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Via e-mail and United States mail

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Re: FREEDOM OF INFORMATION ACT REQUEST
Expedited Processing Requested

To Whom It May Concern:

The American Civil Liberties Union of Northern California and the American Civil Liberties Union (collectively, the “ACLU”)¹ submit this expedited Freedom of Information Act (FOIA) request² for records, as specified below, about the federal government’s policies and actions related to content available on social media networks,³ including but not limited to monitoring programs, criteria for assessing content, and requests to remove content that allegedly violates the networks’ own terms of service.⁴

Federal government officials have publicly expressed concerns about terrorist groups’ use of U.S.-based social media networks to expand their influence. FBI Director James Comey has testified that “as a communication medium, social media is a critical tool for terror groups to exploit.”⁵ In July 2015, Attorney General Loretta Lynch voiced concerns with ISIS’s social media following.⁶ In 2014, DHS Secretary Jeh Johnson noted his concern about the potential influence of extremist social media content on Americans.⁷

Following these statements, Administration officials held a series of closed-door meetings with social media network companies to discuss the accessibility of extremist content

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4), membership organization that educates the public about the civil-liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate, 26 U.S.C. § 501 (c)(3), organization that provides legal representation free of charge to individuals and organizations in civil-rights and civil-liberties cases, educates the public about civil-rights and civil-liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby *their* legislators.

² The ACLU submits this request pursuant to the FOIA, 5 U.S.C. § 552 and the implementing regulations of the Department of Homeland Security, 6 C.F.R. § 5.1 *et seq.*, the Department of Justice, 28 C.F.R. § 16.1 *et seq.*, the National Security Agency 32 C.F.R. § 299 *et seq.*, and the *Office* of the Director of National Intelligence, 32 C.F.R. § 1700.1 *et seq.*

³ Throughout this request, the term “social media networks” refers to online services that permit users to create a public or semi-public profile and use this profile to connect or communicate with other users and/or the general public. Examples of social media services include but are not limited to Facebook, Twitter, Instagram, Google Plus, Pinterest, YikYak, Reddit, Snapchat, and MySpace.

⁴ Throughout this request, the term “terms of service” refers to the legal agreements maintained by online services to which users of such services must adhere, and any information such agreements incorporate by reference. “Terms of service” includes but is not limited to a “user agreement,” “statement of rights and responsibilities,” and “terms of use.”

⁵ James Comey, *Statement Before the Senate Committee on Homeland Security and Governmental Affairs*, Oct. 8, 2015, <https://goo.gl/FsgXav>.

⁶ Pierre Thomas, *Why Attorney General Says ISIS Is More of a Threat Than al Qaeda*, ABC News, Jul. 26, 2015, <http://goo.gl/ugmCyy>.

⁷ Jeh Johnson, *Written testimony of DHS Secretary Jeh Johnson for a House Committee on Homeland Security hearing titled “Worldwide Threats to the Homeland,”* Dept. of Homeland Security, <https://goo.gl/XeVRX5>

on the companies' networks. First, on January 8, 2016, the Administration convened a meeting between senior law enforcement and intelligence officials and representatives from technology companies, including Facebook, Twitter, Apple, Microsoft, YouTube, and others. The meeting received widespread media attention, with coverage in major national and international newspapers.⁸ Officials held a subsequent meeting on February 24, 2016 led by Assistant Attorney General John Carlin, according to news reports.⁹ After the initial meeting, one article described the tech companies' response to the government's message as a "receptive" one.¹⁰ The public, however, lacks any further information about what the federal government requested of these companies and what, if anything, the companies agreed to do in these closed-door meetings.

There is reason to believe, however, that the government has encouraged social media networks to take affirmative steps to monitor and control the content available on their services. A briefing distributed to participants of the January 2016 meeting and leaked to press "invite[d] the private sector to consider ways to increase the availability of alternative content."¹¹ That same briefing suggested "[a] partnership" aimed at "measur[ing] levels of radicalization to violence" that would leverage the companies' expertise.¹² In at least one case, government officials have reportedly suggested that companies make changes to their algorithms to prioritize certain content. Google and Facebook reportedly rejected such a proposal.¹³

In furtherance of the above efforts, the federal government has reportedly requested the removal of user-generated content from social media networks by claiming that it violates the networks' respective terms of service.¹⁴ Social media networks maintain terms of service that

⁸ See, e.g., Danny Yadron, *Revealed: White House seeks to enlist Silicon Valley to 'disrupt radicalization'*, The Guardian, January 7, 2016, <https://goo.gl/fR3LNE>; Ellen Nakashima, *Obama's top national security officials to meet with Silicon Valley CEOs*, Wash. Post, Jan. 7, 2016, <https://goo.gl/UX9X0t>, Devlin Barrett and Damien Paletta, *Top U.S. Officials to Meet With Tech CEOs on Terror Concerns*, Wall St. J., Jan. 7, 2016, <http://goo.gl/ywh7T1>.

⁹ Dustin Volz and Yasmeen Abutaleb, *Justice Department, Silicon Valley discuss online extremism*, Reuters, Feb. 24, 2016, <http://goo.gl/SoZVON>; Cecilia Kang and Matt Apuzzo, *U.S. Asks Tech and Entertainment Industries Help in Fighting Terrorism*, New York Times, Feb. 24, 2016, <http://goo.gl/491cK1>; Julia Harte and Dustin Volz, *U.S. looks to Facebook, private groups to battle online extremism*, Reuters, Feb. 24, 2016, <http://goo.gl/BbS24F>.

¹⁰ Danny Yadron and Julia Carrie Wong, *Silicon Valley appears open to helping US spy agencies after terrorism summit*, The Guardian, Jan. 8, 2016, <http://goo.gl/ZvI731>.

¹¹ Jenna McLaughlin, *White House Raises Encryption Threat in Silicon Valley Summit*, The Intercept, Jan. 8, 2016, <https://goo.gl/aBnNFe>.

¹² *Id.*

¹³ Sheera Frenkel, *Inside The Obama Administration's Attempt To Bring Tech Companies Into The Fight Against ISIS*, BuzzFeed News, Feb. 25, 2016, <http://goo.gl/klmh3>; Sheera Frenkel, *No, Google Is Not Going To Create Fake Search Results For ISIS*, BuzzFeed News, Feb. 2, 2016, <http://goo.gl/gKR7C9>.

¹⁴ Joseph Menn, *Social media companies step up battle against militant propaganda*, Reuters, Dec. 7, 2015, <http://goo.gl/JPRBo4> ("[T]here are workarounds [to formal legal requests to remove content], according to former employees, activists and government officials. A key one is for officials or their allies to complain that a threat, hate speech or celebration of violence violates the company's terms of service, rather than any law. Such content can be taken down within hours or minutes, and without the paper trail that would go with a court order."); see also David E. Sanger, *U.S. Cyberattacks Target ISIS in a New Line of Combat*, The New York Times, April 24, 2016, <http://goo.gl/dSZCF1> ("Facebook, YouTube and Twitter are also growing more efficient at finding and removing

incorporate rules about permissible and impermissible information and conduct on their platforms.¹⁵ Social media networks typically rely on their users to flag alleged violations of these rules using reporting systems built into the platforms.¹⁶

Little information is available about government demands for the removal of content from social media networks. While some social media networks release “transparency reports” that include statistics about formal legal demands for the removal of content – such as court orders – those reports lack information about informal demands, including demands that cite to companies’ terms of service and do not take the form of legal process.¹⁷ Social media networks have been unwilling to reveal the extent to which they communicate or coordinate with the government regarding terms-of-service or other removals.¹⁸

At least one social media network has complied with government requests to remove user accounts for violating its terms of service. Starting in 2011, Facebook accepted requests from federal and state law enforcement agencies to remove the user accounts of current inmates from its service and created a submission form for that purpose.¹⁹ Using that form and regular email, law enforcement agencies submitted informal requests to remove Facebook accounts. Between 2011 and 2015, Facebook received at least 700 such requests from California and South Carolina alone. According to the company, some accounts were removed for violating Facebook’s terms of service.²⁰

Government efforts to censor or limit the availability of a wide range of content on social media networks, supposedly in the name of national security, would raise First Amendment concerns, particularly where such an effort occurs out of public view and without judicial oversight. First, pressuring companies to delete or take down online content purportedly related to terrorism could easily sweep in innocent and protected speech. It could also incentivize companies to proactively delete speech in order to avoid the anticipated threat of government intervention or pressure. Finally, it would chill online speech because users of social media

Islamic State posts — which they can take down without court orders because the posts are a violation of the companies’ terms of service, executives say.”)

¹⁵ See, e.g., Facebook, *Community Standards*, <https://www.facebook.com/communitystandards>; Twitter, *The Twitter Rules*, <https://support.twitter.com/articles/18311>.

¹⁶ Catherine Buni & Soraya Chemaly, *The Secret Rules of the Internet*, The Verge, April 4, 2016, <http://goo.gl/XjuV50> (“[A]lmost every content moderation system depends on users flagging content and filing complaints.... And even industry leaders continue to rely on their users to report and flag unacceptable content.”).

¹⁷ See *id.* (“One of the most significant yet least understood aspects of the propaganda issue is the range of ways in which social media companies deal with government officials.”).

¹⁸ See Natalie Andrews and Deepa Seetharaman, *Facebook Steps Up Efforts Against Terrorism*, Wall Street Journal, Feb. 11, 2016, <http://goo.gl/CQvvOg> (“Neither Facebook nor law-enforcement agencies would discuss in detail how closely they cooperate....”).

¹⁹ Press Release, *CDCR Will Report Prohibited Inmate Accounts to Facebook: Facebook agrees to remove accounts managed by or on behalf of state inmates*, California Department of Corrections and Rehabilitation Blog, Aug. 8, 2011, <http://goo.gl/NK47gX> (“Facebook accounts set up and/or monitored on behalf of an inmate will be removed, as it is a violation of Facebook’s user policies.”).

²⁰ Dave Maass, *Facebook Overhauls Its Inmate Account Takedown Process*, June 4, 2015, Electronic Frontier Foundation, <https://goo.gl/SIG9W7>.

networks would avoid controversial topics out of concern that their speech would be monitored or deleted from the services.²¹

Government efforts to remove content from social media networks could also disproportionately affect minority populations, including American Muslim and Arab-American communities already vulnerable to discrimination and government surveillance, as well as political activists advocating viewpoints that are unpopular or that the government disfavors. Government efforts to bring about the removal of content on such networks raise the risk that lawful content posted by members of these communities will be removed, and that their speech on social media networks will be chilled.

I. REQUESTED RECORDS

We seek the following records:

- 1) All documents, including policies, procedures, practices, advisories, legal opinions, memoranda, briefs, and correspondence (including e-mail), constituting, containing, or referencing any of the following:
 - a. Programs for monitoring content on social media networks that could be understood to be terrorism-related, extremist, promoting violence, hateful in nature, critical of the U.S. government or its policies, or in violation of a terms of service maintained by any social media network.
 - b. Any criteria, whether or not previously published, for determining the types of content which the federal government would seek to have removed from a social media network, including but not limited to criteria for assessing whether content is in violation of a terms of service maintained by any social media network.
 - c. Actions that federal, state, or local government actors can or should take with respect to contacting social media networks to request the removal of content or to request that content not be removed.
 - d. The creation of pseudonymous accounts by federal government employees on social media networks.
- 2) All documents constituting, containing, or referencing communications by any federal agency or officer with representatives of social media networks that request (a) the removal of content on any basis, including but not limited to the possibility that such content violates any part of the networks' terms of service, or (b) that content not be removed from the networks.

²¹ See, e.g., Jeff Guo, *New study: Snowden's disclosures about NSA spying had a scary effect on free speech*, Wash. Post, Apr. 27, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/04/27/new-study-snowdens-disclosures-about-nsa-spying-had-a-scary-effect-on-free-speech/>.

- 3) All documents constituting, containing, or referencing written or oral requests submitted by any federal agency or officer to social media networks through reporting channels maintained by those networks.
- 4) All documents identifying any examples of content available on social media networks that should prompt any federal agency or officer to request the removal of content from a social media network or to request that content not be removed.
- 5) All documents constituting, containing, or referencing summaries, lists, or compilations of content or accounts received from a non-governmental third party that the third party asserts should be monitored or removed from any social media network.
- 6) All documents constituting, containing, or referencing training materials for any program for monitoring content available on social media networks that could be understood to be terrorism-related, extremist, promoting violence, hateful in nature, critical of the U.S. government or its policies, or in violation of a terms of service maintained by any social media network.
- 7) All documents constituting, containing, or referencing meetings between federal officials and representatives of social media networks held between January 1, 2015 and May 1, 2016, including but not limited to records identifying participants in such meetings, calendars for federal officials attending such meetings, background materials prepared for such meetings, meeting agendas, or notes of such meetings.
- 8) All documents constituting, containing, or referencing the purchase of, use of, acquisition of, installation of, subscription to, payment for, or agreements for any product or service that analyzes or compiles content that is publicly available on any social media network.

Please note that requester American Civil Liberties Union submitted a request dated May 13, 2015 for records relating to the government's "countering violent extremism" (CVE) programs. The request is the subject of a pending lawsuit in the U.S. District Court for the District of Columbia. *See ACLU v. Dept. of Homeland Security*, Case No. 1:16-cv-00221-CKK (D.D.C. 2016). The ACLU does not seek in response to this FOIA request records that have already been identified and are being processed in connection with the May 13, 2015 FOIA request.

II. REQUEST FOR EXPEDITED PROCESSING

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).²² Expedited processing is warranted because the ACLU is an organization primarily engaged in

²² See also 6 C.F.R. § 5.5(d); 28 C.F.R. § 16.5(d); 32 C.F.R. § 1700.12; 32 C.F.R. § 299.5(f).

disseminating information, and this request seeks records in order urgently to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v).²³

1. *The ACLU is primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”) (internal citation and quotation marks omitted).²⁴

The ACLU publishes newsletters that report on and analyze civil liberties-related current events. The ACLU nationwide newsletter is disseminated to approximately 450,000 people. The ACLU of Northern California disseminates a separate newsletter to 45,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is disseminated to approximately 300,000 people. Both of these newsletters often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,²⁵ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.²⁶ The

²³ *See also* 6 C.F.R. § 5.5(d)(1)(ii); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 1700.12(c)(2); 32 C.F.R. § 299.5(f)(2).

²⁴ Courts have found that other organizations with missions similar to the ACLU and that engage in information dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (Leadership Conference on Civil Rights); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004); *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003) (Electronic Privacy Information Center).

²⁵ *See, e.g.,* Press Release, American Civil Liberties Union, Erie County Sheriff Records Reveal Invasive Use of “Stingray” Technology (Apr. 7, 2015), <https://goo.gl/HGIZiG>; Press Release, ACLU, U.S. to Release Targeted Killing Memo Sought by ACLU FOIA Lawsuit (May 20, 2014), <https://goo.gl/0a3QiH>; Press Release, ACLU, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://goo.gl/Dgx8LB>; Press Release, ACLU, FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering (Mar. 27, 2012), <https://goo.gl/KvfwvM>; Press Release, ACLU, FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach” (Dec. 1, 2011), <https://goo.gl/OysRio>; Press Release, ACLU, FOIA Documents from FBI Show Unconstitutional Racial Profiling (Oct. 20, 2011), <https://goo.gl/RiYgs0>; Press Release, ACLU, Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem (Oct. 19, 2011), <https://goo.gl/UtGKHZ>.

²⁶ *See, e.g.,* Kim Zetter, *Turns Out Police Stingray Spy Tools Can Indeed Record Calls*, Wired.com, Oct. 28, 2015, <http://goo.gl/rVYGsQ> (quoting ACLU-NorCal Senior Staff Attorney Linda Lye); Ellen Nakashima, *Little-Known surveillance tool raises concerns by judges, privacy activists*, Wash. Post, Mar. 27, 2013, <https://goo.gl/Yp7ciE>; Brad Knickerbocker, *ACLU: FBI Guilty of “Industrial Scale” Racial Profiling*, The Christian Science Monitor, Oct.

ACLU publishes a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.²⁷ Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA, and further in-depth analytic and educational multi-media features.

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Since 2011 alone, ACLU national projects have published and disseminated dozens of reports, many of which include a description and analysis of government documents obtained through FOIA requests.²⁸

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

2. *The records sought are urgently needed to inform the public about actual or alleged government activity.*

The records sought relate to the government's efforts to remove or influence the removal of content from social media networks, which approximately two-thirds of Americans access to communicate regarding current affairs, politics, and all aspects of civic life. In particular the

21, 2011, <http://bit.ly/1IyfhAb>; Joshua E.S. Phillips, *Inside the Detainee Abuse Task Force*, *The Nation*, May 30, 2011, <http://bit.ly/skUHD1> (quoting ACLU staff attorney Alexander Abdo); Eric Lichtblau, *Court Revives Lawsuit Over Government Surveillance*, *N.Y. Times*, Mar. 21, 2011, <http://nyti.ms/tgFpkd> (quoting ACLU deputy legal director Jameel Jaffer).

²⁷ See <https://www.aclu.org/blog>; <https://www.aclunc.org/blog>.

²⁸ See, e.g., ACLU, *Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 2013), available at <https://www.aclu.org/aclu-eye-fbi-documents-reveal-lack-privacy-safeguards-and-guidance-governments-suspicious-activity-0>; ACLU, *Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority* (Sept. 2013), available at <https://www.aclu.org/unleashed-and-unaccountable-fbis-unchecked-abuse-authority>; ACLU, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by Government Contractors* (June 2012), available at https://www.aclu.org/files/assets/hrp_traffickingreport_web_0.pdf; Human Rights Watch and ACLU, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System* (July 2010), available at https://www.aclu.org/files/assets/usdeportation0710_0.pdf; Reclaiming Patriotism: A Call to Reconsider the Patriot Act (March 2009), available at https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf; ACLU, *The Excluded: Ideological Exclusion and the War on Ideas* (Oct. 2007), available at http://www.aclu.org/pdfs/safefree/the_excluded_report.pdf; ACLU, *History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement* (May 2007), available at http://www.aclu.org/images/asset_upload_file893_29902.pdf; ACLU, *No Real Threat: The Pentagon's Secret Database on Peaceful Protest* (Jan. 2007), available at <https://www.aclu.org/report/no-real-threat-pentagons-secret-database-peaceful-protest>; ACLU, *Unpatriotic Acts: The FBI's Power to Rifle Through Your Records and Personal Belongings Without Telling You* (July 2003), available at http://www.aclu.org/FilesPDFs/spies_report.pdf.

Request seeks information on whether the government has requested the removal of content by alleging violations of networks' terms of service, raising serious questions about government-induced restrictions on lawful online speech. Similarly troubling is that such restrictions would presumably be effected absent formal legal process or judicial oversight. Given the pervasive use of social media and the potential impacts of these government efforts on users' First Amendment rights, the public plainly has an urgent need to know about the matters at issue in the Request.

Further underscoring the urgency of this Request is the strong media interest in what little has been publicly revealed about any government efforts to remove content from social media networks. Sheera Frenkel, *Inside The Obama Administration's Attempt To Bring Tech Companies Into The Fight Against ISIS*, BuzzFeed News, Feb. 25, 2016, <http://goo.gl/IuzszJ>; P. Claire Dodson, *White House Forms "Dream Team" To Combat ISIS On Social Media*, Fast Company, Feb. 25, 2016, <https://goo.gl/v5RZ8f>; Julia Harte and Dustin Volz, *U.S. looks to Facebook, private groups to battle online extremism*, Reuters, Feb. 24, 2016, <http://goo.gl/ZecNY7>; Cecilia Kang and Matt Apuzzo, *U.S. Asks Tech and Entertainment Industries Help in Fighting Terrorism*, New York Times, Feb. 24, 2016, <http://goo.gl/TY9yYL>; Dustin Volz and Yasmeen Abutaleb, Justice Department, *Silicon Valley discuss online extremism*, Reuters, Feb. 24, 2016, <http://goo.gl/7Mby8M>; Natalie Andrews and Deepa Seetharaman, *Facebook Steps Up Efforts Against Terrorism*, Wall Street Journal, Feb. 11, 2016, <http://goo.gl/ANr7o3>; Sheera Frenkel, *No, Google Is Not Going To Create Fake Search Results For ISIS*, BuzzFeed News, Feb. 2, 2016; Gardiner Harris and Cecilia Kang, *Obama Shifts Online Strategy on ISIS*, New York Times, Jan. 8, 2016, <http://goo.gl/xWSd8u>; Jenna McLaughlin, *White House Raises Encryption Threat in Silicon Valley Summit*, The Intercept, Jan. 8, 2016, <https://goo.gl/qL620h>; Danny Yadron and Julia Carrie Wong, *Silicon Valley appears open to helping US spy agencies after terrorism summit*, The Guardian, Jan. 8, 2016, <http://goo.gl/9yigHP>; Joseph Menn, *Social media companies step up battle against militant propaganda*, Reuters, Dec. 7, 2015, <http://goo.gl/XvmvRl>; Julia Greenberg, *Why Facebook and Twitter Can't Just Wipe Out ISIS Online*, Wired, Nov. 21, 2015, <http://goo.gl/QGg1PI>; Scott Higham and Ellen Nakashima, *Why the Islamic State leaves tech companies torn between free speech and security*, Wash. Post, July 16, 2015, <https://goo.gl/ZKnCm3>.

In sum, the Request seeks records related to an issue that implicates the online speech of millions of social media users—about which remarkably little information has been revealed publicly. Because there is an urgent need to inform the public about this federal government activity, expedited processing is appropriate under 5 U.S.C. 552(a)(6)(E) and the agencies' respective implementing regulations.

III. REQUEST FOR WAIVER OF PROCESSING FEES

The ACLU requests a waiver of document search, review, and duplication fees because disclosure of the information sought in this Request is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or

activities of the government and is not primarily in the commercial interest of the requester.” See 5 U.S.C. §552(a)(4)(A)(iii).²⁹

As discussed earlier, the records sought will contribute to the public’s understanding of the role of federal government entities in monitoring social media networks and seeking the removal of information from such networks. Little information about the government’s actions related to information on social media networks is publicly available, so the records sought are certain to contribute significantly to the public’s understanding of, *inter alia*, any policies adopted by government agencies regarding content on social media networks, any requests made to social media networks that pressure the networks to remove content, communications with representatives of social media networks, and the extent to which any of the above actions are infringing on the civil liberties of Americans.

The records requested are not sought for commercial use. The ACLU and its affiliates are 501(c)(3) “non-profit, non-partisan, public interest organization[s].” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”) (citation omitted). Any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost.

We also request a waiver of processing fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use.³⁰ The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Service Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of

²⁹ See also 6 C.F.R. § 5.11(k); 28 C.F.R. § 16.11(k); 32 C.F.R. § 1700.06(b)(2); 32 C.F.R. § 299.6(a); DoD 5400.7-R, C6.1.4.

³⁰ See 6 C.F.R. § 5.11(d)(1); 28 C.F.R. § 16.11(d); 32 C.F.R. § 1700.06(i)(2); 32 C.F.R. § 299.6, DoD 5400.7-R, C6.1.5.7.

the news media” for the same reasons it is “primarily engaged in the dissemination of information.”³¹

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).³²

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”³³ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

³¹ A requester's dissemination of information obtained through FOIA requests primarily or exclusively online rather than through traditional print outlets does not disqualify a request from a public-interest waiver. *See Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1117 (D.C. Cir. 2015) (“[S]urely a newspaper is not disqualified if it forsakes newsprint for (or never had anything but) a website.”).

³² Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

³³ For example, in May 2016, the FBI granted a fee waiver with respect to the ACLU’s request for records relating to the government’s “countering violent extremism” programs. In August 2015, the Department of Homeland Security’s Office of Intelligence and Analysis granted a fee waiver with respect to the ACLU’s request for records relating to the government’s use of information obtained or derived from foreign-intelligence surveillance. Also in August 2015, the Department of State granted a fee waiver with respect to the ACLU’s request for specific records identified or discussed in the Executive Summary of the Senate Select Committee on Intelligence *Study of the CIA’s Detention and Interrogation Program*, and for records implicated by the declassification and release of the Executive Summary, the CIA’s June 2013 response to an earlier version of the SSCI Report, and the January 30, 2015 CIA classification guidance with respect to the former Rendition, Detention, and Interrogation (“RDI”) program. In January 2015, the Department of Treasury granted a fee waiver with respect to the ACLU’s request for records relating to the government’s use of information obtained or derived from foreign-intelligence surveillance. In May 2014, Amtrak granted a fee waiver with respect to the ACLU’s request for records regarding the collection of data about Amtrak passengers. In December 2013, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents regarding policies, procedures, and practices followed to obtain search queries from search engine operators for law enforcement or intelligence purposes. In April 2013, the National Security Division of the DOJ granted a fee waiver to the ACLU with respect to a request for records relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee waiver to the ACLU with respect to a request for documents relating to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the National Security Division also granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006.

If the fee waivers are denied, we are prepared to pay fees up to \$200 and request to be informed of further fees that may be charged, but reserve the right to appeal a denial of fee waivers.

* * *

We look forward to the determination of this request for expedited processing within ten (10) calendar days and the determination of this request for documents within twenty (20) days.³⁴

If this request for information is denied in whole or in part, we ask that you justify all deletions by reference to specific provisions of the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Matt Cagle
American Civil Liberties Union of Northern California
39 Drumm Street
San Francisco, California, 94111
Tel: (415) 621-2493 ext. 336
Fax: (415) 255-1478
mcagle@aclunc.org

I affirm that the information provided supporting the request for expedited processing and the fee waiver is true and correct to the best of my knowledge and belief.

Sincerely,



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³⁴ 5 U.S.C. §552(a)(6)(A)(i); *see also* 6 C.F.R. §5.5(d)(4), 28 C.F.R. §16.5(d)(4), 32 C.F.R. §299(f)(5), 32 C.F.R. §1700.12(b).