

**EXHIBIT 3**

**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  
UNITED STATES DEPARTMENT OF JUSTICE'S FIRST SET OF REQUESTS FOR  
PRODUCTION**

**PROPOUNDING PARTY: UNITED STATES DEPARTMENT OF JUSTICE**

**RESPONDING PARTY: WIKIMEDIA FOUNDATION, INC.**

**SET NUMBER: ONE**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 34 and Local Rule 104, Plaintiff Wikimedia Foundation, Inc. (“Wikimedia” or “Plaintiff”) responds as follows to Defendant United States Department of Justice’s (“DOJ” or “Defendant”) Requests for Production, Set One (“the Requests”):

**I. GENERAL RESPONSE.**

1. Wikimedia’s response to the Requests is made to the best of Wikimedia’s current employees’ present knowledge, information, and belief. This 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 Wikimedia’s recollection, is subject to such refreshing of recollection and such additional knowledge of facts as may result from Wikimedia’s further discovery or investigation.

2. Wikimedia reserves the right to make any use of, or to introduce at any hearing and at trial, documents responsive to the Requests but discovered subsequent to the date of Wikimedia's initial production, including, but not limited to, any documents obtained in discovery herein.

3. Wikimedia will not produce documents which Wikimedia or any other party to this litigation 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), or Federal Rule of Evidence 501. To the extent that Wikimedia responds to these Requests by stating that Wikimedia will provide information and/or documents that Wikimedia 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, Wikimedia will do so only pursuant to the Parties' Stipulated Protective Order (ECF No. 120).

4. Wikimedia reserves the right to decide whether the documents produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the Requests, in accordance with Federal Rule of Civil Procedure 34(b).

5. Wikimedia 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 this response and any document or thing produced in response to the Requests.

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

7. Wikimedia reserves the right to object on any ground at any time to such other or supplemental requests for production as Defendant may at any time propound involving or relating to the subject matter of these Requests.

## **II. GENERAL OBJECTIONS.**

Wikimedia makes the following general objections, whether or not separately set forth in response to each document request, to each and every instruction, definition, and document request made in Defendant DOJ's Request for Production, Set One:

1. Wikimedia objects generally to all Definitions, Instructions, and Document Requests inclusive, insofar as each such request seeks production of documents or information protected by the attorney-client privilege or the work product doctrine. Such documents or information shall not be produced in response to the Requests, and any inadvertent production thereof shall not be deemed a waiver of any privilege or right with respect to such documents or information or of any work product doctrine that may attach thereto.

2. Wikimedia objects to all Definitions, Instructions, and Document Requests inclusive, to the extent they purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific request on the ground that such enlargement, expansion, or alteration renders said request vague, ambiguous, unintelligible, unduly broad, and uncertain.

3. Wikimedia objects to all Definitions, Instructions, and Document Requests inclusive, 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).

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

5. Wikimedia 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.

6. Wikimedia objects to the Requests in their entirety to the extent any such Definition, Instruction, or Document Request 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 Wikimedia's contracts or agreements with such third parties, or by Wikimedia's obligations under applicable law or contract to protect such confidential information. Wikimedia 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. Wikimedia also objects generally to all Definitions, Instructions, and Document Requests to the extent they seek disclosure of trade secrets and other confidential research or analyses, development, or commercial information of Wikimedia or any third party.

7. Wikimedia objects to the Requests in their entirety to the extent any such Definition, Instruction, or Document Request is overbroad and unduly burdensome, particularly

to the extent they seek “all,” “each,” or “any” documents relating to various subject matters. To the extent Wikimedia responds to such Requests, Wikimedia will use reasonable diligence to identify responsive documents in its possession, custody, or control, based on its present knowledge, information, and belief.

**8.** Wikimedia objects to the Requests in their entirety to the extent any such Definition, Instruction, or Document Request seeks expert discovery prematurely.

**9.** Wikimedia objects to all Definitions, Instructions, and Document Requests in which the phrase “relate to” appears. The term “relate to” is overly broad, vague, ambiguous, and unintelligible, requires subjective judgment on the part of Wikimedia and Wikimedia’s attorneys, and would require a conclusion or opinion of counsel in violation of the attorney work product doctrine. Without waiving this objection, and subject to all other applicable objections or privileges stated herein, Wikimedia will produce, in response to any request for documents that “relate” to a given subject, such documents as expressly reflect or refer on their face to information relevant to the specified subject.

**10.** Wikimedia objects to definition number one (1) to the extent it defines “Plaintiff” and “Wikimedia” to include Wikimedia’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 of Wikimedia’s possession, custody, or control, and would subject Wikimedia 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.” Wikimedia shall construe “Plaintiff” and “Wikimedia” to mean Wikimedia, and its

present officers, directors, agents, and employees.

**11.** Wikimedia objects to definition number three (3) to the extent it defines “document” to include material “within the possession, custody, or control of Plaintiff, its parent, subsidiary, or affiliated organizations, and all officials, agents, employees, attorneys, consultants, or other persons acting on their behalf.” Said definition is overly broad, seeks irrelevant information not calculated to lead to the discovery of admissible evidence, seeks information outside Wikimedia’s possession, custody, or control, and would subject Wikimedia 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.” To the extent Wikimedia agrees to produce documents in response to any Request, Wikimedia shall only produce documents in the possession, custody, or control of Wikimedia, and its present officers, directors, agents, and employees.

**12.** Wikimedia objects to definition number five (5) to the extent that it imposes an obligation greater and more onerous than required by the applicable Federal and local rules.

**13.** Wikimedia objects to all Definitions, Instructions, and Document Requests to the extent they reference interrogatories propounded by Defendant NSA.

**14.** Wikimedia objects to instruction numbers two (2) and three (3) to the extent that these instructions impose an obligation greater and more onerous than required by the applicable Federal Rules. As to instruction number 2, Wikimedia invites Defendant to confer about a mutually acceptable agreement regarding production of document “families.”

**15.** Wikimedia objects to the time period set forth in instruction number four (4) because it is overbroad and excessive, and would subject Wikimedia to unreasonable and undue

annoyance, oppression, burden, and expense.

**16.** Wikimedia objects to instruction numbers five (5) and six (6) purporting to require Wikimedia to provide a privilege log at the time of its responses and objections. Wikimedia invites Defendant to confer about a mutually agreeable date for the exchange of privilege logs. Wikimedia further objects to instruction numbers 5 and 6 to the extent they purport to require Wikimedia 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 Wikimedia to unreasonable and undue annoyance, oppression, burden, and expense, and constitutes information protected from discovery by privilege and as work product.

**17.** Wikimedia objects to instruction number seven (7) which purports to require Wikimedia to identify each document produced according to the request(s) to which they relate. Said instruction would subject Wikimedia to unreasonable and undue annoyance, oppression, burden, and expense and imposes an obligation greater and more onerous than required by the applicable Federal and local rules.

**18.** Wikimedia objects to instruction numbers eight (8), nine (9), ten (10), and eleven (11) which purport to require Wikimedia to produce documents in a particular form. These instructions impose an obligation greater and more onerous than required by the applicable Federal and local rules. Wikimedia invites Defendant to confer about a mutually acceptable agreement regarding the format for the production of documents.

**19.** Wikimedia objects to instruction number thirteen (13) which attempts to impose unilaterally a date, time, and place for producing and/or making available documents, if any,



responsive to the Requests. Wikimedia shall make the documents available for inspection and copying by Defendant at a mutually agreeable time and place.

**III. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS.**

Without waiving or limiting in any manner any of the foregoing General Objections, but rather incorporating them into each of the following responses to the extent applicable, Wikimedia responds to the specific requests within Defendant's Requests for Production, Set One, as follows:

**REQUEST FOR PRODUCTION NO. 1:**

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 produce documents sufficient to show what portion (percentage) of that category of Wikimedia communications is encrypted, and in what manner (e.g., HTTPS, ssh tunnel, IPsec).

**SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION NO. 1:**

In addition to Wikimedia's General Objections, which are incorporated herein, Wikimedia objects to this Request as unreasonably cumulative and duplicative of other written discovery and can be obtained through another source that is more convenient, less burdensome or less expensive. Wikimedia further objects to this Request as vague and ambiguous as to time. Wikimedia also objects to this Request to the extent it seeks information that is either publicly available or is not within its possession, custody or control. Wikimedia further objects that this Request is overly broad, unduly burdensome, not proportional and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Wikimedia further objects that this Request 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, Wikimedia will not produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 2:**

Please produce documents sufficient to 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; the assigning entity of each such address or block (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.

**SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION NO. 2:**

In addition to Wikimedia’s General Objections, which are incorporated herein, Wikimedia objects to this Request as unreasonably cumulative and duplicative of other written discovery and can be obtained through another source that is more convenient, less burdensome or less expensive. Wikimedia further objects that this Request is overbroad as to time and seeks information that is publicly available. Wikimedia additionally objects that this Request is unduly burdensome, not proportional, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

On the basis of these General and Specific Objections, Wikimedia will not produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 3:**

For each country in which Wikimedia’s publicly accessible websites have been hosted since July 2008, please produce documents sufficient to identify any content delivery networks

(“CDNs”) used by Wikimedia for purposes of hosting its websites; the periods (by month and year) during which each such CDN was used; and the periods (by month and year), if any, during which Wikimedia provided its own hosting services instead of using a CDN.

**SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION NO. 3:**

In addition to Wikimedia’s General Objections, which are incorporated herein, Wikimedia objects to this Request as unreasonably cumulative and duplicative of other written discovery and can be obtained through another source that is more convenient, less burdensome or less expensive. Wikimedia further objects that this Request is unduly burdensome and overbroad to the extent it asks Wikimedia to identify CDNs for “each country” in which Wikimedia has publicly accessible websites from 2008 to the present. Wikimedia additionally objects to this Request as seeking information that is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of these General or Specific Objections, Wikimedia responds as follows: as explained in its response to ODNI Interrogatory No. 16, Wikimedia does not currently use, nor has it used during the referenced period, content delivery networks for hosting its websites. Wikimedia therefore will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 4:**

Please produce documents sufficient to show (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.

**SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION NO. 4:**

In addition to Wikimedia's General Objections, which are incorporated herein, Wikimedia objects to this Request as duplicative of other written discovery. Wikimedia further objects that this Request is overbroad and unduly burdensome, not proportional, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Wikimedia also objects to this Request because it seeks information that is not within its possession, custody or control. Wikimedia additionally objects that this Request is vague and ambiguous as to its use of the term "servers."

Subject to and without waiving these General or Specific Objections, Wikimedia responds as follows. Wikimedia has performed a reasonably diligent inquiry and concluded that it does not possess documents sufficient to show the average upload bandwidth from and download bandwidth to Wikimedia servers from 2015 through 2017.

**REQUEST FOR PRODUCTION NO. 5:**

Please produce documents sufficient to show or estimate (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.

**SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION NO. 5:**

In addition to Wikimedia's General Objections, which are incorporated herein, Wikimedia objects to this Request as duplicative of other written discovery. Wikimedia further objects that this Request is overbroad and unduly burdensome, not proportional, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Wikimedia also objects to this Request as seeking information that is not within its possession,

custody, or control. Wikimedia additionally objects that this Request is vague and ambiguous as to its use of the terms “servers” and “data.”

Subject to and without waiving these General or Specific Objections, Wikimedia responds as follows. Wikimedia has performed a reasonably diligent inquiry and concluded that it does not possess documents sufficient to show the amount of data uploaded from and downloaded to Wikimedia servers each month or for each year from 2015 to 2017.

Dated: January 26, 2018

/s/ Ashley Gorski

Ashley Gorski  
American Civil Liberties Union  
Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
Phone: (212) 549-2500  
Fax: (212) 549-2654  
agorski@aclu.org

*Counsel for Plaintiff*