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15 Attorneys for Plaintiff Public.Resource.Org

17 IN THE UNITED STATES DISTRICT COURT
 18 THE NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

21 PUBLIC.RESOURCE.ORG., a California non-) Case No. 3:13-CV-02789-WHO
 profit organization,)

22 Plaintiff,)

) **DECLARATION OF BETH SIMONE NOVECK**

23 v.)

24 UNITED STATES INTERNAL REVENUE)
 25 SERVICE,)

26 Defendant.)
 _____)

1 I, Beth Simone Noveck, declare as follows:

2 1. Since 2002, I have been a Professor of Law at the New York Law School. I am
3 presently on leave from that position. I have personal knowledge of the matters stated in this
4 declaration and could competently testify to them if called as a witness.

5 2. I am currently the Jerry Hultin Global Network Visiting Professor of Engineering
6 at New York University and since 2012, I have also been a Visiting Professor at the MIT Media
7 Lab.

8 3. From 2009 to 2011, I served as United States Deputy Chief Technology Officer in
9 the Executive Office of the President. In that capacity, I was charged with responsibility for the
10 White House Open Government Initiative, including implementation of the President's
11 Memorandum on Transparency and Open Government and the Office of Management and
12 Budget's Open Government Directive and, together with my colleagues, implementation of the
13 Administration's policy on open government data.

14 4. As a result of this policy millions of people have searched for and downloaded
15 open government datasets about everything from air pollution to farmers' markets to government
16 spending. Today, the governments of over 40 countries have opened more than a million data
17 sets. People outside of government are using this data to develop solutions to challenging
18 problems. For example, governments around the world are opening up the data they collect, such
19 as subway and bus schedules, and then inviting tech-savvy citizens — civic coders — to create
20 smartphone apps that tell commuters when their bus or train is coming.

21 5. In 2013, I served as co-author and principal investigator of the report "Information
22 for Impact: Liberating Nonprofit Sector Data" published by the Aspen Institute (Aspen Institute
23 Report). This report was an independent examination of Internal Revenue Service distribution of
24 Exempt Organization tax returns (Forms 990). Preparation for the Aspen Institute Report included
25 extensive interviews and discussions with experts in the field, including GuideStar, the National
26 Center for Charitable Statistics at the Urban Institute, the Foundation Center, the Center on
27 Philanthropy at Indiana University, and the Center for Civil Society Studies at Johns Hopkins
28 University. A copy of this report can be found at

1 http://www.aspeninstitute.org/sites/default/files/content/docs/psi/psi_Information-for-Impact.pdf

2 and is appended to this Declaration at Exhibit A.

3 6. The conclusion of the Aspen Institute Report was the data that the IRS collects
4 about nonprofit organizations present a great opportunity to learn about and make the nonprofit
5 sector more innovative and effective. Yet this data could be made far more useful than it is today
6 if it were provided in open formats, by which I mean that the Forms 990 should be accessible in
7 forms that third parties can use to do analysis and develop software applications about the
8 workings of America's nonprofits.

9 7. One of the primary conclusions of the Aspen Institute Report was that the IRS
10 should make the Forms 990 available in the format in which they were created. In other words, the
11 990s in Modernized e-File Format (MeF) should be published as-is in an open, digital format
12 rather than being converted at time and taxpayer expense into the low-resolution images that are
13 currently distributed.

14 8. The current system for distribution of e-filed Forms 990 consists of combining the
15 e-file data with the forms and releasing the information as an image file. The result is the
16 equivalent of a scanned paper document. Taking this extra step of converting open, digital data
17 into an image file, instead of releasing the data received in MeF format in which it was filed,
18 makes the information significantly harder to use. While techniques such as Optical Character
19 Recognition (OCR) could be employed to recognize some of the data, these techniques are prone
20 to considerable numbers of errors and are significantly more difficult than working with the data
21 in the original MeF format.

22 9. Making data in MeF format could enable researchers and law enforcement to
23 recognize fraud early, anticipate abuses, and target enforcement more efficiently and effectively.
24 For example, many state Attorneys General have a policy of providing extra scrutiny for
25 nonprofits that provide loans to directors or officers. While such loans are not per se wrong, they
26 are often a red flag that signals the presence of possible governance issues. Under the current
27 system for release of the Form 990, state enforcement officials are forced to manually leaf through
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1 large numbers of returns, whereas with release of data in MeF format, a simple computer program
2 could find that information easily.

3 10. If data in MeF format were available, for example, information from the Form 990
4 could be more easily combined with other datasets, such as those on government spending, to
5 better understand the relationship between public and private dollars in providing social services.

6 11. If data in MeF format were available, extensive, in-depth, empirical research on the
7 sector as a whole, including sector-wide issues such as the impact of the economic downturn on
8 nonprofits, the geographic distribution of nonprofit services, and the efficiency of the nonprofit
9 sector in delivering services could be conducted more easily.

10 12. On January 31, 2013, I spoke publicly on a panel at the Aspen Institute where
11 representatives of major foundations and other leaders of the nonprofit community strongly
12 indicated that they would welcome the release of electronic Forms 990. A video of that panel is
13 available here: https://www.youtube.com/watch?v=_6ZhoIjvt2o

14 13. As I wrote in a public letter published in Forbes to IRS Acting Commissioner
15 Werfel, if data in MeF format were available, the IRS itself could more cost-effectively spot
16 patterns of fraud and abuse and conduct its own enforcement activities on the basis of tangible and
17 visible evidence. That article can be found at: "IRS: Turn Over a New Leaf, Open Up Data," a
18 Forbes (May 2013).

19 14. Federal policy is very clear that making information available in machine-
20 processable format, such as the Modernized e-File Format (MEF), is an important public interest
21 goal as explained in the Executive Order "Making Open and Machine Readable the New Default
22 for Government Information." That Executive Order can be found at
23 [http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-](http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government)
24 [machine-readable-new-default-government-](http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government) That Executive Order states "To promote continued
25 job growth, Government efficiency, and the social good that can be gained from opening
26 Government data to the public, the default state of new and modernized Government information
27 resources shall be open and machine readable."
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15. I believe that release of Forms 990 as machine-processable data in MeF format would be of immense use to those that work with Exempt Organizations data and would open up a raft of new uses for those that have been unable to work with the data because of the current, outmoded distribution format. I believe release of data in MeF format is clearly in the public interest.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 23rd day of September, 2014 at New York, N. Y.

/s/ Beth Simone Noveck
BETH SIMONE NOVECK