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 MOTION TO COMPEL

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's Motion to Compel.

2. Attached hereto as **Exhibit 1** is a chart identifying Plaintiff's Requests for Admission, Interrogatories, and Requests for Production, as modified by Wikimedia following the parties' meet-and-confer discussions, that are at issue in this Motion to Compel.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's First Set of Requests for Admission.

4. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff's Second Set of Requests for Admission.

5. Attached hereto as **Exhibit 4** is a true and correct copy of Plaintiff's Third Set of Requests for Admission.

6. Attached hereto as **Exhibit 5** is true and correct copy of Plaintiff's First Set of Interrogatories.

7. Attached hereto as **Exhibit 6** is a true and correct copy of Plaintiff's Second Set of Interrogatories.

8. Attached hereto as **Exhibit 7** is a true and correct copy of Plaintiff's First Set of Requests for Production.

9. Attached hereto as **Exhibit 8** is a true and correct copy of Plaintiff's Second Set of Requests for Production.

10. Attached hereto as **Exhibit 9** is a true and correct copy of Defendant National Security Agency's ("NSA") Objections and Responses to Plaintiff's First and Second Sets of Requests for Admission.

11. Attached hereto as **Exhibit 10** is a true and correct copy of Defendant NSA's Objections to Plaintiff's Third Set of Requests for Admission.

12. Attached hereto as **Exhibit 11** is a true and correct copy of Defendant NSA's Objections and Responses to Plaintiff's First Set of Interrogatories.

13. Attached hereto as **Exhibit 12** is a true and correct copy of Defendant NSA's Objections to Plaintiff's Second Set of Interrogatories.

14. Attached hereto as **Exhibit 13** is a true and correct copy of Defendant NSA's Objections and Responses to Plaintiff's First and Second Sets of Requests for Production.

15. Attached hereto as **Exhibit 14** is a true and correct copy of Defendant Department of Justice's ("DOJ") Objections and Responses to Plaintiff's First and Second Sets of Requests for Admission.

16. Attached hereto as **Exhibit 15** is a true and correct copy of Defendant DOJ's Objections and Responses to Plaintiff's First Set of Interrogatories.

17. Attached hereto as **Exhibit 16** is a true and correct copy of Defendant DOJ's Objections and Responses to Plaintiff's First and Second Sets of Requests for Production.

18. Attached hereto as **Exhibit 17** is a true and correct copy of Defendant Office of the Director of National Intelligence's ("ODNI") Objections and Responses to Plaintiff's First and Second Sets of Requests for Admission.

19. Attached hereto as **Exhibit 18** is a true and correct copy of Defendant ODNI's Objections and Responses to Plaintiff's First Set of Interrogatories.

20. Attached hereto as **Exhibit 19** is a true and correct copy of Defendant ODNI's Revised Objections and Responses to Plaintiff's First and Second Sets of Requests for Production.

21. Attached hereto as **Exhibit 20** is a true and correct copy of Defendant NSA's Privilege Log.

22. Attached hereto as **Exhibit 21** is a true and correct copy of Defendant DOJ's Privilege Log.

23. Attached hereto as **Exhibit 22** is a true and correct copy of Defendant ODNI's Privilege Log.

24. Attached hereto as **Exhibit 23** is a true and correct copy of Plaintiff's Notice of Deposition Pursuant to Federal Rule of Civil Procedure 30(b)(6).

25. Attached hereto as **Exhibit 24** is a true and correct copy of a letter from James Gilligan, counsel for Defendant NSA, to Patrick Toomey, counsel for Plaintiff Wikimedia, regarding Defendant NSA's objections to Plaintiff's notice of deposition pursuant to Federal Rule of Civil Procedure 30(b)(6), dated March 22, 2018.

26. Attached hereto as **Exhibit 25** is a true and correct copy of a redacted FISC submission titled "Government's Response to the Court's Briefing Order of May 9, 2011," dated June 1, 2011, and labeled with Bates numbers NSA-WIKI 00234–77 ("June 1, 2011 FISC Submission"). It is available at: https://www.dni.gov/files/documents/icotr/NYT/Government's%20Response%20to%20May%209,%202011%20Briefing%20Order%20(June%201,%202011).pdf.

27. Attached hereto as **Exhibit 26** is a true and correct copy of a redacted FISC submission titled "Government's Response to the Court's Follow-Up Questions of June 17, 2011," dated June 28, 2011, and publicly released pursuant to the Freedom of Information Act ("June 28, 2011 FISC Submission"). It is available at: https://www.documentcloud.org/documents/4064819-Savage-NYT-FOIA-2011-Bates-MCT-third-tranche.html#document/p176.[1]

28. Attached hereto as **Exhibit 27** is a true and correct copy of a redacted FISC Memorandum Opinion, dated October 3, 2011, and labeled with Bates numbers NSA-WIKI 00149–229. It is available at: https://www.dni.gov/files/documents/0716/October-2011-Bates-Opinion-and%20Order-20140716.pdf.

29. Attached hereto as **Exhibit 28** is a true and correct copy of a redacted FISC Memorandum Opinion, dated September 20, 2012, and publicly released pursuant to the

[1] Although Defendants have stated that FISC opinions and FISC submissions released via FOIA are readily accessible at "various locations" on Defendant ODNI's public website, *see, e.g.*, NSA Resp. to Pl. Requests for Production No. 21, Plaintiff has been unable to locate a functioning web-link to this document and others on ODNI's website.

Freedom of Information Act. It is available at: https://www.aclu.org/sites/default/files/field_document/fisc-opinion-and-order-re-1809-dated09.20.2012-ocrd_2.pdf.

30. Attached hereto as **Exhibit 29** is a true and correct copy of a redacted FISC Memorandum Opinion and Order, dated April 26, 2017. It is available at: https://www.dni.gov/files/documents/icotr/51117/2016_Cert_FISC_Memo_Opin_Order_Apr_2017.pdf.

31. Attached hereto as **Exhibit 30** is a true and correct copy of a document titled "Procedures Used by the National Security Agency for Targeting Non-United States Persons Reasonably Believed to be Located Outside the United States to Acquire Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended," dated July 25, 2014. It is available at: https://www.dni.gov/files/documents/icotr/702/Bates%20365-373.pdf .

* * *

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

Patrick Toomey

Date: March 26, 2018
New York, New York