

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WIKIMEDIA FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-00662-TSE
)	
NATIONAL SECURITY AGENCY, <i>et al.</i> ,)	FILED UNDER SEAL
)	
Defendants.)	

EXHIBIT 4

**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 AMENDED RESPONSES AND OBJECTIONS TO
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE'S INTERROGATORY
NO. 19**

PROPOUNDING PARTY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

RESPONDING PARTY: WIKIMEDIA FOUNDATION, INC.

SET NUMBER: THREE

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") Interrogatory No. 19 (the "Interrogatory"):

I. GENERAL RESPONSES.

1. Plaintiff's response to Defendant's Interrogatory 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. 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 Interrogatory 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 Interrogatory 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 Interrogatory.

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 this Interrogatory.

II. GENERAL OBJECTIONS.

Plaintiff makes the following general objections, whether or not separately set forth in

response to the Interrogatory, to each instruction, definition, and Interrogatory made in Defendant ODNI's Interrogatories, Set Three:

1. Plaintiff objects to the Interrogatory in its entirety insofar as the instructions, definitions, 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 Interrogatory 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 Interrogatory in its entirety to the extent the 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 Interrogatory in its entirety to the extent it 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, the Interrogatory would subject Plaintiff to unreasonable and undue annoyance, oppression, burden and expense.

4. Plaintiff objects to the extent the Interrogatory exceeds the scope of jurisdictional discovery as defined by Defendants, *see* ECF No. 116 at 4, and ordered by the Court. *See* ECF No. 117.

5. Plaintiff objects to the Interrogatory in its entirety to the extent it seeks information that is available through or from public sources or records, or that is otherwise equally available to Defendant, on the ground that it unreasonably subjects Plaintiff to undue annoyance, oppression,

burden, and expense. Fed. R. Civ. Proc. 26(b)(1), (2).

6. Plaintiff objects to the Interrogatory in its entirety to the extent it purports 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 Interrogatory in its entirety as Defendant's 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 Interrogatory in its entirety to the extent it seeks documents or information no longer in existence or not currently in Plaintiff's possession, custody, or control, or to the extent it refers 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 Interrogatory in its entirety to the extent it 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 the Interrogatory to the extent it seeks 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 Interrogatory in its entirety to the extent it 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 the Interrogatory, 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 Interrogatory in its entirety to the extent it seeks expert discovery prematurely.

12. Plaintiff objects to the Interrogatory in its entirety to the extent it purports to require Plaintiff to restore and/or search data sources that are not reasonably accessible on the grounds that such definitions and Interrogatory 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 the definition of "identify" with respect to Internet Protocol ("IP") addresses because this definition calls for a significant and burdensome collection of information in addition to the IP addresses themselves. The additional information called for by the definition of "identify" is overbroad, unduly burdensome, not proportional and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to jurisdictional issues.

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 objects to instruction number five (5) that the Interrogatory is 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 RESPONSE TO INTERROGATORY NO. 19.

Without waiving or limiting in any manner any of the foregoing General Objections, Definitional Objections, or Instructional Objections, but rather incorporating them into the following response to the extent applicable, Plaintiff responds to Defendant's Interrogatory No. 19 as follows:

INTERROGATORY NO. 19:

NSA Interrogatory No. 3 requests that Plaintiff identify each category of Wikimedia international, text-based, Internet communications that Plaintiff contends is intercepted, copied, and reviewed by the NSA in the course of Upstream surveillance. For the period January 1, 2017, to the present, please describe the communications in each such category by stating:

- a. each communications protocol used to transmit Wikimedia communications in that category;
- b. the number, to the extent it is known or can be estimated, of Wikimedia communications in that category using each protocol;
- c. to the extent known, the countries to and from which Wikimedia communications in that category, using each protocol, are transmitted;
- d. whether and by what means communications in that category using each type of protocol are encrypted; and
- e. the Internet Protocol (IP) addresses or address blocks used by Wikimedia for purposes of transmitting or receiving communications in that category.

If Plaintiff does not intend at summary judgment or trial to offer proof that communications in a given category that use a given protocol are intercepted, copied, and reviewed by the NSA in the course of Upstream surveillance, then it need not identify, quantify, or otherwise respond to this interrogatory concerning communications in that category using that protocol.

RESPONSE TO INTERROGATORY NO. 19:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff objects to this Interrogatory because it is improperly compound and contains multiple subparts. Plaintiff also objects that this Interrogatory is vague and ambiguous as to its use of the term "communications protocol." 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 relevant to jurisdictional issues. Wikimedia objects to the Interrogatory as unreasonably cumulative and duplicative of Defendants' written discovery requests and Wikimedia's written discovery responses and document productions in this matter, including, *inter alia*, NSA Interrogatory Nos. 6-8 and ODNI Interrogatory Nos. 14-15.

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. *See* ECF No. 117. For example, to the extent the Interrogatory seeks information concerning the volume or proportion of Wikimedia communications that are encrypted and the encryption protocols used, Wikimedia objects that such subjects exceed the scope of jurisdictional discovery as defined by Defendants, *see* ECF No. 116 at 4, and as ordered by the Court. *See* ECF No. 117.

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

AMENDED RESPONSE TO INTERROGATORY NO. 19:

In addition to Plaintiff's General Objections, which are incorporated herein, Plaintiff objects to this Interrogatory because it is improperly compound and contains multiple subparts. Plaintiff also objects that this Interrogatory is vague and ambiguous as to its use of the term "communications protocol." 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 relevant to jurisdictional issues. Wikimedia objects to the Interrogatory as unreasonably cumulative and duplicative of Defendants' written discovery requests and Wikimedia's written discovery responses and document productions in this matter, including, *inter alia*, NSA Interrogatory Nos. 6-8 and ODNI Interrogatory Nos. 14-15.

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. *See* ECF No. 117. For example, to the extent the Interrogatory seeks information concerning the volume or proportion of Wikimedia communications that are encrypted and the encryption protocols used, Wikimedia objects that such subjects exceed the scope of jurisdictional discovery as defined by Defendants, *see* ECF No. 116 at 4, and as ordered by the Court. *See* ECF No. 117.

Subject to and without waiving any of these General or Specific Objections, Plaintiff's response to this Interrogatory is contained in the attached Exhibit 1, and Exhibits A-G.

Dated: April 6, 2018

/s/ Ashley Gorski

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EXHIBIT 1

TECHNICAL STATISTICS FOR 2017 TO 2018 RESPONSIVE TO ODNI INTERROGATORY NO. 19						
Protocol	Volume	Date Range	Foreign Countries, Regions, Territories	IP Addresses	Encryption Status	Additional Notes
ODNI Interrogatory 19(a)	ODNI Interrogatory 19(b)		ODNI Interrogatory 19(c)	ODNI Interrogatory 19(e)	ODNI Interrogatory 19(d)	ODNI Interrogatory 19(d)
Category 1 Wikimedia communications with its community members, who read and contribute to Wikimedia's Projects and webpages, and who use the Projects and webpages to interact with each other						
Total HTTP & HTTPS requests: foreign users to WMF US servers	381,655,849,279	Aug. 1, 2017, to Jan. 31, 2018 (six months)	List of countries for HTTPS (Exhibit A)	198.35.26.0/23, 208.80.152.0/22, 2620:0:860::/48, 2620:0:861::/48, 2620:0:863::/48	HTTPS: 373,045,851,598 HTTP: 8,609,997,681	For clarity, these HTTPS and HTTP requests use the same IP addresses.
			List of countries for HTTP (Exhibit B)			
			Netherlands			
Total HTTP & HTTPS requests: US users to WMF foreign servers	2,812,819,460	Aug. 1, 2017, to Jan. 31, 2018 (six months)	Unknown	91.198.174.0/24, 2620:0:862::/48	HTTPS: 2,479,014,613 HTTP: 333,804,847	For clarity, these HTTPS and HTTP requests use the same IP addresses.
SMTP communications: foreign users to WMF US servers	Unknown			208.80.152.0/22, 2620:0:860::/48, 2620:0:861::/48	Unknown	
Category 2 Wikimedia's internal log communications						
Apache Kafka log communications transmitted from WMF foreign servers to WMF US servers	736,045,377,450	Aug. 1, 2017, to Jan. 31, 2018 (six months)	Netherlands	10.0.0.0/8, 2620:0:860::/46	736,045,377,450 log communications encrypted using IPSec	
Category 3 Communications by Wikimedia staff						
Logged international TCP connections using WMF Office Network or WMF VPN	4,948,011	Mar. 1, 2017 to Feb. 28, 2018 (one year)	List of countries for non-VPN (Exhibit C); List of countries for VPN (Exhibit D)	The WMF Office Network IP range is 198.73.209.0/24, with the WMF VPN operating on IP address 198.73.209.25	All 791 connections encrypted using OpenVPN (SSL/TLS protocol)	Other than the VPN connections, Wikimedia itself does not systematically encrypt connections to and from the office network router and it would not be practical for it to do so. However, individuals who use the office network router may establish encrypted connections based on the particular communications services they use at any given time. Because Wikimedia's office network router does not log application-layer protocol information, Wikimedia does not know with certainty the extent to which the data transmitted over these non-VPN connections is encrypted. The logs do contain, however, the source and destination ports of connections, which in certain cases may shed light on the encryption status of connections, such as those that use port 443 or port 22.

<p>Logged International UDP connections using WMF Office Network or WMF VPN</p>	<p>2,207,771</p>	<p>Mar. 1, 2017 to Feb. 28, 2018 (one year)</p>	<p>List of countries for non-VPN (Exhibit E); List of countries for VPN (Exhibit F)</p>	<p>The WMF Office Network IP range is 198.73.209.0/24, with the WMF VPN operating on IP address 198.73.209.25</p>	<p>All 19,709 connections encrypted using OpenVPN (SSL/TLS protocol)</p>	<p>Same response.</p>
<p>Logged International ICMP connections using WMF Office Network or WMF VPN</p>	<p>51,301</p>	<p>Mar. 1, 2017 to Feb. 28, 2018 (one year)</p>	<p>List of countries for non-VPN (Exhibit G)</p>	<p>The WMF Office Network IP range is 198.73.209.0/24, with the WMF VPN operating on IP address 198.73.209.25</p>	<p>0 connections encrypted using VPN</p>	<p>Same response.</p>

