

Wikimedia Foundation v. NSA
No. 15-cv-0062-TSE (D. Md.)

Plaintiff's Exhibit 18

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

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

**OBJECTIONS AND RESPONSES BY DEFENDANTS NATIONAL
SECURITY AGENCY AND ADM. MICHAEL S. ROGERS,
DIRECTOR, TO PLAINTIFF’S INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and District of Maryland Local Rule 104, Defendants National Security Agency (“NSA”) and Adm. Michael S. Rogers, Director of the NSA, in his official capacity (together, the “NSA Defendants”), by their undersigned attorneys, object and respond as follows to Plaintiff Wikimedia Foundation’s Interrogatories, dated November 7, 2017.

**GENERAL OBJECTIONS AND
OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. The NSA Defendants object to Plaintiff’s Interrogatories to the extent, as set forth in response to specific interrogatories below, that they seek information regarding the activities of the NSA, which is absolutely protected from disclosure by the statutory privilege under 50 U.S.C. § 3605(a).

2. The NSA Defendants object to Plaintiff’s Interrogatories to the extent, as set forth in response to specific interrogatories below, they seek information that is irrelevant to jurisdictional issues, which are the only matters as to which the Court has authorized discovery in this case. *See* October 3, 2017, Order, ECF No. 117 at 1.

3. As set forth in response to each interrogatory below, the NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

4. As set forth in response to specific interrogatories below, the NSA Defendants object to the definition of the term “Circuit” as vague and ambiguous insofar as it is meant, by its reference to the use of that term in the Privacy and Civil Liberties Oversight Board’s “Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act” (the “PCLOB Section 702 Report”) to assign the term “Circuit” a meaning other than its ordinary meaning in the telecommunications industry. The PCLOB is an independent agency within the Executive Branch, and the NSA Defendants do not have information regarding what, if anything, that entity intended by the term “Circuit” beyond the ordinary meaning of that term within the telecommunications industry as understood by the NSA Defendants.

5. As set forth in response to specific interrogatories below, the NSA Defendants object to the definition of the term “Internet Transaction” as vague and ambiguous insofar as it is meant, by its reference to the use of that term in the PCLOB Section 702 Report, to assign the term “Internet Transaction” a meaning other than that understood by the NSA Defendants. The PCLOB is an independent agency within the Executive Branch, and the NSA Defendants do not have information regarding what, if anything, that entity intended by the term “Internet Transaction” beyond the meaning of that term as understood by the NSA Defendants.

6. As set forth in response to specific interrogatories below, the NSA Defendants object to the definition of the term “Review” as compound, unduly burdensome and oppressive,

and so vague and ambiguous as to render the specific interrogatories in which it is used incapable of reasoned response.

7. As set forth in response to specific interrogatories below, the NSA Defendants object to the definition of the term “Interacted With” as compound, and, insofar as it incorporates the definition of “Review,” also as unduly burdensome and oppressive, and so vague and ambiguous as to render the specific interrogatories in which it is used incapable of reasoned response.

8. As set forth in response to specific interrogatories below, the NSA Defendants object to Plaintiff’s Interrogatories to the extent that they seek information that is protected from disclosure by the state secrets privilege, and the statutory privilege under 50 U.S.C. § 3024(i)(1).

9. As set forth in response to specific interrogatories below, the NSA Defendants object to Instruction No. 3 in Plaintiff’s Interrogatories to the extent that identification or description of each document or oral communication as to which privilege is claimed would itself divulge privileged information.

10. The NSA Defendants object to Plaintiff’s Interrogatories to the extent that they seek information not involving the NSA’s Upstream Internet acquisition techniques as authorized by Section 702 of the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C. § 1881a. In formulating these answers, the NSA Defendants have limited the scope of their inquiry of knowledgeable persons, as well as their searches of appropriate records, to those persons and records reasonably calculated to possess information involving the NSA’s Upstream Internet acquisition techniques as authorized by Section 702 of the FISA.

11. The following objections and responses are based upon information currently known to the NSA Defendants, and they reserve the right to supplement or amend their objections and responses should additional or different information become available.

12. Nothing contained in the following objections and responses shall be construed as a waiver of any applicable objection or privilege as to any interrogatory or as a waiver of any objection or privilege generally. Inadvertent disclosure or unauthorized disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: DESCRIBE YOUR understanding of the definition of the term “international Internet link” as used by the government in its submission to the Foreign Intelligence Surveillance Court— titled “Government’s Response to the Court’s Briefing Order of May 9, 2011,” and filed on June 1, 2011, *see [Redacted]*, 2011 WL 10945618, at *15 (FISC Oct. 3, 2011)—and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 1 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants also object to Interrogatory No. 1 on the ground that it attributes the phrase “international Internet link” to a Government document when in fact the phrase is taken from an opinion of the Foreign Intelligence Surveillance Court that does not purport to quote directly from the referenced Government document. *See [Redacted]*, 2011 WL 10945618, at *15 (FISC Oct. 3, 2011). Whether the phrase “international Internet link” is contained within the referenced Government document is information (which can be neither confirmed nor denied) that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a).

The NSA Defendants further object to Interrogatory No. 1 on the grounds that the instruction to “provide all information supporting [their] understanding [of the definition of the

term ‘international Internet link’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 1 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 1 on the ground that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

INTERROGATORY NO. 2: DESCRIBE YOUR understanding of the definition of the term “circuit” as used at pages 36 to 37 of the PCLOB Report, and provide all information supporting that understanding, including but not limited to all information furnished by DEFENDANTS to the Privacy and Civil Liberties Oversight Board concerning this term.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 2 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants also object to Interrogatory No. 2 on the grounds that the instruction to “provide all information supporting [their] understanding [of the definition of the term ‘circuit’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

The NSA Defendants further object to this interrogatory on the ground that the PCLOB is an independent agency within the Executive Branch, and the NSA Defendants do not have information regarding what, if anything, that entity intended by the term “circuit” beyond the

ordinary meaning of that term within the telecommunications industry as understood by the NSA Defendants.

Finally, to the extent that Interrogatory No. 2 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 2 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding a “circuit,” within the context of Internet communications, traditionally consists of two stations, each capable of transmitting and receiving analog or digital information, and a medium of signal transmission connecting the two stations. The medium of signal transmission can be electrical wire or cable, optical fiber, electromagnetic fields (e.g., radio transmission), or light. Individual circuits may be subdivided further to create multiple “virtual circuits” through application of various technologies including but not limited to multiplexing techniques.

As of the time of this response the NSA Defendants are unaware of any information furnished by Defendants to the PCLOB regarding the meaning of the term “circuit” that would differ from the understanding set forth above.

INTERROGATORY NO. 3: DESCRIBE YOUR understanding of the definition of the term “filtering mechanism” as used at pages 10 and 47–48 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 3 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 3 on the grounds that the instruction to “provide all information supporting [their] understanding [of the definition of the term ‘filtering mechanism’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 3 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 3 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the term “filtering mechanism,” as used in the above-referenced brief when filed, meant, in unclassified terms, the devices utilized in the Upstream Internet collection process that were designed to eliminate wholly domestic Internet transactions, and transactions that did not contain at least one tasked selector, before they could

be ingested into Government databases. Today the term “filtering mechanism” would mean, in unclassified terms, the devices utilized in the Upstream Internet collection process that are designed to eliminate wholly domestic Internet transactions, and to identify for acquisition Internet transactions to or from persons targeted in accordance with the current NSA targeting procedures.

INTERROGATORY NO. 4: DESCRIBE YOUR understanding of the definition of the term “scanned” as used at page 10 of the Memorandum in Support of Defendants’ Motion to Dismiss the First Amended Complaint, *Wikimedia Foundation v. NSA*, No. 15-cv-662-TSE (D. Md. Aug. 6, 2015), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 4 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 4 on the grounds that the instruction to “provide all information supporting [their] understanding [of the definition of the term ‘scanned’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 4 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 4 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the term “scanned,” as used in the above-referenced brief when filed, meant, in unclassified terms, the use of a screening device in the Upstream Internet collection process to acquire only Internet transactions containing at least one tasked selector. Today the term “scanned” would mean, in unclassified terms, the use of a screening device in the Upstream Internet collection process designed to identify for acquisition Internet transactions to or from persons targeted in accordance with the current NSA targeting procedures.

INTERROGATORY NO. 5: DESCRIBE YOUR understanding of the definition of the term “screen” as used at page 48 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 5 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 5 on the grounds that its instruction to “provide all information supporting [their] understanding [of the definition of the term ‘screen’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 5 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 5 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants

object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the term “screen,” as used in the above-referenced brief when filed, meant, in unclassified terms, the use of a screening device in the Upstream Internet collection process to acquire only Internet transactions containing at least one tasked selector. Today, the term “screened” would mean, in unclassified terms, the use of a screening device in the Upstream Internet collection process designed to identify for acquisition Internet transactions to or from persons targeted in accordance with the current NSA targeting procedures.

INTERROGATORY NO. 6: DESCRIBE YOUR understanding of the definition of the term “discrete communication” as used in the 2014 NSA Minimization Procedures, and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to Interrogatory No. 6 on the grounds that it seeks information that is irrelevant to jurisdictional issues, which are the only matters as to which the Court has authorized discovery in this case. *See* October 3, 2017, Order, ECF No. 117 at 1. The NSA Defendants also object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 6 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 6 on the grounds that the instruction to “provide all information supporting [their] understanding [of the definition of the

term ‘discrete communication’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 6 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 6 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, in the context of the 2014 NSA Section 702 Minimization Procedures, the term “discrete communication” means a single communication.

INTERROGATORY NO. 7: DESCRIBE YOUR understanding of all features that a series of INTERNET PACKETS comprising an “Internet transaction” has in common, as the term “Internet transaction” is used in at page 10 n.3 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding. For example, the INTERNET PACKETS comprising an “Internet transaction” might share source and destination IP addresses, source and destination ports, and protocol type (albeit with the source and destination IP addresses and ports reversed for packets flowing in the opposite direction).

OBJECTION: NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 7 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 7 on the grounds that its instruction to “provide all information supporting [their] understanding [of the ‘features that a

series of Internet packets comprising an “Internet transaction” has in common’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, the NSA Defendants object to Interrogatory No. 7 on the ground that it seeks classified information about alleged NSA intelligence activities that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

INTERROGATORY NO. 8: DESCRIBE YOUR understanding of the definitions of the terms “single communication transaction” and “multi-communication transaction” as used by the government in its submission to the Foreign Intelligence Surveillance Court, filed on August 16, 2011, and provide all information supporting that understanding. *See [Redacted]*, 2011 WL 10945618, at *9 (FISC Oct. 3, 2011).

OBJECTION: The NSA Defendants object to Interrogatory No. 8 on the grounds that it seeks information that is irrelevant to jurisdictional issues, which are the only matters as to which the Court has authorized discovery in this case. *See* October 3, 2017, Order, ECF No. 117 at 1. The NSA Defendants also object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 8 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants also object to Interrogatory No. 8 as vague and ambiguous insofar as it attributes the phrase “single communication transaction” to a Government document when in fact the phrase is taken from an opinion of the Foreign Intelligence Surveillance Court that

does not purport to quote directly from the referenced Government document. *See [Redacted]*, 2011 WL 10945618, at *9 (FISC Oct. 3, 2011).

The NSA Defendants further object to Interrogatory No. 8 on the grounds that its instruction to “provide all information supporting [their] understanding [of the terms ‘single communication transaction’ and ‘multi-communication transaction’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 8 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 8 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding (i) the term “single communication transaction,” when used in reference to Upstream Internet collection, meant in unclassified terms an Internet transaction that contained only a single, discrete communication, and (ii) the term “multi-communication transaction” meant, in unclassified terms, an Internet transaction that contained multiple discrete communications.

INTERROGATORY NO. 9: DESCRIBE YOUR understanding of the definitions of the terms “access” and “larger body of international communications” as used at page 10 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 9 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 9 on the grounds that its instruction to “provide all information supporting [their] understanding [of the terms ‘access’ and ‘larger body of international communications’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 9 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 9 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding (i) the term “larger body of international communications,” as used in the above-referenced brief when filed, meant, in unclassified terms, the body of at least one-end-foreign Internet transactions transiting the Internet backbone networks of electronic communications service providers that were screened during the

Upstream Internet collection process for the purpose of identifying those containing at least one tasked selector; and (ii) the term “access,” as used in the same brief when filed, referred in unclassified terms to the means making it possible to screen this “larger body of international communications” for those that contained at least one tasked selector. As noted above in response to Interrogatory Nos. 3-5, today Internet transactions are screened during the Upstream Internet collection process to identify for acquisition those transactions that are to or from persons targeted in accordance with the current NSA targeting procedures.

INTERROGATORY NO. 10: DESCRIBE YOUR understanding of the definition of the term “acquired” as used at page 10 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 10 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 10 on the grounds that its instruction to “provide all information supporting [their] understanding [of the term ‘acquired’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 10 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 10 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify

and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the term “acquired,” as used in the above-referenced brief in relation to Internet transactions, meant when filed (and still means today), in unclassified terms, ingested into Government databases after the Internet transactions have passed through the filtering and scanning processes conducted during Upstream Internet collection.

INTERROGATORY NO. 11: DESCRIBE YOUR understanding of the definition of the term “collection” as used at page 10 n.3 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 11 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 11 on the grounds that its instruction to “provide all information supporting [their] understanding [of the term ‘collection’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 11 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 11 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants

object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the term “collection,” as used in the above-referenced brief in relation to communications, meant when filed (and still means today), in unclassified terms, ingestion into Government databases after Internet transactions have passed through the filtering and scanning processes conducted during Upstream Internet collection.

INTERROGATORY NO. 12: DESCRIBE YOUR understanding of the definition of the term “Internet ‘backbone’” as used at page 1 of the Brief for Defendants–Appellees, *Wikimedia Foundation v. NSA*, No. 15-2560 (4th Cir. April 11, 2016), and provide all information supporting that understanding.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 12 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

The NSA Defendants further object to Interrogatory No. 12 on the grounds that its instruction to “provide all information supporting [their] understanding [of the term ‘Internet ‘backbone’]” is unduly burdensome and oppressive, and in the context of this interrogatory so vague and ambiguous as to be incapable of reasoned response.

Finally, to the extent that Interrogatory No. 12 seeks classified information about alleged NSA intelligence activities, the NSA Defendants object to Interrogatory No. 12 on the grounds that it seeks information that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants

object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

RESPONSE: Subject to the objections stated above, and without waiving them, the NSA Defendants respond that to their understanding the Internet backbone is no longer well defined due to the growth of direct peering arrangements, but may be understood as the principal high-speed, ultra-high bandwidth data-transmission lines between the large, strategically interconnected computer networks and core routers that exchange Internet traffic domestically with smaller regional networks, and internationally via terrestrial or undersea circuits.

INTERROGATORY NO. 13: DESCRIBE in detail all steps taken by the NSA to PROCESS communications in the course of Upstream surveillance.

OBJECTION: The NSA Defendants object to Interrogatory No. 13 on the grounds that it seeks information that is irrelevant to jurisdictional issues, which are the only matters as to which the Court has authorized discovery in this case. *See* October 3, 2017, Order, ECF No. 117 at 1. The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 13 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous.

Finally, the NSA Defendants object to Interrogatory No. 13 on the ground that it seeks information about alleged NSA intelligence activities that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R.

Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

INTERROGATORY NO. 14: DESCRIBE the entire process by which, pursuant to Upstream surveillance, the contents of INTERNET COMMUNICATIONS are INTERACTED WITH.

OBJECTION: The NSA Defendants object to the definition of the term “Describe” to the extent it calls for “identification of all persons, communications, acts, transactions, events, agreements, recommendations, and Documents used, necessary, or desirable to support [the NSA Defendants’ narrative statement]” in response to Interrogatory No. 14 on the grounds that it is unduly burdensome and oppressive, and vague and ambiguous. The NSA Defendants also object to the definition of “Interacted With” as compound, and, insofar as it incorporates the definition of “Review,” also as unduly burdensome and oppressive, and so vague and ambiguous as to render this interrogatory incapable of reasoned response.

The NSA Defendants further object to Interrogatory No. 14 to the extent grounds that it seeks information that is irrelevant to jurisdictional issues, which are the only matters as to which the Court has authorized discovery in this case. *See* October 3, 2017, Order, ECF No. 117 at 1.

Finally, the NSA Defendants object to Interrogatory No. 14 on the ground that it seeks information about alleged NSA intelligence activities that is protected from disclosure by the state secrets privilege and the statutory privileges under 50 U.S.C. § 3024(i)(1) and 50 U.S.C. § 3605(a). The NSA Defendants object to any instruction or purported requirement, *see* Fed. R. Civ. P. 26(b)(5)(A), to identify and/or describe information withheld on this basis as unduly burdensome and oppressive and itself calling for information protected by these privileges.

Dated: December 22, 2017

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Pursuant to 28 U.S.C. § 1746, I, Jason D. Padgett, declare under penalty of perjury that the foregoing answers to Plaintiff Wikimedia's Interrogatories are true and correct to the best of my knowledge and belief, based on my personal knowledge and information made available to me in the course of my duties and responsibilities as an Attorney in the Office of General Counsel, National Security Agency.

Executed this 22nd day of December, 2017

A handwritten signature in black ink, appearing to read 'J. Padgett', is written over a horizontal line.

Jason D. Padgett
Attorney
Office of General Counsel
National Security Agency