

Exhibit 1

Wikimedia Foundation v. National Security Agency et al.
 No. 15 Civ. 00662 (TSE)

Transcript Citations

Deposition of NSA Rule 30(b)(6) Witness Rebecca J. Richards

The deposition questions fall into the three categories that Wikimedia identified in its opening brief, Pl. Br. 3–8, plus one additional category:

- Category 1: Direct evidence that Wikimedia has been surveilled.¹
- Category 2: The meanings and definitions of key terms the government has used to describe Upstream surveillance to the public.
- Category 3: Evidence concerning the scope and breadth of Upstream surveillance.
- Category 4: Evidence rebutting speculation and hypotheticals that the government’s outside expert intends to offer concerning Upstream surveillance. *See* Def. Mot. to Compel 11–14 (ECF No. 126-1).

Depending on how the Court chooses to structure its in camera review—for instance, by prioritizing straightforward admissions about the surveillance, or based on the assistance and input of the Court’s own expert—Wikimedia will identify any subset(s) of questions that the Court may request.

No.	Category 1 Excerpted Questions: Direct Evidence That Wikimedia Has Been Surveilled	Citation to Questions and Context
1.	Does NSA now scan Wikimedia’s communications in the course of Upstream surveillance?	Tr. 328:15-17
2.	In 2015, did NSA scan Wikimedia communications in the course of upstream surveillance?	Tr. 329:3-5
3.	Does NSA now copy Wikimedia communications in the course of upstream surveillance?	Tr. 329:11-13
4.	In June 2015, did NSA copy Wikimedia communications in the course of upstream surveillance?	Tr. 329:19-21
5.	Has NSA acquired Wikimedia communications as a result of upstream surveillance now?	Tr. 330:5-7

¹ Several questions in Category 4 also concern surveillance of Wikimedia specifically.

6.	As of June 2015, had NSA acquired Wikimedia communications as a result of upstream surveillance?	Tr. 330:13-15
7.	If you assumed that Exhibit 54 related to upstream surveillance, it would indicate, wouldn't it, that the NSA had an intelligence interest in Wikimedia's communications, wouldn't it? (Referring to Deposition Exhibit 54, NSA slide titled, "Why Are We Interested in HTTP?")	Tr. 331:15-19
8.	What is [Exhibit 55]? (Referring to Deposition Exhibit 55, NSA slide titled, "Fingerprints and Appids")	Tr. 333:11
9.	If you assumed that Exhibit 55 related to upstream surveillance, it would indicate, wouldn't it, particularly on the second page in the first bullet point, that the NSA has an intelligence interest in Wikimedia's HTTP communications, wouldn't it? (Referring to Deposition Exhibit 55, NSA slide titled, "Fingerprints and Appids")	Tr. 333:19-334:2
10.	Do Exhibits 54 or 55 relate to upstream surveillance? (Referring to Deposition Exhibit 54, Slide titled, "Why Are We Interested in HTTP?," and Deposition Exhibit 55, NSA slide titled, "Fingerprints and Appids")	Tr. 334:8-9

No.	Category 2 Excerpted Questions: The Meanings and Definitions of Key Terms	Citation to Questions and Context
1.	What do you understand the Foreign Intelligence Surveillance Court to mean in its use of the term "international Internet link" in that sentence? (Referring to Deposition Exhibit 45, page 45, [Redacted], No. [Redacted], 2011 WL 10945618, at *15 (FISC Oct. 3, 2011): "Indeed, the government readily concedes that NSA will acquire a wholly domestic 'about' communication if the transaction is routed through an international Internet link being monitored by NSA or is routed through a foreign server.")	Tr. 160:19-22

2.	Is the NSA's understanding of the term ["international Internet link"] different from the general meaning of the term you described in response to an earlier question as a link between two countries?	Tr. 162:2-6
3.	Is it your understanding that an international Internet link is an Internet backbone circuit with one end in the United States and the other end in a foreign country?	Tr. 163:2-5
4.	In the context of upstream surveillance, can you tell me what an international chokepoint is?	Tr. 183:17-19
5.	[W]ith respect to upstream surveillance as it operated in 2015, . . . what other processes could be used to accomplished either the filtering or the screening described in the sentence you were reading from page 37 of Exhibit 43? (Referring to Deposition Exhibit 43, Referring to Deposition Exhibit 43, Privacy and Civil Liberties Oversight Board, <i>Report on the Surveillance Program Operated Pursuant to Section 702 of FISA 37(2014)</i> , https://perma.cc/J3DZ-62HL ("PCLOB Report")): "Internet transactions are first filtered to eliminate potential domestic transactions, and then are screened to capture only transactions containing a task selector.")	Tr. 200:20-201:4
6.	Can an Internet protocol address be a selector under upstream surveillance?	Tr. 206:19-20
7.	Can a URL, or uniform resource locator, be a selector under upstream surveillance?	Tr. 207:6-8
8.	Could a URL be a selector under upstream surveillance as of June 2015?	Tr. 208:6-7
9.	What does "web activity" mean in the context of Internet communications?	Tr. 222:14-15
10.	Would Internet web browsing constitute web activity? (Referring to Deposition Exhibit 47, page 30, June 1, 2011 FISC Submission, attached as Toomey Decl., Ex. 25 (ECF No. 125-28))	Tr. 223:19-20
11.	I'm asking because your answer suggested that you believe "web activity" to be essentially used interchangeably with the very generic term "Internet traffic" or "Internet	Tr. 227:14-21

	communications,” and I would assume, if that were the case, then the NSA would in fact use that term interchangeably, but I don’t believe that to be the case. I’m asking why that is.	
12.	Are the filtering or screening processes that you’ve described under upstream surveillance as conducted in June 2015 forms of deep packet inspection?	Tr. 244:18-21
13.	Do the Internet packets that constitute a single Internet transaction have a common destination?	Tr. 254:4-6
14.	Do the Internet packets that constitute a single Internet transaction have a common source?	Tr. 254:20-22
15.	Is an Internet transaction, as understood by the NSA, the same as a flow or network flow as used in the context of Internet communications?	Tr. 255:15-257:19

No.	Category 3 Excerpted Questions: Evidence Concerning the Scope and Breadth of Upstream	Citation to Questions and Context
1.	As of 2014, did the NSA conduct upstream surveillance on more than one Internet backbone circuit?	Tr. 123:7-9
2.	As of 2014, were multiple electronic communication service providers compelled to assist the NSA in the operation of upstream surveillance?	Tr. 126:7-128:4
3.	Can you tell us whether there have been more than one provider involved, even if not more than one at the same time?	Tr. 128:22-129:2
4.	Do you understand this sentence to confirm that service providers are compelled to assist NSA in the lawful interception of electronic communications to, from, or about task selectors as of April 16th, 2014? (Referring to Deposition Exhibit 44, NSA Director Report 5: “[S]ervice providers are compelled to assist NSA in the lawful interception of electronic communications to, from, or about tasked selectors.”)	Tr. 132:7-133:13
5.	What is the number, or approximate number, of Internet backbone circuits on which upstream surveillance is	Tr. 145:14-18

	conducted . . . as of June 2015?	
6.	What is the number, or approximate number, of Internet backbone circuits on which upstream surveillance is conducted today?	Tr. 146:10-12
7.	What is the approximate combined bandwidth of the Internet backbone circuits on which upstream surveillance was conducted in June of 2015?	Tr. 147:12-15
8.	What is the approximate combined bandwidth of the Internet backbone circuits on which upstream surveillance is conducted today?	Tr. 147:21-148:1
9.	What are the categories of circuits that were subject to upstream surveillance in June 2015?	Tr. 148:6-8
10.	What are the categories of circuits that are subject to upstream surveillance today?	Tr. 148:13-14
11.	Does the NSA conduct upstream surveillance on one or more international Internet links?	Tr. 180:2-5
12.	Did the NSA conduct upstream surveillance on one or more international Internet links in 2015?	Tr. 180:16-8
13.	Does the NSA conduct upstream surveillance today on more than one international Internet links?	Tr. 181:2-4
14.	Did the NSA conduct upstream surveillance on more than one international Internet links in June of 2015?	Tr. 181:10-12
15.	What is the number or approximate number of international Internet links on which the NSA conducted upstream surveillance in June of 2015?	Tr. 181:17-20
16.	What is the approximate number of international Internet links on which the NSA today conducts upstream surveillance?	Tr. 182:4-6
17.	Is upstream surveillance conducted on any international submarine cables?	Tr. 182:11-12
18.	Was upstream surveillance conducted on any international submarine cables in June of 2015?	Tr. 182:18-20
19.	What is the number or approximate number of cables on which the NSA conducted upstream surveillance in June	Tr. 183:3-5

	2015?	
20.	What is the number or approximate number of cables on which the NSA today conducts upstream surveillance?	Tr. 183:10-12
21.	Is upstream surveillance today conducted at one or more international chokepoints?	Tr. 184:6-8
22.	Was upstream surveillance in June 2015 conducted at one or more international chokepoints?	Tr. 184:13-15
23.	What number, approximate number, of international chokepoints was upstream surveillance conducted on in June 2015?	Tr. 184:21-185:1
24.	What number, approximate number, of international chokepoints is upstream surveillance conducted on today?	Tr. 185:6-8
25.	As of October 3rd, 2011, did the NSA conduct upstream surveillance on one or more international Internet links?	Tr. 186:11-13
26.	<p>Do you understand th[at] sentence . . . to confirm that, as of October 3rd, 2011, that the government in fact conducted upstream surveillance at at least one international Internet link?</p> <p>(Referring to Deposition Exhibit 45, page 45, [Redacted], No. [Redacted], 2011 WL 10945618, at *15 (FISC Oct. 3, 2011):</p> <p>“Indeed, the government readily concedes that NSA will acquire a wholly domestic ‘about’ communication if the transaction is routed through an international Internet link being monitored by NSA or is routed through a foreign server.”)</p>	Tr. 187:15-20
27.	<p>Can you tell us what those certain circumstances would be in unclassified terms?</p> <p>(Referring to Deposition Exhibit 44, NSA Director Report 5: “In certain circumstances, NSA’s procedures require that it employ an Internet protocol filter to ensure that the target is located overseas.”)</p>	Tr. 194:15-16
28.	Are all transactions that were subject to upstream surveillance in June 2015 subjected to Internet protocol filtering . . . to eliminate potential domestic transactions from upstream surveillance?	Tr. 201:12-20
29.	Could you please describe all the ways in which the NSA	Tr. 202:17-20

	could determine in 2015, as part of upstream surveillance, whether a transaction is wholly domestic so as to filter it out?	
30.	Were the selectors used for upstream surveillance the same as those used for PRISM surveillance in June 2015?	Tr. 208:21-209:3
31.	As of 2015, did the procedures approved by the FISC for upstream surveillance permit the NSA to collect an international HTTP transmission of a website if the text of that website contained a selector?	Tr. 219:10-14
32.	[D]id the NSA, in June of 2015, have the authority to collect the communications of a foreign target abroad with a website in the United States?	Tr. 234:5-8
33.	[U]nder upstream surveillance as conducted in 2015, did the NSA have the authority to collect the transactions of a foreigner abroad with a website in the United States if the website contained a selector task for collection?	Tr. 234:17-21
34.	Has the NSA collected webmail in-boxes as part of upstream surveillance?	Tr. 242:10-11
35.	[I]n the course of upstream surveillance, does the NSA review the contents of communications as they are in transit on the Internet backbone?	Tr. 258:15-18
36.	In the course of upstream surveillance in June 2015, did the NSA review the contents of communications as they were in transit on the Internet backbone?	Tr. 259:6-9
37.	In the course of upstream surveillance in June 2015, did the NSA scan the contents of communications as they were in transit on the Internet backbone?	Tr. 259:20-260:1
38.	[I]n June 2015, did the NSA scan the application layer data of communications that transit the Internet backbone? . . . When you say certain . . . application layer data, what you mean by "certain"?	Tr. 263:10-264:1
39.	Today does the NSA scan the application layer data of communications that transit the Internet backbone?	Tr. 266:5-7
40.	In June of 2015, if a transaction was scanned by the NSA in the course of upstream surveillance, and the NSA determined that it did not contain a selector, was the communication eliminated?	Tr. 266:15-19

41.	Today, does the NSA seek to acquire email communications to and from its targets using upstream surveillance?	Tr. 268:15-17
42.	Could you please describe as fully as possible how, in June 2015, the NSA determined whether an Internet transaction contained a selector?	Tr. 269:3-6
43.	Beyond what you've already said or what appears in the NSA's discovery responses, could you please describe as fully as possible how the NSA today determines whether an Internet transaction contains a selector?	Tr. 269:18-22
44.	In the course of upstream surveillance in June 2015, did the NSA scan communications in bulk?	Tr. 270:14-273:9
45.	In the course of upstream surveillance today, does the NSA scan communications in bulk?	Tr. 274:8-9
46.	In the course of upstream surveillance today, does the NSA scan the metadata of communications in bulk?	Tr. 274:16-18
47.	In the course of upstream surveillance in 2015, did the NSA copy communications in bulk?	Tr. 275:2-3
48.	In the course of upstream surveillance today, does the NSA copy communications in bulk?	Tr. 275:8-9
49.	Would the NSA be permitted under upstream surveillance today to collect a target[']s communications with a U.S.-based website?	Tr. 284:4-6
50.	Can you please describe in as much detail as necessary to provide a complete answer how the NSA implemented any changes to "about" collection during or after April 2017?	Tr. 293:18-296:5
51.	[C]ould you please describe in as much detail as necessary to provide a complete answer how, after April 2017, the NSA attempts to avoid collecting communications that are solely about a selector?	Tr. 296:21-298:6
52.	[P]lease describe in as much detail as necessary to provide a complete answer how the change in April 2017 affected the filtering of communications subject to upstream surveillance?	Tr. 298:7-13
53.	[C]ould you please describe in as much detail as necessary to give a complete answer how the change in April 2017 affected the scanning of communications subject to upstream	Tr. 299:20-300:2

	surveillance?	
54.	[P]lease describe in as much detail as necessary to give a complete answer which portions of an Internet transaction are scanned for selectors after April 2017?	Tr. 300:10-14
55.	Since April 2017, does the NSA first scan the contents of communications for selectors, and then discard those that are solely about a selector?	Tr. 300:20-301:1
56.	Since April 2017, does the NSA copy the contents of communications prior to scanning those communications?	Tr. 301:9-11
57.	Since April 2017, does the NSA copy the application layer data of packets prior to scanning the communications to which they belong?	Tr. 301:17-19
58.	Since April 2017, does the NSA review any portion of the contents of communications for selectors?	Tr. 302:3-5
59.	Since April 2017, does the NSA scan any portion of the contents of Internet transactions for selectors?	Tr. 303:5-7
60.	[W]hat portions of the contents of Internet transactions are scanned for selectors since April 2017?	Tr. 304:13-15
61.	Since April 2017, does the NSA scan the entire contents of Internet transactions for selectors?	Tr. 305:13-15
62.	Since April 2017, does the NSA scan any portion of the application layer data of Internet transactions for selectors? . . . And if I were to ask what portions of Internet transaction the NSA scans for selectors, would your answer be the same?	Tr. 306:2-15
63.	[S]ince April 2017, does the NSA scan the entire application layer of Internet transactions for selectors?	Tr. 306:21-307:1
64.	Are there any barriers to the NSA restarting “about” collection today? . . . [A]re there any other barriers besides the two that you just described? . . . What are those underlying issues? . . . And what were those issues?	Tr. 307:7-311:17
65.	Besides the barriers you already identified and what’s described in Exhibit 51, are there any other barriers to the NSA restarting “about” collection? (Referring to Deposition Exhibit 51, FISC Opinion dated	Tr. 313:17-20

	April 26, 2017, attached as Toomey Decl., Ex. 29 (ECF No. 125-32))	
66.	Has the NSA indicated to the FISC any interest in resuming “about” collection in the future?	Tr. 316:20-22
67.	Has the NSA indicated to the FISC that it intends to resume “about” collection in the future?	Tr. 317:13-15
68.	Today, does upstream surveillance involve the scanning of all international text-based communications on [the] individual circuit or circuits the NSA is monitoring?	Tr. 322:16-19
69.	In June 2015, did upstream surveillance involve the scanning of all international text-based communications on the individual circuit or circuits the NSA was monitoring?	Tr. 324:7-11
70.	Today, if some international text-based communications on a given circuit are not scanned, please explain in as much detail as necessary to completely answer why those communications are not scanned . . . [C]an you please fully explain in as much detail as necessary why some communications are not scanned?	Tr. 324:17-326:2
71.	[A]s of June 2015, if some international text-based communications on a given circuit were not scanned, please explain in as much detail as necessary to fully answer why those communications are not scanned.	Tr. 326:13-328:2
72.	At this time, HTTP communications are scanned for selectors in the course of upstream surveillance, aren’t they?	Tr. 334:15-17
73.	As of June 2015, HTTP communications were scanned for selectors in the course of upstream surveillance, right?	Tr. 335:14-16
74.	At this time, HTTPS communications are scanned for selectors in the course of Upstream surveillance, aren’t they? . . . Same question as to the June 2015 time frame.	Tr. 335:22-336:9
75.	Are Apache Kafka communications scanned for selectors in the course of upstream surveillance?	Tr. 336:15-17
76.	Open VPN communications are scanned for selectors in the course of upstream surveillance, aren’t they?	Tr. 337:11-13
77.	As of June 2015, were open VPN communications scanned for selectors in the course of upstream surveillance?	Tr. 337:21-338:1

78.	Other than public documents, public documents at large, hearing testimony that is transcribed, public documents you reviewed, documents that have been filed or served in this case, or your testimony today, what can you tell me about the volume of communications subject to upstream surveillance at this time using any unit of measurement you want to discuss volume of communications?	Tr. 338:8-16
79.	How many communications -- and you can use any unit of measurement you want -- did NSA retain as a result of upstream surveillance in each of the last three years?	Tr. 339:14-17
80.	What is the volume of communications copied in the course of upstream surveillance in each of the last three years? . . . Same question as to transactions.	Tr. 340:9-19
81.	What is the volume of communications or transactions that are subject to filtering in the course of upstream surveillance in the last three years?	Tr. 341:3-6
82.	[I]t's accurate . . . to say that upstream surveillance, as of June 2015, involved deep packet inspection, right?	Tr. 349:5-7
83.	Today, how many targets does NSA have for upstream surveillance?	Tr. 349:20-350:8
84.	In June 2015, how many targets did NSA have for upstream surveillance?	Tr. 351:3-4
85.	What's inaccurate about the sentence at the bottom of page 36, carrying over onto page 37, in Exhibit 43? (Referring to Deposition Exhibit 43, PCLOB Report 36–37: “Once tasked, selectors used for the acquisition of upstream Internet transactions are sent to a United States electronic communication service provider to acquire communications that are transiting through circuits that are used to facilitate Internet communications, what is referred to as the “Internet backbone.”)”))	Tr. 110:4-112:3
86.	Is [the sentence] inaccurate as to the operation of upstream surveillance today? (Referring to Deposition Exhibit 43, PCLOB Report 36–37, quoted above)	Tr. 115:8-22

No.	Category 4 Excerpted Questions: Evidence Rebutting Defendants' Hypotheticals	Citation to Questions and Context
1.	In the course of upstream surveillance in June of 2015, did the NSA deliberately attempt to filter out any of Wikimedia's international communications?	Tr. 275:14-17
2.	In the course of upstream surveillance today, does the NSA deliberately attempt to filter out any of Wikimedia's international communications?	Tr. 276:2-5
3.	In the course of upstream surveillance in June of 2015, did the NSA deliberately attempt to filter out all of Wikimedia's communications?	Tr. 276:10-12
4.	In the course of upstream surveillance today, does the NSA deliberately attempt to filter out all Wikimedia communications?	Tr. 276:17-19
5.	Does the NSA contend as a factual matter in this case that it deliberately filters out all Wikimedia communications?	Tr. 277:3-5
6.	Does anyone at the NSA know whether the NSA contends in this case, as a factual matter, that it deliberately filters out all Wikimedia communications?	Tr. 278:2-279:3
7.	Has the NSA programmed its surveillance equipment to disregard HTTPS communications altogether?	Tr. 281:1-3
8.	Does the NSA have the ability to decipher HTTPS communications?	Tr. 281:13-282:9
9.	Has the NSA configured its surveillance equipment to ignore all communications having source or destination IP addresses associated with Wikimedia?	Tr. 282:18-283:10
10.	Does the NSA deem communications to and from Wikimedia's website to be of low foreign intelligence value?	Tr. 283:19-21
11.	Could the term "foreign intelligence information" encompass information that a person surveilled using Upstream surveillance is reading on one of Wikimedia's websites?	Tr. 286:5-8
12.	[C]ould the term "foreign intelligence information" encompass information that a person surveilled using upstream surveillance is contributing to one of Wikimedia's	Tr. 288:4-289:18

	websites? . . . Could you please provide any classified information that you believe my question calls for?	
13.	Today, does the NSA intentionally attempt to filter out all HTTPS communications from upstream surveillance?	Tr. 290:6-8
14.	[In] June 2015, [d]id the NSA at that time intentionally attempt to filter out all HTTPS communications from upstream surveillance?	Tr. 290:16-19
15.	Today, does the NSA intentionally attempt to filter out all Internet communications that use TCP port 443?	Tr. 291:3-5
16.	In June 2015, did the NSA intentionally attempt to filter out all Internet communications that used TCP port 443?	Tr. 291:10-12
17.	Today, does the NSA intentionally filter out all encrypted VPN communications?	Tr. 291:17-18
18.	In June 2015, did the NSA intentionally filter out all encrypted VPN communications?	Tr. 292:2-4
19.	Today, does the NSA intentionally filter out all open VPN communications?	Tr. 292:9-10
20.	In June 2015, did the NSA intentionally filter out all open VPN communications?	Tr. 292:15-17
21.	Today does the NSA intentionally filter out Wikimedia's encrypted VPN communications?	Tr. 293:2-4
22.	In June 2015, did the NSA intentionally filter out Wikimedia's encrypted VPN communications?	Tr. 293:10-12