



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 INTERROGATORIES

PROPOUNDING PARTY: UNITED STATES DEPARTMENT OF JUSTICE

RESPONDING PARTY: WIKIMEDIA FOUNDATION, INC.

SET NUMBER: ONE

Pursuant to Federal Rule of Civil Procedure 33, Plaintiff Wikimedia Foundation, Inc. ("Plaintiff" or "Wikimedia") responds as follows to Defendant Department of Justice's ("Defendant" or "DOJ") (collectively with Plaintiff, the "Parties") First 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's Interrogatories:

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 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," "every," or "any" documents, witnesses, "factors," or facts relating 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 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 any contention Interrogatories in their entirety as premature. Plaintiff will provide its response prior to the close of fact discovery.

13. 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 four (4) and to each Interrogatory that purports to require Plaintiff to “state the basis of,” “stating the basis of,” “state on what basis,” or otherwise “state with particularity” or “identify” “all” facts, documents, or persons whose testimony support or dispute any given factual assertion, on the ground that any response thereto would require subjective judgment on the part of Plaintiff and its attorneys, and would further require disclosure of a conclusion or opinion of counsel in violation of the attorney work product doctrine and/or attorney-client privilege. 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.

3. Plaintiff objects to definition number five (5) 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.”

4. Plaintiff objects to definition number six (6) 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.”

5. Plaintiff objects to definition number seven (7) 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 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.”

3. 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.

4. Plaintiff objects to instruction number five (5) 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.

5. Plaintiff objects to instruction number six (6) 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:

**ALLEGATIONS REGARDING NSA INTERCEPTION OF WIKIMEDIA’S
INTERNATIONAL, TEXT-BASED, INTERNET COMMUNICATIONS**

INTERROGATORY NO. 1:

Please state whether Plaintiff continues to contend, for purposes of establishing jurisdiction, that “even if one assumes that a 0.00000001% chance ... of the [National Security

Agency (“NSA”)] copying and reviewing any particular communication, the odds of the government copying and reviewing at least one of Plaintiff[’s] communications in a one-year period would be greater than 99.9999999999%.” *See* Amended Complaint ¶ 58.

RESPONSE TO INTERROGATORY NO. 1:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is a contention Interrogatory that is premature at this stage in the litigation. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Subject to and without waiving any of these General or Specific Objections, Plaintiff responds as follows.

No.

INTERROGATORY NO. 2:

Unless Plaintiff’s response to Interrogatory No. 1, above, is an unequivocal “no,” then please state the basis, including all assumptions, of the allegation in paragraph 58 of the Amended Complaint, that, “if one assumes a 0.00000001% chance ... of the NSA copying and reviewing any particular communication, the odds of the government copying and reviewing at least one Wikimedia communication in a one-year period would be greater than 99.9999999999%.”

RESPONSE TO INTERROGATORY NO. 2:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is premature at this stage of the litigation because it is a contention Interrogatory and because it seeks information that may be the subject of expert reports and expert testimony. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Because Plaintiff's Response to Interrogatory No. 1 is "no," Plaintiff has not provided a response to this Interrogatory.

INTERROGATORY NO. 3:

Unless Plaintiff's response to Interrogatory No. 1, above, is an unequivocal "no," please identify any conclusions that Plaintiff disputes in paragraph 11 of the Declaration of Dr. Alan Salzberg, ECF No. 77-2, including but not limited to the conclusions that "no statistical foundation is provided" for the alleged .00000001% chance of the NSA copying and reviewing at least one Wikimedia communication in a one-year period contained in paragraph 58 of the Amended Complaint, and that "[i]f that assumption is incorrect, the calculation changes as a direct result," stating the basis on which Plaintiff disputes each conclusion.

RESPONSE TO INTERROGATORY NO. 3:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is premature at this stage of the litigation because it is a contention Interrogatory and because it seeks information that may be the subject of expert reports and expert testimony. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Because Plaintiff's Response to Interrogatory No. 1 is "no," Plaintiff has not provided a response to this Interrogatory.

INTERROGATORY NO. 4:

Unless Plaintiff's response to Interrogatory No. 1, above, is an unequivocal "no," please identify any conclusions in paragraph 14 of the Declaration of Dr. Alan Salzberg, ECF No. 77-2, that Plaintiff disputes, stating the basis on which Plaintiff disputes that conclusion.

RESPONSE TO INTERROGATORY NO. 4:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is premature at this stage of the litigation because it is a contention Interrogatory and because it seeks information that may be the subject of expert reports and expert testimony. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Plaintiff further objects that this Interrogatory is overbroad and unduly burdensome.

Because Plaintiff's Response to Interrogatory No. 1 is "no," Plaintiff has not provided a response to this Interrogatory.

INTERROGATORY NO. 5:

Unless Plaintiff's response to Interrogatory No. 1, above, is an unequivocal "no," please state whether and on what basis on which Plaintiff disputes the conclusion, in paragraph 15 of the Declaration of Dr. Alan Salzberg, ECF No. 77-2, that "[a]ny clustering of the copying and reviewing of communications, whether by country or some other criteria, would mean that some groups would have different chances of being copied than some other groups and that the fact that a particular communication in one group is reviewed or copied means other communications in that group are more likely to be copied."

RESPONSE TO INTERROGATORY NO. 5:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is premature at this stage of the litigation because it is a contention Interrogatory and because it seeks information that may be the subject of expert reports and expert testimony. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Because Plaintiff's Response to Interrogatory No. 1 is "no," Plaintiff has not provided a response to this Interrogatory.

INTERROGATORY NO. 6:

Unless Plaintiff's response to Interrogatory No. 1, above, is an unequivocal "no," please state whether and on what basis on which Plaintiff disputes the conclusion, in paragraph 19 of the Declaration of Dr. Alan Salzberg, ECF No. 77-2, that "Plaintiff's assertions about how the [Upstream] process works – through the copying of 'certain high-capacity cables, switches, and routers' ([Am.] Compl. ¶ 49) – would mean, if accurate, that the process is, in statistical terms, haphazard" rather than random.

RESPONSE TO INTERROGATORY NO. 6:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is premature at this stage of the litigation because it is a contention Interrogatory and because it seeks information that may be the subject of expert reports and expert testimony. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

Because Plaintiff's Response to Interrogatory No. 1 is "no," Plaintiff has not provided a response to this Interrogatory.

ALLEGATIONS REGARDING INJURY TO WIKIMEDIA

INTERROGATORY NO. 7:

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 identify each specific type of information contained in that category of communication in which Plaintiff contends it has

a possessory interest.

RESPONSE TO INTERROGATORY NO. 7:

In addition to the General Objections above which are incorporated herein, 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. Plaintiff additionally objects that this Interrogatory is compound in that it contains multiple subparts.

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

INTERROGATORY NO. 8:

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 identify by layer within an Internet communication packet each type of information contained in that category of communication in which Plaintiff contends it has a privacy or proprietary interest.

RESPONSE TO INTERROGATORY NO. 8:

In addition to the General Objections above which are incorporated herein, 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. Plaintiff additionally objects that this Interrogatory is compound in that it contains multiple subparts.

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

INTERROGATORY NO. 9:

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 identify by layer within an Internet communication packet each type of information contained in that category of communication in which Plaintiff contends it has an expressive interest.

RESPONSE TO INTERROGATORY NO. 9:

In addition to the General Objections above which are incorporated herein, 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. Plaintiff additionally objects that this Interrogatory is compound in that it contains multiple subparts.

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

INTERROGATORY NO. 10:

Please state the basis of Plaintiff's allegation, in paragraph 99 of the Amended Complaint, that "Wikimedia's communications also reveal private information about its operations, including details about its technical infrastructure, its data flows, and its member community writ large."

RESPONSE TO INTERROGATORY NO. 10:

In addition to the General Objections above which are incorporated herein, 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. 11:

If Plaintiff contends that in order to conduct Upstream surveillance it is necessary to review

the application layer of a packet or otherwise review the contents of a communication where Upstream surveillance does not involve “about” collection, then please state the basis of that contention.

RESPONSE TO INTERROGATORY NO. 11:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is a contention Interrogatory that is premature at this stage in the litigation. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery. Plaintiff additionally objects that this Interrogatory seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

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

INTERROGATORY NO. 12:

If Plaintiff disputes that with “rare exception” it “do[es] not contribute, monitor, or delete content” on its Project websites, that it “merely host[s] this content,” “maintaining the infrastructure and organizational framework that allows [its] users to build the [Project websites] by contributing and editing [the] content themselves”; or that it “do[es] not take an editorial role” but “simply provide[s] access to the content that . . . users have contributed and edited,” as stated at http://wikimediafoundation.org/wiki/Terms_of_Use (last visited on November 15, 2017) (copy attached), then please state the basis on which Plaintiff contends those statements are inaccurate.

RESPONSE TO INTERROGATORY NO. 12:

In addition to the General Objections above which are incorporated herein, 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. 13:

Please state which of the categories 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, involve communications in which Wikimedia obtains information about the actual identities of the other parties to those communications, apart from the IP addresses associated with the communications to and from those parties.

RESPONSE TO INTERROGATORY NO. 13:

In addition to the General Objections above which are incorporated herein, 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. 14:

Please state which of the categories 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, involves communications in which Wikimedia, rather than the other parties to the communications, selects the information sent to them.

RESPONSE TO INTERROGATORY NO. 14:

In addition to the General Objections above which are incorporated herein, 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. Plaintiff additionally objects that this Interrogatory seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects that this Interrogatory is vague, ambiguous and unintelligible as to its use of the terms “selects” and “them.”

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

INTERROGATORY NO. 15:

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 the basis of Plaintiff’s allegations, in paragraphs 75 and 109 of the Amended Complaint, that “in part” as a result of Upstream surveillance Wikimedia has undertaken “burdensome” and “costly measures” and “diverted time and monetary resources ... from other important organizational work” in order to protect the confidentiality of communications in that category.

RESPONSE TO INTERROGATORY NO. 15:

In addition to the General Objections above which are incorporated herein, Plaintiff additionally objects that this Interrogatory is improperly compound in that it contains multiple subparts.

Subject to and without waiving any of these General or Specific Objections, Plaintiff responds as follows.

(1) Technical measures.

Due in part to Upstream surveillance, Wikimedia transitioned from HTTP to HTTPS as the

default protocol for all Wikimedia project webpages. In order to effectively execute its transition to HTTPS-by-default for all Project pages, Wikimedia has devoted four years of full-time employee work allocated across different members of Wikimedia's staff. This transition to HTTPS-by-default has also created additional burdens on specific Wikimedia projects or initiatives. For example, the HTTPS transition necessitated approximately six months of full-time employee work to: (1) coordinate with Wikimedia's partners regarding the manner in which the transition would affect the "Wikipedia Zero" project; and (2) provide related technical support.

Due in part to Upstream surveillance, Wikimedia implemented Internet Protocol Security ("IPsec"). In order to effectively execute IPsec implementation and maintenance, Wikimedia allocated approximately six months of full-time employee work.

The transition to HTTPS-by-default and IPsec implementation required a capital expenditure on technical infrastructure:

(i) Wikimedia spent approximately €241,148.46 on Cache/TLS-termination servers located in Amsterdam, Netherlands.

(ii) Wikimedia spent approximately \$40,384.56 on Cache/TLS-termination servers located in Virginia, U.S.A.

Documentation of the aforementioned expenditures will be produced to Defendants.

Finally, Wikimedia has also hired a full-time Traffic Security Engineer who will be responsible for implementing and maintaining technical efforts to protect its users' reading and editing habits from mass surveillance—including, specifically, from the NSA's Upstream surveillance.

(2) Policy measures.

Wikimedia held internal discussions and community consultations specifically related to

NSA surveillance. Due in part to Upstream surveillance, Wikimedia expedited the negotiation, drafting, and approval of a new Privacy Policy, which included a new Access to Nonpublic Information Policy. Wikimedia staff responded to community concerns over surveillance—including concerns about the NSA’s Upstream surveillance—when drafting these policy changes. As part of these efforts, Wikimedia’s legal team conducted extensive negotiations with other departments within Wikimedia and consulted with outside counsel.

Due in part to Upstream surveillance, Wikimedia created new Data Retention Guidelines and a new Request for User Information Procedure and Guidelines. Specifically, in drafting each of these guidelines, Wikimedia staff was acting on concerns over NSA surveillance.

These collective processes to overhaul Wikimedia’s privacy policies and create related procedures and guidelines required approximately (and at least) 14 months of one full-time employee’s work.

(3) Staff practices.

Due in part to Upstream surveillance, Wikimedia staff increasingly relied on telephone communications and encrypted messaging systems, including when interacting with community members who have expressed concerns over privacy/confidentiality issues, including NSA surveillance.

Wikimedia is a non-profit organization with limited staff and financial resources. The aforementioned resources that Wikimedia devoted to protect the confidentiality of its communications were made at the expense of other organization initiatives and activities that Wikimedia could have undertaken to further advance its mission.

INTERROGATORY NO. 16:

For each of the “burdensome” and “costly measures” and “diver[sions] of time and

monetary resources” identified in response to Interrogatory No. 15, above, please identify and describe with particularity every factor other than Upstream surveillance to which that measure or diversion of time and resources is attributable, including but not limited to any other NSA surveillance, any other U.S. government surveillance, any foreign government surveillance, any surveillance by non-government entities, and protection against computer viruses or other computer-crime activities.

RESPONSE TO INTERROGATORY NO. 16:

In addition to the General Objections above which are incorporated herein, Plaintiff additionally objects that this Interrogatory is improperly compound in that it contains multiple subparts. Plaintiff additionally objects that this Interrogatory is overbroad and unduly burdensome to the extent that it requests that Plaintiff identify “with particularity every factor other than Upstream surveillance” that has attributed to Wikimedia’s measures to protect the confidentiality of its communications.

(1) Technical measures.

Wikimedia transitioned to HTTPS-by-default primarily due to concerns over Upstream surveillance. Other factors that influenced Wikimedia’s transition to HTTPS included Wikimedia’s desire to protect against: (i) surveillance practices of foreign state actors; (ii) practices of commercial actors; and (iii) individual computer hackers. A significant majority of Wikimedia’s ongoing work to maintain HTTPS standards and practices is due solely to the threat of NSA surveillance.

Wikimedia implemented IPsec primarily due to concerns over Upstream surveillance. Other factors that influenced Wikimedia’s decision to implement IPsec included Wikimedia’s desire to protect against: (i) other NSA surveillance practices; (ii) other U.S. government

surveillance practices; and (iii) surveillance practices of foreign state actors.

Wikimedia hired a Traffic Security Engineer partially due to concerns over Upstream surveillance. Other factors that influenced this staffing decision included Wikimedia's desire to protect against: (i) other NSA surveillance practices; (ii) other U.S. government surveillance practices; (iii) surveillance practices of foreign state actors; (iv) practices of commercial actors; and (v) individual computer hackers.

(2) Policy Measures.

Wikimedia enacted a new Privacy Policy partially due to concerns over Upstream surveillance. Other factors that influenced Wikimedia's policy update included Wikimedia's concerns regarding: (i) other NSA surveillance practices; (ii) other U.S. government surveillance practices; (iii) surveillance practices of foreign state actors; (iv) responding to civil subpoenas; (v) responding to government subpoenas; (vi) practices of commercial actors; (vii) protecting against individual computer hackers; and (viii) keeping policies up-to-date and transparent.

Wikimedia created new Data Retention Guidelines partially due to concerns over Upstream surveillance. Other factors that influenced Wikimedia's creation of these guidelines included Wikimedia's concerns regarding: (i) other NSA surveillance practices; (ii) other U.S. government surveillance practices; (iii) surveillance practices of foreign state actors; (iv) responding to civil subpoenas; (v) responding to government subpoenas; (vi) practices of commercial actors; (vii) protecting against individual computer hackers; and (viii) keeping policies up-to-date and transparent.

Wikimedia created new Request for User Information Procedure and Guidelines partially due to concerns over Upstream surveillance. Other factors that influenced Wikimedia's creation of the guidelines included Wikimedia's concerns regarding: (i) other NSA surveillance practices;

(ii) other U.S. government surveillance practices; (iii) surveillance practices of foreign state actors; (iv) responding to civil subpoenas; (v) responding to government subpoenas; (vi) practices of commercial actors; and (vii) protecting against individual computer hackers; and (viii) keeping policies up-to-date and transparent.

(3) Staff practices.

Due in part to Upstream surveillance, Wikimedia staff increasingly relied on telephone communications and encrypted messaging systems, including when interacting with community members. Other factors that influenced these practices included: (i) other NSA surveillance practices; (ii) other U.S. government surveillance practices; and (iii) surveillance practices of foreign state actors.

INTERROGATORY NO. 17:

For each of the “burdensome” and “costly measures” and “diver[sions] of time and monetary resources” identified in response to Interrogatory No. 15, above, please state the basis of Plaintiff’s contention that the measure or diversion is attributable to Upstream surveillance rather than factors identified in Plaintiff’s response to Interrogatory No. 16, above.

RESPONSE TO INTERROGATORY NO. 17:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is overbroad, unduly burdensome, and a contention Interrogatory that is premature at this stage in the litigation. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery.

(1) **Wikimedia’s transition to HTTPS-by-default.** Revelations about Upstream surveillance in summer 2013 were a substantial factor in Wikimedia’s decision to transition to HTTPS-by-default. Wikimedia initially had significant reservations regarding how the transition

would affect users in large restricted corporate networks or users in countries such as China and Iran, for whom Wikimedia project webpages may or would become inaccessible if they were transitioned to HTTPS. Had it not been for revelations about the NSA's Upstream surveillance, it is likely that Wikimedia would not have transitioned all of its Project webpages to HTTPS-by-default, and instead would have relied on a less burdensome approach through which users could "opt-in" to using HTTPS. Revelations related to Upstream surveillance also contributed to Wikimedia's execution of the transition process on an accelerated basis.

(2) **Wikimedia's IPsec implementation.** Revelations about Upstream surveillance in summer 2013 also prompted and was the decisive factor in Wikimedia's decision to implement IPsec. Wikimedia had considered implementing IPsec before the revelations, but only acted once it learned the extent of the NSA's surveillance practices as disclosed in June 2013. Knowledge that the NSA's Upstream surveillance involved tapping the Internet backbone made IPsec implementation necessary to protect the confidentiality and security of Wikimedia's communications. Revelations related to Upstream surveillance also contributed to Wikimedia's execution of the transition process on an expedited basis.

(3) **Wikimedia's hiring of a Traffic Security Engineer.** Wikimedia's primary motivation in hiring a Traffic Security engineer is to maintain ongoing efforts to protect the confidentiality and security of its Internet communications in response to NSA surveillance practices, including the Upstream surveillance. If it were not for Wikimedia's extensive ongoing efforts to combat the threat of NSA surveillance, Wikimedia would not have expended the additional resources to hire a new employee for this position.

(4) **Policy Measures.** Major substantive work on Wikimedia's Privacy Policy, Data Retention Guidelines, and Request for User Information Procedure and Guidelines occurred

subsequent to revelations about Upstream surveillance in summer 2013. Wikimedia held community consultations related to NSA surveillance in connection with drafting the new policies and guidelines, and community member concerns about surveillance—including specifically the Upstream surveillance—were taken into account by Wikimedia staff members when crafting the policies. With NSA surveillance concerns in mind, Wikimedia’s new Privacy Policy was expressly designed to minimize the collection and retention of user information.

(5) Wikimedia’s increased reliance on telephone communications and encrypted messaging systems when interacting with community members. Revelations about Upstream surveillance in summer 2013 led to a reluctance on the part of international community members to interact with U.S.-based Wikimedia staff. Fears over NSA surveillance of international text-based Internet communications meant that Wikimedia was required to increasingly rely on telephone and in person communications and encrypted messaging systems when interacting with community members.

Wikimedia had been aware of surveillance threats from other state actors, but the sophistication and extent of NSA practices created a heightened emphasis on communications security. Because of Wikimedia’s international scope, Upstream surveillance presented the most direct threat to the confidentiality and security of its communications, both with members of the community and within the organization internally.

INTERROGATORY NO. 18:

Please state the basis of Plaintiff’s allegations, in paragraphs 76 and 110 of the Amended Complaint, that “Upstream surveillance has resulted and will result in some foreign readers, editors, contributors, and volunteers being less willing to read, contribute to, or otherwise engage with Wiki Projects,” including but not limited to the allegations that “Wikimedia users have

expressed reluctance to continue participating in the Wikimedia movement because of' Upstream surveillance, and that Upstream surveillance reduces the likelihood that individuals will share information or communicate with Wikimedia's staff, or otherwise contribute to or read its Projects.

RESPONSE TO INTERROGATORY NO. 18:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is improperly compound in that it contains multiple subparts.

Numerous Wikimedia users around the world have expressed their reluctance and concern with respect to participating in the Wikimedia movement and to sharing information or communicating with Wikimedia's staff because of NSA surveillance, including Upstream surveillance, in a variety of ways and settings, including but not limited to, Wikimedia community forums and discussion groups, communications with Wikimedia employees, and responses to peer-reviewed academic studies.

Wikimedia hosts a number of community forums and other similar web pages in which Wikimedia users can and do converse on a range of topics, including their use of, and participation in, Wikimedia projects. Users in these conversations have discussed U.S. government surveillance and how that surveillance deters users from participating in Wikimedia projects. Indeed, because of this surveillance, many Wikimedia users feared not only participating in Wikimedia projects as contributors or editors but also even reading or visiting Wikimedia pages; this collected information could be used by the U.S. government to reveal users' identities, to identify their political or social activism, or to detect anti-American bias. Users were concerned that they could suffer adverse consequences as a result of this government surveillance.

Additionally, Wikimedia staff have had numerous conversations with Wikimedia users outside of the United States who have voiced substantial concerns with NSA surveillance

activities, including Upstream. Many of these people are involved in political or social activism and live or work in geopolitical areas that are a special focus of the U.S. government's counterterrorism or diplomatic efforts, such as Iran, Russia, Egypt, Ukraine, India, and China. And these individuals have engaged in repeated acts of self-censorship vis-à-vis Wikimedia because of NSA surveillance: some refuse to discuss sensitive political topics on which they once spoke candidly; some will now only speak in person rather than over email or other communication channels they used to use; and some will only speak through intermediaries. These individuals have censored their speech in part or altogether because they fear that the U.S. surveillance could, among other things, serve to identify them, jeopardize or undermine the political or social movements they work in, or otherwise harm themselves or their families. Many of them were especially concerned because of the NSA slides showing that the NSA has expressed interest in surveilling Wikimedia's communications.

As one specific example, due in part to concerns about U.S. government surveillance, including Upstream surveillance, some of Wikimedia staff's international contacts have refused to communicate certain information to Wikimedia over the Internet. These refusals directly affect Wikimedia's ability to carry out its work. For example, Wikimedia historically required individuals seeking particular administrative privileges to provide Wikimedia staff with photo identification. However, several European users declined to transmit photo identification to Wikimedia via the Internet because of concerns about U.S. government surveillance.

Moreover, academic studies have explored in quantitative and qualitative fashion the negative effects of NSA surveillance on Wikimedia users' participation in, and interaction with, Wikimedia projects. *See* J. W. Penney, Chilling Effects: Online Surveillance and Wikipedia Use, 31 Berkeley Tech. L.J. 117 (2016); A. Forte, N. Andalibi, R. Greenstadt, *Privacy, Anonymity, and*

Perceived Risk in Open Collaboration: A Study of Tor Users and Wikipedians, Proceedings of Computer-Supported Cooperative Work and Social Computing (2017).

INTERROGATORY NO. 19:

Please state or, if necessary, estimate the decline in readership of Wikimedia's Projects (in terms of lost page views), in contributions to Wikimedia's Projects or related websites and pages (in terms of lost one-way messages from contributors or editors), and in other communications from outside individuals to Wikimedia's staff (in terms of one-way messages) that Plaintiff contends has occurred because of Upstream surveillance, as described in paragraph 110 of the Amended Complaint, stating the basis of that contention.

RESPONSE TO INTERROGATORY NO. 19:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is a contention Interrogatory that is premature at this stage in the litigation. Plaintiff additionally objects that this Interrogatory requests information that may be the subject of expert discovery. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery. Plaintiff further objects that this Interrogatory is improperly compound in that it contains multiple subparts.

Wikimedia staff have had numerous conversations with Wikimedia users outside of the United States, including those residing or working in geopolitical areas that are a special focus of the U.S. government's counterterrorism or diplomatic efforts, such as Iran, Russia, Egypt, Ukraine, India, and China. These individuals have engaged in repeated acts of self-censorship vis-à-vis Wikimedia because of NSA surveillance, including Upstream – among other things, they have refused to communicate with Wikimedia staff over email and they have curtailed or abstained from working on Wikimedia projects.

As one specific example, due in part to concerns about U.S. government surveillance, including Upstream surveillance, some of Wikimedia staff's international contacts have refused to communicate certain information to Wikimedia over the Internet. For instance, Wikimedia historically required individuals seeking particular administrative privileges to provide Wikimedia staff with photo identification. However, several European users declined to transmit photo identification to Wikimedia via the Internet because of concerns about U.S. government surveillance.

Moreover, academic studies have explored in quantitative and qualitative fashion the negative effects of NSA surveillance on Wikimedia users' participation in, and interaction with, Wikimedia projects. *See, e.g.,* J. W. Penney, *Chilling Effects: Online Surveillance and Wikipedia Use*, 31 Berkeley Tech. L.J. 117 (2016); A. Forte, N. Andalibi, R. Greenstadt, *Privacy, Anonymity, and Perceived Risk in Open Collaboration: A Study of Tor Users and Wikipedians*, Proceedings of Computer-Supported Cooperative Work and Social Computing (2017).

Finally, Wikimedia staff have censored their electronic communications with users and avoided communicating with users regarding certain sensitive topics because of concerns about U.S. government surveillance, including Upstream surveillance.

INTERROGATORY NO. 20:

For each reduction in readership of, contributions to, or other engagement with Wikimedia Projects (or related websites and pages), and reduction in communications or information shared with Wikimedia's staff, identified in Plaintiff's response to Interrogatory No. 19, above, please state the basis of Plaintiff's contention that the reduction is attributable to Upstream surveillance rather than any other NSA surveillance activity, any other U.S. government surveillance, any foreign government surveillance, any surveillance by non-government entities, protection against

computer viruses or other computer-crime activities, or other factors.

RESPONSE TO INTERROGATORY NO. 20:

In addition to the General Objections above which are incorporated herein, Plaintiff objects that this Interrogatory is a contention Interrogatory that is premature at this stage in the litigation. Plaintiff therefore specifically reserves the right to supplement and amend its response based on further investigation and discovery. Plaintiff further objects that this Interrogatory is overbroad, unduly burdensome and improperly compound in that it contains multiple subparts.

Wikimedia bases its contention that the reduction in readership of, contributions to, or other engagements with Wikimedia Projects (or related websites and pages), and reduction in communications or information shared with Wikimedia's staff, identified in Wikimedia's response to Interrogatory No. 19, is attributable to Upstream surveillance on a variety of sources, including but not limited to, as discussed in detail in response to Interrogatory No. 19, conversations and communications with Wikimedia users outside of the United States, such users' behavior and conduct, scholarly articles such as Jonathon Penney's Chilling Effects, and the NSA slide showing that the NSA has expressed interest in surveilling Wikimedia's communications.

Dated: January 11, 2018

/s/Ashley Gorski

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