IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED and SECOND AMENDMENT FOUNDATION, INC.,	§	Case No. 15-CV-372-RP
Plaintiffs,	§	
v.	§	
U.S. DEPARTMENT OF STATE, et al.,	§	
Defendants.	§	

NOTICE RE: DEFENDANTS' RECENT PROPOSED RULES

On June 3, 2015, Defendants published a Federal Register notice in which they propose to amend the definition of "public domain" at ITAR Section 120.11 (the "June 3 Proposed Rule"). *See* 80 Fed. Reg. 31,525 (June 3, 2015).

Among other things, the June 3 Proposed Rule seeks to amend ITAR Section 120.11(b) to explicitly require prior U.S. Government approval before the publication of ITAR-controlled technical data into public forums. *Id.* at 31,528 ("Paragraph (b) of the revised definition explicitly sets forth the Department's requirement of authorization to release information into the 'public domain'"). In the preamble to the June 3 Proposed Rule, the Defendants explicitly confirm that they presently impose a prior restraint on the publication of ITAR-controlled technical data into public forums:

> The requirements of paragraph (b) are not new. Rather, they are a more explicit statement of the ITAR's requirement that one must seek and receive a license or other authorization from the Department or other cognizant U.S. government authority to release ITAR controlled "technical data," as defined in § 120.10. A release of "technical data" may occur by disseminating "technical data" at a public conference or trade show, publishing ''technical data'' in a book or journal article, or posting "technical data" to the Internet.

Id. at 31,528. The preamble further states:

> Posting "technical data" to the Internet without a Department or other authorization is a violation of the ITAR even absent specific knowledge that a foreign national will read the "technical data."

Id. at 31,529.

Defendant Peartree is designated as the official point of contact for the June 3 Proposed Rule, which he personally and substantially created with defendants Heidema and Handelman.

Plaintiffs dispute the assertion that ITAR has ever approved of a prior restraint on speech.[1] However, Defendants' proposal leaves no doubt as to the scope of the prior restraint that they have applied here and which they continue to apply in the absence of judicial intervention.

Dated: June 8, 2015

Respectfully submitted,

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[1]Plaintiffs note the individual Defendants' conflict of interest in promulgating such a position for the Government now that they have a financial interest in denying the extra-legal nature of their conduct in applying a prior restraint. 18 U.S.C. 208(a); 5 C.F.R. § 2635.402(c).

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Certificate of Service

On June 8, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have thus served all parties electronically.

/s/ Matthew Goldstein
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