confirmed and enforced in any court having jurisdiction thereof. Except as required by judicial process or by law, no party or arbitrator may disclose the existence, contents or results of any arbitration hereunder without the prior written consent of Grantor and Grantee. Subject to reapportionment by the arbitrator, the parties shall share equally in payment of the expenses of the arbitrator and the arbitration. Nothing in this Section shall preclude any party from seeking interim or provisional injunctive relief, including a preliminary injunction, either prior to or during arbitration, if necessary to protect the interests of such party.

21. **Notice.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by email, with email confirmation of receipt by the receiving party; (c) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (d) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (e) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the signature page of this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section).

22. **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

23. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, and the remainder of this Agreement shall remain in full force and effect.

24. **Assignment; No Third Party Beneficiaries.** Grantee shall not and shall not have the right to assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Grantor. Any purported assignment, sale, transfer, delegation or other disposition by Grantee, except as permitted herein, shall be null and void. Grantor may assign, transfer, delegate or otherwise dispose of this Agreement and any of

its rights or obligations of this Agreement without the prior written consent of Grantee. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer, nor shall anything herein confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

25. **Remedies; Injunctive Relief.** Any specific right or remedy provided in this Agreement shall not be exclusive but shall be in addition to all other rights and remedies set forth in this Agreement and permitted under applicable law. Grantee acknowledges and agrees that there can be no adequate remedy at law for any breach by Grantee of this Agreement, that any such breach may result in irreparable harm to Grantor for which monetary damages would be inadequate to compensate Grantor, and that Grantor shall have the right, in addition to any other rights available under applicable law, to obtain from any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of, or otherwise to specifically enforce, any covenant or obligation of Grantee under this Agreement, without the necessity of posting any bond or security.

26. **Acknowledgment.** Grantee acknowledges that it understands its obligations imposed by this Agreement, including but not limited to those obligations imposed by specific reference to the US Internal Revenue Code. Grantee agrees that if Grantee has any questions about its obligations under this Agreement, including those incorporated by reference to the US Internal Revenue Code, Grantee will promptly contact its own legal counsel.

27. **Captions; Interpretation.** All captions and headings in this Agreement are for the purposes of reference and convenience only, and shall not limit or expand the provisions of this Agreement. This Agreement shall be deemed to have been drafted by all parties and, in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.

28. **Counterparts.** This Agreement may be executed (including, without limitation, by facsimile signature) in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

29. **Entire Agreement.** This Agreement (including any Exhibits attached hereto which are hereby incorporated by reference) constitutes the entire agreement with respect to the subject matter hereof, and shall supersede any prior or contemporaneous oral or written agreements, understandings or communications or past courses of dealing between Grantor and Grantee with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by duly authorized representatives of both parties.

[remainder of page intentionally left blank]

Authorized representatives of each party have executed this Agreement on the date set forth below.

GRANTOR:

GRANTEE:

FIRST LOOK MEDIA, INC.

REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS

By: [Signature]

By: [Signature]

Name: Lynn Oberlander

Name: Bruce D. Brown

Title: Executive Director

Title: Executive Director

Date: May 12, 2014

Date: 5-5-14

Address:

Address:

Attention: lynn.oberlander@firstlook.org

1101 Wilson Boulevard

Post Office Box 3838

Suite 1100

Redwood City, CA 94064

Arlington, VA 22209

USA

Fax: 703-807-2100

Email: lynn.oberlander@firstlook.org

Email: bbrown@rcfp.org

*and with a copy of notices other than reports to:*  
Attention: Legal Department

PO Box 3838

Redwood City, CA 94064

Fax:

Email: legal@firstlook.org

## Exhibit A

### Purpose

RCFP's work over the last year - both in terms of the briefs and projects they have undertaken and the online tools they have developed - has brought them closer to technology. The grant will support a technologist as a "Fellow" on staff to assist their work and benefit journalism in several ways.

- 1 A technologist on staff will provide the Executive Director with significant strategic support. It is also possible that a First Look Media technology fellow could put out a white-paper assessing the new DOJ guidelines from a technologist's perspective and collaborate with a new free press national security legal fellow they hope to have on board in the fall.
- 2 As these new security tools, including anonymizing devices, are designed and implemented they see a First Look Media technology fellow as an envoy from their organization to other press groups and to newsrooms to help troubleshoot any legal issues that arise.
- 3 They anticipate that a technology fellow will help them identify cases and public policy disputes outside of their usual docket of traditional media law practice where their participation might be helpful because of potential implications for reporters or First Amendment rights in general.
- 4 First Look Media technology fellow will help them improve their existing digital tools and lead them to new initiatives in this area.
- 5 A fellow would help them connect with the computer science and technology departments at the partner universities to bring their expertise to bear on the work of the clinics.
6. The technology fellow at RCFP could play an important function in seeding the new kinds of discussions and collaborations that must take place going forward and in working with their new board members.
- 7 Finally, on top of the external roles, the technology fellow will sit in a key spot for RCFP internally working with RCFP's board leadership to instill a sense of urgency to the embrace of the technological shifts that are changing how journalism is practiced and how media lawyers protect newsgathering and defend the First Amendment.

### Budget Breakdown

Salary	\$66,666
Payroll taxes and benefits	\$9,464
Travel	\$3,333
Senior staff supervision	\$10,960
Overhead (rent, telephone, etc.)	\$9,091
Total	\$100,000

**Exhibit B**

**Disbursement Schedule**

<b>#</b>	<b>Amount</b>	<b>Disbursement Condition</b>	<b>Target Payment Date</b>
#1	\$100,000	Unconditional.	15 May 2014

**Additional Disbursement Terms and Conditions:**

1. With respect to each conditional disbursement, Grantee shall provide supporting documentation for Grantor to verify the achievement of the applicable conditions. Please contact Grantor to determine what supporting documentation will be considered sufficient. If Grantee fails to provide Grantor with sufficient supporting documentation by the date specified above or Grantor has determined that Grantee has not achieved the applicable condition(s), then such disbursement shall automatically expire.
2. Upon expiration of any disbursement (or portion thereof), the Grant shall automatically be reduced by any such amount.
3. Grantor shall have the right to withhold disbursements under the Grant for Grantees who fail to meet the reporting requirements set forth in the Agreement.
4. In connection with each disbursement, Grantee shall provide a signed wire transfer request to Grantor in the form attached hereto as Exhibit G.



## Exhibit C

### Reporting Obligations

	2014	2015
<b>Quarterly Financials:</b>		Q1 2015 (due 30 Apr 2015)
	Q2 2014 (due 31 Jul 2014)	
	Q3 2014 (due 31 Oct 2014)	
	Q4 2014 (due 31 Jan 2015)	
<b>Annual Audited Financials:</b>	FY2014 (due 30 Jun 2015)	FY2015 (due 30 Jun 2016)
<b>Semi-Annual Report:</b>	H1 2014 (due 31 Jul 2014)	
<b>Annual Report:</b>	2014 (due 28 Feb 2015)	2015 (due 28 Feb 2016)
<b>Final Report:</b>		

- a. Annual Accounting Period. Grantee's annual accounting period ends on: December 31" ("Grantee's Fiscal Year End").
- b. Quarterly Financial Report. Within one (1) month following the end of each fiscal quarter of the Grantee, Grantee shall provide Grantor with an unaudited statement of operations for the project supported by the Grant for the quarterly and year-to-date period, with comparison to the budget ("Quarterly Financial Report").
- c. Annual Audited Financials. For each fiscal year, Grantee shall have its financial statements audited on an annual basis by an independent third party auditor, and shall provide a copy of such audited financials to Grantor within one (1) month following completion of each such audit (which shall be completed no later than six (6) months after the end of each fiscal year).
- d. Semi-Annual Report. Within one (1) month following June 30 of each year, Grantee shall provide Grantor with a semi-annual report ("Semi-Annual Report") that summarizes Grantee's activities and progress toward the goals described in Exhibit D hereto.
- e. Annual Report. Within two (2) months following the Grantee's Fiscal Year End of each year, Grantee shall provide Grantor with an annual report ("Annual Report") that includes:
- a full and complete narrative of Grantee's activities and use of the Grant.

- ii. Grantee's progress toward the goals described in Exhibit D hereto;
  - iii. copies of any publications resulting from the Grant; and
- f. Final Report. Within two (2) months following the Grant Expiration Date, Grantee shall submit a final report ("Final Report") to Grantor that includes (i) an update to the most recent Annual Report, covering the period between the end of the last Annual Report and the end of the Grant Term, and (ii) a final summary of the Grantee's use of the Grant.

## Exhibit D

### Goals

1. Weekly digest to RCFP community of technology and press freedom issues
2. Exploration of joint training opportunities with other organizations on use of security tools
3. Contributions to 2-3 amicus briefs in technological security cases
4. Reports
  - Mapping the landscape of domestic press organizations with respect to their technological sophistication, activity, and expectations
  - An assessment of the new DOJ guidelines from a technological perspective
  - One new RCFP best practices guide, perhaps on migration to third-party cloud servers
  - One new RCFP legal guide (to be co-authored with a legal fellow) in an area where tech expertise should inform the issues, e.g. application of computer fraud statutes to newsgathering.
5. Create a news technologist email list
6. RCFP Board presentation on long term strategy

### Engagement

Target	End of Year 1
New amicus partners in tech	3-6
Downloads/views of new tech guides/reports	5,000
Technologists on email lists	500
Panels and presentations at technology events	1-3
New social media followers	1,000
Journalists attending tech training sessions	150

## Exhibit E

### **Terrorist Activity, Sanctions, Anti-Money Laundering, and Foreign Corrupt Practices**

#### **1. Terrorist Activity.**

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, terrorist activity of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity, and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know advocates, plans, sponsors or engages in terrorist activity.

b. Grantee represents and warrants that Grantee is not listed in the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of Treasury (the "SDN List").

#### **2. Sanctions.**

a. Grantee represents and warrants that Grantee is not engaged, directly or indirectly, in transactions with any individual or entity listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury.

#### **3. Anti-Money Laundering.**

a. Grantee represents and warrants that (i) Grantee does not conduct or support, directly or indirectly, money laundering of any kind; (ii) Grantee is not associated or engaged in transactions with any individual or entity that it knows or has reason to know engages in money laundering, and (iii) Grantee is not owned or controlled by, and does not act for or on behalf of, any individual or entity that it knows or has reason to know engages in money laundering.

#### **4. Foreign Corrupt Practices.**

a. Grantee represents and warrants that Grantee and its officers, directors, employees, or agents thereof have not and will not pay, offer or promise to pay, or authorize the payment directly or indirectly, of any money, gift or anything of value to any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to Grantee.

#### **5. Ongoing Compliance; Remedies.**

a. Grantee agrees to use its best efforts to ensure that the representations and warranties in this Exhibit E remain true and accurate during the Grant Term, and Grantee agrees to promptly

notify Grantor if any such representation or warranty ceases to be true and accurate during the Grant Term.

b. Grantee acknowledges that Grantor is required by U.S. law to ensure that none of Grantor's funds are used directly or indirectly (i) to conduct or support terrorist activity, (ii) to support individuals or entities identified as terrorists, (iii) to support persons or organizations listed on the SDN List or otherwise subject to economic or trade sanctions as administered by the Office of Foreign Assets Control of the United States Department of Treasury, (iv) to conduct or support money laundering, or (v) to make corrupt payments to government officials. Grantee shall use its best efforts to ensure that Grantor's funds are not so used.

c. To assist Grantor in complying with all applicable laws and regulations, Grantee agrees to provide Grantor such information as Grantor may reasonably request, including without limitation, information about persons or organizations receiving funds from Grantee.

d. In the event Grantor has reason to believe that a breach of the terms and conditions of this Exhibit E has occurred or may occur, Grantor may immediately terminate this Agreement or withhold further payments until such time as it has received confirmation to its satisfaction that no breach has occurred or will occur. In no event shall Grantor be obligated under this Agreement to take any action or omit to take any action that Grantor believes in good faith would cause it to be in violation of any U.S. laws.