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# **AGENT OF INFLUENCE**

Should Russia's RT Register  
as a Foreign Agent?

By Elena Postnikova

Foreword by Alina Polyakova





# AGENT OF INFLUENCE

**By Elena Postnikova**

This Report is Chaired by  
**Congressman David N. Cicilline**

The author would like to thank Judge James Baker, a visiting professor of National Security at Georgetown University Law Center and former Chief Judge of the US Court of Appeals for the Armed Forces, and Thomas Firestone of Baker McKenzie for their thoughtful comments and guidance in preparing this project.

ISBN: 978-1-61977-408-7

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August 2017





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## Foreword

RT (formerly Russia Today) is a tool of Russian political influence, designed to spread disinformation and undermine Western values around the world. Since its creation in 2005, this Russian state media outlet has broadcasted purposely misleading information about key events, propagated unfounded conspiracy theories, and presented lies as facts. Over the last twelve years, the Russian government has invested significant resources into growing its “disinformation ecosystem,” in which RT plays an important role alongside bot armies, troll factories, the Kremlin-funded Sputnik, and other fly-by-night “news” sites. The January 2017 US intelligence report that assessed Russian influence operations during the presidential elections concluded that RT was part of the Russian government’s strategic messaging campaign aimed at undermining the democratic process, sowing distrust in Western institutions, and influencing the outcome of the US presidential elections.

RT and the Russian government claim that the network is an independent news agency akin to the British BBC or the German Deutsche Welle, but, like much of its reporting, this too is a lie. Unlike these networks, RT’s funding and governance structure are purposely opaque, its so-called reporting is unabashedly supportive of Russian President Vladimir Putin and his foreign policy, and its true mission is to influence rather than inform.

RT is by design an extension of the Kremlin’s political warfare against the West. Yet it continues to operate in the United States under the guise of media independence. RT functions as a foreign agent of influence, and it is time that the network was legally recognized as such. This Atlantic Council report details the legal framework for requiring RT to register as an “agent of a foreign principal” under the Foreign Agents Registration Act of 1938 (FARA). Expertly written and convincingly argued, the report’s conclusion, supported by overwhelming evidence, is clear: RT is not like the BBC; it does not qualify for legal exemption; it must be required to register under FARA. The report provides detailed policy recommendations and specific actions that the US Congress and the Department of Justice should take to update FARA for the modern information age and improve enforcement.

In 2017, Congressional members in the Senate and House introduced bipartisan legislation that would allow the Department of Justice the authority to investigate outlets like RT for possible FARA violations. This legislation, introduced by Representatives David Cicilline (D-RI) and Matthew Gaetz (R-FL) and Senator Jeanne Shaheen (D), deserves serious consideration. If passed into law, it would send a strong message to President Putin and be an important step in securing our democracies from foreign meddling.

**Dr. Alina Polyakova**

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# Introduction<sup>1</sup>

**“[T]he Kremlin is waging an international disinformation campaign through the RT propaganda network which traffics in anti-American conspiracy theories that rivaled the extravagant untruths of Soviet era Pravda (ph). Russia also has a long history of meddling in other countries, election systems and launching cyber-attacks on a wide range of countries and industries.”<sup>1</sup>**

James B. Comey, *Former Director of the Federal Bureau of Investigation, testifying at the House Permanent Select Committee on Intelligence hearing on Russian Active Measures, March 20, 2017*

The declassified US intelligence report on Russian interference in the 2016 US elections found that Russia implemented a multifaceted influence campaign. It combined “disclosures of data obtained through Russian hacking operations; intrusions into U.S. state and local electoral boards; and overt propaganda.”<sup>2</sup> Russia’s state-run propaganda machine is comprised of its domestic media, international television (TV) channel RT and news agency Sputnik, and a network of quasi-government trolls.<sup>3</sup> The intelligence community assessed that, in trying to influence the US election, “the Kremlin sought to advance its longstanding desire to undermine the U.S.-led liberal democratic order,” which Russian President Vladimir Putin views as a threat to Russia and his regime.<sup>4</sup> To influence policies and fuel discontent, the Kremlin’s primary tool was state-funded TV channel RT, which broadcasts in English in the United States.

This is not the first time that a foreign country with interests inimical to ours has directed its “information warfare” against the American people. Similar tactics were extensively used by the Nazis before and during World War II, and by the Soviet Union during the Cold War. To address these issues, the US Congress adopted the Foreign Agents Registration Act of 1938 (FARA), which required persons advancing foreign interests to register as “agents of foreign principals” and disclose the full extent of their activities and the nature of their employment. The act aimed to ensure that the American people were not misled into thinking that they received information from a disinterested source. There is a lesson here.

To counter the Kremlin’s influence campaign, the US government could enforce FARA against RT and compel it to register as an agent of the Russian government. This would alert the public to Russia’s efforts and limit Russia’s ability to masquerade its “information warfare” as legitimate media activity.

As a disclosure statute, FARA does not prohibit, edit, or restrain an agent’s ability to distribute information. Rather, it compels disclosure of the origin and purpose of the information to help the audience develop an accurate understanding of the source. In doing so, it does not suppress freedom of speech; instead, it serves the First Amendment by supplementing information available to the public.<sup>5</sup>

In 1938, Congress adopted the Foreign Agents Registration Act to address Nazi propaganda activities in the United States. The act requires agents of foreign principals to identify themselves and publicly disclose the nature of their employment. The act aims to ensure that the American people are not misled into thinking that the information disseminated by foreign agents originates from a disinterested source.

Concerned about the findings that RT attempted to influence the 2016 elections, New Hampshire Sen. Jeanne Shaheen (D), on March 7, 2017, Rep. David Cicilline (D), and Rep. Matthew Gaetz (R), on June 7, 2017, introduced bills that would give the US Department of Justice (the DOJ or Department) additional authority to investigate outlets like RT for possible FARA violations.<sup>6</sup> While Senator Shaheen’s, Representative Cicilline’s, and Representative Gaetz’s proposals would increase the efficiency of FARA enforcement, the reform needs to be more comprehensive. Such reform should reflect how seriously the government takes violations of the act and resource the DOJ to investigate and prosecute such violations.

This paper will review FARA, its history, and purpose; consider whether RT in fact is required to register as an “agent of a foreign principal”; discuss whether RT qualifies for a bona fide media exclusion; consider policy implications of FARA enforcement against RT; and present recommendations to modernize FARA. Finally, it will conclude that having RT register as a foreign agent is necessary to ensure that the American public is not misled that RT is a disinterested source, consistent with our constitutional free speech guarantees, and warranted by our foreign policy interests.

# Foreign Agents Registration Act of 1938

## Key Provisions and Definitions

The Foreign Agents Registration Act of 1938 requires that every person acting as an “agent of a foreign principal,”<sup>7</sup> unless otherwise exempt, must register with the Attorney General within ten days of being engaged and before performing any work as such an agent.<sup>8</sup> The term “agent of a foreign principal” specifically excludes any US news organization or foreign media organizations engaged in bona fide news or journalistic activities in the United States, provided that specific requirements, discussed *infra*, are met.<sup>9</sup>

A registered foreign agent must submit periodic disclosures outlining his/her agreements with the foreign principal, disclose income from and expenditures on behalf the principal, and have business records of his/her activities available for inspection by the DOJ. In addition, a foreign agent must ensure that all informational materials it distributes are conspicuously labeled<sup>10</sup> and filed with the DOJ. Failure to comply with any requirements of the act is a criminal offense that could result in a fine of up to \$10,000, imprisonment for up to five years, or both.<sup>11</sup> The DOJ can also seek civil injunctive relief against a foreign agent who is believed to be in violation and compel registration.<sup>12</sup> The DOJ National Security Division (the NSD) and its FARA Registration Unit (FARA Unit) are responsible for the enforcement and administration of the act. The FARA Unit currently has 396 registrants, most of whom are lobbying firms, law firms, and publicity agencies.<sup>13</sup>

## Legislative History and Purpose

Congress enacted FARA to address Nazi propaganda activities in the United States in the 1930s, which were discovered during an investigation by the McCormack-Dickstein House Un-American Activities Committee (HUAC).<sup>14</sup>

By enacting the statute, Congress aimed to limit the effectiveness of foreign propaganda and, following the HUAC’s recommendations, required agents of foreign principals to identify themselves and publicly disclose the nature of their employment. The policy and purpose of the act mandated disclosure to

protect the national defense, internal security, and foreign relations of the United States . . .

## Statutory Exemptions to FARA Registration

- Diplomats and foreign officials;
- Persons engaging in private commercial activities;
- Persons engaging in activities of religious, scholastic, academic, scientific, or fine arts nature;
- Persons soliciting funds for medical aid or humanitarian purposes;
- Lawyers representing foreign principals in the courts or similar proceedings;
- Lobbyists registered under the Lobbying Disclosure Act if they represent foreign commercial interest;
- Bona fide media organizations are excluded from the definition of “agent of a foreign principal,” if certain conditions are met.

22 U.S.C.A. §§ 611(d), 613.

so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.<sup>15</sup>

However, in support of this crucial policy and purpose, Congress did not prohibit, edit, or restrain the distribution of advocacy materials. Instead, it required foreign agents to disclose the origin and purpose of the information they put out. This focus on disclosure helped ensure the constitutionality of the act and allowed it to withstand multiple enforcement challenges.<sup>16</sup>

After FARA was enacted, the investigative reports by HUAC described in detail the methods and tactics employed by the Nazi regime to disseminate propaganda.<sup>17</sup> HUAC identified dozens of propaganda agents working under diplomatic cover in cultural and educational organizations, foundations, and in the print and news agencies.<sup>18</sup> The first enforcement actions under FARA targeted German print and news organizations, such as the German Library of Information and Transocean News Service, which worked as propaganda fronts for the Nazi regime.<sup>19</sup>



# Is RT an Agent of a Foreign Principal?

## What Is RT?

RT, formerly known as “Russia Today,” is a Kremlin-funded 24-hour news network that broadcasts in English, Spanish, and Arabic and claims to have a global reach of 700 million people in more than 100 countries.<sup>20</sup> In the United States, it is available via satellite, cable, and internet streaming, and claims to be among the top five of the most watched international TV channels with a weekly audience of more than eight million.<sup>21</sup>

“Russia Today” and “RT” are both public names for the legal entity ANO “TV-Novosti,” which was established in 2005 by Russia’s 100 percent state-owned news agency RIA Novosti.<sup>22</sup> “ANO” in Russian stands for “autonomous nonprofit organization”; “TV-Novosti” is Russian for “TV-News.” Originally, Russia Today was conceived as a soft-power tool to improve Russia’s image abroad and counter the “anti-Russian bias” in media coverage of Russia.<sup>23</sup> But by 2009, Russia Today recast itself as presenting “an alternative view”<sup>24</sup> to that of mainstream Western media on global events<sup>25</sup> and changed its name from “Russia Today” to “RT.”<sup>26</sup> Instead of promoting Russian news narratives, RT adopted a new slogan “Question More” and focused on undermining Western reports.<sup>27</sup> Today, the “alternative view” presented by RT is voiced by guests from the US left, European right, and others who are highly critical of the Western system of government and express the view that democratic values are flawed.<sup>28</sup>

## RT Broadcasting in the United States

In a 2012 interview, RT editor-in-chief Margarita Simonian said that RT was not a foreign agent under FARA because, in the United States, RT conducts its activities via a for-profit organization, to which RT “simply transfers funds.”<sup>29</sup> According to public records, RT contracts with two District of Columbia-registered entities—RTTV America, Inc. and RTTV Studios, LLC, which are “owned and controlled” by a Russian-born businessman Alex Yazlovsky, who is a dual US and Russian citizen.<sup>30</sup> Both entities were incorporated in 2005, the same year RT was established,<sup>31</sup> and are registered at the same addresses as the RT’s three US bureaus. They produce video content, tape shows, provide crew services, and studio facilities for RT,<sup>32</sup> as well as transmit content for distribution to RT’s audience in the United States.<sup>33</sup> RT pays for their products and services on contractual basis and maintains that the RT news channel is unrelated to these entities.<sup>34</sup>

RT operates similarly in the United Kingdom (UK), where it contracts all its services from a “supplier”—“Russia Today TV Ltd.”—a “local production company that, amongst other things, handles RT staff salaries.”<sup>35</sup>

# Should RT Register as an Agent of the Russian Government?

In order to compel someone to register under FARA, the government needs to present evidence that this person (1) acts “at order, request, or under direction or control, of a foreign principal”; and (2) engages in “political activities in the interest of its foreign principal.”<sup>36</sup> The critical threshold question under FARA is whether a foreign principal directs or controls the person in question. As set forth below, RT’s opaque corporate structure obscures who actually decides its management and editorial policy, so RT could deny that the news organization is controlled by the Russian government within the meaning of FARA. However, there is substantial circumstantial evidence of state control, including RT’s (1) founding and continued control by a Russian state-owned news agency, (2) reliance on the Russian state for 99 percent of its budget, and (3) non-transparent governance structure that—in contrast to other state-funded news organizations like the UK’s British Broadcasting Corporation (BBC) and Germany’s Deutsche Welle (DW)—allows the Kremlin to influence its policies and operations. Furthermore, there is strong evidence from RT’s past coverage that it engages in “political activities” within the meaning of FARA. This section therefore argues that RT is properly subject to FARA registration.

**“RT is essentially a propaganda mouthpiece for the [Russian] government, since the predominance of its funding comes from the government and the management is close to Putin. So it’s, as I say, . . . [a] Russian governmental mouthpiece.”<sup>ii</sup>**

Ret. Gen. R. James Clapper, *Former Director of National Intelligence*

## Whether RT Is Subject to Direction or Control of a Foreign Principal

### RT’s Autonomy from the Russian Government

RT claims that it is “independent from the state” because ANO TV-Novosti, the legal entity behind RT, is an “autonomous nonprofit organization.”<sup>37</sup> Under Russian law, autonomous nonprofits are non-member organizations created by property contributions from founders for the provision of services in education, healthcare, culture, and other fields.<sup>38</sup> Their autonomy can manifest as follows: (1) the assets contributed by the founder

become property of the nonprofit,<sup>39</sup> and (2) the founder cannot be held liable for the actions of the autonomous nonprofits, and the latter have no liability for the founder.<sup>40</sup> In all other respects, the autonomous nonprofits are subject to “control”<sup>41</sup> by the founder “in the order prescribed by their founding documents,” such as a charter or an agreement for establishing the organization.<sup>42</sup> Therefore, the nonprofit’s management decisions regarding its financial and economic activities, budget priorities, hiring and employee relations, and—most importantly in this case—editorial policy, remain subject to control of the founder, unless the founder provides otherwise. In RT’s case, the single

### Creation of the International News Agency Russia Today

In December 2013, a presidential decree “On Measures on Increasing Effectiveness of State Media” issued by Vladimir Putin merged RT into a newly created “state unitary enterprise,” called International News Agency Russia Today (MIA Rossiya Segodnya).<sup>1</sup> The new entity was created to liquidate RT’s state-owned founder RIA Novosti and transfer all its subsidiaries, along with their assets, to MIA Rossiya Segodnya. The decree provided that the main purpose of MIA Rossiya Segodnya, a new parent organization for RT, shall be to “highlight abroad the state policy and public life of the Russian Federation,” and, among other things, to “secure the national interests of the Russian Federation in the information field.”<sup>2</sup>

The same day MIA Rossiya Segodnya was created, Putin appointed Dmitry Kiselev its general director.<sup>3</sup> Mr. Kiselev is a conservative news anchor and a devoted Putin loyalist with extreme anti-Western views.<sup>4</sup>

1 Order by President of Russian Federation on Measures on Increasing Effectiveness of State Media No. 894, December 9, 2013, Section 3.

2 Charter of the MIA Rossiya Segodnya, Section 2.1.

3 Order by President of Russian Federation on General Director of the International News Agency Rossiya Segodnya No. 895, December 9, 2013, <http://kremlin.ru/acts/news/19806> (in Russian).

4 “Putin appoints homophobic presenter to head state news agency,” Associated Press, December 9, 2013, <https://www.theguardian.com/world/2013/dec/09/putin-appoints-homophobic-presenter-kiselyov-head-news-agency-homosexuals>.



*Photo credit: Reuters/Jim Bourg.*

founder was Russia's state-owned news agency RIA Novosti, which was liquidated in 2013.<sup>43</sup> A new media holding Russia Today, headed by "Putin's chief propagandist"<sup>44</sup> Dmitry Kiselev,<sup>45</sup> was formed in its place and became its legal successor.<sup>46</sup>

### **RT's Opaque Operations**

RT's charter specifies that it is governed by a supervisory board.<sup>47</sup> Yet, the composition of the board is not publicly disclosed. Initially, the board members were appointed by RT's founder, but subsequently the board members have reelected themselves annually. The board appoints and removes the editor-in-chief, who sets priorities and decides how to use the organization's property as RT's sole executive body. The charter is silent about the criteria upon which the board members should be elected, invited to join, or removed, or what qualifications and experience they should possess, likewise whether they should be independent from the state, from each other, or from a third party.

The identities of RT's supervisory board members are not publicly disclosed; therefore, it is unknown whose interests they may advance and to whom they

ultimately report. RT does not compensate board members for their service, which is not unusual for a nonprofit. But it is unusual for a nonprofit not to disclose who governs it and to allow board members to reelect themselves annually. Given the overall lack of transparency in RT's structure, the nondisclosure of individuals serving on its supervisory board appears purposeful. It is clear that a TV channel whose board members were independent journalists and public figures with diverse viewpoints would have a different editorial profile than a channel whose board members were gathered from the Putin administration, the leadership of other state-run TV channels, or otherwise are persons over whom President Putin has leverage.

### **Whether RT's Editorial Policy Is Autonomous**

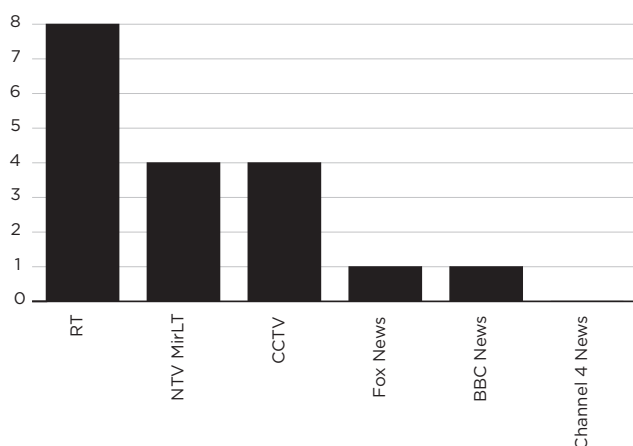
Where formal governmental ties are concealed by opaque corporate structures, actual control could be established from facts and circumstances demonstrating the consistency of RT's editorial views with official positions of the Russian government and lack of contrary positions or critical reporting. ANO TV-Novosti may be deemed autonomous

under Russian law; however, in the United States, the separate existence of corporate entities does not legally isolate them from each other, especially where facts and circumstances demonstrate the opposite. Otherwise, any FARA registrant would be able to avoid registration by setting up a nonprofit and proclaiming that it is independent, thus rendering the act meaningless.

The UK media regulator Ofcom investigated complaints against RT and found nine episodes in 2014–16 when its reporting was in breach of broadcasting standards on impartiality. No other entity was sanctioned so frequently in such a short period of time.<sup>48</sup> Each incident of bias concerned “issues of political controversies” and coincided with the Kremlin’s policy goals in Ukraine, Turkey, and Syria.<sup>49</sup> For example, the investigation concluded that in covering the 2014 constitutional crisis in Ukraine, RT emphasized that “ultra-nationalist forces” came to power in Kiev, threatened ethnic Russians living in Ukraine, and were a “potential national security threat to Russia.”<sup>50</sup> RT’s reports described the interim Ukrainian government as “self-proclaimed” and “self-appointed”—thereby emphasizing the view that the new government lacked legitimacy—and also reported that the government was giving “illegal orders” to Crimean military and police personnel. Contemporaneously, the Kremlin used the same arguments to justify the invasion and annexation of Crimea. Ofcom also concluded that RT failed to give the interim government an opportunity to adequately reflect its viewpoint.<sup>51</sup> Critics of Russia’s position on Ukraine were conspicuously absent from RT.

Some may argue that such coincidence of editorial views expressed by RT with Russian government’s policies is not sufficient to establish that the Kremlin controls the channel. Indeed, in a 1966 amendment Congress emphasized that FARA should not require

**Figure 1. TV news broadcasts failing to show due impartiality**



Source: Ofcom, BBC Trust 2014–2016

### Legal Test for FARA Registration

To compel someone to register as an agent of a foreign principal, the government needs to present evidence that this person (1) acts “at order, request, or under direction or control, of a foreign principal”; and (2) engages in “political activities” in the interest of its foreign principal.”

the registration of persons who act independently in exercising their rights of free speech, petition, or assembly and “may incidentally be of benefit to foreign interests.”<sup>52</sup> But a number of reports based on independent accounts of former RT staffers conform that RT has “an unusually strict editorial line” compared to other broadcast media.<sup>53</sup> Liz Wahl, the RT anchor who resigned on air in 2014 in protest of RT’s coverage of Ukraine, described how detailed directives on editorial coverage and selection of commentators came from RT’s Russian managers.<sup>54</sup> Most reporters “were kept in the dark about the origins of the directives” they received.<sup>55</sup> Similarly, a *Moscow Times* investigation uncovered that RT has “untouchable” stories that come “from above”; staff writers and editors are “usually not privy to the process of how these stories were ordered and created.”<sup>56</sup> These reports may still not be sufficient to prove the Kremlin’s “direction or control,” but they warrant further DOJ investigation.

### Government Funding and Subsidies Provided to RT

RT is financed by the Russian government through annual budgetary appropriations approved by the legislature and signed by President Putin. According to government budget appropriations, RT was allocated approximately \$323 million in 2017,<sup>57</sup> \$285 million in 2016, approximately \$236 million in 2015, and approximately \$445 million in 2014 (before the imposition of sanctions and collapse of the ruble).<sup>58</sup> The *Daily Beast* obtained RT’s leaked financial record, showing that in 2005–13, RT received about \$2 billion from the Russian government.<sup>59</sup>

Indeed, RT’s mandatory financial reports to the Russian Ministry of Justice demonstrate that in 2013–16 government support accounted for 99 percent of its operational expenditures.<sup>60</sup> Such heavy dependence on government funding proves that the government can exercise leverage and pressure on RT by cutting the budget.

State funding alone usually does not prove a government’s control over the institutions that receive funding. The 1966 amendment to FARA clarifies that “mere receipt of a bona fide subsidy not subjecting the recipient to the direction or control of the donor does not require the recipient . . . to register as agent of the donor.”<sup>61</sup> But the reality in



An armed pro-Russian separatist stands on part of the wreckage of the Malaysia Airlines Boeing 777 plane after it crashed in the Donetsk region, July 17, 2014. *Photo credit: Maxim Zmeyev/Reuters.*

Russia is different. In 2013, President Putin said in an interview to RT that, because the network is funded by the government, “it cannot help but reflect the Russian government’s official position on the events in our country and in the rest of the world one way or another.”<sup>62</sup> Even if Putin’s observation does not establish state control, it does, at minimum, make his expectations of the editorial policy very clear.

### **Whether RT Is Akin to the UK’s BBC or Germany’s Deutsche Welle**

RT claims that it is a “publicly funded” media outlet, similar to the UK’s BBC or Germany’s Deutsche Welle (DW).<sup>63</sup> However, even though BBC and DW receive public funding, their governance structure protects them from government interference. Their management system is transparent and designed to ensure accuracy of reporting, editorial independence, accountability, and transparency of decision making, as well as pluralism of opinions broadcast on air. RT discloses no such standards.

The BBC’s TV, radio, and online content is funded by annual license fee contributions made by all British people who own television sets (in 2017, the fee is £147).<sup>64</sup> The license fee is designed to make the BBC

independent of shareholder interests and the cycle of annual government spending decisions.<sup>65</sup> The BBC Trust consists of twelve publicly announced trustees and is the governing body of BBC; it serves as “the guardian of licence fee revenue and of the public interest in the BBC”<sup>66</sup> and prepares annual reports to the license fee payers and the UK Parliament.<sup>67</sup> The Executive Board is also public, but separate from the Trust and is responsible for the operations and “the direction of BBC editorial and creative output in line with the framework set by the Trust.”<sup>68</sup>

Germany’s publicly funded foreign broadcasting corporation Deutsche Welle is a self-governing institution and is “not subject to state supervision,” according to its governing statute.<sup>69</sup> DW has a dual board structure similar to the BBC’s, with a seven-member Administrative Board and a seven-member Broadcasting Board.<sup>70</sup> Unlike the BBC, Germany’s DW is financed with annual budgetary allocations based on a four-year task plan prepared by DW.<sup>71</sup>

Unlike BBC and DW, the corporate structure of RT is designed to obscure who controls its management and sets editorial policy, suggesting that the Kremlin likely exercises control. RT has not publicly

put forth the composition of its board or any other public and/or independent body that participates in managerial or editorial decisions.<sup>72</sup> RT claims to be editorially independent from the government, though it does not disclose its editorial standards, nor does it describe the measures it takes to ensure a diversity of opinions. It reports annually to the Ministry of Press on its expenditures,<sup>73</sup> but makes public neither its annual reports, nor its financial statements and audit reports.

**“Russia continually sought to diminish and undermine our trust in the American media, like blurring our faith in what is true and what is not. Russian propaganda outlets like RT and Sputnik successfully produced and peddled disinformation to American audiences in pursuit of Moscow’s preferred outcome. This Russian propaganda on steroids was designed to poison the national conversation in America.”<sup>iii</sup>**

Sen. Mark Warner (D-VA)

It is not uncommon for foreign media organizations to be registered as agents of foreign principals. During the Cold War, the largest Soviet news agency, TASS, had its New York bureau registered as a foreign agent under FARA; other Soviet media also had their US correspondents registered as agents.<sup>74</sup> Most recently, in 2003–2005, RT’s founder RIA Novosti was registered as a foreign principal represented by several subsequently serving

agents. Today, several foreign media outlets from China, Japan, and South Korea are registered with the FARA Unit at the DOJ.<sup>75</sup> Therefore, there is an established precedent for media organizations to be registered as agents.

## Whether RT Engages in “Political Activities”

FARA requires proving that the agent of a foreign principal engages in “political activities for or in interest of such foreign principal.”<sup>76</sup> RT’s engagement in political activities is clearly demonstrated by its coverage intended to influence the US government and public during the 2016 elections. The *US Intelligence Report* found that Russia used RT as part of its influence efforts to denigrate Hillary Clinton, because its coverage of Secretary Clinton throughout the US presidential campaign was consistently negative, focused on her leaked e-mails, and accused her of corruption, poor health, and ties to Islamic extremists.<sup>77</sup> Some Russian officials echoed the RT campaign and claimed that Secretary Clinton’s election could lead to a war between the United States and Russia. At the same time, RT made increasingly favorable comments about now-President Donald Trump.<sup>78</sup>

It remains to be investigated whether Russia’s attempt to influence the US elections were effective and to what extent. FARA, however, does not require proof that an agent’s engagement in political activities brought about any change in US domestic or foreign policies.

### RT’s Coverage of the MH17 Flight Downing in Eastern Ukraine

The downing of Malaysia Airlines flight MH17 in 2014, in which the Russian government was implicated, caused Russia to unfold a multifaceted campaign targeting the credibility of the international investigation and the validity of its findings. RT aired a documentary showing that a Ukrainian SU-25—a low-altitude ground attack aircraft—could have, in fact, downed MH17. RT repeatedly invited Russian military experts to comment that the plane’s debris had damage consistent with damage caused by air-to-air missiles.<sup>1</sup> It also frequently broadcasted an alternative version by Almaz-Antey, a Russian state-owned missile manufacturer, that MH17 had been brought down by a Buk missile fired from Ukrainian government-held territory.<sup>2</sup>

On September 28, 2016, the Dutch-led Joint Investigation Team (JIT) announced that the MH17 flight was brought down by a missile from a missile launcher brought from Russia. RT presented the findings of the JIT report as “biased” and “politically motivated”—consistent with the Kremlin’s view on the MH17 inquiry.<sup>3</sup> The Kremlin used the same arguments to refute that Russia could have any responsibility for the crash.

1 See, e.g., “Could SU-25 Fighter Jet Down a Boeing? Former Pilots Speak Out on MH17 Claims,” RT, March 11, 2015, <http://www.rt.com/news/239881-mh17-ukraine-fighter-jet/>.

2 Nimmo, *supra* note 99.

3 RT’s headlines following the release of the JIT’s preliminary findings include “Buk missile producer: JIT probe lacks tech proof, experiments showed MH17 downed from Kiev-held area,” “MH17 int’l probe’s only sources are Ukrainian intel & internet - Russian MoD,” “Solid facts? 5 flaws that raise doubt over int’l MH17 criminal probe,” “Plane politics: MH17 ‘truth’ enforcers and the New McCarthyism.” See <https://www.rt.com/search?q=almaz+antey+mh17>.



## Could RT Rely on a Bona Fide Media Exclusion?

The vast majority of foreign media organizations, even state-owned, operate in the United States legally without having to register as agents. The act specifically excludes “any news or press service” engaged in any “bona fide news or journalistic activities,” so long as it is at least 80 percent beneficially owned by citizens of the United States and “not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal.”<sup>79</sup>

RT most likely would not qualify to be exempt from registration as a bona fide media organization. First, the entity that operates RT, ANO TV-Novosti, is established under the laws of Russia and is subject to Russian jurisdiction. Second, it is formed by non-US entities and has as its officers and directors non-US citizens. Third, as described above, it is 100 percent owned, controlled, and supervised by a state-owned entity, MIA Rossiya Segodnya (or RIA Novosti), financed directly through budgetary allocations and

99 percent subsidized by the Russian government. Moreover, to claim the exemption, RT would need to disclose its beneficial ownership structure, identify its supervisory board members or other persons with control, provide detailed financial reports, and produce evidence demonstrating its editorial independence—for example, balanced coverage and diversity of opinion, including positions adverse to the government’s viewpoint. Compared to this disclosure, registration may seem a lesser burden, especially since disclosure does not automatically grant the exemption.

FARA registration means that RT would need to conspicuously label its information as “distributed by an agent on behalf of the foreign principal” and include these statements on its website, social media accounts, and in all broadcasts.<sup>80</sup> Such disclosure would be adequate and warranted to alert the US public about the origin of RT’s information.

# Freedom of Speech and Possibility of Retaliation

## Does FARA Registration Violate Freedom of Speech?

If the United States were to enforce FARA against RT, Russia would likely respond with high-profile allegations of double standards in the US commitment to freedom of speech.<sup>81</sup> RT might also bring a lawsuit in the US courts challenging the registration requirement. In public and in court, RT would claim that the US government fears RT's popularity and influence as an alternative to the mainstream media, and therefore seeks to silence the news organization.<sup>82</sup> However, these are not good reasons to avoid enforcement of registration and compelling disclosure.

RT's First Amendment arguments are likely to be dismissed. FARA's constitutionality is "well-settled,"<sup>83</sup> since multiple constitutional challenges during its almost eighty-year history have been rebuffed at every level of the federal court system, including at the Supreme Court.<sup>84</sup> Even though the Supreme Court has considerably expanded First Amendment protections since the previous constitutional challenge in 1987,<sup>85</sup> FARA should withstand contemporary scrutiny.

RT would likely argue that FARA discriminates against foreign media organizations engaged in political speech on the basis of their identity in "attempts to disfavor certain subjects or viewpoints."<sup>86</sup> Specifically, under *Citizens United* "the Government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity."<sup>87</sup> Nevertheless, RT's claim is not likely to succeed.

As a general matter, the First Amendment means that government has no power to restrict expression because of its message, ideas, subject matter, or content.<sup>88</sup> However, this principle is not absolute.<sup>89</sup> Laws burdening political speech are subject to strict scrutiny, which requires the government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."<sup>90</sup> Under this standard, a statute is consistent with the Constitution only if it is necessary to achieve a compelling government purpose and does not burden other constitutionally protected speech.<sup>91</sup>

If the government presents sufficient evidence that RT meets FARA standards for "an agent of a foreign principal," it would demonstrate a compelling government interest to "protect the national

defense, internal security, and foreign relations of the United States," as FARA is expressly designed to do.<sup>92</sup> Even if courts find that compelled registration could chill speech, it is clear that FARA applies only to agents of foreign principals, but not to persons who independently express similar views.<sup>93</sup> Thus, the First Amendment will be "served through the notification of the public of the effect of this evidence."<sup>94</sup>

As a disclosure statute, FARA does not restrict speech or create any impediment for an agent to continue advancing the interests of its foreign principal, engage with its audience, distribute information, or participate in public debate.<sup>95</sup> This is different from *Citizens United* holding that the prohibition on corporate independent expenditures for advocating for or against an election candidate is a ban on speech.<sup>96</sup> FARA applies "equally to agents of friendly, neutral, and unfriendly governments,"<sup>97</sup> regardless of the content of their message or views they express. If statutory requirements for "direction or control" and intent to influence "domestic or foreign policies of the United States" are satisfied, the registration requirement is triggered automatically, regardless which country's interests an agent is advancing. Therefore, RT's claims of viewpoint discrimination and attempts to chill free speech would likely be dismissed.

## Would Russia Retaliate if RT Is Compelled to Register as Foreign Agent?

Any legal action against RT would probably trigger threats of retaliation against US government-funded Radio Free Europe / Radio Liberty (RFE/RL) and Voice of America (VOA).<sup>98</sup> With that in mind, the US government should consider the reality of how the Russian Federation already treats RFE/RL and VOA—blocking both organizations from television and radio. Matt Armstrong, a member of the Broadcasting Board of Governors in 2013-2017, the US government agency that oversees RFE/RL and VOA, has stated that:

[Russian] stations that did carry VOA and RFE/RL programming were threatened by the government. Worse, in Russia and Russian-controlled areas, such as Crimea, VOA and RFE/RL's journalists face physical intimidation at home and at work, and they are often





Photo credit: Jürg Vollmer/Flickr.

prevented from covering events, including in Moscow.<sup>99</sup>

In contrast, RT can operate in the United States without restriction, including enjoying unfettered access to cable networks, entering into agreements with any provider, freely establishing offices

anywhere in the country, and hiring anyone who wants to work for RT.<sup>100</sup> Compelling RT to register under FARA will not affect its ability to continue working in the United States, conduct broadcasting from its Washington, DC studio, or in any way restrict its right to operate as it did prior to registration.

## The RT Case Demonstrates Need for FARA Modernization and Reform

While FARA provides tools to expose RT as an agent of a foreign principal, the fact that RT has not yet registered may be indicative of gaps in the administration and enforcement of the act. Such gaps were highlighted by the DOJ's Office of the Inspector General in the Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act (OIG Report).<sup>101</sup> The OIG Report emphasized a number of deficiencies in the DOJ's administration of the act, including the lack of a comprehensive FARA enforcement strategy, poor control and oversight of FARA registration, and the infrequency of enforcement actions. The RT case demonstrates a compelling example of these shortcomings and highlights the need for DOJ and, where needed, Congress to modernize how the DOJ administers and enforces FARA.<sup>102</sup>

According to the OIG Report, the DOJ's FARA Unit stated that it needs civil investigative demand authority (CID) in order to identify foreign agents who knowingly or unknowingly fail to register. Such authority would allow the FARA Unit to "compel the production of records, or response to written interrogatories or oral testimony concerning such records."<sup>103</sup> FARA administrators currently have no such power.<sup>104</sup>

Concerned about the US Intelligence Report's findings of Russia's influence in the 2016 elections,<sup>105</sup> Senator Jeanne Shaheen of New Hampshire as well as Representative David Cicilline of Rhode Island and Representative Matthew Gaetz of Florida introduced respective versions of the Foreign Agents Registration Modernization and Enforcement Act to grant CID authority the DOJ's FARA Unit.<sup>106</sup> Under the proposed reform, CID power would be similar to *subpoena duces tecum* used in grand jury investigations and could be used to compel the production of documents "whenever the Attorney General has reason to believe" that registration under the act is required.<sup>107</sup> Such power would enable the DOJ to investigate suspected violators more aggressively; discover documentary evidence of foreign direction or control; and uncover secret arrangements between foreign principals and think tanks, nongovernmental organizations, grass roots organizations, organizations operating on university campuses, and foreign state-funded media outlets operating in the United States.<sup>108</sup> If passed, the CID authority would allow the DOJ's

FARA Unit to request documents from RT to expose its organizational structure, identify its supervisory board members, and reveal financial expenditures and contractual arrangements. The FARA Unit could then decide whether to initiate a civil or criminal proceeding.

To bring the law in line with modern technology and advocacy practices, FARA reform should be more expansive. The FARA Unit requested that CID authority should include not only power to compel the production of records, but also obtain responses to written interrogatories or oral testimony.<sup>109</sup> Given how inherently challenging it could be to prove "direction or control" by a foreign principal, the ability of the DOJ to compel witness testimony in FARA enforcement actions is very important. With the expanded CID authority, the DOJ could compel RT and its US counterparts to disclose their contractual arrangements. But, to uncover the extent of a foreign principal's direction or control, the CID authority should include the power to compel witness testimony. The authority to subpoena individuals to appear and testify under oath would allow the DOJ to investigate both compliance with the disclosure requirements and agents' relationships with their principals.

FARA provisions that exempt persons from registering under the act pose another significant challenge to the DOJ's enforcement.<sup>110</sup> Some industry participants observed that these exemptions are "poorly defined" and the FARA Unit has issued few regulations or advisory guidance interpreting them.<sup>111</sup> In particular, the Lobbying Disclosure Act of 1995 (LDA) created a carve-out for foreign commercial interests (which could be hard to distinguish from government interests) and allowed them to register as lobbyists, rather than as foreign agents under FARA, and thus minimize disclosure obligations.<sup>112</sup>

To ensure that the current exemption system does not inhibit FARA enforcement, Congress could amend FARA to establish an affirmative duty on possible FARA agents to inform the DOJ if they intend to rely on a particular exemption<sup>113</sup> and present sufficient evidence that the exemption applies. Lobbyists representing foreign interests who rely on the LDA exemption should make additional disclosures that they indeed represent foreign commercial rather than government or political interests. The notification would inform the DOJ of the agent's existence and allow the DOJ to



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compel additional disclosure via CID, if warranted by the evidence. So, for example, if RT intended to rely on a bona fide media exclusion, it would be required to notify the DOJ of its intent to do so and make disclosures confirming that it is indeed a bona fide media organization.

FARA could also be reformed by enabling the DOJ to impose civil penalties for failing to register—or for late, incomplete, or inaccurate filings—against agents who knew or should have known that they needed to register. Most FARA violations are inadvertent because FARA applies broadly and does not have *de minimis* thresholds to trigger violations. For that reason, the DOJ typically provides the individual or entity a notice and opportunity to rectify the failure to register. But some agents acting on behalf of foreign principals intentionally operate in a way to avoid FARA triggers. Therefore, civil fines should be determined based on the nature of violations, take into account the agent's

intent, and be proportionate to the expenditures and compensation. The penalties should apply retroactively to maximize incentives for compliance.

In addition to granting the FARA Unit full CID authority, imposing affirmative notification requirement for use of exemptions, and allowing for civil fines for noncompliance, Congress should increase funding to modernize FARA administration and enforcement, improve the record-keeping system, and facilitate users' access to disclosure materials. The internet database that the DOJ uses today to house current and historical data on FARA registrants needs to be more comprehensive and include all informational materials submitted by all registrants at all times. Making this data more easily available would enable civil society groups and other interested stakeholders to identify the information distributed by foreign agents and alert the public of their activities.



## Conclusion

The Foreign Agents Registration Act of 1938 was adopted in response to what Congress regarded as an information war against the American people. Despite the desire to protect the public from conversion, confusion, and deceit, Congress did not restrain the adversary's attempts to distribute information. Instead, it required the speakers to identify themselves and disclose the nature of their activities, in order to enable the public to better judge the truthfulness of their materials.

At a minimum, RT's activities warrant a thorough investigation by the Department of Justice. Strong evidence supports a conclusion that Russia's RT is owned, controlled, and financed by the Russian state. RT does not present evidence to support that it is a bona fide media organization, which should be excluded from registration. Instead, RT advances

Russia's interests abroad and uses communication channels to influence US domestic and foreign policy. If RT fails to respond to a DOJ inquiry or to present ample evidence that it should be exempt, an enforcement action should follow.

The registration "as agent of foreign principal" would not infringe on RT's freedom of speech, because RT would be able to continue operating in the US without restriction. Rather, the disclosure would serve the First Amendment by supplementing information about the agent and ensuring that the public is not misled that it represents a disinterested source. Recently introduced reforms and other reform initiatives can modernize the statute and make it more effective in bringing "the spotlight of pitiless publicity"<sup>14</sup> to the attempts of foreign powers to undermine and discredit democracy.



# Recommendations for Amending FARA and Improving Enforcement

## For Congress to Amend FARA

- Grant the DOJ National Security Division civil investigative demand authority to compel production of records from potential and current registrants and obtain responses to written interrogatories and oral testimony.
- Create an affirmative duty for persons whose activities trigger registration requirement to inform the DOJ that they intend to rely on a particular exemption and present sufficient evidence that the exemption applies.
- Require lobbyists representing foreign interests and registered under the Lobbying Disclosure Act to make additional disclosures confirming that they represent foreign commercial rather than government or political interests, particularly with respect to interests of foreign government-owned, financed, or subsidized entities.
- Impose civil penalties for failure to register—or for late, incomplete, or inaccurate filings—against agents who knew or should have known that they needed to register.
- Require electronic filing of informational materials and disclosure of all materials distributed by foreign agents, including written communications with US officials, candidates for office or their staff, and make all informational materials publicly available.
- Update the definition of “information materials” and labeling requirements to account for modern technology, internet, and social media as means of conveying informational materials.

## For the Department of Justice

- Perform an assessment of current statutory exemptions from registration and reporting and consider issuing interpretative guidelines or making FARA advisory opinions publicly available as an information resource.
- Increase oversight and enforcement of FARA to ensure better compliance.
- Improve the timeliness and completeness of registrant submissions, send delinquency notices, and develop policies to follow up on them.
- Modernize record-keeping system and facilitate users’ access to disclosure materials, including historical data and all informational materials submitted by all registrants at all time.
- Implement recommendations in the 2016 Audit Report on the National Security Division’s Enforcement and Administration of FARA by the Office of Inspector General.



## Endnotes

- 1 Parts of this paper were previously published by the author in "US Should Require Russia's RT to Register as Foreign Agent," *UkraineAlert*, January 13, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/the-us-should-require-russia-s-rt-to-register-as-foreign-agent>.
- 2 National Intelligence Council, *Intelligent Community Assessment: Assessing Russian Activities and Intentions in Recent US Elections*, ICA 17-01D at 2, January 6, 2017, [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf) (hereafter *US Intelligence Report*).
- 3 *US Intelligence Report*, 3.
- 4 *US Intelligence Report*, 1.
- 5 Elena Postnikova, "US Should Require Russia's RT to Register as Foreign Agent."
- 6 Foreign Agents Registration Modernization and Enforcement Act, S.625, 115th Cong., <https://www.congress.gov/bill/115th-congress/senate-bill/625/text?format=txt>.
- 7 Definitions, 22 U.S.C. § 611. The act identifies "an agent of a foreign principal" as "any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal." Such person could be a "public relations counsel, publicity agent, information-service employee or political consultant" engaging in "political activities" in the interests of a foreign principal or representing the interests of a foreign principal before any agency or official of the US government. The act defines "foreign principal" as "a government of a foreign country," "a person outside of the United States," or "a partnership, association, corporation" organized under the laws of a foreign country.
- 8 Registration Statement, 22 U.S.C. § 612.
- 9 Definitions, 22 U.S.C. § 611(d). For a media organization to be deemed not an agent of a foreign principal, it must be (1) organized under the laws of the United States or be subject to US jurisdiction, (2) be at least 80 percent beneficially owned by, and have as its officers and directors, US citizens, and (3) not be "owned, directed, supervised, controlled, subsidized, or financed," or have any of "its policies determined" by a foreign principal.
- 10 Filing and Labeling of Political Propaganda, 22 U.S.C. § 614(b). The FARA Unit recommends including the following statement: "*This material is distributed by (name of registrant) on behalf of (name of foreign principal). Additional information is available at the Department of Justice, Washington, DC.*" FARA FAQs, *What Are the Filing, Labeling Requirements for Information Materials?*, <https://www.fara.gov/fara-faq.html>. Such statement must be included on the website of the organization, in its social media sites, and all other media used as instruments to disseminate informational materials. Informational materials that are televised or broadcast must be introduced by a statement which is "reasonably adopted to convey to the viewers or listeners thereof such information as is required" by the act. 28 C.F.R. § 5.402(d).
- 11 Enforcement and Penalties, 22 U.S.C. § 618.
- 12 Office of Inspector Gen., *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act*, US Dep't of Justice, September 2016, <https://oig.justice.gov/reports/2016/a1624.pdf> (hereafter *OIG Report*).
- 13 National Security Division, US Department of Justice, FARA Quick Search, accessed June 15, 2017, <https://www.fara.gov/quick-search.html>; Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended for the six months ending December 31, 2016, available at [https://www.fara.gov/reports/FARA\\_DEC\\_2016.pdf](https://www.fara.gov/reports/FARA_DEC_2016.pdf). The Podesta Group consults the governments of Azerbaijan, India, Iraq, Saudi Arabia, among others, on relevant US policy issues and maintains relations with member of Congress, executive branch officials, press, and NGOs. For example, the law firm Akin, Gump, Strauss, Hauer & Feld, LLP is a registered agent for Canada, Japan, and the United Arab Emirates, among others, on trade and other issues impacting US relations with these countries. PR firms like APCO Worldwide register to represent foreign principals on media relations and strategic communications to promote positive relations with the United States.
- 14 The purpose of the committee was to investigate "(1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." The hearings were held from the third session of the 75th Congress through the second session of the 78th Congress. <http://onlinebooks.library.upenn.edu/webbin/metabook?id=diescommittee>. The House of Representatives report accompanying FARA stated: "Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups, who are supplied by such foreign agencies with funds and other materials to foster un-American activities, and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law, as well as the democratic basis of our own American institutions of government." H.R. Rep. No. 75-1381 (1937).
- 15 *Meese v. Keene*, 481 U.S. 465 (1987) (citing 56 Stat. 248-49). See also *Attorney Gen. of U.S. v. Irish People, Inc.*, 684 F.2d 928 (D.C. Cir. 1982) ("The purpose of the Act is to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature.").
- 16 For example, even free speech absolutist Justice Hugo Black argued that FARA did not violate the First Amendment. In *Viereck v. United States*, the Court dismissed FARA charges against the Nazi propagandist George Sylvester Viereck on grounds of statutory interpretation and prosecutorial misconduct. *Viereck v. United States*, 318 U.S. 236, 237-49 (1943). However, Justice Black dissented. After concluding the majority had misinterpreted the statute, Justice Black reached the question of FARA's constitutionality. He wrote

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- that FARA was based on the “fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false.” He further emphasized that the act “implements rather than detracts from the prized freedoms guaranteed by the First Amendment” when it requires “to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. *Id.* at 251 (Black, J., dissenting).
- 17 Special Committee on Un-American Activities, Investigation of Un-American Propaganda Activities in the United States, H. Res. 282, 78th Cong. 1st sess., 1944, available at <https://archive.org/details/investigationofu194315unit>.
  - 18 Investigation of Un-American Propaganda Activities in the United States, H. Res. 282, 78th Cong. 1st Sess., 1944.
  - 19 In March 1941, the Department of Justice indicted a German propaganda agent Manfred Zapp for not registering as a foreign agent and shut down the Transocean News Service agency. *Ibid.* at 19-21. Next, the DOJ targeted George Sylvester Viereck, a German-American poet, commentator and publisher who was convicted for failure to fully disclose the nature of his business concerning his efforts to distribute Nazi propaganda through press, radio, and book publishing. *Viereck v. United States*, 318 U.S. 236 (1943).
  - 20 “Fact vs Fiction,” RT International, accessed June 15, 2017, <https://www.rt.com/facts-vs-fiction>. RT concedes that it is funded by the Russian government and mentions on its website the amount funding it receives from the state; “About RT,” RT International, accessed June 15, 2017, <https://www.rt.com/about-us/>. However, the actual size of RT’s audience and its popularity could not be independently verified, and the network is often accused of lying about its audience and influence. Katie Zavadski, “Putin’s Propaganda TV Lies About Its Popularity,” *Daily Beast*, September 17, 2015, <http://www.thedailybeast.com/articles/2015/09/17/putin-s-propaganda-tv-lies-about-ratings.html>.
  - 21 *Ibid.*
  - 22 Extract from the United States Register or Legal Entities for ANO TV-Novosti, Mar. 20, 2017 [in Russian]. ANO TV-Novosti is a legal entity that operates RT, therefore in this paper “RT” and “ANO TV-Novosti” are used interchangeably unless otherwise distinguished.
  - 23 Julia Ioffe, “What Is Russia Today? The Kremlin’s propaganda outlet has an identity crisis,” *Columbia Journalism Review*, Sept-Oct 2010, [http://www.cjr.org/feature/what\\_is\\_russia\\_today.php](http://www.cjr.org/feature/what_is_russia_today.php).
  - 24 RT claims that its mission is “to provide an alternative perspective on major global events,” and acquaints an international audience with the Russian viewpoint. It intends “to provide people with more answers to more questions,” to examine world events from different point or points of view and to encourage people to keep questioning more. “About RT,” <https://www.rt.com/about-us/>.
  - 25 Criticizing the lack of diversity of views in the West, Ms. Simonyan said that, “News coverage is merely indistinguishable among commercial broadcasters such as CNN, MSNBC, FOX, Bloomberg, SkyNews from each other and from the coverage by state funded media, as well as the majority of US and European newspapers, magazines, and online publications.” “RT’s 2016 budget announced, down from 2015, MSM too stumped to spin?,” RT, <https://www.rt.com/op-edge/318181-rt-budget-down-msm/>.
  - 26 Max Seddon, “Lunch with the FT: Kremlin media star Margarita Simonyan, The Kremlin media star on the world according to Russia,” *Financial Times*, July 29, 2016, <https://www.ft.com/content/7987e5c2-54b0-11e6-9664-e0bdc13c3bef> (“The initial idea was to make a channel only about Russia,” Simonyan explains of the network’s inception in 2005. “It became clear very quickly that this idea was doomed to failure.”).
  - 27 Matthew Bodner, “Welcome to The Machine: Inside the Secretive World of RT,” *Moscow Times*, June 1, 2007, <https://themoscowtimes.com/articles/welcome-to-the-machine-inside-the-secretive-world-of-rt-58132>.
  - 28 Liz Wahl, “Discrediting the West – An insider’s view on Russia’s RT,” StopFake.Org, March 8, 2016, <http://www.stopfake.org/en/tag/liz-wahl/> (“[M]y experience as an RT reporter and anchor was that RT’s main goal is not to seek truth and report it. Rather, the aim is to create confusion and sow distrust in Western governments and institutions by reporting anything which seems to discredit the West, and ignoring anything which is to its credit.”).
  - 29 In 2013, Mr. Yazlovsky pleaded guilty to tax fraud he committed with the use of the RTTV entities and subsequently served one year prison term, followed by supervised release and a fine. In his guilty plea, Yazlovsky stipulated that he “owned and controlled two domestic entities: RTTV America, Inc. and RTTV Studios, LLC.” Guilty Plea – Statement of Facts, *USA v. Iazlovsky*, Docket No. 2:13-cr-00344 (C.D. Cal. May 16, 2013) (hereafter *Yazlovsky’s Guilty Plea*).
  - 30 *Ibid.*
  - 31 Orbis company reports for RTTV America, Inc. and RTTV America, LLC., accessed on November 14, 2016.
  - 32 *Ibid.* Both entities engage in “motion picture, video and television programme [sic] production activities.”
  - 33 Commenting on Mr. Yazlovsky’s arrest and guilty plea (*Yazlovsky’s Guilty Plea*, *supra* note 29), RT America business manager Roman Tokman told *The Washington Free Beacon*, “RTTV America, Inc. is a video production company providing services such as video content, transmission, crew services and studio facilities. It is a District of Columbia corporation. These services are sold to a company in Russia that runs RT including the RT America channel.” Alana Goodman, “Russia Today President Facing Prison for Tax Fraud: Alexei Iazlovsky pleaded guilty to tax fraud last July,” *Washington Free Beacon*, April 1, 2014, <http://freebeacon.com/nationality-security/russia-today-president-facing-prison-for-tax-fraud/>.
  - 34 *Ibid.* (“RT America business manager Roman Tokman told the *Washington Free Beacon* that the RT America news channel is unrelated to RTTV America, Inc.”).
  - 35 “RT: NatWest Denies Shutting Accounts of Russian TV Channel,” BBC, Oct. 18, 2016, <http://www.bbc.com/news/world-europe-37697474>.
  - 36 Definitions, 22 U.S.C. § 611(c)(1). The Department of Justice identifies the difficulties of proving “direction and control” by foreign principal as one of the major challenges in the act’s enforcement. However, the DC District Court in *Irish People, Inc.* noted that it is not necessary to show that principal both directs and controls agent, since “the requirements of statute are stated in disjunctive.” *Attorney Gen. of U.S. v. Irish People, Inc.*, 595 F. Supp. 114, 117 (D.D.C. 1984), *aff’d in part, rev’d in part*, 796 F.2d 520 (D.C. Cir. 1986).
  - 37 “Margarita Simonyan about Julian Assange, Pussy Riot and the State Department. Full version,” interview by Tikhon Dzyadko, TV Rain, July 11, 2012, [https://tvrain.ru/teleshov/harddaysnight/margarita\\_simonjan\\_o\\_dzhuliane\\_assanzhe\\_pussy\\_riot\\_i\\_gosdepe\\_polnaja\\_versija-327931/](https://tvrain.ru/teleshov/harddaysnight/margarita_simonjan_o_dzhuliane_assanzhe_pussy_riot_i_gosdepe_polnaja_versija-327931/).

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- 38 Russian Federal Law No. 7-FZ on Non-Commercial Organizations, January 12, 1996, Section 10. (in Russian.) For example, the Winter Olympic Games held in Sochi in 2014 was an autonomous nonprofit organization with a publicly disclosed supervisory board. See “Organizing Committee Sochi 2014,” Wikipedia, accessed April 17, 2017, <https://goo.gl/aGxiA2>.
- 39 Russian Federal Law No. 7-FZ on Non-Commercial Organizations, January 12, 1996, Section 10.
- 40 *Ibid.*
- 41 The Russian word “надзор” can be translated as “control” or “oversight.”
- 42 *Ibid.* The Russian Constitutional Court, analogous with our Supreme Court, held that control of an autonomous nonprofit can be exercised “directly by the founder, or by a specially created control body (advisory or supervisory board, audit commission), with the use of different types of reporting, including public reporting.”
- 43 Order by President of Russian Federation on Measures on Increasing Effectiveness of State Media, No. 894, December 9, 2013, Section 3 (in Russian). The decree mandated that RIA Novosti be liquidated and all its subsidiaries, along with their assets, be transferred to Russia Today. The decree provided that the main purpose of Russia Today, a new parent organization for RT, shall be to “highlight abroad the state policy and public life of the Russian Federation,” and, among other things, to “secure the national interests of the Russian Federation in the information field.” See Charter of the Russia Today, Section 2.1 (in Russian), available for download at <http://www.fapmc.ru/rospechat/rospechat/lwr/unitar/item130.html>.
- 44 *US Intelligence Report*, 4.
- 45 Mr. Kiselev is a conservative news anchor and devoted Putin loyalist with extreme anti-Western views that echo the Kremlin’s foreign policy goals, which he helps explain domestically. For example, in response to the US threat to impose sanctions when Russia invaded Crimea, Mr. Kiselev issued a stark warning in his weekly show that “Russia is the only country in the world that is realistically capable of turning the United States into radioactive ash.” Lidia Kelly, “Russia can turn US to radioactive ash - Kremlin-backed journalist,” Reuters, March 16, 2014, <http://www.reuters.com/article/ukraine-crisis-russia-kiselyov-idUSL6NOMDOP920140316>.
- 46 *Supra* note 43.
- 47 ANO TV-Novosti Charter, Section 5.1, dated March 30, 2005, last amended on February 5, 2014 (in Russian).
- 48 Matthew Bodner, “Welcome to The Machine: Inside the Secretive World of RT,” *Moscow Times*, June 1, 2007, <https://themoscowtimes.com/articles/welcome-to-the-machine-inside-the-secretive-world-of-rt-58132> (quoting Ben Nimmo of the Atlantic Council’s Digital Forensic Lab that, “[RT] claims to be impartial, but it’s had more programs found guilty of partiality [by the U.K.’s Ofcom media regulator] than any other broadcaster in the U.K. since 2014.”).
- 49 Ofcom Broadcast Bulletin, Issue 288, September 25, 2015, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0017/50507/issue\\_288.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0017/50507/issue_288.pdf) (finding RT’s series of reports accusing BBC that it staged chemical attacks in Syria materially misleading); Ofcom Broadcast Bulletin, Issue 308, July 4, 2016, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0019/46621/issue\\_308.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46621/issue_308.pdf) (concluding that RT violated “due impartiality rule” reporting on the allegation that the Turkish Government was “attacking” and committing “genocide” against the Kurdish community within southeastern Turkey and providing material support to the Islamic State of Iraq and al-Sham.).
- 50 Ofcom Broadcast Bulletin, Issue 288, September 21, 2015, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0017/50507/issue\\_288.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0017/50507/issue_288.pdf) (finding violations in impartiality standards in RT’s coverage of events unfolding in eastern Ukraine and in particular, “an alleged policy of genocide being carried out, alongside other atrocities, by the Ukrainian Government and its military forces against the population of eastern Ukraine.”).
- 51 Ofcom Broadcast Bulletin, Issue 266, November 11, 2014, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0025/47635/obb266.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0025/47635/obb266.pdf). Ofcom concluded that, “It was clear to us that TV Novosti did not adequately reflect one key significant view – that of the interim Ukrainian Government in response to the various explicit and implicit criticisms made of, and in opposition to, it elsewhere in the news bulletin. . . . [G]iven the controversial nature of [the events] . . . , in our view, the viewpoint of the interim Ukrainian Government on the decision of the Russian Parliament to approve the use of military forces in Ukraine, and on its own policies and actions in relations to what was happening in Ukraine, should have been adequately reflected, and given due weight.”
- 52 *Attorney Gen. of U.S. v. Irish People, Inc.*, 796 F.2d 520, 522 (D.C. Cir. 1986), citing H.R. Rep. 1470, 89th Cong. 2nd sess., 1996, 5-6.
- 53 See, e.g., Bodner, “Welcome to The Machine.”
- 54 Wahl, “Discrediting the West – An insider’s view on Russia’s RT.”
- 55 *Ibid.* See also Jackie Wattles, “Ex-reporter for Russian news agency Sputnik says he was ‘fed’ questions,” CNN June 4, 2017 (quoting Andrew Finberg, a White House reporter for RT’s sister agency Sputnik, that “a key difference between Sputnik and other state-backed news organizations like the BBC in the U.K. or Al Jazeera in Qatar” is that “the others are state-sponsored. Sputnik is state-controlled.” Konstantin Goldenzweig, “‘I learned to strike deals with myself’ Former TV journalist explains how Russian propaganda works,” <https://meduza.io/en/feature/2015/06/16/i-learned-to-strike-deals-with-myself> (An account of a Russian TV journalist describing how the Kremlin controls the newsrooms. Goldenzweig writes that networks daily receive instructions from the Presidential Administration on special unsigned notecards containing “strong recommendations” for coverage of “inconvenient, controversial topics.”).
- 56 See, e.g., Bodner, “Welcome to The Machine.”
- 57 Steven Erlanger, “What Is RT?,” *New York Times*, March 8, 2017, <https://www.nytimes.com/2017/03/08/world/europe/what-is-rt.html>.
- 58 “Ministry of Communications: Financing of RT and Russia Today Will Be Cut in Half in Dollar Equivalent,” *Vedomosti*, January 16, 2015, <http://www.vedomosti.ru/politics/news/2015/01/16/minkomsvyazi-finansirovanie>.
- 59 Zavadski, “Putin’s Propaganda TV.”
- 60 ANO TV-Novosti 2013-2015 reports “On financial expenditures and use of other property by nonprofit organizations, including those received from foreign and international organizations, foreign and stateless persons,” available at <http://unro.minjust.ru/NKOReports.aspx> (in Russian). In 2016, RT’s total expenditures were 17,710,636,000 RUB, of which 17,668,310,000 RUB or 99.8 percent were state subsidized. In 2015, RT’s total expenditures were 17,097,215,000 RUB, of which



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17,049,607,000 RUB or 99.7 percent were state subsidized. In 2014, RT's total expenditures were 11,817,986,000 RUB, of which 11,794,996,000 RUB or 99.8 percent were state subsidized. In 2013, RT's total expenditures were 12,945,817,000 RUB, of which 12,935,063,000 RUB or 99.9 percent were state subsidized.

- 61 *Michele Amoruso E. Figli v. Fisheries Development Corporation*, 499 F. Supp. 1074, 1081-82 (S.D.N.Y.1980), (citing H.R. Rep. No. 1470, 89th Cong. 2nd sess., 1966, 5-6) (corporation which receives financial support from foreign principal without being subject to its control and whose lobbying efforts benefit a foreign government but are not subject to the foreign government's control is not an agent under FARA).
- 62 Max Fisher, "In case you weren't clear on Russia Today's relationship to Moscow, Putin clears it up," *Washington Post*, June 13, 2013, [https://www.washingtonpost.com/news/worldviews/wp/2013/06/13/in-case-you-werent-clear-on-russia-todays-relationship-to-moscow-putin-clears-it-up/?utm\\_term=.baa6cc892edd](https://www.washingtonpost.com/news/worldviews/wp/2013/06/13/in-case-you-werent-clear-on-russia-todays-relationship-to-moscow-putin-clears-it-up/?utm_term=.baa6cc892edd).
- 63 Margarita Simonyan, "On The Washington Post and fear of RT," RT, November 3, 2015, <https://www.rt.com/op-edge/320636-washington-post-rt-fear/> ("RT, while publicly-funded, is not state-owned").
- 64 "Inside the BBC—The Licence Fee," BBC, accessed June 15, 2017, <http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/licencefee>.
- 65 James Heath, "Why the licence fee is the best way to fund the BBC," *BBC Blog*, July 14, 2014, <http://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4>.
- 66 "BBC Trust," BBC, accessed June 15, 2017, <http://www.bbc.co.uk/bbctrust/>.
- 67 *Ibid.*
- 68 *Ibid.*
- 69 Deutsche Welle Act, <http://www.dw.com/downloads/36383966/dwgesetzen.pdf>, Sections 1 ("Deutsche Welle shall have legal capacity and the right to be self-governing within the framework of the following provisions."), 61 ("Deutsche Welle shall not be subject to state supervision.") (hereafter *DW Act*).
- 70 *DW Act*, Section 32. The Broadcasting Board elects DW's General Director and supervises DW's compliance with general program guidelines. The Administrative Board "supervises the management of General Director beyond the daily programming." The Broadcasting Board and the Administrative Board are the executive bodies of DW, and the membership in these bodies is public and mutually exclusive.
- 71 *DW Act*, Sections 4A ("Deutsche Welle shall be directly responsible for preparing a four-year Task Plan, utilizing all information and assessments important to its mission, particularly its expertise in foreign affairs. The Task Plan shall be updated annually. The plan shall be based on the financial outline data provided by the Federal Government insofar as they affect Deutsche Welle."), 4b(7) ("The amount of the Federal subsidy for Deutsche Welle shall be determined in the annual Federal Budget Act."). DW provides annual financial reports to the government and Federal Auditing Office and publishes the reports on its website. See, e.g., Deutsche Welle Annual Report, <http://www.dw.com/en/deutsche-welle-annual-report/a-3530526>.
- 72 The section on Management on RT's website is limited to listing Margarita Simonyan as Editor-in-Chief and Alexey Nikolov as Managing director, see <https://www.rt.com/about-us/management/>, accessed November 27, 2016. Similarly, the section on Management on Russia Today's website, lists only Dmitry Kiselev as General Director and Margarita Simonyan as Editor-in-chief, see <https://ria.ru/docs/about/structure.html>, accessed November 27, 2016.
- 73 "Margarita Simonyan about Julian Assange, Pussy Riot and the State Department. Full version," interviewed by Tikhon Dzyadko, TV Rain, July 11, 2012, [https://tvrain.ru/teleshov/harddaysnight/margarita\\_simonjan\\_o\\_dzhuliane\\_assanzhe\\_pussy\\_riot\\_i\\_gosdepe\\_polnaja\\_versija-327931/](https://tvrain.ru/teleshov/harddaysnight/margarita_simonjan_o_dzhuliane_assanzhe_pussy_riot_i_gosdepe_polnaja_versija-327931/).
- 74 For other outlets registered as foreign agents, search at <https://www.fara.gov/quick-search.html>. Other Soviet media outlets, including the newspapers *Pravda* and *Izvestiya*, news agencies RIA and Novosti, Radio Moscow, and *Soviet Life Magazine* had their US correspondents registered as agents. In 1995-2001, an opposition (at that time) TV channel NTV, operated by Media Most Group, had registered agents.
- 75 Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended for the six months ending June 30, 2015, available at [https://www.fara.gov/reports/FARA\\_JUN\\_2015.pdf](https://www.fara.gov/reports/FARA_JUN_2015.pdf). Among these entities are China's Hai Tian Development U.S.A., which distributes *People's Daily* newspaper in the United States; China Daily Distribution Corporation, which publishes and distributes *China Daily* newspaper; Japan's NHK Cosmomedia America, Inc., which rebroadcasts Japanese language radio and TV programs; and South Korea's KBS America, Inc., which distributes Korean films and rebroadcasts Korean TV news programming. However, the Department of Justice has waived the requirement to disclose informational materials for Japan's NHK Cosmomedia America, Inc. See Supplemental Statement, Exhibit D, April 27, 2017, <https://www.fara.gov/docs/4490-Supplemental-Statement-20170427-24.pdf>.
- 76 Definitions, 22 U.S.C. § 611 (o). A foreign agent engages in "political activity" whenever it intends to influence any US agency or government official or US public with reference to "formulating, adopting, or changing the domestic or foreign policies of the United States" or advancing "the political or public interests, policies, or relations" of a foreign country.
- 77 *US Intelligence Report*, 4; Elena Postnikova, "US Should Require Russia's RT to Register as Foreign Agent." See also Ben Nimmo, "Understanding the Role of Russian Propaganda in the US Election," Atlantic Council, August 2016, <http://www.atlanticcouncil.org/blogs/new-atlanticist/understanding-the-role-of-russian-propaganda-in-the-us-election> (finding that, when covering Clinton's campaign, RT focused on accusations of corruption, lying, and ill health against her; accused her of launching a McCarthy-style "witch hunt" against Trump; and linked her to the use of nuclear weapons in 1945).
- 78 *Ibid.* Ben Nimmo independently concluded that RT's coverage of the Republican Candidate Donald Trump was "uncharacteristically balanced."
- 79 Definitions, 22 U.S.C. § 611(d) states: "The term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, . . . solely by virtue of any bona fide news or journalistic activities, . . . so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of

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its policies are determined by any foreign principal . . . .”

80 Labeling Informational Materials, 28 C.F.R. § 5.402.

81 “At war with Russia: EU Parliament approves resolution to counter Russian media “propaganda,” RT, November 23, 2016, <https://www.rt.com/news/367922-eu-resolution-russian-media/> (“The EU Parliament’s resolution demonstrates ‘political degradation’ in regard to the ‘idea of democracy’ in the West, Russian President Vladimir Putin [commented] on the vote.”).

82 “Obama administration at war with RT, an alternative media source,” RT, November 18, 2016, <https://www.rt.com/op-edge/367402-state-dep/>.

83 *Attorney Gen. of U.S. v. Irish People, Inc.*, 684 F.2d 928, 936 (D.C. Cir. 1982).

84 See, e.g., *Meese v. Keene*, 481 U.S. 465 (1987) (“The statute itself neither prohibits nor censors the dissemination of advocacy materials by agents of foreign principals.”); *Viereck v. United States*, 318 U.S. 236, 251 (1943) (Black, J., dissenting) (“Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment. No strained interpretation should frustrate its essential purpose.”); *Irish People, Inc.*, 684 F.2d at 936 (D.C. Cir. 1982) (“The Act is founded upon the indisputable power of the Government to conduct its foreign relations and to provide for the national defense and so falls within the inherent regulatory power of Congress.”); *United States v. Peace Information Center*, 97 F. Supp. 255, 260 (D.D.C. 1951) (“The power over external relations of the United States is extensive. It authorizes the Federal Government to deal with all phases of this subject. It comprizes (sic) not only authority to regulate relations with foreign countries, but also to prohibit any disturbance or interference with external affairs.”).

85 See, e.g., *United States v. Alvarez*, 132 S. Ct 2537 (2012) (invalidating the Stolen Valor Act of 2006 and extending the First Amendment protection to factually false speech); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010) (holding that political spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual candidates in elections); *Meese v. Keene*, 481 U.S. 465 (1987).

86 *Citizens United*, 558 U.S. at 312 (“First Amendment stands against attempts to disfavor certain subjects or viewpoints, and prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others.”).

87 *Ibid.* at 365.

88 *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564, 573 (2002) (internal citations omitted).

89 *Ibid.*

90 *Citizens United*, 558 U.S. at 340; Elena Postnikova, “US Should Require Russia’s RT to Register as Foreign Agent.” See also *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004) (The Constitution “demands that content-based restrictions on speech be presumed invalid . . . and that the Government bear the burden of showing their constitutionality.”)

91 *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 817 (“If a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest.”).

92 *Keene*, 481 U.S. at 469 (citing 56 Stat. 248-49). See also *Attorney Gen. of U.S. v. Irish People, Inc.*, 684 F.2d 928 (D.C. Cir. 1982); *United States v. Peace Information Center*, 97 F. Supp. 255, 260 (D.D.C. 1951) (holding that the government’s power to deal with national security challenges comprises “the authority to regulate relations with foreign countries, and to prohibit any disturbance or interference with external affairs”).

93 *Supra* note 51 and accompanying text.

94 *Attorney Gen. of U.S. v. Irish People, Inc.*, 595 F. Supp. 114, 121 (D.D.C. 1984), aff’d in part, rev’d in part, 796 F.2d 520 (D.C. Cir. 1986). See also *Viereck v. United States*, 318 U.S. 236, 251 (1943) (Black, J., dissenting) (The Act “implements rather than detracts from the prized freedoms guaranteed by the First Amendment” when it requires “to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source”).

95 *Ibid.* at 481 (“[T]he Act places no burden on protected expression.”); *United States v. Peace Information Center*, 97 F. Supp. 255 (D.D.C. 1951) (dismissing the refuted First Amendment challenge on the grounds that the Act “does not regulate expression of ideas” but merely requires disclosure).

96 *Citizens United*, 558 U.S. at 339. (As a “restriction on the amount of money a person or group can spend on political communication during a campaign,” that statute “necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” citing *Buckley v. Valeo*, 424 U.S. 1, 19, (1976) (*per curiam*)).

97 *Keene*, 481 U.S. at 469-70. In *Keene*, the Supreme Court required that three Canadian documentaries acid rains, one of which won an Academy Award, were labeled “political propaganda.”

98 Matthew Armstrong, “A revealing fight with Russia’s RT at the State Department,” *WarOnTheRocks.Com*, November 21, 2016, <http://warontherocks.com/2016/11/a-revealing-fight-with-russias-rt-at-the-state-department/>. On November 15, 2016, during a press briefing at the State Department, the spokesman dismissed RT as a “state-owned outlet” that is not “on the same level with [journalists] who are representing independent media outlets.” The Russian Foreign Ministry immediately asked whether these comments were “some new form of segregation? Dividing media on an ideological basis?” The Ministry threatened that if RT was treated with disrespect, the US journalists in Russia would receive similar treatment.

99 *Ibid.*

100 *Ibid.*

101 *OIG Report*.

102 Transcript: “Podcast: The National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act,” September 2016, <https://oig.justice.gov/multimedia/transcripts/podcast-09-07-16.pdf>.

103 *OIG Report*, 18-19.

104 *OIG Report*, 19. The FARA Unit has identified the lack of

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CID authority as its primary enforcement challenge and expressed that CID is vital in determining whether FARA violations are occurring.

- 105 Kelsey Sutton & Hadas Gold, “Senator introduces bill to investigate Russian news outlet RT,” Politico, March 14, 2017, <http://www.politico.com/blogs/on-media/2017/03/senator-introduces-bill-to-investigate-russian-site-rt-news-236033?cmpid=sf>.
- 106 S.625, 115th Cong., <https://www.congress.gov/bill/115th-congress/senate-bill/625/text?format=txt>.
- 107 *Ibid.* (“A demand under this section may not--(1) contain any requirement that would be considered unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of grand jury investigation of such alleged violation”); *OIG Report*, 19.
- 108 The OIG Report expressed concern that CID authority “can be subject to overreach and abuse if left unchecked” and should not “be used to overcome legitimate and important legal protections and interests.” The OIG recommended that CID authority should include “rigorous controls and oversight to ensure that it is being used appropriately.” *OIG Report*, 19. For this reason, Sen. Shaheen, Rep. Cicilline, and Rep. Gaetz proposed that CID should be used as subpoena duces tecum subject to all relevant safeguards and authorizations.
- 109 *OIG Report*, 18.
- 110 *Ibid.* at 17.
- 111 “Have We Reached a FARA ‘Tipping Point’?,” Covington & Burling LLP, August 26, 2016, [https://www.cov.com/-/media/files/corporate/publications/2016/08/have\\_we\\_reached\\_a\\_fara\\_tipping\\_point.pdf](https://www.cov.com/-/media/files/corporate/publications/2016/08/have_we_reached_a_fara_tipping_point.pdf).
- 112 *OIG Report*, 17-18.
- 113 Similar amendment was proposed during previous considerations to reform the Act. See, e.g., Perry, P., Recently Proposed Reforms to the Foreign Agents Registration Act, 23 Cornell Int. Law, 133, 152 (1990).

114 H. R. Rep. No. 1381, 75th Cong., 1st sess., 1937, 2.

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- i US Congress, House of Representatives, House Permanent Select Comm. on Intelligence, Investigation of Russian Active Measures: testimony of James Comey, FBI Director, 115th Cong., 1st sess., March 20, 2017; See “Full transcript: FBI Director James Comey testifies on Russian interference in 2016 election,” Washington Post, March 20, 2017, [https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election/?utm\\_term=.78e0bfa2bfc2](https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election/?utm_term=.78e0bfa2bfc2).
- ii US Congress, Senate, Subcommittee on Crime and Terrorism, Senate Comm. on the Judiciary, Russian Interference in the 2016 United States Election, Testimony of Ret. Gen. James Clapper, former Director of National Intelligence, 115th Cong., 1st sess., May 8, 2017; See “Full transcript: FBI Director James Comey testifies on Russian interference in 2016 election,” Washington Post, May 8, 2017, [https://www.washingtonpost.com/news/post-politics/wp/2017/05/08/full-transcript-sally-yates-and-james-clapper-testify-on-russian-election-interference/?utm\\_term=.10364ce7e42c](https://www.washingtonpost.com/news/post-politics/wp/2017/05/08/full-transcript-sally-yates-and-james-clapper-testify-on-russian-election-interference/?utm_term=.10364ce7e42c).
- iii US Congress, Senate, Senate Select Comm. on Intelligence, Disinformation: A Primer in Russian Active Measures and Influence Campaigns, Statement by Vice-Chairman Mark Warner (D-VA), 115th Cong., 1st sess., March 30, 2017; See “Transcripts,” CNN, March 30, 2017, <http://transcripts.cnn.com/TRANSCRIPTS/1703/30/cnr.03.html>.



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