

Form F3-1. Complaint for Declaratory and Injunctive Relief: Pre-Enforcement First Amendment Challenge to a Restriction on Communicating with Non-Human Intelligence

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Use. [Issue F3](#) concludes that a broad ban on private communication with NHI, or a content-based licensing scheme for messages, would be subject to strict scrutiny and would likely fail, while narrow export-control rules on specified technical data and content-neutral rules on transmitter power and frequency would likely survive. This complaint challenges the first kind of rule and concedes the second. It is written for plaintiffs who have concrete plans to communicate (a research group planning transmissions, an individual who reports ongoing contact, and an organization that publishes accounts of contact), so that standing to sue before enforcement is clear.

When to use. A pre-enforcement challenge to a rule or order restricting communication with NHI. **Not for:** Restrictions limited to classified or export-controlled information.

Deadlines. APA claims within six years (28 U.S.C. §2401(a)); move for preliminary relief promptly, since delay undercuts irreparable harm.

1 **PARTIES**

2 5. **[Research Organization]** is a [nonprofit] that [describe scientific mission]. It
3 has designed, and had scheduled for [date], a transmission program from [facility] under [FCC
4 experimental license no. ___ / application no. ___]. The program’s content is [describe:
5 mathematical and scientific messages; no controlled technical data]. The Restriction forbids the
6 program without a license that [agency] may deny on the basis of message content.

7 6. **[Individual Plaintiff]** is a [describe] who reports [describe ongoing
8 communication in plain terms]. [He/She/They] intend to continue those communications and to
9 publish accounts of them.

10 7. **[Publisher]** publishes [books / a periodical / a website] that includes first-hand
11 accounts of communication with non-human intelligence, including the accounts of [Individual
12 Plaintiff], and intends to continue doing so.

13 8. Defendants are responsible for administering and enforcing the Restriction.

14 **FACTS**

15 9. [Describe the Restriction: text, definitions, licensing criteria, penalties, and any
16 public statements by officials about its purpose and enforcement.]

17 10. [Describe each Plaintiff’s concrete plans, preparations, and expenditures; any
18 license application and its status; and any warning or inquiry received from Defendants.]

19 11. The Restriction is not limited to technical data controlled under the International
20 Traffic in Arms Regulations or the Export Administration Regulations, to coordinated services
21 provided to any designated entity, or to transmitter characteristics. It applies to any
22 communication, whatever its content.

23 **STANDING AND RIPENESS**

24 12. A plaintiff may challenge a law before it is enforced against him where he
25 alleges “an intention to engage in a course of conduct arguably affected with a constitutional
26 interest, but proscribed by a statute, and there exists a credible threat of prosecution
27 thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v.*
28 *United Farm Workers National Union*, 442 U.S. 289, 298 (1979)). Each Plaintiff intends to

engage in conduct the Restriction forbids, and Defendants have not disavowed enforcement.
[Allege any statement of intent to enforce.]

CLAIMS FOR RELIEF

Count I: First Amendment (content-based and speaker-based restriction on speech)

13. Plaintiffs incorporate the preceding paragraphs.

14. The Restriction applies because of the identity of the listener or speaker and the topic of the communication. A law that is content based on its face is subject to strict scrutiny regardless of the government’s motive. *Reed v. Town of Gilbert*, 576 U.S. 155, 163-65 (2015).

15. The Restriction is not narrowly tailored to any compelling interest. The government’s interest in keeping weapons-relevant technical data from hostile actors is served by existing export controls on specified data, which Plaintiffs do not challenge. The Restriction reaches mathematics, greetings, descriptions of human culture, and personal accounts, none of which threatens that interest.

Count II: First Amendment (right to receive information)

16. The First Amendment protects the right to receive information and ideas, including from foreign sources. *Lamont v. Postmaster General*, 381 U.S. 301, 305-07 (1965); *Kleindienst v. Mandel*, 408 U.S. 753, 762-65 (1972). The Restriction bars Plaintiffs from receiving and repeating communications from a willing speaker.

Count III: First Amendment (prior restraint and unbridled licensing discretion)

17. The Restriction requires a license before speech and [does not limit the licensing official’s discretion by narrow, objective, and definite standards / does not require a decision within a specified brief period or provide prompt judicial review]. A licensing scheme of that kind is an unconstitutional prior restraint. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969); *Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965).

Count IV: Fifth Amendment (vagueness)

18. The Restriction does not define “non-human intelligence” or “communication” with enough definiteness that ordinary people can understand what conduct is prohibited, and it

invites arbitrary enforcement. [Quote the definitions, or note their absence.] Vagueness is judged more strictly where a law reaches speech. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Count V: Administrative Procedure Act [if the Restriction is a regulation or agency order]

19. The Restriction is “contrary to constitutional right,” 5 U.S.C. §706(2)(B), and [exceeds the agency’s statutory authority, §706(2)(C) / was issued without notice and comment, §706(2)(D)].

[Alternative Count VI: Foreign Agents Registration Act as applied] [Use if the government treats contact activity as acting for a “foreign principal” under 22 U.S.C. §611(b) and demands registration.]

20. [Agency] has [demanded / threatened to demand] that Plaintiffs register under 22 U.S.C. §612 as agents of [describe the asserted principal]. Plaintiffs do not act “at the order, request, or under the direction or control” of any foreign principal (§611(c)(1)). Their communications are their own and are directed to [describe audience or recipient].

21. A non-human intelligence is not “a government of a foreign country,” “a foreign political party,” or “a person outside of the United States” within §611(b), and FARA’s registration and labeling requirements cannot be extended to Plaintiffs’ own speech without a clear statement by Congress. Applied to Plaintiffs, the registration demand is a content-based burden on speech and petition that fails strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163-65 (2015).

PRAYER FOR RELIEF

Plaintiffs ask the Court to:

A. Declare that the Restriction violates the First and Fifth Amendments [and the APA] on its face and as applied to Plaintiffs;

B. Preliminarily and permanently enjoin Defendants from enforcing the Restriction against Plaintiffs [and others];

C. Award costs and reasonable attorney’s fees under 28 U.S.C. §2412; and

1 D. Grant such other relief as is just.

2 Dated: [_____] Respectfully submitted,

3 [signature block]

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Drafting notes

- **Concede the narrow rules.** Paragraph 2 and Count I's tailoring argument concede export controls on specified technical data and content-neutral transmitter rules. Courts have sustained regulation of functional technical data sent to identified recipients ([Issue F3](#), [Issue A5](#)), and contesting those rules weakens the case.
- **Holder v. Humanitarian Law Project.** Expect the government to rely on *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). Distinguish it: *Holder* upheld a ban on expert advice and training coordinated with designated foreign terrorist organizations, and it emphasized that independent advocacy remained lawful. A ban on all communication with an entire class of beings, with no designation and no coordination element, goes far beyond what *Holder* sustained.
- **Facial and as-applied.** Plead both. An as-applied claim for the scientific transmission program is the strongest; the overbreadth argument supports facial relief.
- **Preliminary injunction.** File a motion with declarations describing each Plaintiff's plans and the irreparable harm of lost speech. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality) (loss of First Amendment freedoms for even minimal periods is irreparable injury).
- **Pin cites:** *Driehaus* at 159; *Reed* at 163-65; *Lamont* at 305-07; *Mandel* at 762-65; *Shuttlesworth* at 150-51; *Freedman* at 58-59; *Fox* at 253; *Elrod* at 373. Run KeyCite before filing.
- Related: [Issue F3](#), A5, B4; [Form F3-2](#).