

October 4, 2018

Via Federal Express

Mark Zuckerberg
Chief Executive Officer

c/o

Colin Stretch, General Counsel
1601 Willow Road
Menlo Park, CA 94025

Paul Grewal, Deputy General Counsel
1601 Willow Road
Menlo Park, CA 94025

**Re: Facebook Compliance with Department of Justice Document Requests for
Data Concerning Illegal Wildlife Trafficking on Its Web Platform**

Dear Mr. Zuckerberg:

The National Whistleblower Center (“NWC”) has obtained information of urgent public interest about Facebook’s conduct in relation to wildlife trafficking investigations conducted by the U.S. government. Recently, the NWC approached representatives of the Department of Justice’s Environment and Natural Resources Division (“DOJ”) with our concerns about illegal wildlife trafficking transpiring on popular social media platforms. Facebook is one of the largest repositories of information implicating wildlife trafficking networks due to its failure to implement sufficient internal quality control and we requested information as to why the DOJ had yet to obtain crucial data from the company.

We were stunned to learn from the DOJ that Facebook has not been fully cooperating with investigatory efforts but instead, responding to subpoenas by providing material that was not in a readily usable format for investigators. We understand that Facebook has responded to the subpoenas by providing information in a raw format that is very difficult and costly to analyze, making it difficult or impossible for investigators to properly vet and review potential evidence on illegal trafficking and trafficking networks.

This concern is extremely significant because Facebook can voluntarily provide this information without being subpoenaed and without incurring legal liability.¹ In fact, Facebook is permitted (and potentially required) by statute to promptly provide all information regarding felonious criminal activity that is within its knowledge to law enforcement.² Refusing to comply with such statutes, while profiting from income derived from criminal pages or actions on the site, may even implicate Facebook in obstruction of justice or aiding and abetting charges, depending on Facebook's knowledge of these crimes and/or actions it has taken in regard to these crimes.³

We cannot stress enough how crucial this data is in the fight to end online wildlife trafficking. The electronic footprints left behind by traffickers and buyers contain every conceivable type of evidence that would aid investigatory efforts, from proof of individual transactions, to the physical locations of the largest online sellers. This kind of data is the most invaluable tool that law enforcement can obtain in any type of criminal investigation. Such information allows legal authorities to methodically investigate crimes, enforce wildlife protection laws, and prosecute criminals on the broadest scale possible, by tackling not only individual buyers, but entire wildlife trafficking networks.

We urge Facebook to take prompt corrective action in its response to subpoenas from the DOJ, given the urgent need to shut down online marketplaces for wildlife traffickers.

The investigatory importance of the data Facebook has regarding wildlife traffickers cannot be overstated. For this reason, we also want to highlight two Facebook policies that have the potential to seriously impede such efforts. The first is Facebook's policy of immediately removing pages or postings on its platform when it discovers they are being utilized for illegal activity.⁴ The policy potentially interferes with law enforcement investigations because it tips off traffickers that their illegal activity has been noted, thereby giving them time to go into hiding,

¹ See *United States v. Jacobsen*, 466 U.S. 109 (1984); *Burdeau v. McDowell*, 256 U.S. 465 (1921); *U.S. v. Reed*, 15 F.3d 928 (9th Cir.1994); *Roberts v. AT&T Mobility LLC*, 877 F.3d 833 (9th Cir. 2017); *U.S. v. Miller*, 688 F.2d 652 (9th Cir.1982); *U.S. v. Sherwin*, 539 F.2d 1 (9th Cir.1976).

² See 18 U.S.C. § 4 ("Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both."); 47 U.S.C. § 230(e) ("Nothing in this section shall be construed to impair the enforcement of . . . any other Federal criminal statute."); *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1187 (9th Cir. 2008) ("Significantly, § 230(e) expressly exempts from its scope certain areas of law, such as . . . federal criminal laws").

³ Moreover, all Facebook employees have the right to report any criminal activity occurring on Facebook property/sites, free from retaliation. 18 U.S.C. § 1513(e) ("Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.").

⁴ See *Community Standards: Introduction*, FACEBOOK, <https://www.facebook.com/communitystandards/introduction>; *Community Standards: 2. Dangerous Individuals and Organizations*, FACEBOOK, https://www.facebook.com/communitystandards/dangerous_individuals_organizations; *Community Standards: 3. Promoting or Publicizing Crime*, FACEBOOK, https://www.facebook.com/communitystandards/promoting_publicizing_crime; *Community Standards: 4. Coordinating Harm*, FACEBOOK, https://www.facebook.com/communitystandards/coordinating_harm.

where they continue illegal trafficking, simply with greater caution. This can hinder the ability of law enforcement to quietly track entire wildlife trafficking conspiracies over time, which is often the most effective tactic in the long-term fight to end trafficking. The second is Facebook's policy giving users the ability to delete their own data after Facebook discovers that their page/group may be being used for criminal activity. Permitting users to remove data evidencing their involvement in illegal activity, including trafficking, may constitute an obstruction of justice.

These two policies work in concert; once a trafficker is alerted by a page deletion that their illegal activity has been noted, they can delete all their data concerning communications and sales transactions of animals and animal parts.

It is appropriate for Facebook to voluntarily give the responsible U.S. law enforcement agencies an opportunity to weigh-in as to how best to communicate with the traffickers, if at all. Furthermore, the U.S. law enforcement authorities should be given an opportunity to obtain the search warrants they may need to fully exploit the information being generated on Facebook by traffickers (and their buyers/sellers) who may be unaware they are being monitored. Again, once a subpoena is issued, Facebook should provide the data in the most useable format possible to enable authorities to crack down on traffickers.

Although Facebook has been a breeding ground for illegal activity, we can draw solace from the fact that the data in its possession regarding those activities is invaluable. The earlier failure to properly police wildlife trafficking on Facebook can now be used to the advantage of law enforcement officials.

Unlike concerns that can be fixed over time, extinctions are forever. Facebook has the power to make a huge impact in the fight against wildlife trafficking by using the information stored on its servers to help law enforcement find and arrest wildlife traffickers.

The NWC recommends Facebook take the following corrective actions:

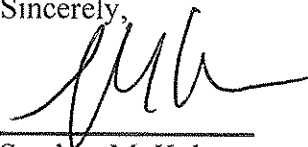
1. Immediately and fully comply with all state and federal subpoenas that request information on wildlife trafficking, and ensure that the information provided is in the most usable format possible;
2. Work with law enforcement in helping them understand the data provided;
3. Create a policy that would alert law enforcement to individuals who have been linked to illegal wildlife trafficking activity on Facebook, without alerting the individuals, and promptly provide data regarding that activity to legal authorities;
4. Institute a policy of full cooperation with U.S. law enforcement on all wildlife trafficking issues.

The NWC hereby requests that Facebook and all its affiliates fully comply with all DOJ or other government requests related to any law enforcement effort to investigate illegal wildlife trade occurring on the Facebook website, Facebook messenger, or any of its related applications. If Facebook is truly committed to ending wildlife trafficking, as it purported to through its

membership in the Global Coalition to End Wildlife Trafficking Online, it should implement the above recommendations.

Thank you for attention to this very important issue. Please do not hesitate to contact us with any questions. We look forward to hearing from you within ten business days.

Sincerely,



Stephen M. Kohn
Executive Director
National Whistleblower Center
3238 P Street, N.W.
Washington, D.C. 20007
(202) 342-1903



Maya Efrati
Policy Counsel
Global Wildlife Whistleblower Program
National Whistleblower Center
3238 P Street, N.W.
Washington, D.C. 20007
(202) 342-1903