

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND**

WIKIMEDIA FOUNDATION, INC.

Plaintiff,

v.

NATIONAL SECURITY AGENCY, et al.,

Defendants.

Civil Action No. 1:15-cv-00662-TSE

Hon. T.S. Ellis, III

**WIKIMEDIA FOUNDATION, INC.'S RESPONSES AND OBJECTIONS TO
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE'S SECOND SET OF
INTERROGATORIES**

PROPOUNDING PARTY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

RESPONDING PARTY: WIKIMEDIA FOUNDATION, INC.

SET NUMBER: TWO

Pursuant to Federal Rule of Civil Procedure 33, Plaintiff Wikimedia Foundation, Inc. ("Plaintiff" or "Wikimedia") responds as follows to Defendant Office of the Director of National Intelligence's ("Defendant" or "ODNI") (collectively with Plaintiff, the "Parties") Second Set of Interrogatories (the "Interrogatories"):

I. GENERAL RESPONSES.

1. Plaintiff's response to Defendant's Interrogatories is made to the best of Plaintiff's present knowledge, information, and belief. Discovery in this action is ongoing, and Plaintiff's responses may be substantially altered by further investigation, including further review of Plaintiff's own documents, as well as the review of documents produced by Defendant, which Plaintiff has just begun to receive. Said response is at all times subject to such additional

or different information that discovery or further investigation may disclose and, while based on the present state of Plaintiff's recollection, is subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Plaintiff's further discovery or investigation.

2. Plaintiff reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to Defendant's Interrogatories but discovered subsequent to the date of this response, including, but not limited to, any such information or documents obtained in discovery herein.

3. To the extent that Plaintiff responds to Defendant's Interrogatories by stating that Plaintiff will provide information and/or documents that Plaintiff deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure pursuant to Federal Rule of Civil Procedure 26(c)(7), Federal Rule of Evidence 501, or other applicable law, Plaintiff will do so only pursuant to the Parties' Stipulated Protective Order (ECF No. 120).

4. Plaintiff reserves all objections or other questions as to the competency, relevance, materiality, privilege, or admissibility as evidence in any subsequent proceeding in or trial of this or any other action for any purpose whatsoever of Plaintiff's responses herein and any document or thing identified or provided in response to Defendant's Interrogatories.

5. Plaintiff's responses will be subject to and limited by any agreements the Parties reach concerning the scope of discovery.

6. Plaintiff reserves the right to object on any ground at any time to such other or supplemental interrogatories as Defendant may at any time propound involving or relating to the subject matter of these Interrogatories.

II. GENERAL OBJECTIONS.

Plaintiff makes the following general objections, whether or not separately set forth in response to each Interrogatory, to each instruction, definition, and Interrogatory made in Defendant ODNI's Interrogatories, Set Two:

1. Plaintiff objects to the Interrogatories in their entirety insofar as any such instruction, definition, or Interrogatory seeks information or production of documents protected by the attorney-client privilege or the work product doctrine. Fed. R. Civ. Proc. 26(b)(1). Such information or documents shall not be provided in response to Defendant's Interrogatories and any inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege with respect to such information or documents or of any work product immunity which may attach thereto. Fed. R. Civ. Proc. 26(b)(5)(B).

2. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory seeks identification of documents, witnesses, or information that Defendant has withheld from Plaintiff. Fed. R. Civ. Proc. 26(b)(1), (2).

3. Plaintiff objects to the Interrogatories in their entirety to the extent any such Interrogatory requires Plaintiff to identify potentially thousands of pages of documents, not all of which have been or can be located and reviewed by counsel within the time period allowed for this response or within a reasonable time. Accordingly, said Interrogatories would subject Plaintiff to unreasonable and undue annoyance, oppression, burden and expense.

4. Plaintiff objects to any Interrogatories that exceed the scope of jurisdictional discovery as defined by Defendants, *see* ECF No. 116 at 4, and ordered by the Court.

5. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory seeks information that is available through or from public

sources or records, or that are otherwise equally available to Defendant, on the ground that such instructions, definitions, and/or Interrogatories unreasonably subject Plaintiff to undue annoyance, oppression, burden, and expense. Fed. R. Civ. Proc. 26(b)(1), (2).

6. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory purport to impose obligations that are greater or more burdensome than or contradict those imposed by the applicable Federal and local rules. *See* Fed. R. Civ. Proc. 26, 33.

7. Plaintiff objects to the Interrogatories in their entirety as the Interrogatories in aggregate contain more than the “25 written interrogatories, including all discrete subparts,” permitted by the Federal Rules of Civil Procedure, Rule 33(a)(1), and Defendant has not sought leave to serve additional interrogatories.

8. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory seeks documents or information no longer in existence or not currently in Plaintiff’s possession, custody, or control, or to the extent they refer to persons, entities, or events not known to Plaintiff or controlled by Plaintiff, on the grounds that such definitions or Interrogatories are overly broad, seek to require more of Plaintiff than any obligation imposed by law, would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and would seek to impose upon Plaintiff an obligation to investigate, discover, or produce information or materials from third parties or otherwise that are accessible to Defendant or readily obtainable from public or other sources. Fed. R. Civ. Proc. 26(b)(1), (2).

9. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory seeks information or production of documents protected

from disclosure by any right to privacy or any other applicable privilege or protection, including the right to confidentiality or privacy of third parties, any right of confidentiality provided for by Plaintiff's contracts or agreements with such third parties, or by Plaintiff's obligations under applicable law or contract to protect such confidential information. Plaintiff reserves the right to withhold any responsive information or documents governed by a third-party confidentiality agreement until such time as the appropriate notice can be given or the appropriate permissions can be obtained. Plaintiff also objects generally to all instructions, definitions, or Interrogatories to the extent they seek disclosure of trade secrets and other confidential research or analyses, development, or commercial information of Plaintiff or any third party.

10. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory is overbroad and unduly burdensome, particularly to the extent they seek "all," "each," or "any" documents, witnesses, individuals, persons, organizations, statements, or facts that refer or relate to various subject matters. Fed. R. Civ. Proc. 26(b)(1), (2). To the extent Plaintiff responds to such Interrogatories, Plaintiff will use reasonable diligence to identify responsive documents, witnesses, individuals, persons, organizations, statements, or facts in its possession, custody, or control, based on its present knowledge, information, and belief.

11. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory seeks expert discovery prematurely.

12. Plaintiff objects to the Interrogatories in their entirety to the extent any such instruction, definition, or Interrogatory purports to require Plaintiff to restore and/or search data sources that are not reasonably accessible on the grounds that such definitions and Interrogatories would subject Plaintiff to undue burden and expense. Fed. R. Civ. Proc. 26(b)(1),

(2).

III. DEFINITIONAL OBJECTIONS.

1. Plaintiff objects to definition number one (1) to the extent it defines “Plaintiff” and “Wikimedia” to include Plaintiff’s “parent, subsidiary, and affiliated organizations, and all persons acting on their behalf, including officials, agents, employees, attorneys, and consultants.” Said definition is overly broad, seeks irrelevant information not calculated to lead to the discovery of admissible evidence, seeks information outside Plaintiff’s possession, custody, or control, and would subject Plaintiff to unreasonable and undue annoyance, oppression, burden and expense. Said definition is also vague and ambiguous in that it cannot be determined what is meant by the terms “affiliated organizations” and “all persons acting on their behalf.” Plaintiff shall construe “Plaintiff” and “Wikimedia” to mean Wikimedia, and its present officers, directors, agents, and employees.

2. Plaintiff objects to definition number three (3) as unduly burdensome in that it purports to require Plaintiff to “identify” each “natural person” by providing information including “her most current home and business addresses, telephone numbers, and e-mail addresses, the name of her current employer, and her title.”

3. Plaintiff objects to definition number four (4) as unduly burdensome in that it purports to require Plaintiff to “identify” an “entity that is not a natural person” by providing information including “its telephone number and e-mail address, and the full names, business addresses, telephone numbers, and e-mail addresses of both its chief executive officer and an agent designated by it to receive service of process.”

4. Plaintiff objects to definition number five (5) as unduly burdensome in that it purports to require Plaintiff to “identify” documents by providing “(a) the nature of the document

(*i.e.*, letter, memorandum, spreadsheet, database, etc.); (b) its date; (c) its author(s) (including title(s) or position(s)); (d) its recipient(s) (including title(s) or position(s)); (e) its number of pages or size; and (f) its subject matter,” or by providing information in accordance with Defendant’s “Specifications for Production of ESI and Digitized (‘Scanned’) Images attached to Defendant National Security Agency’s First Set of Requests for Production.” Plaintiff further objects that this definition and all requests to identify documents in the Interrogatories are premature at this early stage of the litigation, would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and would impose an obligation to provide information greater than that required by the Federal Rules of Civil Procedure.

IV. INSTRUCTIONAL OBJECTIONS

1. Plaintiff objects to instruction number one (1) to the extent it purports to request “knowledge or information” from Wikimedia’s “parent, subsidiary, or affiliated organizations, and their officials, agents, employees, attorneys, consultants, and any other person acting on their behalf.” Said request is overly broad, seeks irrelevant information not calculated to lead to the discovery of admissible evidence, seeks information outside Plaintiff’s possession, custody, or control, and would subject Plaintiff to unreasonable and undue annoyance, oppression, burden and expense. Moreover, said request is vague and ambiguous in that it cannot be determined what is meant by the term “affiliated organizations” and “any other person acting on their behalf.” Where an Interrogatory requests knowledge or information of Plaintiff, Plaintiff shall construe such request to mean knowledge or information from Wikimedia, and its present officers, directors, agents, and employees.

2. Plaintiff objects to instruction number two (2) as unduly burdensome to the extent it imposes an obligation to provide information greater than that required by the Federal Rules of

Civil Procedure.

3. Plaintiff objects to instruction number three (3) as unduly burdensome and imposing an obligation to provide information greater than that required by the Federal Rules of Civil Procedure to the extent it purports to require Plaintiff to “identify each person known by Plaintiff to have such knowledge, and in each instance where Plaintiff avers insufficient knowledge or information as a grounds for not providing information or for providing only a portion of the information requested, set forth a description of the efforts made to locate information needed to answer the interrogatory.”

4. Plaintiff objects to instruction number four (4) to the extent it seeks to require it to identify anything other than the specific claim of privilege or work product being made and the basis for such claim, and to the extent it seeks to require any information not specified in Discovery Guideline 10, on the grounds that the additional information sought by Defendant would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and constitutes information protected from discovery by privilege and as work product. Plaintiff is willing to discuss acceptable reciprocal obligations for disclosure of information withheld on the basis of attorney-client privilege or attorney work-product.

5. Plaintiff also objects to instruction number four (4) to the extent it defines “the time period for which each interrogatory seeks a response” as “the period from July 10, 2008 (the date of enactment of the FISA Amendments Act of 2008, Pub. L. 110-261, 121 Stat. 522) until the date of Plaintiff’s response.” This definition is overly broad, seeks irrelevant information not calculated to lead to the discovery of admissible evidence, and would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense. Where appropriate, Plaintiff has defined the specific time period encompassed by specific responses.

6. Plaintiff objects to instruction number five (5) that the Interrogatories are continuing, to the extent said instruction seeks unilaterally to impose an obligation to provide supplemental information greater than that required by Federal Rule of Civil Procedure 26(e) and would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense. Plaintiff will comply with the requirements of the Federal Rules of Civil Procedure and is willing to discuss mutually acceptable reciprocal obligations for continuing discovery.

V. SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES.

Without waiving or limiting in any manner any of the foregoing General Objections, Definitional Objections, or Instructional Objections, but rather incorporating them into each of the following responses to the extent applicable, Plaintiff responds to the specific Interrogatories in Defendant's Interrogatories as follows:

INTERROGATORY NO. 14:

For each category of Wikimedia international, text-based, Internet communications identified in response to NSA Interrogatory No. 3 that Plaintiff contends is intercepted, copied, and reviewed by the NSA in the course of Upstream surveillance, please state what portion (percentage) of that category of Wikimedia communications is encrypted, and in what manner (e.g., HTTPS, ssh tunnel, IPsec).

RESPONSE TO INTERROGATORY NO. 14:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff further objects to this Interrogatory because it is improperly compound and contains multiple subparts. Plaintiff further objects that this Interrogatory is overly broad, unduly burdensome, not proportional and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects that this Interrogatory is vague and ambiguous as to

time. Plaintiff additionally objects to this Interrogatory to the extent that it seeks information that is not within Plaintiff's possession, custody and control or public information that is equally accessible to Defendant. Plaintiff further objects that this Interrogatory seeks information that exceeds the scope of jurisdictional discovery as defined by Defendants, *see* ECF No. 116 at 4, and as ordered by the Court.

On the basis of these General and Specific Objections, Plaintiff will not provide a response to this Interrogatory.

INTERROGATORY NO. 15:

Please identify the IP addresses or address blocks used by Wikimedia for purposes of transmitting "logs from its servers abroad to its servers in the United States," *see* Amended Complaint ¶ 93, for the period July 2008 to the present, specifying as to each the assigning entity (whether the American Registry for Internet Numbers or otherwise), and the period (by month and year) during which the assigned addresses or blocks were used by Wikimedia for purposes of log transmission.

RESPONSE TO INTERROGATORY NO. 15:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff further objects to this Interrogatory as improperly compound and containing multiple subparts. Plaintiff also objects that this Interrogatory is overbroad as to time. Plaintiff additionally objects that this Interrogatory is unduly burdensome, not proportional, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these General and Specific Objections, Plaintiff responds as follows. The following are the IP address blocks and assigning entity associated with log communications from Wikimedia's servers abroad to its servers in the United States from March

2009 to the present.

IP blocks	Assigning entity	Approximate Dates
203.212.189.192/26	Yahoo!, Inc.	03-2009- 05-2009
91.198.174.0/24	RIPE Network Coordination Centre (RIPE NCC)	03-2009- present
208.80.152.0/22	American Registry for Internet Numbers (ARIN)	03-2009- present
10.0.0.0/8	<i>Not assigned, RFC 1918 private address space</i>	11-2013- present
2620:0:860::/46	American Registry for Internet Numbers (ARIN)	12-2015-present

INTERROGATORY NO. 16:

For each country in which Wikimedia’s publicly accessible websites have been hosted since July 2008, please identify any content delivery networks (“CDNs”) used by Wikimedia for purposes of hosting its websites, and the periods (by month and year) during which each such CDN was used. If during any period Wikimedia provided its own hosting services instead of using a CDN, please so state.

RESPONSE TO INTERROGATORY NO. 16:

In addition to Plaintiff’s General Objections, which are incorporated herein, Plaintiff further objects that this Interrogatory is unduly burdensome and overbroad to the extent it asks Plaintiff to identify CDNs for “each country” in which Wikimedia has publicly accessible websites from 2008 to the present. Plaintiff additionally objects to this Interrogatory as seeking information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects that this Interrogatory is vague and ambiguous as to its use of the term “hosting services.”

Subject to and without waiving these General or Specific Objections, Plaintiff responds

as follows. From 2008 to the present, Wikimedia has not used any content delivery services for hosting on its websites. Wikimedia operates its own servers and hosts these servers, and has done so consistently since 2008.

INTERROGATORY NO. 17:

Please state (in appropriate standard multiples of bits per second) the average upload bandwidth from and download bandwidth to Wikimedia servers on whatever basis tracked by or available to Plaintiff (whether yearly, monthly, weekly, daily, or on some other basis) for the years 2015, 2016, and 2017 year to date.

RESPONSE TO INTERROGATORY NO. 17:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff additionally objects to this Interrogatory as overbroad, unduly burdensome, not proportional, and as seeking information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff additionally objects that this Interrogatory is improperly compound and contains multiple subparts. Plaintiff also objects to this Interrogatory because it seeks information that is not within its possession, custody or control. Plaintiff additionally objects that this Interrogatory is vague and ambiguous as to its use of the term "servers." Plaintiff further objects that this Interrogatory is duplicative of ODNI Interrogatory No. 18. Plaintiff does not collect or maintain this information in the ordinary course of its business.

Subject to and without waiving these General or Specific Objections, Plaintiff responds as follows. Wikimedia has performed a reasonably diligent inquiry and lacks sufficient information to provide a reasonably accurate response to this Interrogatory.

INTERROGATORY NO. 18:

Please state (in gigabytes, terabytes, or other appropriate standard unit of measurement)

the amount of data uploaded from and downloaded to Wikimedia servers each month, or, if monthly information is unavailable, then each year, for 2015, 2016, and 2017 year to date.

RESPONSE TO INTERROGATORY NO. 18:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff additionally objects to this Interrogatory as overbroad, unduly burdensome, not proportional, and as seeking information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff additionally objects to this Interrogatory as improperly compound and containing multiple subparts. Plaintiff also objects to this Interrogatory because it seeks information that is not within its possession, custody or control. Plaintiff additionally objects that this Interrogatory is vague and ambiguous as to its use of the terms "servers" and "data." Plaintiff further objects that this Interrogatory is duplicative of ODNI Interrogatory No. 17. Plaintiff does not collect or maintain this information in the ordinary course of its business.

Subject to and without waiving these General or Specific Objections, Plaintiff responds as follows. Wikimedia has performed a reasonably diligent inquiry and lacks sufficient information to provide a reasonably accurate response to this Interrogatory.

Dated: January 26, 2018

/s/ Ashley Gorski

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