

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

Plaintiff's Exhibit 7

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

WIKIMEDIA FOUNDATION,

Plaintiff,

v.

NATIONAL SECURITY AGENCY /
CENTRAL SECURITY SERVICE, *et al.*,

Defendants.

Hon. T. S. Ellis, III

Civil Action No.
15-cv-00662-TSE

**DECLARATION OF PATRICK TOOMEY IN SUPPORT OF
PLAINTIFF WIKIMEDIA FOUNDATION'S OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Patrick Toomey, a member of the Bar of the State of New York and admitted *pro hac vice* to the Bar of this Court, declare under penalty of perjury as follows:

1. I am an attorney with the American Civil Liberties Union Foundation, and represent Plaintiff Wikimedia Foundation ("Wikimedia") in this matter. I submit this declaration in support of Plaintiff Wikimedia's Opposition to Defendants' Motion for Summary Judgment (ECF No. 161).

2. Filed as Exhibits 1-45 attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment are true and correct copies of the following documents:

No.	Exhibit
1	Declaration of Scott Bradner and attached Appendix
2	Declaration of Jonathon Penney and attached Appendix
3	Declaration of Michelle Paulson
4	Declaration of James Alexander

5	Declaration of Tilman Bayer
6	Declaration of Emily Temple-Wood
7	Declaration of Patrick Toomey
8	Wikimedia-hosted email list discussing NSA slide with Wikimedia logo, from July to August 2013
9	Wikimedia “Talk page” discussing its non-public information policy, from September to December 2013
10	“OTRS” ticket showing Wikimedia user requesting Tor permissions in September 2013 ¹
11	Wikimedia webpage showing Wikimedia user requesting Tor permissions in September 2017
12	Wikimedia document compiling German-user-community appeal concerning privacy in 2013
13	Wikimedia “Talk page” discussing NSA surveillance from June to December 2013
14	Wikimedia Technical Statistics Chart & Supporting Exhibits A-G
15	Privacy & Civil Liberties Oversight Board, <i>Report on the Surveillance Program Operated Pursuant to Section 702 of FISA</i> (July 2014)
16	FISC Memorandum Opinion, [<i>Redacted</i>], 2011 WL 10945618 (Oct. 3, 2011)
17	Office of the Director of National Intelligence, <i>DNI Declassifies Intelligence Community Documents Regarding Collection Under Section 702 of FISA</i> (Aug. 21, 2013), http://icontherecord.tumblr.com/post/58944252298/dni-declassifies-intelligence-community-documents
18	Defendant NSA’s Objections and Responses to Plaintiff’s First Set of Interrogatories (Dec. 22, 2017)
19	FISC Submission, <i>Clarification of National Security Agency’s Upstream Collection Pursuant to Section 702 of FISA</i> (May 2, 2011)
20	Office of the Director of National Intelligence, <i>Statistical Transparency Report Regarding Use of National Security Authorities, Calendar Year</i>

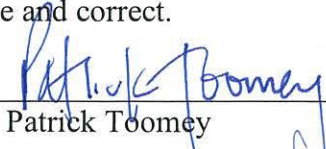
¹ This document is a true and correct version of the “OTRS” ticket with certain identifying information redacted, as produced to Defendants in discovery.

	2017 (Apr. 2018), https://www.dni.gov/files/documents/icotr/2018-ASTR---CY2017----FINAL-for-Release-5.4.18.pdf
21	FISC Memorandum Opinion & Order (Apr. 26, 2017)
22	FISC Submission, <i>Government's Response to the Court's Briefing Order of May 9, 2011</i> (June 1, 2011)
23	<i>Big Brother Watch & Others v. United Kingdom</i> , App. Nos. 58170/13, 62322/14, 24960/15, Eur. Ct. H.R. (2018)
24	NSA Director of Civil Liberties & Privacy Office, <i>NSA's Implementation of FISA Section 702</i> (Apr. 16, 2014)
25	<i>Legal Issues Relating to the Testing, Use, and Deployment of an Intrusion-Detection System (EINSTEIN 2.0)</i> , 33 Op. O.L.C. 1 (Jan. 9, 2009)
26	Minimization Procedures Used by the NSA in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA (July 2014)
27	Glenn Greenwald, <i>XKeyscore: NSA Tool Collects "Nearly Everything a User Does on the Internet"</i> , Guardian, July 31, 2013, https://www.theguardian.com/world/2013/jul/31/nsa-top-secret-program-online-data
28	NSA slide, excerpted from Exhibit 27 (Greenwald, <i>XKeyscore: NSA Tool Collects "Nearly Everything a User Does on the Internet"</i>)
29	Morgan Marquis-Boire, <i>et al.</i> , <i>XKEYSCORE: NSA's Google for the World's Private Communications</i> , Intercept, July 1, 2015, https://theintercept.com/2015/07/01/nsas-google-worlds-private-communications
30	NSA slide deck, <i>XKEYSCORE for Counter-CNE</i> , published in The Intercept on July 1, 2015, https://theintercept.com/document/2015/07/01/xks-counter-cne
31	Wikimedia, <i>Founding Principles</i> (accessed Mar. 14, 2018)
32	Yana Welinder, <i>Opposing Mass Surveillance on the Internet</i> , Wikimedia Blog (May 9, 2014), https://blog.wikimedia.org/2014/05/09/opposing-mass-surveillance-on-the-internet
33	Wikimedia Public Policy, <i>Privacy</i> (accessed Mar. 14, 2018)

34	Wikipedia, <i>Sock Puppetry</i> (accessed Mar. 14, 2018)
35	Wikimedia, <i>Privacy Policy</i> (accessed Feb. 14, 2018)
36	Ryan Lane, <i>The Future of HTTPS on Wikimedia Projects</i> , Wikimedia Blog (Aug. 1, 2013), http://blog.wikimedia.org/2013/08/01/future-https-wikimedia-projects
37	Yana Welinder, <i>et al.</i> , <i>Securing Access to Wikimedia Sites with HTTPS</i> , Wikimedia Blog (June 12, 2015), http://blog.wikimedia.org/2015/06/12/securing-wikimedia-sites-with-https
38	Wikimedia email describing Tech/Ops goals and the importance of HTTPS (May 23, 2014)
39	Wikimedia document discussing IPsec implementation, including July 8, 2013 statement from a Wikimedia engineer
40	Wikimedia job posting for Traffic Security Engineer (accessed Feb. 8, 2018)
41	Michelle Paulson, <i>A Proposal for Wikimedia's New Privacy Policy and Data Retention Guidelines</i> , Wikimedia Blog (Feb. 14, 2014), https://blog.wikimedia.org/2014/02/14/a-proposal-for-wikimedias-new-privacy-policy
42	Wikimedia's Supplemental Exhibit C in response to NSA Interrogatory No. 8 (volume of HTTP border-crossing communications by country)
43	Wikimedia's Supplemental Exhibit D in response to NSA Interrogatory No. 8 (volume of HTTPS border-crossing communications by country)
44	Wikimedia analytics document showing monthly unique visitors to Wikimedia by region, from December 2007 to May 2015
45	Press Release, NSA, <i>NSA Stops Certain Section 702 "Upstream" Activities</i> , Apr. 28, 2017, https://www.nsa.gov/news-features/press-room/Article/1618699/nsa-stops-certain-section-702-upstream-activities

* * *

I declare under penalty of perjury that the foregoing is true and correct.


Patrick Toomey

Date: December 18, 2018
New York, New York