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The Honorable John P. Carlin
Assistant Attorney General for National Security
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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Dear Assistant Attorney General Carlin:

As you may know, my subcommittee included direction in the FY 2015 Commerce-Justice-Science Appropriations report requiring the Justice Department's Inspector General "to review the Department's enforcement of the Foreign Agents Registration Act (FARA). The report should take into account FARA filing trends and foreign government tactics to engage in public advocacy in the United States while avoiding FARA registration. The report shall recommend administrative or legislative options for the improvement of FARA enforcement." This provision was included following a growing number of questions about whether the statute was being effectively used as a tool to address foreign lobbying and propaganda efforts in the United States, especially by countries like China and Russia.

The original FARA statute was adopted in 1938 in response to concerns about Soviet and Nazi propaganda in the United States. Unfortunately, the law has been severely weakened over the last 80 years with carve-outs and exemptions for a range of activities that may be controlled by foreign governments, including lobbying, propaganda and control of media and cultural institutions that seek to shape public opinion. It is notable that until my subcommittee requested this report, the U.S. government had not conducted a comprehensive review of FARA since a 1990 GAO study. Given how much has changed over the last 26 years in terms of hostile foreign actors, technology and the use of misinformation and propaganda, this OIG report provides a much overdue review of how FARA can be used to protect national security.

This OIG report, "Audit of the National Security Division's Enforcement of the Foreign Agents Registration Act," was released in September, and I appreciate the substantive findings and recommendations from the Inspector General, as well as the constructive responses indicating that you agree with and will implement all 14 recommendations identified in the OIG report. As the OIG report stated, failure to effectively update and use FARA "leaves an important counterintelligence tool underutilized," which is why it encourages the department to

develop a coordinated strategy to address how FARA fits into the department's overall national security efforts.

I was pleased to read the department's welcome and positive response to the OIG findings, noting that "the audit was helpful in reviewing some trends in registrations, the timeliness and sufficiency of FARA registration filings, and some areas for administrative or legislative improvements to achieve FARA's primary goal: greater transparency of foreign influence in the United States" and that "the audit prompted a productive dialogue about the criminal enforcement of FARA and the key role administrative authorities play in promoting visibility into the identities, activities, and information provided by persons acting as agents of foreign principals."

I urge you to swiftly adopt all of the recommendations, and wanted to highlight one in particular – Recommendation 12 – for your attention. This recommendation urges the department to "perform a formal assessment of the [Lobbying Disclosure Act] exemption, along with other current FARA exemptions and determine whether a formal effort to seek legislative change on any of these exemptions is warranted." I appreciate that the department agreed with this recommendation, stating "NSD endorses, and will undertake a formal assessment of the LDA and other current FARA exemptions. As noted in the Report, the FARA Unit has attributed a decrease in the number of registrants and foreign principals to the enactment of the LDA exemption and has also noted that the reporting requirements of LDA are not as robust as those under FARA. Prior to the OIG Report, NSD embarked on efforts to study the LDA and other FARA exemptions. Those efforts will continue, and NSD will determine the need and viability of legislative changes by June 30, 2017."

One of the key exemptions of concern highlighted in the report included "foreign media entities," which may receive funding and/or direction from a foreign government with the intent to serve propaganda goals and censor content in the United States.

As the department conducts its review of these exemptions, I urge you to specifically investigate how FARA may apply to foreign ownership and control of U.S. media companies – including movies, television, radio and other productions – that may be subject to foreign propaganda, censorship or other pressures that lead to self-censorship in order to receive financing and distribution. This concern is particularly timely due to the rapid growth in Chinese acquisitions and ownership, including American media, as part of its growth in foreign investment in the U.S. from \$2 billion per year in 2010 to an estimated \$20 billion this year.

Over the last several years, we have seen growing Chinese control over major American movie studios, production financing and theatre distribution, such as Dalian Wanda Group Corp.'s purchase of movie studio Legendary Entertainment for \$3.5 billion and a further 49 percent stake in Paramount Pictures, as well as purchases of the two largest movie theatre chains in the U.S., AMC and Carmike Cinemas, as well as Hunan TV's stake in Lions Gate. These acquisitions, as well as many more co-financing arrangements, allow Chinese state-controlled companies a significant degree of control over the financing and content of American media that raises serious concerns about how this may be used for propaganda purposes.

Wanda's CEO Wang Jianlin does not try to hide his close relationship with the Chinese government. According to one recent article, "Wang, who relied heavily on government

relationships to help build his mainland empire, according to an investigation by the New York Times, has said that his company policy is to “Stay close to the government and distant from politics¹.” Another article noted, “Wang’s ultimate goal, he said during the recent interview, is to ‘change the world where rules are set by foreigners.’ In other words, Chinese should make the final calls².” This has profound implications for American media controlled by this type of Chinese company leadership.

Last October, the U.S.-China Economic and Security Review Commission released the enclosed report, “Directed by Hollywood, Edited by China: How China’s Censorship and Influence Affect Films Worldwide.” The report documents a growing number of troubling examples of how agents of the Chinese Communist Party are exerting control of American movie content, both through direct ownership of studios and distribution as well as through coerced cooperation with the Chinese censorship agency, the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT). SAPPRFT is led by a Chinese Communist Party (CCP) official who, as the report notes, has “a long career as a propagandist, serving as the deputy director of Beijing’s propaganda department from 1998 to 2008. While SAPPRFT’s authority is intentionally broad, its mandate specifically includes provisions protecting the interests of the CCP.”

The report succinctly summarizes the propaganda controls that China is effectively building to control American movie content and distribution:

“Chinese censorship affects not only Chinese audiences, but also audiences in the United States and around the world. Hollywood confronts broad consequences when it does not appease Chinese regulators: Captain Phillips found itself \$9 million short of its anticipated revenue after finding itself unable to distribute in China because of the film’s positive portrayal of the United States and U.S. military. Meanwhile, films that work with SAPPRFT limit their creative freedom and sanitize their portrayals to suit the interests of the CCP. The consideration of China’s political sensitivities by those producing and controlling American films poses troubling questions about the reach of China’s censors and the future of their influence.

“The breadth of China’s censorship efforts, its political and international sensitivities, and the caprice of its regulatory system together impose a powerful chilling effect on movie studios. Rather than awaiting SAPPRFT’s reaction after submitting a film for import approval, Hollywood has begun to censor itself, anticipating what Chinese regulators will object to and making alterations before production is completed.”

The OIG report notes that commercial foreign entities are sometimes not distinct from foreign government control, and this especially the case among Chinese state-owned and state-controlled companies. The report states, “NSD officials believe that Congress should act and once again require those who lobby for foreign commercial interests to register under

¹ <http://www.mingtiandi.com/real-estate/outbound-investment/why-wang-jianlin-wants-more-chinese-movies-in-his-american-theatres/>

² <http://qz.com/768740/chinas-richest-man-wanda-group-ceo-wang-jianlin-has-declared-war-on-disneyland/>

FARA. We agree with the concern that foreign governmental and commercial interests overseas may not always be distinct and we recommend that NSD perform a formal assessment of the LDA exemption, along with other current FARA exemptions and determine whether a formal effort to seek legislative change is warranted.”

Finally, as the department conducts its review, I urge you to consider the following comments from the OIG report, which reflect the FARA Unit’s request to address both the statutory exemptions as well as the need for Civil Investigative Demand Authority to better determine whether organizations, including foreign controlled media, are operating under direction or influence from a foreign government and thus must comply with FARA:

“FARA Unit staff did provide some insight as to how this authority could help it better determine when FARA violations are occurring, specifically identifying think tanks, non-governmental and grass roots organizations, organizations operating on college or university campuses, and foreign media outlets operating in the United States as potential registrants as to which it can be difficult to obtain information for a variety of reasons. Such organizations may receive funding from foreign governments and subsequently take public political positions that are favorable to those governments... The FARA Unit has identified the above as its primary enforcement challenge, and believes [Civil Investigative Demand Authority] is vital in determining whether FARA violations are occurring. We do not dispute that CID authority would provide FARA Unit staff with a very useful additional tool in its efforts to administer and enforce FARA.”

FARA is an important and significantly underutilized tool the department has at its disposal to address concerns about foreign agents and propaganda in the United States, but it is clear that the department will need to update its strategy, guidance and, perhaps, seek additional legislative authority to update the law to address new threats.

If, in fact, the law in its current form no longer effectively addresses these concerns, I urge you to provide legislative options Congress may consider to ensure transparency, full disclosure and to mitigate this type of foreign propaganda influence over American media, which shapes not only the opinions of many within the U.S. but remains one of our biggest cultural exports to nations around the world. Thank you for your attention to this important issue.

Sincerely,



John A. Culberson
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies