Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.
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I. FACTS

You are organized as a nonprofit corporation under the laws of a State on Date 1. You filed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on Date 2.

Your Articles of Incorporation state that you are organized exclusively for charitable purposes as specified in I.R.C. § 501(c)(3). Specifically, your purpose is to develop and distribute software programs at no cost to the interested public (hereinafter "open source software").

Activities

You estimate that you spend three quarters of your time developing and distributing open source software. The remaining one quarter of your time will be spent on fundraising, community development, and other administrative duties.

Your mission is "to build free open source software tools to tackle the world's biggest problems, from creating a more sustainable planet to ensuring freedom of speech around the world." In carrying out your exempt purpose, you provide goods, services, or funds to individuals and corporations. Specifically, you will provide open source software to the public for free.

To that end, your first project is the creation and distribution of X, which is anti-censorship internet software. You will provide X software to the public via free internet download. Through use of peer-to-peer technology (hereinafter "P2P technology"), X software allows users in censored countries access to websites that are blocked or censored by foreign governments. The intended users of X software are "the 1.7 billion people living in countries with extreme online censorship and the over 3.5 billion people living in countries with some censorship" as well as individuals living in uncensored countries. Specifically, the intended users of X software will include individuals residing in Country 1 and Country 2 with restricted or limited internet access. However, access to X software can not be limited to only these individuals because X software relies on individuals running X software in uncensored countries to create "portals" for individuals in censored countries.

You state that X software cannot be used to circumvent network restrictions in the United States because the network-level blocking and keyword censorship that X software is designed to circumvent do not exist in the United States. Furthermore, you state that X software would have to be specifically enabled to circumvent any such network-level blocking or censorship occurring in the United States. X software is not so enabled.

You will also educate the public, primarily over the internet through your website, about internet censorship generally, and X software specifically. Your educational activities will consist of publishing X software's source code and documentation. You will also provide an "informal course of study" related to X software comprised of online tutorials, in-person and online forums, presentations about internet censorship and X software's architecture, and workshops. Tutorials, general purpose forums, and internet censorship presentations will be accessible to the general public. More technical material will be accessible to a more technical audience (i.e., computer programmers). You intend to plan ten to twenty conference appearances and
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workshops annually. All events will be free and open to the public.

Your second project will be open source software, Y, that allows an individual to track and reduce his environmental impact. Specifically, Y software will allow a user to estimate his carbon footprint by utilizing several data sources. Furthermore, Y software will encourage its users to reduce their carbon footprints through an online "scoreboard" that compares a user's carbon footprint with other users’ carbon footprints.

No future projects beyond X software and Y software are currently planned. However, you state that the Board of Directors will meet at the outset of any future project to determine whether the project furthers your tax-exempt purpose or purposes. In making this determination, you will review IRS publications, consult with tax attorneys experienced in the law of exempt organizations, and contact the Internal Revenue Service Tax Exempt and Government Entities Help Line.

You will publish, own, or have rights in intellectual property. Any software you produce, and every idea or process that software embodies, will be broadly available to the public. Toward that end, you will license your copyrights under a General Public License ("GPL"), which permits anyone to copy, modify, and distribute your software and also ensures that future modification will be freely available to the public.

You will accept contributions of intellectual property such as patents, trademarks, and copyrights. You will require any individual contributors to license their copyrights under the GPL, but you will not require such individuals to assign that copyright to you. You will not accept donations with conditions imposed by the donor.

Your documentation, web content, and educational materials will be available on a nondiscriminatory basis using a Creative Commons license, which permits redistribution without discrimination. You will make your source code to any software you develop downloadable via your website and other free, public code-hosting websites. Furthermore, you will not apply for any patents because you do not believe that acquiring patents will further your charitable purpose. You also will not assist or cooperate with third parties seeking to patent any software it develops using your source code.

Your fundraising activities consist of seeking foundation and government grants and accepting donations via your website. You have been awarded a grant from Federal Agency 1 to continue the development and free distribution of X software. You will receive the grant only if you are recognized as tax-exempt under I.R.C. § 501(c)(3).

Grant from Federal Agency 1

Grants awarded under Federal Agency 1 are funded under Act 1. Specifically, Act 1 provides that these monies "shall be made available to expand information and communications through the Internet, and shall be used for programs that provide unmonitored and uncensored access to the internet for large numbers of users living in closed societies that have acutely hostile Internet environments." Within Act 1, Congress appropriated funds to Federal Agency 1, which began administering a program with certain specific requirements, including that the grantees
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be recognized as exempt under I.R.C. § 501(c)(3), and that they provide free technology to permit the public to circumvent government imposed restrictions on internet access. Federal Agency 1’s program is intended to provide anti-censorship internet software to persons residing in countries that censor internet access in order to encourage the development of democracy within these countries.

A high ranking official in Federal Agency 1 has made a speech on the anti-internet censorship program. The official in part stated that governments do have a right to censor certain information, such as information containing child pornography, hate speech, terrorist material, or government or trade secrets. Furthermore, although Article 19th of the United Nations Universal Declaration of Human Rights of 1948 and Article 19th of the United Nations International Covenant on Civil and Political Rights of 1976 list the right to freedom and expression as a basic human right, it does not elevate internet access to the status of a basic human or civil right secured by law.

In 2011, Federal Agency 2 was appropriated greater funding to expand internet access in countries that block their citizens’ access to certain internet sites. Specifically, within Act 2, Congress allocated $10 million to Federal Agency 2 to be used to “expand unrestricted access to information on the internet.” See Act 2. The goal of Federal Agency 2’s program is similar to that of Federal Agency 1’s program, except that Federal Agency 2 hires for-profit companies and independent contractors to provide anti-internet censorship software.

II. LAW

I.R.C. § 501(c)(3) exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in I.R.C. § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in I.R.C. § 501(c)(3). If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in I.R.C. § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the

1 See Y.
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organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in I.R.C. § 501(c)(3) in its generally accepted legal sense and includes, among other things, lessening the burdens of government, relief of the poor and distressed or of the underprivileged, advancement of education or science, erection or maintenance of public buildings, monuments, or works, and promotion of social welfare by organizations designed to accomplish any of the above purposes, or in part to defend human and civil rights secured by law.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides that the term educational relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(ii)(Example 2) provides that an educational organization includes an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(i) provides that a scientific organization must be organized and operated in the public interest. Therefore, the term scientific, as used in I.R.C. § 501(c)(3), includes the carrying on of scientific research in the public interest. "Research," when taken alone, is a word with various meanings; it is not synonymous with scientific; and the nature of particular research depends upon the purpose which it serves. For research to be scientific, within the meaning of I.R.C. § 501(c)(3), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on whether such research is classified as fundamental or basic as contrasted with applied or practical.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(ii) provides that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(iii) provides that scientific research will be regarded as carried on in the public interest: (a) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the public on a nondiscriminatory basis; (b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or (c) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest: (1) scientific research carried on for the purpose of aiding in the scientific education of college or university students; (2) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public; (3) scientific research carried on for the purpose of discovering a cure for a disease; or (4)
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scientific research carried on for the purpose of aiding a community or geographical area by attractive new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(iv) provides that an organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under I.R.C. § 501(c)(3) as a scientific organization, if:

(a) Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in I.R.C. § 501(c)(3), or

(b) Such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formula resulting from its research and does not make such patents, copyrights, processes, or formula available to the public.

Rev. Rul. 59-310, 1959-2 C.B. 146, held that an organization that established, maintained, and operated a public swimming pool, playground, and other recreation facilities for the children and other residents of a community qualified for exemption under I.R.C. § 501(c)(3). Facility users were primarily low income individuals who could not afford privately sponsored recreation facilities. The Service therefore found the organization to be charitable because the property and its uses were dedicated to members of the general public of the community and because it served a generally recognized public purpose which tended to lessen the burden of governments.

Rev. Rul. 65-1, 1965-1 C.B. 226, describes an organization which promoted and fostered the development and design of machinery in connection with commercial operation, and in connection therewith had the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights, that did not qualify for exemption from Federal income tax under I.R.C. § 501(c)(3). The primary purposes of the organization were to foster the development and design of labor saving agricultural machinery, including the development of new labor saving ideas and methods, and to conduct pertinent research related to this purpose. The organization was engaging in development activities of a type incident to commercial activities and was not exempt under I.R.C. § 501(c)(3).

Rev. Rul. 65-60, 1965-1 C.B. 231, held that an organization that performed scientific research under contracts with government agencies and conducted public seminars was exempt as a scientific and educational organization under I.R.C. § 501(c)(3). Specifically, the research the organization conducted was in the “social” sciences. The organization performed scientific research in the public interest because its research was conducted for the government.

Rev. Rul. 66-147, 1966-1 C.B. 137, held that an organization formed to survey scientific and medical literature published throughout the world and to prepare and distribute, free of charge, abstracts taken from such literature qualified for exemption under I.R.C. § 501(c)(3). The organization employed technical personnel who surveyed the world’s medical and scientific publications as soon as they were published. These individuals then selected and abstracted the articles appearing in the literature. The abstracts were mailed in monthly publications and
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were distributed free of charge to anyone having particular interest in the subject matter. The Service determined that the organization's activities, consisting of reviewing medical and scientific publications and preparing and disseminating free abstracts of meaningful and accurate reference materials based on articles appearing in such publications, advanced education and science.

Rev. Rul. 66-255, 1966-2 C.B. 210, describes an educational organization that qualified for providing public information. In this ruling, the organization educated the public as to a particular method of painless childbirth. The organization utilized meetings, films, forums, and publications to educate the public. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians.

Rev. Rul. 66-359, 1966-2 C.B. 219, held that an organization that promoted humane treatment of laboratory animals by carrying on a program for the accreditation of animal care facilities that supplied, kept, and cared for animals used by medical and scientific researchers qualified for exemption under I.R.C. § 501(c)(3). The organization was created to conduct a voluntary accreditation program for laboratory animal care facilities. The accreditation program was intended to educate and furnish guidance for the maintenance and operation of laboratory animal care facilities and to upgrade the standards for such facilities. The organization prepared and published specific standards and requirements for accreditation of laboratory animal care facilities. As part of the program, the organization furnished experts to inspect, evaluate, and recommend improvements to applicants for accreditation. All organizations having facilities caring for animals used for research purposes were invited to apply for accreditation. Based on the above, the Service found that the development and publication of standards for the operation of laboratory animal care facilities and the inspection, evaluation, and recommendations for improvement of such facilities were activities that supported and advanced education and science.

Rev. Rul. 67-4, 1967-1 C.B. 121, held that an organization that encouraged basic research of specific types of physical and mental disorders, that improved educational procedures for teaching those afflicted with such disorders, and that disseminated educational information about such disorders qualified for exemption under I.R.C. § 501(c)(3). The organization published a journal containing abstracts of current information about mental disorders from the world's medical and scientific publications. The journal was sold, below cost, to the public. The organization's staff consisted of leading pathologists, other medical specialists, and teachers. The Service determined that an organization engaged in publishing scientific and medical literature may qualify for exemption under I.R.C. § 501(c)(3) if several conditions are met: (1) the content of the publication is educational; (2) the preparation of material follows methods generally accepted as "educational" in character; (3) the distribution of materials is necessary or valuable in achieving the organization's educational and scientific purposes; and (4) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices. The Service then held that the organization met the four requirements set forth above.
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Rev. Rul. 68-373, 1968-2 C.B. 206, described an organization whose principal activity was clinically testing drugs for commercial pharmaceutical companies. These tests were required in order to comply with Food and Drug Administration requirements that drugs be tested for safety and efficacy before they can be marketed. The pharmaceutical companies selected the drugs to be tested and used the results of the tests in their marketing applications to the Food and Drug Administration. In addition, the results of the tests were freely available for publication in various scientific and medical journals. Clinical testing is an activity ordinarily carried on as an incident to a pharmaceutical company's commercial operations. The fact that the testing must be done by highly qualified professionals does not change its basic nature. Therefore, such testing did not constitute scientific research within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(5)(i). The organization failed to qualify for exemption from Federal income tax under I.R.C. § 501(c)(3).

Rev. Rul. 69-526, 1969-2 C.B. 115, describes an organization formed by a group of physicians specializing in heart disease, to research the causes of heart defects and publish treatments, that qualified for exemption under I.R.C. § 501(c)(3). In this ruling, patients were referred to the organization by physicians and welfare agencies when it appeared that their condition merited special study and evaluation. Each patient underwent a medical examination to determine whether their condition fell within the scope of the organization's research goals. If the patient's case met the criteria, the patient was accepted without regard to their ability to pay. The data collected from the patient studies is used by the organization in the development of new methods and procedures for preventing and treating heart defects. The results of the research, as well as any medical procedures derived, were made public through publication. The organization's research could only be performed by individuals with advanced scientific and/or technical expertise — i.e., cardiologists. Patients in the organization's study underwent medical examination pertaining to their heart defects. The medical examinations naturally entail medical observation and experimentation to formulate and verify objective human bodily responses to treatment. The results of the organization's research were publicly disseminated and add to the knowledge of internal medicine, specifically the causes and treatments for heart disease. Based upon the above, the Service held that the organization's research activities were scientific under I.R.C. § 501(c)(3).

Rev. Rul. 70-129, 1970-1 C.B. 128, held that an organization formed to support research in anthropology by manufacturing quality cast reproductions of anthropological specimens which were sold to scholars and educational institutions in a noncommercial manner qualified for exemption under I.R.C. § 501(c)(3). Specifically, the organization manufactured and distributed anthropological reproductions that illustrated important developments in human evolution. These reproductions were manufactured under the direction of qualified scientific personnel with emphasis placed on quality control to assure accurate reproductions. The reproductions were then sold to scholars and educational institutions in a noncommercial manner to recoup costs and expenses. The Service determined that the examination of anthropological specimens was an important step in anthropological education and research and that the manufacture and sale of accurate reproductions provided an effective means for making these important research and study aids generally available. Therefore, the Service held that the distribution of the reproductions advanced science and education.

Rev. Rul. 70-186, 1970-1 C.B. 128, held that an organization formed to preserve a lake as a
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public recreational facility and to improve the condition of the water in the lake to enhance its recreational features qualified for exemption under I.R.C. § 501(c)(3) as a charitable organization that erected or maintained a public work. The ruling determined that, by treating the water, removing algae, and otherwise improving the condition of the water, the organization ensured the continued use of the lake for public recreational purposes and therefore performed a charitable activity. Furthermore, the benefits of the organization's activities flowed principally to the general public through the maintenance and improvement of public recreational facilities.

Rev. Rul. 70-584, 1970-2 C.B. 114, held that an organization that recruited college students for government internship programs that related to their course of study qualified for exemption under I.R.C. § 501(c)(3). The internship program advanced the students' education because it trained the individual for the purpose of improving or developing his capabilities in his chosen field of study.

Rev. Rul. 71-29, 1971-1 C.B. 150, held that an organization that maintained a mass transportation system qualified for exemption under I.R.C. § 501(c)(3). The city was served by a privately owned bus company that had been operating at a deficit and was unwilling to sustain any future financial losses. The city entered an agreement to take over the bus service and applied for federal assistance to do so. However, the privately owned company was unwilling to continue operating at a loss. The organization therefore provided the city with a grant to ensure that bus service continued uninterrupted until the city could obtain the necessary funding to take over the privately owned bus company's routes. The Service found that, by providing the city transit authority with the funds necessary to insure that bus service in the city was continued, the organization assisted the municipal government and conferred a benefit upon the entire community. Therefore, the Service held that, under the circumstances, the grant to the city transit authority qualified as a charitable disbursement in furtherance of the organization's exempt purpose.

Rev. Rul. 71-506, 1971-2 C.B. 233, describes an engineering society formed to engage in scientific research in the areas of heating, ventilating, and air conditioning ("HVAC") for the public that qualified as a scientific research organization under I.R.C. § 501(c)(3). The Service found that the organization was comprised of HVAC engineers, architects, educators and others who have a professional interest in HVAC—with full membership in the organization limited to persons with 8 years of experience in the science related to HVAC. The organization's research was conducted by a full-time paid staff in the organization's own laboratory. Typical subjects of investigation for the organization included the effects of solar radiation through various materials, the phenomena of heat flow and transfer, development of data on air friction, the problems of panel heating, and the physiological effects of air conditioning upon the human body. The organization's research was devoted exclusively to the development of data on basic physical phenomena, which data can be used by anyone. The organization published a regular journal and maintained a library where its data, and specifically scores of model codes of minimal standards for HVAC, are stored for public review. The Service concluded that this organization engaged in scientific research. Specifically, the organization used observation and experimentation to formulate and verify facts or natural laws pertaining to HVAC—such as the effects of solar radiation through various materials. Its activities were performed by professionals with extensive scientific and/or technical expertise in HVAC—such as members with a minimum of 8 years experience in HVAC science. The organization conducted
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experimentation in its own laboratory. The organization's activities added to the knowledge of HVAC science, specifically with the organization publishing scores of model codes of minimum standards for HVAC. All the organizations data was maintained in a library and was publicly available. Based upon the above, the Service held that the organization's research activities were scientific under I.R.C. § 501(c)(3).

Rev. Rul. 73–285, 1973–2 C.B. 174, held that an organization that provided funds to defend members of a religious sect in legal actions involving substantial constitutional issues was defending human and civil rights secured by law and thus was exempt as a charitable organization under I.R.C. § 501(c)(3).

Rev. Rul. 75–196, 1975–1 C.B. 155, held that an organization operating a law library whose rules limited access and use to members, or their designees, of a local bar association, composed of substantially all of the members of the legal profession in the municipality and providing the library's primary support, qualified for exemption under I.R.C. § 501(c)(3). The fact that access to and use of the library facilities was limited to a designated class of persons did not bar recognition of the organization because the class benefited by the library's presence was broad enough to conclude that the educational facility or activity served a broad public interest rather than a private interest and was therefore exclusively educational in nature. Furthermore, any personal benefit derived by attorneys using the library was a logical by-product of an educational process and therefore only incidental.

Rev. Rul. 75–284, 1975–2 C.B. 202, held that an organization that provided high school graduates and college students with uncompensated work experience in selected trades or professions qualified for exemption under I.R.C. § 501(c)(3). The program provided students with exposure to five of twenty-five trades or professions. Such exposure advanced the students' education by familiarizing the students with various career fields and developing the students' capabilities.

Rev. Rul. 77–365, 1977–2 C.B. 192, describes an educational organization that conducted clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport.

Rev. Rul. 78–310, 1978–2 C.B. 173, held that an organization that provided law students with practical experience in exempt public interest law firms and legal aid societies qualified for exemption under I.R.C. § 501(c)(3). The organization advanced the law students' education by developing or improving the students' capabilities.

Rev. Rul. 79–369, 1979–2 C.B. 226, held that an organization that recorded and distributed the work of unrecognized composers and the neglected works of recognized composers qualified as a tax-exempt charitable and educational organization under I.R.C. § 501(c)(3). The music selected for recording was not usually produced by commercial music publishers, was not generally available to the public, and was sold primarily to libraries and educational institutions. The organization furthered charitable and educational purposes because its recordings promoted and developed serious music composition as an art form by providing a vehicle for the presentation of the new works of unrecognized composers as well as the neglected works of more recognized composers.
Rev. Rul. 81-29, 1981-1 C.B. 329, held that a library network organization that operated a computer network to facilitate the exchange of bibliographic information among member libraries, some of which were not tax-exempt, qualified for exemption under I.R.C. § 501(c)(3).

Rev. Rul. 85-1, 1985-1 C.B. 177, held that an organization that provided funds to a county's law enforcement agencies to police illegal narcotic traffic lessens the burdens of government and, therefore, qualified for exemption under I.R.C. § 501(c)(3). The criteria for determining whether an organization's activities are lessening the burdens of government are: first, whether the governmental unit considers the organization's activities to be its burden; and second, whether these activities actually lessen the burden of the governmental unit. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances. In this ruling, the organization provided funding for activities that the local law enforcement agencies treated as an integral part of their program to prevent the trafficking of illegal narcotics; thereby, demonstrating that these activities were part of their burden. With the added funding, the local law enforcement agencies could engage in certain aspects of drug enforcement without the appropriation of additional governmental funds; thereby, the organization was actually lessening the burdens of government.

Rev. Rul. 85-2, 1985-1 C.B. 178, held that an organization that provided legal assistance to guardians ad litem who represented abused and neglected children before a juvenile court that required their appointment lessened the burdens of government and, therefore, qualified for exemption under I.R.C. § 501(c)(3). To determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all of the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually 'lessening' the burdens of the government. The organization's training of lay volunteers was an integral part of the government's program of providing guardians ad litem in juvenile court proceedings. Without the organization's activities, the government could not continue its present program, unless it undertook to train lay volunteers itself, or appointed attorneys to act as guardians as it had in the past. Thus, the organization was actually lessening the government's burden.

In Universal City Studios v. Corley, 273 F.3d 429 (2d Cir. 2001), the issue before the United States Court of Appeals for the Second Circuit involved the constitutionality of certain provisions of the Digital Millennium Copyright Act ("DCMA").
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In *Jacobson v. Katzer*, 535 F.3d 1373 (Fed. Cir. 2008), the issue before the United States Court of Appeals for the Federal Circuit involved "the ability of a copyright holder to dedicate certain work to free public use and yet enforce an 'open source' copyright license to control the future distribution and modification of that work." Based on the terms of the license, the court determined that, "[i]n this case, a user who downloads the [open source software] is authorized to make modifications and to distribute the materials 'provided that' the user follows the restrictive terms of the Artistic License."

In *IIT Research Institute v. United States*, 9 Cl. Ct. 13, (1985), the issue before the U.S. Court of Claims was whether certain activities of which a recognized I.R.C. § 501(c)(3) tax-exempt scientific research organization was engaging in would constitute scientific research and thus not be subject to unrelated business income taxation under I.R.C. § 512. The Court held that "in the context of this litigation, 'science' will be defined as the process by which knowledge is systematized or classified through the use of observation, experimentation, or reasoning." The Court further held that as scientific research does not include activities of a type ordinary carried on as incident to commercial or industrial operations, the organization was found not to be involved "in the commercialization of the products or processes developed as a result of its research," as it "would only develop a project to the point where the research principles were established." The Court held that the projects at issue were scientific.

In *Midwest Research Institute v. United States*, 554 F. Supp. 1379, (W.D. Mo 1983), the issue before the U.S. District Court was whether certain activities of which a recognized I.R.C. § 501(c)(3) tax-exempt scientific research organization was engaging in would constitute scientific research and thus not be subject to unrelated business income taxation under I.R.C. § 512. The Court held that "while projects may vary in terms of degree of sophistication, if professional skill is involved in the design and supervision of a project intended to solve a problem through a search for a demonstrable truth, the project would appear to be scientific research." The Court further held that as scientific research did not include activities of a type ordinary carried on as incident to commercial or industrial operations, the organization was found not to engage in the ordinary or routine testing of products and processes, but rather engaged in "testing done to validate a scientific hypothesis." The Court concluded that the projects at issue were scientific.

### III. RATIONALE

An organization seeking tax-exempt status under I.R.C. § 501(c)(3) must be organized and operated exclusively for charitable or other exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. See also Treas. Reg. § 1.501(c)(3)-1(a)(1). The materials you submitted state that you are seeking tax-exempt status under I.R.C. § 501(c)(3): (1) as a charitable organization for (i) lessening the burdens of the U.S. Government by making X, a type of anti-censorship internet software, freely available to the public; as a social welfare organization for (ii) defending human and civil rights secured by law through the provision of X software, which allows users to gain access to restricted websites, and for (iii) providing relief to the poor and distressed or underprivileged through the provision of
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X software, and (iv) erecting or maintaining public buildings, monuments, or works; (2) as an educational organization for educating the public about X software; and (3) as a scientific organization for adapting and improving X software. Based upon a review of your activities, you are not described in I.R.C. § 501(c)(3) as explained below.

1. Charitable Purposes

   i. Lessening the Burdens of the U.S. Government

You claim to qualify for exemption under I.R.C. § 501(c)(3) as an organization that is lessening the burdens of the United States Government by providing X software, a type of internet anti-censorship software, to the public pursuant to a grant from Federal Agency I.

The term "charitable" in I.R.C. § 501(c)(3) includes lessening the burdens of government. Treas. Reg. § 1.501(c)(3)-1(d)(2). To qualify as an I.R.C. § 501(c)(3) organization for lessening the burdens of government, the organization must meet a two-prong test. The first prong requires the government unit to objectively manifest that it considers the activities of the organization as activities that are its burden. See Rev. Rul. 85-1, 1985-1 C.B. 177; Rev. Rul. 85-2, 1985-1 C.B. 178. All relevant facts and circumstances are considered in this analysis. "A favorable working relationship between the government and the organization is strong evidence that the organization is actually 'lessening' the burdens of the government." Rev. Rul. 85-2.

The stronger the control a government has over the activities of the organization the better evidence of an objective manifestation. Rev. Rul. 85-1.

The first prong of the two-prong lessening of burdens of government test is not met as there is no objective manifestation by the United States Government that it considers your activities to be its burden. The appropriation statutes do not include any statement that the United States Government considers your activities to be its burden. Additionally, you are not controlled by the United States Government. Other than review of grant expenditures, the United States Government plays no part in your operations. As such, there is no working relationship between you and the United States Government, other than as a grantor and grantee, to manifest that the United States Government considers your activities to be its burden. Even though Federal government officials have made speeches in support of internet access for persons in closed societies, there is no evidence that the Federal Government considers your activities to be its burden.

You argue that your approval of a grant from Federal Agency I is evidence that you are lessening the burdens of the United States Government. However, "the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government." Rev. Rul. 85-2. Awarding a grant to you is only evidence that you met the requirements of the grant. Stated another way, receiving government funding does not qualify an organization to be granted tax-exempt status under I.R.C. § 501(c)(3). An argument can be made that the payment of the grant for the software is nothing more than the payment for a service by Federal Agency I. Federal Agency II, similar to Federal Agency I, was appropriated monies to be utilized to circumvent internet censorship in authoritative regimes. However, Federal Agency II chooses to pay contractors, as opposed to awarding grants, to provide
technology that circumvents internet censorship. As such, receiving government monies, either as a grant or as a salary, is not evidence that an organization lessens the burdens of government and does not automatically qualify an organization for tax-exempt status under I.R.C. § 501(c)(3). Therefore, you fail to meet the first prong of the two-prong lessening of the burdens of government test.

Even if the first prong of the lessening of the burdens of government test was met, you would not meet the second prong of the test. The second prong requires that the activities of the organization actually lessen the burdens of the governmental unit. Rev. Rul. 85-1, Rev. Rul. 85-2. Evidence that the organization is actually lessening the burdens of government is shown when the government could not continue to conduct its program without the organization’s activities. Rev. Rul. 85-2. Here, you have not shown that making available your software is a government program. Furthermore, your activities do not alleviate any fiscal or personnel burden of the United States Government. Therefore, you have also failed to meet the second prong of the test and do not qualify under I.R.C. § 501(c)(3) as a charitable organization by lessening the burdens of the United States Government.

ii. Promoting Social Welfare by Defending Human and Civil Rights Secured by Law

An organization can qualify under I.R.C. § 501(c)(3) for promoting social welfare by defending human and civil rights secured by law. Specifically, you stated that by developing and providing X software, you defend the public’s right to freedom of expression and freedom of speech guaranteed by the First Amendment, by Article 19th of the United Nations Universal Declaration of Human Rights of 1948, and by Article 19th of the United Nations International Covenant on Civil and Political Rights of 1976.

Under I.R.C. § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(d)(2), an organization can qualify as a tax-exempt charity for defending human and civil rights secured by law. For example, in Rev. Rul. 73-285, 1973-2 C.B. 174, an organization that provided funds to defend individuals in legal actions involving substantial constitutional issues was held to be defending human and civil rights secured by law and thus exempt under I.R.C. § 501(c)(3). Your activities are not similar to the organization described in Rev. Rul. 73-285. You have not shown how making your software available on your website would promote human and civil rights. You do not target or limit how your software will be used, by whom, or for what purposes. Moreover, you have not provided any information that unrestricted access to the internet is a basic human and civil right secured by law and that your activities actually defend such a right. This is contrasted with the organization described in Rev. Rul. 73-285, which was defending established constitutional rights defined under the law. Specifically, the First amendment, Article 19th of the United Nations Universal Declaration of Human Rights of 1948, and Article 19th of the United Nations International Covenant on Civil and Political Rights of 1976 do not elevates internet access to a human and civil right secured by law. Furthermore, a high ranking official in Federal Agency I has publicly stated that governments have a right to censor information, especially information containing child pornography, hate speech, terrorist material, or government or trade secrets. See Y. As you have failed to meet your burden of proof that internet access is a basic human and civil right secured by law, you do not promote social welfare under I.R.C. § 501(c)(3) by defending human and civil rights secured by law.
iii. Promoting Relief of the Poor and Distressed or Underprivileged

You also have not shown that you are described in I.R.C. § 501(c)(3) as a charitable organization that provides relief to the poor and distressed or underprivileged by providing the public with X software.

The term "charitable" is used in I.R.C. § 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in I.R.C. § 501(c)(3). See Treas. Reg. § 1.501(c)(3)-1(d)(2). The term charitable includes "relief of the poor and distressed or of the underprivileged." Id. You will not be regarded as "charitable" if a substantial part of your activities are not in furtherance of exempt purposes. Treas. Reg. § 1.501(c)(3)-1(c)(1). You have not provided information to show that X software is directed towards, or will serve, a recognized charitable purpose or a recognized charitable class. You stated that X software is freely downloadable from the internet by anyone and is easily transferable from user to user. Although you expect the users of X software to be individuals in countries that censor or limit their citizens' access to the internet or individuals with limited access to high speed internet connections because they live in poor countries or rural areas, you do not describe any activities to target or control the use of your software, by whom or for what purposes. Nor have you provided any authority that persons who use X are a recognized charitable class. The Service has recognized charitable classes to include the poor, distressed and underprivileged\(^2\), the aged\(^3\), the sick or handicapped\(^4\), but not persons with restricted internet access. Second, even if the beneficiaries of the software could be restricted to individuals with restricted or limited access to the internet, however so defined, these individuals are also not a recognized charitable class or underprivileged. As such, X software benefits a non-charitable class of persons, which does not further an exempt purpose, precluding your recognition under I.R.C. § 501(c)(3).

iv. Erection or Maintenance of Public Works

You also have not shown that you are described in I.R.C. § 501(c)(3) as a charitable organization erecting or maintaining public buildings, monuments, or works through the development and distribution of X.

Under I.R.C. § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(d)(2), an organization can qualify as a tax-exempt for erecting or maintaining public buildings, monuments, or works. For example, in Rev. Rul. 70-186, an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features qualified for exemption under I.R.C. § 501(c)(3) as a charitable organization that erected or maintained a public work. E.g., Rev. Rul. 59-310, 1959-2 C.B. 146; Rev. Rul. 71-29, 1971-1 C.B. 150. The ruling determined that by treating the water, removing algae, and otherwise improving the condition of the water, the organization ensured the continued use of the lake for public recreational purposes and therefore performed a charitable activity. Furthermore, the benefits

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\(^2\) Treas. Reg. § 1.501(c)(3)-1(d)(2).
\(^3\) See Rev. Rul. 72-124, 1972-1 C.B. 145.
of the organization's activities flowed principally to the general public through the maintenance and improvement of public recreational facilities.

You do not erect or maintain public buildings, monuments, or works because X software is not a public work and, even if it were, the benefits of X software's productions do not flow to the public. You argue that X software is a public work because open source software projects are dedicated to the public. However, a public work is distinguishable from a work dedicated to the public. The ordinary meaning of "public works" refers to "[a]ll works of a fixed nature, such as highways, canals, waterworks, docks, etc., constructed by public bodies for public use, protection, or enjoyment." Ballentine's Law Dictionary. Thus, a public work is a work dedicated to the public, but a work dedicated to the public is not necessarily a public work. X software is not a public work because it is intangible and, by the very nature of open source software, not fixed; any member of the public may alter X software or use it to develop new software.

Second, anti-censorship software like X software is not something ordinarily constructed by public bodies. Finally, even if X software were a public work, the benefits of the program flow to individuals in censored countries ("censored individuals") and not to the general public. Furthermore, the case you cite in support of your argument, Jacobson v. Katzer, is inapposite to the current situation because it involved a copyright infringement and breach of contract action and not the issue of whether open source software could be a public work. 535 F.3d 1373 (Fed. Cir. 2008). Therefore, you do not qualify under I.R.C. § 501(c)(3) as an organization erecting or maintaining public buildings, monuments, or works.

2. Educational Purposes

You are not described in I.R.C. § 501(c)(3) as an educational organization for providing product manuals and how-to guides related to X software. The term "educational", as used in I.R.C. § 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i). The regulations provide several examples of organizations that qualify as educational organizations, including "organizations whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs." See Treas. Reg. § 1.501(c)(3)-1(d)(3)(ii), example (2).

One such educational organization was described in Rev. Rul. 66-255, 1966-2 C.B. 210, which describes an organization formed to educate the public as to a particular method of painless childbirth. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians. Another example of a qualifying educational organization was described in Rev. Rul. 77-365, 1977-2 C.B. 192, in which the organization qualified for its activities of conducting clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport. Here, you are not conducting any of the activities described above. You state that your website "will be the primary outlet for educational materials about X." Educational information provided on your website includes tutorials, documentation, and moderated discussion groups about X software specifically and internet censorship generally. You also conduct some in-person educational activities similar to those conducted by the organizations above. However, these activities are best described as
providing product information and are analogous to a product manual and do not rise to the level of educational as required under I.R.C § 501(c)(3).

You argue that you educate individuals and the public through the publication of X software’s source code and documentation. Quoting Universal City Studios, Inc. v. Corley, you argue that source code is the primary means by which programmers communicate with and educate one another:

A programmer reading a program learns information about instructing a computer, and might use this information to improve personal programming skills and perhaps the craft of programming. Moreover, programmers communicating ideas to one another almost inevitably communicate in code, must as musicians use notes.

273 F.3d 429 (2d Cir. 2001). However, Universal City Studios, which involved the anti-trafficking provisions of the Digital Millennium Copyright Act and not the Internal Revenue Code, is inapposite in the current situation. The portion of the case on which you rely was part of the court’s discussion of whether computer code was First Amendment speech. The court never addressed whether publishing source code is an educational activity within the meaning of I.R.C. § 501(c)(3). The court’s dicta in Universal City Studios plays no role in determining whether your activities are educational under I.R.C. § 501(c)(3). Therefore, you do not qualify under I.R.C. § 501(c)(3) as either an educational organization or a charitable organization that advances education.

Furthermore, you are not described in I.R.C. § 501(c)(3) as a charitable organization that advances education by providing product manuals and how-to guides related to X software. The regulations provide several examples of organizations that advance education. For example, the organization described in Rev. Rul. 70-584, 1970-2 C.B. 114, recruited college students to participate in a government internship program, the organization described in Rev. Rul. 75-284, 1975-2 C.B. 203, provided high school graduates and college students with uncompensated work experience in selected trades and professions, and the organization described in Rev. Rul. 78-310, 1978-2 C.B. 173, provided law students with practical experience in exempt public interest law firms and legal aid societies. Here, you are not conducting any of the activities described above.

First, you argue that publishing X software’s source code advances education. Specifically, you argue that the publication of X software’s source code instructs and trains individuals in the advances of P2P networking technology. You argue that you are similar to the organization in Rev. Rul. 79-369, 1979-2 C.B. 226, which involved an organization that recorded and distributed the work of unrecognized composers and the neglected works of recognized composers. The ruling noted that organizations devoted to the promotion and development of the arts may qualify as tax-exempt charitable and educational organizations under I.R.C. § 501(c)(3). The organization qualified for exemption because its recordings promoted and developed serious music composition as an art form by providing a vehicle for the presentation of the new works of unrecognized composers as well as the neglected works of more recognized composers. Moreover, the ruling noted that the recording and sale of musical compositions not generally produced by the commercial recording industries was similar to the publication and sale of
educational materials in a noncommercial manner. You are not like the organization in Rev. Rul. 79-369 because you are not an organization devoted to the promotion and development of the arts. Furthermore, you do not provide a vehicle for the presentation of new works of unrecognized computer programmers as well as the neglected work of recognized computer programs. Rather, the internet provides an unrestricted forum for the “publication” of such work with or without your assistance. Finally, as concluded above, publication of X software is not educational.

Second, you argue that providing censored individuals with access to the internet is an educational activity due to the "wealth of free educational materials" on the internet. This argument is analogous to arguing that you are operating a library, which may be educational under the certain circumstances. See Rev. Rul. 81-29, 1981-1 C.B. 329 (referencing both "exempt and non-exempt libraries"). Like any educational organization, a library must either (a) instruct or train the individual for the purpose of improving or developing the individual's capabilities or (b) instruct the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i); see Rev. Rul. 75-196, 1975-1 C.B. 155 (finding a law library to be educational in nature). However, you do not limit censored individuals' internet access only to educational materials; users are free to access all materials on the internet, educational or otherwise, including child pornography, hate speech, terrorist material, or government or trade secrets, which Z has stated is within a government's right to restrict. Therefore, you do not qualify under I.R.C. § 501(c)(3) as an organization that advances education.

3. Scientific Purposes

You also claim to qualify for tax-exemption as a scientific research organization for your activities related to the continued research and development of X software. For an organization to qualify as an I.R.C. § 501(c)(3) scientific research organization, the organization must (1) engage in scientific research; (2) the scientific research must not include activities that are incident to commercial or industrial operations; and, (3) the scientific research must be undertaken in the public's interest. Treas. Reg. § 1.501(c)(3)-1(d)(5).

Under the first element, the organization seeking exempt status as a scientific research organization must be engaging in scientific research. Treas. Reg. § 1.501(c)(3)-1(d)(5). For research to be "scientific," within the meaning of I.R.C. § 501(c)(3), it must be carried on in furtherance of a 'scientific' purpose. Treas. Reg. § 1.501(c)(3)-1(d)(5)(i). Although the Regulations provide that research that is scientific can be practical or applied as well as fundamental or theoretical, the term "scientific" is not clearly identified in either the Code or the Treasury Regulations. However, several revenue rulings and cases have interpreted "science" and "scientific" in terms of scientific research for I.R.C. § 501(c)(3) purposes.

For example, in Rev. Rul. 71-506, 1971-2 C.B. 233, the Service held that an engineering society qualified as a scientific research organization under I.R.C. § 501(c)(3). The organization was operated to engage in scientific research in the areas of heating, ventilation, and air conditioning ("HVAC") for the public benefit. The organization was comprised of HVAC engineers, architects, and others who had a professional interest in HVAC. Its main activity was research conducted by highly skilled personnel in the organization's own laboratory, which personnel
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used observation and experimentation to formulate and verify facts or natural laws pertaining to
HVAC—such as the effects of solar radiation through various materials, the phenomena of heat
flow and transfer, development of data on air friction, the problems of panel heating, and the
physiological effects of air conditioning upon the human body. The organization published its
results, along with papers related to its findings in its journal. These results became model
codes of minimum standards for HVAC. The organization’s research was devoted exclusively
to the development of data on basic physical phenomena, which data could be used by anyone,
and not on the development or improvement of particular products or services. The testing and
improvement of commercial products was forbidden by the organization’s charter. The
organization’s activities added to the knowledge of HVAC science.

In another example, the Service held that an organization formed by a group of physicians
specializing in heart disease, to research the causes of heart defects and publish treatments,
the organization by physicians and welfare agencies when it appeared that their condition
merited special study and evaluation. The data collected from the patient studies was used by
the organization in the development of new methods and procedures for preventing and treating
heart defects. The results of the research, as well as any medical procedures derived, were
made public through publication. The medical examinations entailed medical observation and
experimentation to formulate and verify subjective human bodily responses to treatment. The
results of the organization’s research was publicly disseminated and added to the knowledge of
internal medicine, specifically the causes and treatments for heart disease.

Furthermore, two court cases have interpreted “science” and “scientific” in terms of scientific
research for I.R.C. § 501(c)(3) purposes. Specifically, the Court of Claims in
IT Research
Institute v. United States, 9 Cl. Ct. 13, 20(1985), held that “in the context of this litigation,
’science’ will be defined as the process by which knowledge is systematized or classified
through the use of observation, experimentation, or reasoning.” The court further held that as
scientific research does not include activities of a type ordinary carried on as incident to
commercial or industrial operations, the organization must not be involved in the
commercialization of the products or processes developed as a result of its research, but rather
must only “develop a project to the point where the research principles are established.” Id at
21. Whereas, the District Court in Midwest Research Institute v. United States, 554 F. Supp.
1379, 1386 (W.D. Mo 1983), aff’d 744 F2d 635, found that “while projects may vary in terms of
degree of sophistication, if professional skill is involved in the design and supervision of a
project intended to solve a problem through a search for a demonstrable truth, the project would
appear to be scientific research.” The Court further held that as scientific research does not
include activities of a type ordinary carried on as incident to commercial or industrial operations,
the organization was found not to engage in the ordinary or routine testing of products and
processes, but rather engaged in “testing done to validate a scientific hypothesis.” Id.

Based upon the above law, you do not meet the first and second elements for recognition as a
scientific research organization under I.R.C. § 501(c)(3) because you do not engage in scientific
research and your development activities are of a type incident to commercial or industrial
operations. Unlike the organizations described above, you are not utilizing objective scientific
methods to formulate or verify facts or natural laws, or to search for a demonstrable truth. You
do not propose a hypothesis pertaining to the verification of facts or natural laws. You do not
utilize scientific methods to test this hypothesis and objectively record the results of your experimentation. Finally, you do not objectively evaluate your research results and publish the findings for the public to utilize. Instead, you describe your scientific research activities as "taking existing peer-to-peer techniques and adapting them to anti-censorship software." These activities can best be described as routine product development, which are a type incident to commercial operations. Under Treas. Reg. § 1.501(c)(3)-1(d)(5)(ii), scientific research does not include activities carried on as an incident to commercial or industrial operations, such as the design or improvement of goods or services. For example, in Rev. Rul. 65-1, 1965-1 C.B. 226, the Service held that an organization operated to research, design and develop labor saving agricultural machinery was not a scientific organization under IRC § 501(c)(3); but rather, was engaging in product development incident to commercial purposes. Similarly, in Rev. Rul. 68-373, 1968-2 C.B. 206, the Service held that an organization that engaged in clinical testing of pharmaceuticals by highly qualified personnel was not a scientific research organization under I.R.C. § 501(c)(3); but rather, was engaging in ordinary testing necessary to comply with standards to bring the pharmaceuticals to market. Here, your self described activities of adapting X software are similar to the two organizations described above in that you are engaging in routine software adaptation, similar to what a commercial software company engages in to adopt their products to new uses in order to be competitive in the market. As such, your activities are incident to commercial operations and are not exempt under I.R.C. § 501(c)(3).

You argue that the development of X is scientific research because it "contributes new knowledge." However, the addition of knowledge is only one characteristic of scientific research. As demonstrated above, the process by which that knowledge is discovered (i.e., the scientific method) is a vital aspect of scientific research.

You also argue that the production of open source software should not be categorized as activities of a type of activity ordinarily carried on as an incident to commercial or industrial operations because: (1) open source software's origin are nonprofit and academic; (2) the production of open source software is too broad to characterize as a "type" of activity; and (3) the development of open source software by for-profit entities should not disqualify the entire practice as "unscientific." However, open source software's origin is irrelevant to the determination of whether an activity is scientific. The nature of particular research depends upon the purpose it serves, not its origin. See Treas. Reg. § 1.501-1(c)(3)-1(d)(5)(i). Here, the production of open source software does not serve a "scientific purpose" because of the above stated reasons. Therefore, we categorize your production of open source software by taking existing technology and adapting it to a different use as a type of activity ordinarily carried on as an incident to commercial operations.

Finally, you do not meet the third element for a scientific research organization, which element requires that scientific research to be directed toward benefiting the public. Treas. Reg. § 1.501(c)(3)-1(d)(5)(iii). Your research does not benefit the public. First, you do not publish the results of your research. Rather, you make X software's source code and documentation, not the results of your research, available to the public. The release of X software's source code is akin to the release of a commercial product, not the publication of scientific research. Second, your research is not performed for the United States. You argue that you are similar to the organization in Rev. Rul. 65-60, 1965-1 C.B. 231, in which the Service held that an organization
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that conducted social science research carried on its research in the public interest because it operated under government contracts. However, you do not have a contract to perform research for the government because a contract to perform research is distinguishable from a government grant. Finally, your research is not directed toward benefitting the public. Production of X software benefits censored individuals in other countries, not the public generally. Therefore, you do not qualify under I.R.C. § 501(c)(3) as a scientific research organization.

You also are not described in I.R.C. § 501(c)(3) as a charitable organization advancing science for your activities related to the continued research and development of X software. Activities that advance science include reviewing medical and scientific publications and the disseminating the abstracts of those articles for free, conducting a voluntary accreditation program for laboratory animal care facilities, publishing a journal with current technical literature relating to physical and mental disorders, and selling quality cast reproductions of anthropological specimens to scholars and educational institutions. Rev. Rul. 66-147, 1966-1 C.B. 137; Rev. Rul. 66-359, 1966-2 C.B. 219; Rev. Rul. 67-4, 1967-1 C.B. 121; Rev. Rul. 70-129, 1970-1 C.B. 128. Here, you are not conducting any of the activities described above. Therefore, your activities will not be regarded as advancing science within the meaning of I.R.C. § 501(c)(3).

IV. CONCLUSION

Based on the above, we have determined that you fail to meet the requirements necessary to be recognized as a tax-exempt organization under § 501(c)(3). You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.
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If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T3)
Stephanie Robbins (534-25)
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[Signature]

Lois G. Lerner
Director, Exempt Organizations