

# **Exhibit A**

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April 26, 2019

**VIA EMAIL: [FOIAREQUESTS@USPTO.GOV](mailto:FOIAREQUESTS@USPTO.GOV)**

USPTO FOIA Officer  
United States Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

*Re: FOIA Request for American Center for Equitable Treatment, Inc.*

Dear FOIA Officer:

I represent the American Center for Equitable Treatment, Inc. (“ACET”), a nonprofit corporation that is dedicated to educating Americans about the economic and social benefits of the federal government’s fair, efficient, and effective administration of technology, innovation, and intellectual property laws and policies. On behalf of ACET, and pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I hereby request the following records:

1. PTO FOIA logs for all FOIA requests received from October 1, 2015, to the present date. As the PTO tracks in its reports on FOIA, please tabulate these FOIA logs by: Request ID, Requester Name, Organization, Received Date, Request Description, Closed Date, Exemption Cited, and Fee Determinations.
2. PTO submissions to the U.S. Department of Commerce from the past three years in response to agency surveys and/or questionnaires used by Department to compile and generate its annual U.S. Department of Commerce Chief FOIA Officer Report. Responsive records include, but are not limited to, the PTO’s FOIA Annual Report pursuant to 5 U.S.C. § 552<sup>1</sup> and any submissions relating to the associated guidance of the Department of Justice.<sup>2</sup>

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<sup>1</sup> The last such report published by the PTO appears to be “USPTO FOIA FY 2013 Annual Report.” See [www.uspto.gov/sites/default/files/ip/boards/foia\\_rr/2013\\_USPTO\\_FOIA\\_Annual\\_Report.pdf](http://www.uspto.gov/sites/default/files/ip/boards/foia_rr/2013_USPTO_FOIA_Annual_Report.pdf).

<sup>2</sup> *Department of Justice Handbook for Agency Annual Freedom of Information Act Report*, (2018). [www.justice.gov/oip/page/file/1130311/download](http://www.justice.gov/oip/page/file/1130311/download).

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Please provide the requested material above in their native electronic formats, such as Excel spreadsheets, Word files, or PDF files.

The terms “and” and “or” shall be construed both conjunctively and disjunctively.

### **Public Interest Fee Waiver and Lack of Commercial Use**

Because the records requested herein were identified explicitly and may be readily located without undue search burden, ACET anticipates that, under 37 C.F.R. § 102.11(d)(4), no fees should be assessed. However, in the event that the PTO intends to assess fees for this request, I request a public-interest fee waiver because the requested records directly concern and bear upon the regularity of the government’s operations and activities and will be highly informative to the general public regarding the PTO’s policies, including on matters directly affecting the public access to information under the FOIA.

Upon receipt, our client will make these records or their analysis publicly available on its website at [www.acet-usa.org](http://www.acet-usa.org) (USPTO Accountability Project) for use by journalists, scholars, students, and interested members of the public at no charge and use the information in reports, newsletters, and other public disseminations to advance its educational mission. Therefore, disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,”<sup>3</sup> a nonprofit corporation. Accordingly, if you determine that ACET is not entitled to a fee waiver, I ask request that you determine that these records are not sought for commercial use.

### **ACET Classified as Representative of the News Media**

For fee-status purposes, ACET also qualifies as a “representative of the news media” under FOIA.<sup>4</sup> As the D.C. Circuit recently held, the “representative of the news media” test focuses on the requestor, not the specific FOIA request at issue.<sup>5</sup> ACET satisfies this test because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”<sup>6</sup> Evidence of these activities is available on ACET’s website, [www.acet-usa.org](http://www.acet-usa.org).

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<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 37 C.F.R. § 102.11(k)(1).

<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 37 C.F.R. § 102.11(b)(6).

<sup>5</sup> *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1121 (D.C. Cir. 2015).

<sup>6</sup> The PTO’s definition of “representative of the news media,” 37 C.F.R. § 102.11(b)(6), is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *See Cause of Action*, 799 F.3d at 1125 (“Congress...omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007.... [Therefore,] there is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”). Under either definition, however, ACET qualifies as a representative of the news media.

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Thank you for your attention to this request, and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew M. Grossman".

Andrew M. Grossman  
*Counsel to American Center for Equitable  
Treatment, Inc.*