

Secrets & Lies: Response to Channel 4 Ofcom submission and Ofcom Preliminary View

On 14 March 2012 Channel 4 responded to Ofcom's Entertainment Decision to investigate my complaint under the Fairness and Privacy provisions of the Broadcasting Code against Channel 4 and Oxford Films Limited, the makers of the documentary *Wikileaks: Secrets and Lies*, regarding unfair treatment and unwarranted infringement of privacy.

It is fair to say that Channel 4's response provides what amounts to a user manual for future journalists and documentary film producers – a definitive guide almost – on how NOT to make a fair, accurate and balanced documentary television programme about WikiLeaks.

From its opening paragraphs onwards, Channel 4's response tries to bluster its way past the detailed and substantiated evidence I produced to back my complaint, for example: "His extraordinarily high profile meant that when allegations of sexual assault were levelled against him in Sweden, allegations he strenuously denies, and his extradition from the UK sought, it dominated the news agenda throughout the world... The aim of the director was to strip the Wikileaks story back to its basic elements and ask the key protagonists to tell their story first hand, for the first time." Really? No mention of the fact that the producer promised *in writing* that "We are honestly not at all interested in the personal life of Julian" or "any unrelated legal proceedings" in order to gain my involvement in a documentary Oxford Films claimed would "focus on the core of the [WikiLeaks] story, the substance, content and impact of the Iraq, Afghan and diplomatic cables, rather than the way in which the media and others have handled them, or any unrelated legal proceedings" (my evidence Doc C, Doc A); nor that – as both the transcript of the broadcast programme and the transcript of my unedited interview footage show – these 'strenuous denials' they refer to appear nowhere in the programme seen by viewers, because I was never aware at any point that the programme would include such allegations. Indeed, I was told specifically that it would not.

Quite apart from the fact that I cannot answer a question that I am simply never asked, I am legally barred from publicly discussing these allegations or the ongoing criminal investigation in Sweden. This latter fact alone makes the inclusion of the Swedish allegations – never mind the way in which the programme includes them (and I'll come back to that in detail later on) – an unfairness that is impossible to remedy. The inclusion of material that an interviewee is legally forbidden to comment on introduces inherent bias against and unfairness to that interviewee, and is a clear breach of Broadcasting Code Clauses 7.2 "Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise" and 7.11 "If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond". I wasn't, as both the transcript of the final programme and the unedited footage of my interview prove.

The producer's dishonesty during pre-production negotiations in gaining that interview in the first place – an interview he needed to give any credibility to a documentary purporting to tell, in Channel 4's own words, the key protagonists' story of "leaks of previously withheld and confidential information on the most important subjects of our time such as the conflicts in Afghanistan and Iraq and international diplomatic relations" – constitutes 'misrepresentation' and 'deception' as defined in Clause 7.14 of the Broadcasting Code: "Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception." I cover these leaks at great length in my interview but the only comments of mine about their content which are used in the programme are "over 76,000 individual events, and although it was only classified secret, not top secret, the shadow of various top secret operations leaked into the material" (prog timecode 10.24.17, pg 33) and "It's illegal under UN law for diplomats to be directly

operating like spies” (prog timecode 11.13.58, pg 79) – unbelievably, as the “central protagonist”, that is all I get to say on the content of WikiLeaks’ 2010 releases.

Once the confidentiality requirements of this Ofcom investigation have been met, WikiLeaks will be releasing our full unedited footage of my interview for the programme – as well as all other materials submitted for Ofcom’s adjudication – so that the public may judge for themselves the lengths to which the programme makers went to produce a biased and one-sided smear documentary to suit the agenda of those who, it is now clear, were from the start their unofficial co-production partners – the *Guardian* newspaper. We now know what “... and the Guardian who we have exclusive access to” in Oxford Films’ second email to my assistant (my evidence Doc C) actually meant.

Channel 4’s contention that the producer “went to great lengths to provide Mr Assange with details of the programme and its contributors as it evolved” and edited the footage so that I was “given a full opportunity to put [my] perspective on the matters discussed in the programme” will be shown below to be utterly baseless. Here, I will just ask why, given that Channel 4 concedes: “There is a well-established duty to obtain a ‘right of reply’ in respect of ‘significant allegations’ from their subject for their response and perspective”, and given the producer had a direct rebuttal in my interview –

(timecode 18.48.32, pg 40): “He has stated that I um didn’t-, said that informants deserve to die, um although that is not true and other witnesses at the event have also said that that is not true, but nonetheless he has repeated it constantly, including to American audiences. Um so that’s-, that affects us legally and um just the-, the continual smears and innuendo, bringing out every pl-, every possible aspect that he could find about er the security of our organisation and different people and so on, when we’re all under er threat of um being extradited to the United States for espionage”

– to significant allegations he knew (but I didn’t) had been made by another interviewee whom he had already filmed by that time, he chose not to use it, or part of it? It is, as Channel 4 points out, a requirement of Section 7 to include such responses in the programme “where not to do so would be unfair to the subject”. Please see the attached **signed witness statement from John Goetz of *Der Spiegel***, who was at the dinner at El Moro, refuting David Leigh’s libel that I said “they’re informants, they deserve to die” during that dinner, and confirming that he told the producer Patrick Forbes that I never made such a remark. This was prior to both his interview and my own interview for the programme. I have no specific knowledge concerning the date of filming of David Leigh’s interview for the programme and request that Ofcom obtains from Channel 4 that date and the date of the producer’s pre-interview meeting with John Goetz. In any event, the producer has clearly left unchallenged in the final programme remarks he knew to be libellous untruths.

Channel 4 wishes – and Ofcom’s Preliminary Decision concurs - to treat my complaint as a matter of conflicting opinions between interviewees, when all the objections listed in my complaint are about the misrepresentation of facts – and the malign editing required to enable such misrepresentation – in what purports to be a documentary. Their argument that my complaint is based on a misunderstanding of the Broadcasting Code’s Section 7: Fairness, and the role of Article 10 – the right to freedom of expression – of the European Convention of Human Rights which underlies it, is completely spurious. I have been a free press campaigner working in the field of ethical journalism for most of my adult life and understand clearly the distinction between ‘free speech’ and ‘false speech’. WikiLeaks’ founding principles are based on Article 10 of the ECHR: <http://wikileaks.org/About.html> It is clear both from my unedited interview and my assistant’s emails that we have never sought to “interfere” with the producer’s right to freedom of expression under Article 10. However, Ofcom’s principles insist on factual accuracy. So do we.

It is significant that Channel 4 admits that David Leigh, a reporter from the *Guardian* and brother-in-law of its editor, with whom Channel 4 knew *WikiLeaks* and Assange were in an ongoing legal and reputational dispute, was secretly paid as a so-called 'fact-checker' for the programme: "David Leigh of the *Guardian* acted as an ad hoc consultant and he provided access to many useful contacts and assisted in the process of checking on certain factual matters. A reasonable fee, which is confidential, was agreed with him to cover these consultancy services". This is in marked contrast to the producer's evasive answers about David Leigh's role during my phone call of 16 November (my evidence Doc L link). Channel 4 claims I am mistaken in my belief that the dealings between the producers and the *Guardian* were in some way improper. What is improper about them is that they were not honestly represented to me – or indeed to the programme's audience – as the producer's evasiveness indicates. Knowledge of the true extent of David Leigh's role – that is, as more than simply another interviewee – would have impacted my decision to participate at all. More importantly, the producer was aware – see above **signed witness statement from John Goetz** – that the programme's 'fact-checker', *Guardian* reporter David Leigh, has told a direct lie in multiple instances of malicious libel.

How can Ofcom view the disparity between the preview rights offered the *Guardian* and not *WikiLeaks*; the producer's refusal to let us fact-check the final cut; the omission from the programme of the underlying contractual dispute between the *Guardian* and *WikiLeaks*; and the omission of the *Guardian*'s responsibility for how the unredacted cables came to be released as merely a matter of conflicting opinions in a dispute – and that it is not unfair that the audience is not properly informed of these matters – when the producer is aware – to his certain knowledge, in fact – that one side of that dispute is telling lies?

Channel 4's response to paragraph a) of the Entertainment Decision

The sections Channel 4 has underlined in the pre-production emails to my assistant – and which Ofcom's preliminary view unquestioningly repeats – simply reflect the misrepresentations the producers made to me to gain my co-operation, not what they in fact did or the nature of the finished programme. Channel 4 glosses over some of the other statements made in these emails, such as that the programme would not cover "any unrelated legal proceedings" and the comments "but this is not a media focused story I want to stress" and "Julian was the driving force of this whole event, and at the epicentre as the story unfolded and therefore it is essential to hear his take on what happened" (which I duly gave them – over a five-hour interview, of which they used 8 minutes while giving *Guardian* interviewees 30 minutes of airtime in a 72-minute programme). Channel 4 needs to gloss over these points as it cannot otherwise explain the producer's highly selective editing of the footage of my interview (I will list some specific examples further on). A cursory inspection of the yellow highlighting on the transcripts of the finished programme and my unedited interview reveals how biased the editing is, several times selecting a single phrase from several pages of interview discussion of a particular topic to give a skewed and misrepresentative version of events. This clearly breaches Clause 7.6: "When a programme is edited, contributions should be represented fairly."

Channel 4 also does not mention – and neither does Ofcom's preliminary decision – the fact I was told there would be no narrator during the pre-interview meeting on 17 August. Patrick Forbes was still denying that the programme had a narrator during my phone call to him on 16 November, which was after the promo trailer had been released (my evidence Doc L link). This is a significant point as much of the unfair bias in the programme is introduced by way of the voiceover narration and the way in which it has been edited with the visual elements, for example in the opening sequence, where the narrator says: "Have the actions of one man turned triumph into disaster?" over a screenshot of a newspaper headline 'Julian Assange Swedish Rape Claims'. The *opening* sequence – so much for the producer's desire not to focus on "any unrelated legal proceedings". This too undercuts Channel 4's

claim that my participation was based on 'informed consent'. I was directly misinformed about this matter.

Channel 4 states that: "during the course of filming the bitter enmities between the key protagonists and their criticisms of each other became increasingly apparent and so the evolution of the project in this respect was reflected in subsequent emails". Where? This was not reflected in subsequent emails. I attach the full pre-production email chain as a single document – including the 'missing' emails Channel 4 mentions (which were previously overlooked as they were sent to my assistant's private email by her old friend Tilly Cowan, the Assistant Producer of Oxford Films). These are slotted in at the appropriate dates and highlighted in blue type. As you can see, they do not substantiate Channel 4's assertion in any way.

If Channel 4 thinks that the statement in Oxford Films' 23 August email: "yes in some instances that will involve responding to what others say/their version of events in during [sic] the process" covers all the producer's obligations under Clause 7.3 of the Code, can they point to anywhere in my unedited interview where *any* remarks by other interviewees *already filmed* (for the avoidance of doubt, my interview was filmed on Friday 9 September 2011) have been put to me, or where I am asked questions related to the "bitter enmities" that these *already filmed* interviews had made "increasingly apparent"?

I am the second-to-last interviewee to be filmed (Daniel Domscheit-Berg is last for logistical reasons) yet all that is put to me regarding serious allegations made by other contributors is: "What was your beef with the *New York Times*?" (i/v timecode 19.18.44, pg 48) and "So you were taking a different approach to the *Guardian*, is that what you're saying, but there was no mammoth row? Is that what you're saying?" (i/v timecode 17.04.57, pg 29)

In the final programme the producer skips the first two, more important, 'beefs' I have with the *NYT* – that their coverage of the Afghan War Diaries and Iraq War Logs stripped alleged source Bradley Manning of any higher moral motivations and that they killed the Task Force 373 story (i/v timecode 19.18.44, pg 48) – and uses a truncated Beef 3 to give the impression that my only reason for not wishing them to be involved in the release of the US State Department cables is that they wrote a "sleazy hit piece" on me (prog timecode 11.01.53, pg 67).

The producer's question about the *Guardian* follows my very long and detailed explanation of the methodology (and WikiLeaks' media partners' agreement to it) of the redaction of the Afghan War Diaries (starting at i/v timecode 16.59.16, pg 28). The dinner to which David Leigh's libellous statements relate is not mentioned at all in the interview and yet my response to the producer's question – "there was no row, no row at all, there was no-, there's not even um only hints of a discussion" – appears in the final programme as my supposed direct 'right of reply' to these serious and libellous allegations (prog timecode 10.36.24, pg 44). This is dishonest editing, pure and simple, and in clear breach of Clause 7.6 of the Broadcasting Code: "When a programme is edited, contributions should be represented fairly."

Channel 4 claims the release form I signed on 11 November accurately described the programme's focus on the "substance, content and impact of the Iraqi, Afghan and diplomatic cables, looking at the emergence of the Arab Spring and the impact on repressive regimes." It quotes two sentences from my interview which made it into the final programme as evidence of this focus:

"some critics say the Cablegate material will de-stabilise the Middle East. But it turns out those critics were right, we put in a sort of politic response to that frequent criticism that while we

would not say de-stabilise we would say re-stabilise the Middle East into a new more harmonious democratic system.”

As is clear from the transcript of the unedited footage, during the course of my five-hour interview I gave the producers exactly what they claimed to be looking for: “a factual accounting of the Wikileaks story from the Apache video release through to the release of the cables,” covering “what impact he considers the leaking of the war logs/cables to have been on the political landscape, ordinary people and society and on traditional journalism,” and in very great depth too. I spoke at length on these matters, and more – far more than these two short sentences – as, of course, the “central protagonist” would. More focus on this material and none, as promised, on “unrelated legal proceedings” would have given a much better “factual accounting of the WikiLeaks’ story”.

Channel 4 does not mention that I had not been afforded any preview rights – as other contributors from the *Guardian* were – to check whether the release form accurately described the programme when I signed it. Channel 4 talks of my “purported withdrawal of consent” on 17 November. Purported? I withdrew it (my evidence Doc J) and was notified that same day that my email had been forwarded to Channel 4 eleven days prior to broadcast. That email contained numerous serious concerns I had that the promo trailer indicated a very different programme from the one I had been led to believe I was taking part in but Channel 4 chose to do nothing about it, which I trust will be a factor in Ofcom’s final adjudication.

It is true, as Channel 4 states, that I had requested a non-adversarial approach to questioning in my interview and was relaxed during the filming. This was because I had been led to believe the producer was making a balanced, fair and neutral programme. But that is not, in fact, what he has produced. At the time of filming he already had extremely adversarial interviews – including, to his certain knowledge untruthful libels (see **John Goetz signed witness statement**) – ‘in the can’ (all bar Domscheit-Berg’s, whom he had never told me he would be interviewing; if he had, it would have impacted my decision to participate in the programme at all) – it was manifestly unfair not to inform me of the serious allegations made within them. This is exactly what the section of Clause 7.3 which reads “be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness” is designed to prevent.

The excerpt from my assistant’s 22 August email which Channel 4 reproduces – *“It is good that he will be given a chance to give a reply to anything said by the other talking heads... but we don't want it done in the accusatory style of someone such as Sweeny (not that you would - that is an extreme example, but you get my point)”* – makes it clear what we’d been led to expect (*“not that you would”*) and that we would have wanted to know about any ‘Sweeny-style’ accusations made and be given the opportunity to refute them. The transcript of my interview proves that I was not given *“a chance to give a reply to anything said by the other talking heads”* as not a single remark made by other interviewees is put to me during the whole interview, ‘Sweeny-style’ or otherwise.

Channel 4 claims the producers told me during the pre-interview meeting on 17 August that Nick Davies would be interviewed but hadn’t been yet. I dispute this claim, however, Channel 4 admits Nick Davies’ interview had been conducted by the time of mine and it contained extraordinary allegations about me to which I was given no right of reply. Channel 4 maintains “the nature of other likely contributions” would have been apparent to me during interview by way of questions about “the apparent fallout with the *New York Times*” and “an alleged row with the *Guardian*”. I have provided timecodes for these two instances above to show how these questions were contextualised within my interview, and how my answers were used out of context in the finished programme to give a skewed account that in no way provides a proper right of reply or “the last word” about the significant and

serious libels against me made by other interviewees – in particular by Nick Davies and David Leigh of the *Guardian* newspaper – which the producer and Channel 4 claim I was given. I note Channel 4 cannot point to instances where the nature of Nick Davies' contributions "would have been readily apparent" to me during my interview – because there are none.

The single-page email chain attached shows that the producers made no serious efforts to contact WikiLeaks media partners suggested by my assistant, contrary to Channel 4's claims. Kristinn Hrafnsson is WikiLeaks' official press spokesperson; journalists and filmmakers do not need our permission to contact him, and his contact details are listed on our website. There was no impediment to the producers obtaining an interview with him but he was never contacted by them. Despite the valuable insight Kristinn could give on his journalistic work to verify the facts behind the Collateral Murder video – and the 12 minutes of interview dialogue from me, rich in detail, about the footage (i/v timecodes 15.33.21–15.45.01, pgs 9-12) to choose from – Patrick Forbes chose instead to have David Leigh, who played no part in the research, preparation or release of Collateral Murder, explain the significance of this footage to the programme's viewers across two minutes of screen time (prog timecodes 10.05.44–10.07.46, pgs 9-15)

WikiLeaks' media partners were either not contacted in the first place, despite their contact details being given to the producers by WikiLeaks (full email chain, 23-27 July) or were not followed up – for example, Mansour Aziz of *Al-Akhbar* has confirmed there was some initial contact and he agreed to speak on the programme but he heard no further from the producers. None were interviewed. WikiLeaks' longstanding policy is that the identities of its staff are protected, so the question of filming "the WikiLeaks team working" or to camera would never have arisen. Again, I do not believe that this question did in fact arise at the pre-interview meeting – or at any other point – contrary to what Channel 4 and the producer state.

Overall the programme features interviews with five *Guardian* journalists (David Leigh, Nick Davies, Alan Rusbridger, Ian Katz, James Ball), three *New York Times* journalists (Bill Keller, Eric Schmitt, Dean Baquet), two *Der Spiegel* journalists (Georg Mascolo, John Goetz), one interviewee from WikiLeaks (me) and none from any of WikiLeaks' other 90 media partners. Furthermore, as sole representative of WikiLeaks' perspective in the programme, my commentary on the *content* of our entire 2010 publications output is restricted to two sentences: "It's illegal under UN law for diplomats to be directly operating like spies" (prog timecode 11.13.58, pg 79) and "over 76,000 individual events, and although it was only classified secret, not top secret, the shadow of various top secret operations leaked into the material" (prog timecode 10.24.17, pg 33) in a documentary we were told would "focus on the core of the [WikiLeaks] story, the *substance, content and impact* of the Iraq, Afghan and diplomatic cables, *rather than the way in which the media and others have handled them, or any unrelated legal proceedings*". This does not honour the guarantee given to WikiLeaks by the producer prior to my interview: "but this is not a media focused story I want to stress" (my evidence Doc C), in breach of Clause 7.7: "Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured".

Channel 4 claims Daniel Domscheit-Berg made no "significant allegations" during his interview requiring "an appropriate and timely response" in the interests of fairness, as set out in Clause 7.11 of Ofcom's Code. Here's a few of the significant allegations made by him which appear in the final programme, together with why he had no standing to make them:

Libellous imputation 1 – in the final programme Domscheit-Berg maintains there was a [narrator-described] "furious row" within WikiLeaks following the arrest of alleged source Bradley Manning concerning [again, narrator-described] "...is Manning their source? And if he is, what responsibility do they owe him? WL has a mountain of unpublished secrets from the same source... Julian wants to keep

going, Daniel doesn't". Domscheit-Berg's comments about "not wanting to put Bradley Manning in more trouble than he is already in... we should have stopped thinking about ourselves at that moment" imply that I view whistleblowers as expendable. I don't and it's libellous to imply that I do. See i/v timecodes 15.25.44–15.31.26, pgs 7-8 for my true position regarding sources and their value to society in increasing human knowledge. The yellow highlighted portion selected has been used out of context in the final cut in a biased and unfair way (prog timecode 10.14.44, pg 24). In fact, in a public statement, human rights lawyer, Renata Avila Pinto, who knows Mr Domscheit-Berg, stated that when she tried to contact him to alert him about the arrest of Mr Manning, which had been made public, Mr Domscheit-Berg, despite being made aware of the gravity of the situation, said he was busy on holiday and didn't want to deal with the matter.

Following his nervous breakdown and departure from Iceland in February 2010 (even documented in his book) Mr Domscheit-Berg's input within WikiLeaks was restricted to a minor administrative role in Germany and as spokesperson there. His role as spokesperson within Germany was removed after he gave a number of interviews following the 5 April 2010 release of Collateral Murder in which he misdescribed himself to the press. He was never a co-ordinator or decision-maker within the organisation and should not be captioned as "WikiLeaks spokesperson" or described as an 'insider' at the time of Bradley Manning's arrest in May 2010. See WikiLeaks' press releases of 20 August 2011 and 9 February 2011 concerning Daniel Domscheit-Berg reproduced here: <http://wlcenral.org/node/2171> (my evidence Doc M link)

Libellous imputation 2 – in the final programme Domscheit-Berg asserts: "we hadn't taken care of any kind of redactions in respect to the material" of the Afghan War Diaries. As above, by the time of the AWD release in July 2010 Domscheit-Berg's role in Germany was to deal with minor purchases and expenses, relay messages, liaise with people booking venues, etc. He was not party to and had no direct knowledge of the procedures agreed for redacting the Afghan War Diaries material (I provide evidence of this from a third-party source in the section Entertainment Decision point ii below). Furthermore, prior to Domscheit-Berg's interview the producer had the benefit of my detailed explication (i/v timecodes 16.59.16–17.04.57, pgs 28-29) that one in five reports had been removed from the dataset (ie the release was pre-redacted prior to publication), that it was the media partners' oversight in discovering regions and keywords pertaining to the informants that slipped through, as that was their agreed task, and the non-inflammatory nature of this 'informing':

And also the oversight of the journalists in The New York Times and Der Spiegel and The Guardian, who'd never mentioned that form of material although it was their job to go through the individual records. Um that said, looking at it and speaking to a number of people in Afghanistan, it was our view that no one would be um killed as a result, simply because it was-, the sort of information was rarely inflammatory, it was given-, it was someone would come into um US military would come into a town and search someone's house um and say, "Are there any Taliban in your town?" and they'd say something like, "No." So they're an informer, or they would say um or, "There used to be," or, "Maybe in the next town," something like this. So these weren't significant events and people um that we spoke to um said that because these communities are so small in Afghanistan, and so tight, everyone knows who supports who, which side of the fence you are, it is-, it is no secret,

Despite this, and the two press releases mentioned above, the producer allows Domscheit-Berg to make his allegation unchallenged in the final programme. Also, Nick Davies' comment "we had just made their [the Pentagon's] job easier for them, or to be clear, Julian Assange had made their job easier for them" (prog timcode 10.40.14, pg 48) is allowed to stand in the final programme, despite the producer being aware that it was the media partners' job – ie. the *Guardian*, *Der Spiegel*, the *New York Times* – to remove vulnerable informants' names from the field reports before WikiLeaks' publication.

Libellous imputation 3 – In the final programme, immediately following a news presenter’s announcement “Assange says all the allegations are untrue,” Domscheit-Berg says: “That’s what he told everybody, that he had been warned about a CIA, some kind of a subversive CIA attack or something like this. I mean that was the initial response that’s been printed all over the world and that’s what actually lots of people started to believe you know?” This remark is edited alongside Nick Davies’ equally libellous comments of a similar nature, which I deal with in depth further on.

Domscheit-Berg was suspended on 25 August 2010 for sabotaging WikiLeaks’ submission system and misappropriating donor funds. He was acting in isolation in Germany. On 21 August 2010 he was on holiday in Iceland. A press release detailing these matters and his theft of and threats to destroy whistleblower submissions was issued by WikiLeaks on 20 August 2011, a few weeks before my own interview for the programme, perhaps a month or so before Domscheit-Berg’s. Domscheit-Berg’s role in publicising the whereabouts of the encryption key to the unredacted cableset (*Guardian* reporter David Leigh’s book!) and its subsequent release worldwide became public knowledge on or around 1 September 2011. The producer admitted he was aware of Domscheit-Berg’s unreliability and that he was not a “major protagonist” in events in a phone call of 16 November: “Yeah, exactly – he’s out” (my evidence Doc L link). Despite this, in the final programme he is given 6 minutes’ airtime, falsely captioned “WikiLeaks spokesperson” and “deputy”, misdescribed as a computer programmer (he can’t program and has admitted so publicly) and given a right of reply about his suspension. Why has *any* contribution from Domscheit-Berg – let alone the above libels – been allowed to remain in the broadcast programme? The fact that it has clearly breaches Clauses 7.2, 7.3, 7.6, 7.7, 7.9, 7.11 and 7.14 of the Broadcasting Code.

In Channel 4’s view – and Ofcom’s Preliminary View seemingly concurs – there were no significant changes as the production progressed which might reasonably affect my original consent to participate. As outlined above, David Leigh’s role as production consultant/fack-checker and the presence of significant and libellous allegations made by other interviewees were both matters I was kept in the dark about and my participation therefore does meet the criteria of ‘informed consent’. My amendment of the release form – signed on 11 November, withdrawn 17 November when the above facts became known to me for the first time – to include a provision that the producers “would not use part/s of my interview out of the context of the whole programme” did not, unfortunately, anticipate that they would use them out of context *within* the programme. Two examples (among many):

My comment “I find that to be deplorable, absolutely deplorable” is edited in the final programme (prog timecode 11.03.09, pg 68) as a response to David Leigh’s admission that he gave the full cableset to the *New York Times* (in contravention of WikiLeaks’ contract with the *Guardian* (my evidence Doc N), but that’s not mentioned). It was in fact a comment about the *New York Times* taking every single cable it intended to write about to the US government 10 days before Cablegate’s publication for vetting and the opportunity to prepare its spin (i/v timecode 16.54.46, pg 27).

My comment “we were shooting ourselves as an organisation every time we work with the *New York Times*. If you’re producing journalism with a goal of it producing justice, then you don’t want that goal undermined” (prog timecode 11.07.04, pg 71) follows the narrator stating the NYT plans to take the cables to the White House (omitting the fact it did the same with the Afghan War Diaries and the Iraq War Logs), but in fact it was a comment on how the NYT ran the story of US forces knowingly handing over detainees to Iraqi torture: “Some detainees fared worse in Iraqi hands” (i/v timecode 19.20.46, pg 48).

Agreement that producers “shall be entitled to cut and edit the contribution as you deem fit” cannot be said to have been given unless it is based on ‘informed consent’.

I did not request preview rights because I was not told these rights were available and that they had been granted to the *Guardian* contributors. Channel 4 claims that agreement to give preview rights “would not be usual in these circumstances” and Patrick Forbes’ letter of 18 November (my evidence Doc K) concurs: “Channel 4 does not generally permit previews of its programmes to participants except in specific circumstances which are agreed in advance and only then within very limited parameters” and “It is not appropriate for a contributor to a programme to see a promotional trail in advance of its broadcast”. Yet Luke Harding and James Ball (a contributor) of the *Guardian* both tweeted on 27 November that they had been given a preview. Channel 4 now admits: “The Guardian requested, and was granted, a right to preview the Programme solely for the purpose of raising concerns about factual accuracy.” I was not afforded the same opportunity to fact-check – in fact, subsequent to my informing the producer that I had serious concerns about the factual accuracy of the programme, Forbes refused my request for a preview for this purpose (Doc K) – this, knowing of the “bitter enmity between the key protagonists” that had “become increasingly apparent” during the course of filming and his certain knowledge of libellous untruths in the final programme (see **signed witness statement from John Goetz**). This is manifestly unfair and inequitable treatment, breaching Clauses 7.2, 7.3 sections on other contributors, significant changes, rights and obligations, previews, 7.9, 7.11 and 7.14.

Channel 4’s response to paragraph b) of the Entertainment Decision

Entertainment decision point i)

Channel 4 claims: “The attempt to extradite Mr Assange from the UK, his legal battle to oppose extradition, the allegations made about him in Sweden, and his immediate public response to them were crucial aspects of the story and so it would have been bizarre not to have referred to them in the Programme.” A recent 2-part, 2-hour BBC documentary *WikiLeaks: The Secret Life of a Superpower* – also covering the same ground of “the substance, content and impact of the... diplomatic cables, looking at the emergence of the Arab Spring and the impact on repressive regimes” – managed to deal with the Swedish allegations in one sentence. Contrast this one sentence with the seven minutes-plus of airtime (in a 72-minute programme) given to them in Oxford Films/Channel 4’s programme – following a *written undertaking* (my evidence Doc C) that the programme would not deal with any legal proceedings unrelated to the WikiLeaks’ 2010 publications, on which my consent to participate was based. See also **John Goetz’ signed witness statement**: “Patrick Forbes, the producer, told me that he felt that ‘all of that other stuff’ – including the Swedish allegations against Julian Assange – was off the point and irrelevant.”

Channel 4 claims that my comments on my case are included in the final programme. Not so – I am legally barred from discussing the allegations or specifics of my case – but during the course of a long discussion (i/v timecodes 18.52.39-19.00.33, pgs 42-44) of the secret Grand Jury process convened to indict me for espionage I discuss the high-level political implications revealed by my appealing the extradition process to Sweden. This is what is reproduced in the programme and is held by Channel 4 – and Ofcom’s preliminary decision concurs – to be the fair and neutral equivalent of the programme’s fact-checker, *Guardian* reporter David Leigh (not party to the events in Sweden and known by the producer to have made malicious false statements about me (see **signed witness statement from John Goetz**)), giving a highly salacious account of the *allegations* against me. “Julian had upset these two women by his incontinent sexual behaviour which had involved, it would appear, jumping on them and not using a condom” (prog timecodes 10.49.36-10.50.44, pgs 55-56) – “jumping on them” – from where does Mr Leigh get these ‘facts’? Certainly not from the Swedish police file of the allegations –

allegations which were dismissed by the first prosecutor after reading it and the case closed – which gives a very different version of events. Please note David Leigh's commentary is *immediately* preceded by the misuse of Swedish journalist Donald Bostrom's quote: "My friend, I'm sorry to tell you it's true" (he was referring to the fact that a preliminary investigation had been initiated and leaked to the press (illegal under Swedish law)) – which, of course, follows *immediately* after Nick Davies' listing of potential reasons why the allegations might NOT be true (prog timecode 10.48.40, pg 55). Mr Leigh's assertions are then presented as a factual accounting – there is *nothing* to convey the fact that these are mere allegations. There is no mention anywhere in the programme that I have *not been charged with any offence*.

Channel 4 contends: "At no time did Mr Assange suggest that the Producers spoke to his legal team". Of course I didn't; I had been given a *written undertaking* (my evidence Doc C) that the programme would not feature the Swedish legal proceedings against me! – The fact that it did is a blatant breach of Clause 7.7: "Guarantees given to contributors, for example relating to the content of a programme... should normally be honoured". It also breaches Clause 7.14: "Broadcasters or programme makers should not normally obtain or seek... an agreement to contribute through misrepresentation or deception" as the producers misrepresented the fact that the programme would contain extensive coverage of the Swedish case in order to gain my participation.

Channel 4 further maintains that my complaint under Clause 7.9: "material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute" that the non-inclusion of any of the lawyers, prosecutors, legal experts or witnesses with the authority to provide a background, explain or discuss the controversy in Sweden was unfair to me is "contradictory". It is not. I had received a written undertaking that the programme would not feature the Swedish case at all – "We are honestly not at all interested in the personal life of Julian" and the programme would not focus on "any unrelated legal proceedings" (Docs A, C) – the fact that it did focus on these matters is what makes the non-inclusion of views representing the facts of my side of the story unfair. In particular, Donald Bostrom, who has detailed in his police witness statement that he doesn't believe one of the complainants, has a comment by him used out of context (a breach of Clause 7.13: "Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner"). His direct involvement in the Swedish events is made clear in David Leigh's account but he was given no opportunity to participate in the programme (a breach of Clause 7.9: "anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute").

Channel 4 claims "The legal case was not the focus of the Programme but it fairly reported that Mr Assange denies the allegations and was continuing the appeal process." This translates on screen as a newsreader reporting "Assange says all the allegations against him are untrue" (followed immediately by Daniel Domscheit-Berg saying "That's what he told everybody") and a graphics card at the end of the programme "November 2nd 2011 High Court rejects Julian's appeal. Julian is appealing - again". This, in the context of seven minutes of airtime devoted to the skewed and biased recounting of the allegations by two *Guardian* reporters and Domscheit-Berg, a former employee who was sacked for sabotage and misappropriation of donor funds and was in any event on holiday in Iceland at the time and not party to events as a WikiLeaks 'insider' as he claims – all of whom have no direct knowledge of events – this is considered fair and neutral treatment in Ofcom's preliminary view?

Channel 4 contends that "At no point was there any suggestion, either in commentary or by an interviewee, that the allegations were true" in the final programme. However, Nick Davies' comments at prog timecode 10.57.41, pg 62: "And it's the same *when for example he's talking about the two women in Sweden and tries to pretend* that this is all dirty tricks by the Pentagon. I think he believes it"

and at prog timecode 11.17.21, pg 82: "I think secondly he's becoming embroiled *with the accusations of sexual misbehaviour in Sweden* was somewhat damaging. What was even more damaging was that *he was clearly not telling the truth about it*" carry the clear – and clearly libellous – imputation that my denial of the allegations is false. In the minds of viewers – and coming as it does from the mouth of a 'reputable' journalist – a false denial of allegations amounts to the same thing as 'proof' that the allegations are true. I am given no right of reply to these very serious allegations of wrongdoing, in contravention of Clause 7.11 of the Ofcom Broadcasting Code: "If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond." Please point to *where* – in either the transcript of my unedited interview or the final broadcast transcript – I am given an opportunity to respond to these allegations of untruthfulness.

Channel 4 claims "Mr Assange had initially claimed publicly that the allegations were part of an American intelligence dirty tricks conspiracy against him it was reasonable to hear from those who were critical of his decision to do so without an apparent evidential basis to support these claims." The Channel 4 claim is false. This is in reference to Nick Davies' remarks in the programme: "To see Julian tweeting and giving mainstream media comment which clearly suggested that she was some kind of American dirty trick was very distressing because the guy is supposed to stand for truth and that wasn't true" and: "I'm saying that Julian misled the world when he claimed, or hinted, that there was some kind of conspiracy by the Americans behind it." (prog timecodes 10.52.28–10.53.01, pg 58) Here's that 'hint', a single tweet sent by the WikiLeaks organisational account, on 21 August 2010:

<http://twitter.com/#!/wikileaks/status/21731247584>

Sent after the surprise discovery that a Swedish right-wing tabloid, *Expressen*, was saying I was being tracked in a manhunt for an alleged double violent rape (which was dropped completely a mere 6 hours later by the Chief Prosecutor of Stockholm), when in fact I was sitting down writing. Neither WikiLeaks nor I had any way of knowing I was "wanted" for any matter at the time and right-wing smear attacks were common against me and the organisation. To this day, no woman has ever claimed that I "raped" her, and the subject of the Swedish police investigation said, in official records, available to Channel 4, that she had been "railroaded by police and others around her" and refused to sign her statement. The only book to have even been written on the matter, by Swedish Fulbright scholar Oscar Swartz, says exactly the same: <http://swartz.typepad.com/texplorer/2012/06/assange-ecuador-rape-and-sweden-2.html>

You will notice that the tweet doesn't mention anything about Americans or the Pentagon. Or contain any mention of a 'she'. This is because it is in fact a reference to the *Espressen* splash headline shown at timecode 10.48.49 (pg 55) in the programme. This splash headline most certainly looked like a 'dirty trick' to us at the time and the prosecutor who told the press, against Swedish law, was referred to the Swedish Ombudsman's office by the Swedish equivalent of the ACLU, *RO*.

Note also an **article written by Nick Davies on 24 August 2010:**

<http://www.guardian.co.uk/media/2010/aug/24/assange-wikileaks-swedish-prosecutors-charges>

In subsequent tweets and interviews, Assange suggested that the timing of the allegations against him was "deeply disturbing". He told al-Jazeera on Sunday: "It is clearly a smear campaign ... The only question is who was involved. We can have some suspicions about who would benefit, but without direct evidence, I would not be willing to make a direct allegation." He said he had been warned that the US Pentagon was planning to use dirty tricks to spoil things for WikiLeaks.

Please take careful note here – from Nick Davies’ own article – of what is, and what is not, within the direct quotation marks attributed to me. I have made *no* public comments that the Swedish case is ‘dirty tricks’ by the Pentagon. Furthermore, Channel 4 claims also there was no “apparent evidential basis to support these claims”. Here’s a series of tweets issued by the US *All Military News* (*Army Times*) on 21 and 22 August 2010 and an article by respected US journalist Scott Horton of *Harper’s Magazine*: “Rape claims against Assange aggressively spread by Pentagon on Twitter”, dated 23 August 2010:

<http://twitter.com/#!/allmilitarynews/status/21758035713>

<http://twitter.com/#!/allmilitarynews/status/21758571079>

<http://twitter.com/#!/allmilitarynews/status/21761317050>

<http://twitter.com/#!/allmilitarynews/status/21857560264>

<http://www.harpers.org/archive/2010/08/hbc-90007522>

However, I have not made public statements that the Swedish allegations are a Pentagon ‘dirty trick’, although they are certainly false. All these factual sources were readily available to a documentary producer doing his own independent research. Instead, Patrick Forbes chose to rely on the production’s ‘timetabler’ and ‘fact-checker’ David Leigh, whom he knew to have made untruthful – and libellous – statements about me (see **signed witness statement of John Goetz**).

Entertainment decision point ii)

Astonishingly, Channel 4 contends – and Ofcom’s preliminary view is to concur – that the omission of the fact that David Leigh broke the written contract between WikiLeaks and the *Guardian* newspaper (my evidence Doc N) and published the encryption key to the cableset, thereby precipitating the release of the unredacted US State Department cables worldwide, was not “relevant” to a programme purporting to depict the “substance, content, and impact of the Iraqi, Afghan and diplomatic cables” (my evidence Doc C). Unless they are saying that in their view the release of the unredacted cables had no impact – which would make the programme narrator’s claim this event elicited “worldwide condemnation” (prog timecode 11.19.42, pg 84) a little dubious– this position is completely untenable.

Channel 4 further contends – and Ofcom seemingly concurs – the producer took the “reasonable decision” to exclude both sides of this “complicated dispute”, however this statement is not true. David Leigh does give his version of events in the programme (prog timecodes 10.47.02, pg 54) – “he told me that this file would then expire, be deleted within a matter of hours” – whereas I give a detailed explanation of events leading to the release of the unredacted cableset in my interview (i/v timecodes 17.42.51–17.57.44, pgs 35-39) and not one single word of it is used. No mention of key facts such as encryption keys do not ‘expire’; that multiple copies of the cableset had already been distributed (securely – the only way to decrypt the data is through the key) to prevent attacks, so re-encrypting one copy is useless; that David Leigh broke the contractual security arrangements for the cableset; of the actions of Domscheit-Berg/David Leigh leading to the release; of the pros and cons of WikiLeaks’ then publishing the data (because it was already out there); and of WikiLeaks contacting the US State Department to check their harm minimisation programme – started November 2010 – had been completed by late August 2011.

Channel 4 and the producer cannot omit all these key facts and then claim even-handedness for a programme where the narrator states “to worldwide condemnation Assange announces he is planning to put out all the cables with nothing blacked out” over a shot of a self-serving *Guardian* newspaper headline: “Wikileaks publishes full cache of unredacted cables. Former media partners condemn Wikileaks’ decision to make public documents identifying activists and whistleblowers” without giving *any* explanation of what led to that announcement, technically or in terms of human factors, namely

David Leigh writing a statement and foisting it on these other organizations, and personally lobbying them, saying they would get the blame for the cable release if they did not publish his draft combined editorial, because Mr Leigh was desperate to avoid perceived liability from the password disclosure in his book. The claim that to do so would have “required a significant amount of screen time to do it justice” is particularly galling in view of the amount of screen time devoted to covering events – “any unrelated legal proceedings” – I was assured *in writing* (my evidence Doc C) it would not cover, and is in any event completely spurious. Here is a short section of my interview with the selection made by the producer for the final cut highlighted in yellow. In the finished programme it appears immediately before (prog timecode 10.46.18, pg 53) David Leigh’s interview segment about the encryption key:

There wasn't rows with our partners, there is simply one incident, one incident, and that was the deliberate-,so, start from the beginning. Um we knew the significance of the diplomatic cables as an instrument of reform, and we also knew its significance as an input to a news organisation, we knew its significance. We also knew that we had a CIA taskforce assigned to us, some 120 people working in the Pentagon against us, er and other organisations. **We knew that they knew that we had 251,000 diplomatic cables, over a 100,000 which were classified.** So, **I personally was in a very precarious position**, and others. *We made various encrypted copies of this material in many different localities, but* **we were still worried about a surprise sneak attack simultaneous across all the continents where our people were. So, under that basis we were willing to give The Guardian a copy of the material for safekeeping**, in the-, as an interim measure, and then we would discuss the precise mechanisms by which it may or may not be published through The Guardian, and to do that, to enforce that, we had Alan Rusbridger, the editor, sign a contract with three points. Number one, no cables would be published at all, no stories from cables would be published, until we gave further agreement, number two, that the cables would not be given to any other organisation and would be held securely, and number three, that the cables would be kept off any internetted-, connected computer system in order to protect them from computer hackers and ina-, inadvertently quoted while we did this delicate manoeuvre of putting out the Iraq war logs, dealing with the legal situation, dealing with financial situations, dealing with potential sourcing, legal issues, um and moving our people into the correct locations. So we were intending to publish in January 2011. The Guardian, and David Leigh personally, secretly and knowingly violated every single point in that contract, took all the material in September or before and gave it to The New York Times, knowing that we did not want to deal with The New York Times anymore because of their jour-, journalistic failures previously and attacks on this organisation and one of our alleged sources. They knew that we wanted to work with the Washington Post and McClatchy instead, um so it's not like there would not be a US partner involved, rather there would simply be-, be a different one. Er but in order to speed up the publication, Leigh was going to retire at the end of the year, to speed up the publication and to keep their business alliance with The New York Times strong they decided to knowingly break every point of that contract and smuggle the material out to The New York Times, to publish it without telling us at all. (i/v timecodes 19.13.32–19.16.36, pg 47)

Three minutes of interview that could easily be edited down to give the key facts. The deliberate excision of the italicised sentence in the selected edit makes a nonsense of Channel 4’s claim that “Some months prior to this publication [Leigh’s publication of the encryption key in his book] WikiLeaks, unbeknownst to David Leigh, replicated the files on the web” as the copy of the cableset was given to the Guardian *under that basis*. The producer is clearly aware of this fact from my interview; clearly aware that the production’s ‘fact-checker’ is given to telling lies (see **signed witness statement of John Goetz**); and clearly happy to grant the *Guardian* – but not me – preview rights for the purpose of fact-checking. To include that one vital sentence in italics to give a clear picture of the facts preceding David Leigh’s publication of the encryption key would take so little extra running time

that it is clear it is a deliberate omission of those facts. I submit therefore that the editorial decisions made by the programme's producer were deliberately intended to produce a biased and skewed account favourable to the *Guardian* and which is unfair to me, breaching Clause 7.6 of the Broadcasting Code.

Channel 4 bases its claim that the details of the events leading to the unredacted cables release are "not relevant" because "Assange always intended to publish the cables in their unredacted form" on its mistaken interpretation of this sentence from my interview: "although we had been preparing to publish the majority of material by November 29 we'd have to rush this forward and publish all the rest" (i/v timecode 17.53.32, pg 38). I am talking here of WikiLeaks' always-planned, one-year publishing schedule (from 28 November 2010) of the *redacted* versions of the cables, as we had been doing up to that point (of Domscheit-Berg's action in publicising the location of the encryption key), as is clear in context within the interview.

Despite the producer being fully aware of Domscheit-Berg's hugely irresponsible role in these events prior to interviewing him, his comments about WikiLeaks' publication of the unredacted cables as "That's about the worst decision I am aware of, that's like this shouldn't happen, because this is again where you are not a pro whistle blowing organisation, but you're just a mere anti-secrecy organisation. And there's a big, big difference in between these two things... One is a responsible thing and the other one isn't" (prog timecodes 11.19.57–11.20.18, pgs 84-85) are not challenged. Moreover, they follow immediately after the narrator's statement: "to worldwide condemnation Assange announces he is planning to put out all the cables with nothing blacked out". It is this combination which leaves viewers with the impression of an 'incomprehensible and reprehensible' act on my part, unfairly and in breach of Clauses 7.1, 7.2, 7.3, 7.6, 7.9 and 7.11.

Yes, as Channel 4 states, "other respected media outlets have criticised Mr Assange's actions" in publishing the unredacted cables. The full facts are available but lazy fact-checking is widespread – not to mention dishonest 'documentaries' such as this one – and many journalists have simply taken the *Guardian's* word for it as to how this came about. It is significant that Channel 4 has to resort in its defence to stating that the programme gives the "last word" to me about the publication of the unredacted US State Department cables by quoting my comments about the "unredacted Afghan war logs" (i/v timecode 17.05.43, pg 29). Two points: 1) as explained above, the Afghan War Diaries were redacted in a ratio of 1 : 5, and 2) the notion this is a proper right of reply to the allegation that WikiLeaks' publication of the unredacted US State Department cables was irresponsible is belied by the fact that there is so much material in my interview about this particular event – why could the producer not select a 'right of reply' from within that?

As Channel 4 points out, Marcel Rosenbach attended the dinner at El Moro with myself and *Guardian* reporters David Leigh and Declan Walsh, and not Holgar Stark. My apologies for the confusion; I meant Marcel Rosenbach. Holgar Stark was not there at the time but he is co-author with Marcel – who was – of a book in which this dinner is described. The book ***Staatsfeind Wikileaks by Marcel Rosenbach and Holgar Stark*** was published in Germany on 24 January 2011, a week before David Leigh's book *WikiLeaks: Inside Julian Assange's War on Secrecy* (published 1 February 2011), which contains the libellous statement that I said "they're informants, they deserve to die". To date, only a German-language version of *Staatsfeind Wikileaks* is available but the relevant pages have been translated into English – see **attached translation**, and this link to an alternative translation, for verification of its accuracy: <http://ccwlja.wordpress.com/2011/06/03/staatsfeind-wikileaks-harm-minimization-and-the-afghan-war-logs/>

You will see from both translations that I readily entered into the discussion of redactions for the Afghan War Diaries, envisaged a technical solution and held back 15,000 field reports. There is no

mention in *Staatsfeind WikiLeaks* of any “row” or of the “they’re informants, they deserve to die” remark, as of course there wouldn’t be in a book published a week before this libel was first concocted by David Leigh. I note that the only reference Channel 4 can give to their claim that Declan Walsh “entirely supports” David Leigh’s story is to the quotation of one word, “callous”, from David Leigh’s own book, a fatally flawed approach that needs no further comment.

Channel 4 claims: “However, Mr Goetz did not at any time tell the Producers that Mr Assange did not make this statement”, which is false (see **signed witness statement of John Goetz**).

According to Channel 4, “The complaint as entertained does not include as a potential point of unfairness that Mr Assange’s denial was not explicitly reported”. My original complaint makes it clear that I consider the fact that my denial was not explicitly reported as an “intentional libel”. From my complaint: “I have denied it publicly many times but am given no opportunity to respond directly to this allegation. This is intentional libel.” – If this is not ‘entertained’ by Ofcom as a point of potential unfairness then it should be. David Leigh’s original libel – re-reported many times – is a very serious and consequential matter for WikiLeaks in that it poisons public support against WikiLeaks as a publishing organisation, support on which we rely, and against me personally at a time when I am imperilled by a US Grand Jury convened to find a way to indict my journalistic activities as some form of espionage.

Far from being, as Channel 4 tries to claim, “at odds with the Producer’s research”, to the producer’s *certain* knowledge – from an indisputably independent witness who was directly involved (see **signed witness statement of John Goetz**), David Leigh’s interview for the programme contains an intentional and deliberate libel, yet he chooses to put this libel in his final cut. The producer has available to him in the footage of my interview a direct rebuttal (reproduced above) to something he knows to be a serious and significant libel. He chooses to leave it out of his final cut. This – the producer’s actions – is, in and of itself, an intentional libel and grossly unfair to me, in breach of the provisions of the Broadcasting Code. I trust this now makes the position clear to Ofcom.

Channel 4 claims that “the crucial issue is that Mr Domscheit-Berg was involved in the key events at WikiLeaks at the material time and was therefore able to give a view on what happened at the time and events subsequently,” which is false. Channel 4 tries to imply that Domscheit-Berg somehow set up *Der Spiegel*’s involvement in the publication of the various WikiLeaks 2010 releases; however, their use of “instrumental in”, “he alerted them to a big story coming up” and he “advised them to work with WikiLeaks” is telling. As outlined above, Domscheit-Berg was stripped of his function as spokesperson in Germany after initiating press interviews in which he misrepresented himself following the Collateral Murder release. He continued to have a minor role, however, such as relaying messages and liaison with people doing bookings (for example, he had liaised with Jennifer8, who booked the National Press Club for the Collateral Murder release, which was his sole involvement in that release) until his suspension on 25 August 2010 for sabotage and misappropriation of funds. Note that in the ***Staatsfeind WikiLeaks* excerpt** attached, *Der Spiegel* journalists report that Domscheit-Berg only learned of the agreed method for the Afghan War Diaries redactions *from them* and he “was perplexed about the break with Wikileaks’ previous principles”. He was not involved at the material time, not an ‘insider’, not party to the events this documentary purports to be about, the 2010 WikiLeaks releases. If someone has been demoted for misrepresenting himself to the press, and the producer is aware of that fact – or should be, if he is doing his research with any kind of diligence instead of relying on someone he knows to be untruthful as a ‘fact-checker’, David Leigh – it is no good pointing to that person’s misrepresentations *in his own book* as a reason for reproducing those misrepresentations in the programme, as Channel 4 does here.

Channel 4 also claims that it is clear from “the Producer’s research conversations with Holger Stark and John Goetz of *Der Spiegel*, and from their recorded interviews” that Domscheit-Berg “was the key middle man” in the deal between *Der Spiegel* and WikiLeaks. Given that it is now known that the producer has lied to Channel 4 about his research conversations with John Goetz (see **signed witness statement of John Goetz**), I reiterate my 21 February 2012 request to Ofcom that it obtains the full unedited footage of the *Der Spiegel* interviews in light of these tweets by Holger Stark following the transmission of the programme in Germany by Arte. I will come back to the October/November 2010 events Holger Stark describes here, and their treatment in the programme, in detail later:

https://twitter.com/#!/holger_stark/status/169830954980999169

https://twitter.com/#!/holger_stark/status/169831313300398080

https://twitter.com/#!/holger_stark/status/169831748933402624

Contrary to what Channel 4 states, the programme does not “report the reasons” for Domscheit-Berg’s suspension, only the wording of it, and he is given a right of reply to that (prog timecodes 10.53.47–10.54.23, pg 59). The programme reports that this suspension happened in October 2010, which is incorrect. I note Channel 4 claims – and apparently Ofcom’s Preliminary View is to concur – that it “was not incumbent upon the Producers to report the detailed, defamatory and unsubstantiated claims made against [Domscheit-Berg] by the Complainant”, yet the producer has taken it upon himself to air the “detailed, defamatory and unsubstantiated claims” (and which he knows to be so, see **signed witness statement of John Goetz**) made against me by David Leigh, and has given me no right of reply to them. I am at a loss to understand how Ofcom can concur that this treatment is fair to me.

As Channel 4 states, I am aggrieved that Daniel Domscheit-Berg, whose level of involvement in the 2010 WikiLeaks releases was insignificant, is given 6 minutes of screen time when his misdeeds and unreliability were known to the producer (“yeah, exactly – he’s out” (my evidence Doc L link)) comparable to the 8 minutes given to me as the “central protagonist”. I am not, as Channel 4 tries to suggest, “given the opportunity to put [my] position on the matters aired” by Domscheit-Berg – I was never told at any point in the production that he would be interviewed, which in light of the well-known actions against WikiLeaks taken by Domscheit-Berg (my evidence Doc M link) constitutes misrepresentation on the part of the producer to gain my involvement, a breach of Clause 7.14. It is significant that another of the programme’s interviewees also details the same kind of misrepresentations by the producer as were made to me – see **signed witness statement of John Goetz**, which states that in their pre-interview meeting: “Patrick Forbes, the producer, told me that he felt that ‘all of that other stuff’ – including the Swedish allegations against Julian Assange – was off the point and irrelevant.”

In addressing my complaint about how the programme has portrayed my decision to exclude the *New York Times* from the US State Department cables release, and how the programme has treated the fact that they came to be involved in it anyway, Channel 4 has selectively picked various of my quotes used in the final programme out of context – as does the actual edit, as I have outlined above for two examples with the relevant timecodes, so will not repeat here – without any regard to their placement and juxtaposition in the final programme and therefore the misleading effect that that placement will have on viewers. A straight read-through of the final programme transcript noting the placement of my yellow-highlighted quotations, and what immediately precedes each of them, makes that misleading effect abundantly clear.

Most crucially, Channel 4 ignores the real reason for the 1 November 2010 meeting at the *Guardian*’s offices, which was that the *Guardian* was colluding with the *New York Times* to release the cables without WikiLeaks – as verified by Holger Stark of *Der Spiegel* here:

https://twitter.com/#!/holger_stark/status/169830954980999169 The *Der Spiegel* journalists, who

tipped off WikiLeaks about the *Guardian*/*New York Times* plot in late October 2010, feel that the programme misrepresents their position at this meeting, which was to insist that WikiLeaks could not be cut out like that, as well as their efforts to keep all parties on board. As Holgar Stark notes, this issue was discussed at length in their interviews but has been completely excised from the final programme:

https://twitter.com/holger_stark/status/169831313300398080,
https://twitter.com/#!/holger_stark/status/169831748933402624

The producer also had available to him my explanation at i/v timecode 19.16.36 (pg 47) but instead the programme has Eric Schmitt describe it as “and then the *Guardian* came to our rescue” (prog timecode 11.02.45, pg 68) and David Leigh describe it as “I took a few decisions which is that I am going to keep the *New York Times* in the loop on this and I am not going to betray our partners” (prog timecode 11.02.51, pg 68). This amounts to a misrepresentation of facts, in clear breach of Clause 7.9 of the Broadcasting Code: “Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation”. I insist that in order to conduct its investigation properly Ofcom should obtain the full unedited footage of interviews given by all *Der Spiegel* personnel.

The programme’s depiction of the 1 November meeting obscures the real reason why, as David Leigh states, “The *New York Times* is the thing that makes him go crazy. Every time the subject of the *New York Times* comes up he starts ranting again” (prog timecode 11.03.41, pg 69) and is heavily biased in favour of the *Guardian*’s perspective: *Guardian* editor Alan Rusbridger talks of “blustering and aggression and bullying and tantrums” (prog timecode 11.03.29, pg 68) and David Leigh of “Julian bursts in accompanied by... a troop of lawyers and... starts shouting at the *Guardian* editor”, behaving like “a sort of Mafia don” (prog timecodes 11.03.17/11.04.40, pgs 68-69). I was angry – I’m not disputing that, who wouldn’t be after the wilful secret breach of a signed agreement? – although I did not “shout”, but by deliberately omitting the underlying cause of that anger the programme is not, as Channel 4 claims, “a balanced report on the differing views [that] caused no unfairness to the Complainant” – it is an extremely unfair, biased and skewed account of events in favour of Oxford Films’ unofficial co-production partner, the *Guardian* newspaper.

Channel 4’s argument, and Ofcom’s Preliminary View, that the chronological reversal of events told in two graphic cards at the end of the programme – “November 2nd 2011 The High Court rejects Julian’s appeal. Julian is appealing – again” and “WikiLeaks suspends all publishing” (prog timecode 11.21.27, pg 85) – would not mislead many viewers is simply untenable. A documentary tells a factual story, a causal narrative – not necessarily in strict chronological order, agreed, but it is absurd to suggest that it simply doesn’t matter to the viewer which comments or events appear to follow what as the programme builds that narrative. It is extraordinary that both Channel 4 and Ofcom’s Preliminary View argue that this programme – containing serious libels and allegations against me (to which I am given no right of reply) and broadcast six days before my High Court appeal verdict – would have no prejudicial effect on the level of public support for me in what is a highly *politicised* extradition battle (hence public support *matters*), and yet also argue that events taking place a full month (24 October 2011) before the broadcast – WikiLeaks’ suspension of publication because of the extra-legal banking blockade against it – would be so fresh in viewers’ minds they couldn’t possibly be confused about the causality of events left undated, with facts (the banking blockade) omitted and sequenced in the wrong order.

Ofcom Entertainment Decision point iii)

In dealing with my complaint that the producer had an agenda to paint me as somehow 'anti-American' and to differentiate me as a "hacker", "systematiser", "activist", "engineer" rather than as a journalist or publisher, Channel 4 claims to be "at a loss to understand the basis for this" and Ofcom's Preliminary View is that it can find no instances of such an agenda. Here are some examples, with timecodes:

Anti-American

David Leigh: "he said well they're American informants they deserve to die" (prog timecode 10.35.36, pg 44) – Leigh's original libel does not contain the word "American"; it's a new introduction, for this programme.

Daniel Domscheit-Berg: "That's what he told everybody, that he had been warned about a CIA, some kind of a subversive CIA attack or something like this" (prog timecode 10.51.32, pg 57) – as evidenced above, I never said any such thing, as a producer properly fact-checking his programme would know.

Nick Davies: "To see Julian tweeting and giving mainstream media comment which clearly suggested that she was some kind of American dirty trick was very distressing" (prog timecode 10.52.28, pg 58) – as evidenced above, I made no such claim.

Nick Davies: "Julian misled the world when he claimed, or hinted, that there was some kind of conspiracy by the Americans behind it" (prog timecode 10.53.01, pg 58) – as evidenced above, no I did not.

Nick Davies: "it's the same when for example he's talking about the two women in Sweden and tries to pretend that this is all dirty tricks by the Pentagon" (prog timecode 10.57.41, pg 62) – as evidenced above, I announced WikiLeaks had been warned to expect 'dirty tricks', which is true, but I refused to speculate on their source.

I am not sure how Ofcom can have missed these examples as I pointed out in my original complaint that I had highlighted them in capitals in my notes on the editing.

I am not anti-American; I am anti-corruption – it doesn't matter to me *where* in the world corruption occurs, just that it is rightly exposed to the public. WikiLeaks is a publisher of previously unpublished or suppressed materials received from anonymous sources – we publish what we receive, we do not select its source. WikiLeaks' releases prior to 2010 have exposed corruption and crimes in Kenya, Somalia, Iceland and the UK, for example.

A hacker, not a journalist

Narrator: "To Adrian Lamo, one of Assange's few rivals for most famous hacker in the world" (prog timecode 10.10.21, pg 18)

Narrator: "An unexpected issue threatens the mould-breaking alliance between hacks and hacker" (prog timcode 10.33.44, pg 42) – clearly present tense, clearly implies I'm not a 'hack' (journalist).

Ofcom takes the Preliminary View that "Ofcom considered that the reference to being a hacker was only made in the context of Mr Assange's past... On examining the programme, Ofcom could not see any additional references or material broadcast which might lead viewers to think that Mr Assange was still a 'hacker'," which the above two examples directly contradict.

Despite what Channel 4 says – and Ofcom’s Preliminary View is to concur with them – that the references to my work as a journalist in the programme are sufficient to not mislead viewers, there is still a concerted attempt to re-define me as something else:

Patrick Forbes question: “So do you feel on a sort of philosophic and indeed a personal basis any kinship or not with those journalists and those-, do you feel a different person from them?” (i/v timecode 17.11.16, pg 31)

Patrick Forbes question: “the only reason I ask is, and time again the sort of the journalists will say, “Julian wasn't like us,” I mean it's such a sort of, “he was different.” (i/v timecode 17.13.44, pg 31)

My direct response to these promptings – a single answer (i/v timecodes 17.13.44–17.18.40, pgs 31-33) manages to end up in three different parts of the programme:

Part 2 opener: “I am a systematiser... to that degree I am an engineer” (prog timecode 10.17.04, pg 27)

Part 3 opener: “when I was in, did a conference at Berkeley and um [I] said there, “Are, are you a journalist or are you an activist?”... so, to that degree, I am an activist” (prog timecode 10.31.03, pg 41)

Part 5: “Bill Keller once said that while he-, maybe he's a journalist but he's not my kind of journalist, and, well, thank god, I mean that's all I can say, thank god I'm not Bill Keller's type of journalist.” (prog timecode 11.07.41, pg 72)

The producer’s follow-up questions are: “Okay cool, so, right, back at shoe journalism which you're not doing. You can't...” and “well, never mind, come back to your temperament... what do you say is your temperament?” and “Alright, so come on engineer, you make your first systemisation with the mass media and what's your initial judgement on how it goes?” I contend that the producer is fishing for answers for which he already has a specific purpose in mind, in line with the *Guardian*’s agenda to differentiate me as ‘not a proper journalist’.

Channel 4’s response to paragraph c) of the Entertainment Decision

Channel 4 claims: “The Programme contained no “significant allegations” about wrongdoing or incompetence or otherwise on the part of Mr Assange that he did not have the opportunity to comment on.” Section 7.11 of the Broadcasting Code stipulates: “If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond”. Apparently, Ofcom agrees with Channel 4 that the following allegations made by other interviewees in the final programme – never put to me in interview – are not significant enough to require a right of reply in the programme:

–That I said “They’re American informants, they deserve to die” (David Leigh, prog timecode 10.35.36, pg 44) – a libel the producer knew to be untrue, see **signed witness statement of John Goetz**

–That WikiLeaks “hadn’t taken care of any kind of redactions in respect to the [AWD] material” (Daniel Domscheit-Berg, prog timecode 10.40.45, pg 49) – the excerpt from my interview used in the programme is the section where I explain the type of names left in, not where I explain how much we had already redacted out, thereby implying Domscheit-Berg’s statement is true. It’s not, it’s a libel to which I am given no right of reply.

–That I have been “jumping on” women (David Leigh, prog timecode 10.49.36, pg 55) – a libel I cannot properly rebut as I am legally barred from commenting on the Swedish investigation.

–That I am lying about the Swedish case against me (Nick Davies, prog timecode 11.17.21, pg 82) – an appalling libel to which I am given no right of reply. Though I cannot speak about the Swedish case directly, this is a very serious and significant allegation of untruthfulness which was never put to me during my interview, and should have been.

–That I have misled the world and made unfounded allegations about American/Pentagon dirty tricks (Nick Davies, prog timecodes 10.52.28/10.53.01, pg 58) – again, significant and false allegations of untruthfulness, which I have evidenced as such above but I am given no chance in the programme to do so.

–That I unilaterally and with no prior cause or reason decided to publish the unredacted State Department cables (Narrator, prog timecode 11,19.50, Daniel Domscheit-Berg 11.19.57, pg 84) – a misrepresentation of the facts, as the producer well knows, but I am given no right of reply. And two other websites had already published the unredacted cableset before WikiLeaks did – no one ever mentions that.

Contrast this with the misrepresentations the producer made regarding the benefits of interviewing me last in the production filming schedule: “This way **we can put to him what others have stated** in their recollection of certain events **and make sure he can respond** as he feels fit” (my evidence Doc G) – a flagrant breach of Clauses 7.1, 7.2, 7.3 (the nature of other likely contributions), 7.6 (editing), 7.7 (guarantees should be honoured), 7.11 (right of reply to serious allegations of wrongdoing) and 7.14 (seeking agreement to participate through deception and misrepresentation).

What Channel 4 claims is my direct response to Nick Davies’ extraordinary ad hominem attack – “this extraordinarily dishonest man. I don’t, I don’t know that I’ve ever met a human being as dishonest as Julian” (prog timecode 10.58.13, pg 62) – is in fact a comment on British journalism, of which Nick Davies is a part, and is truncated in the final programme. In the interview my very next sentence is “Nick Davies is a nice man, I actually like Nick Davies, I get along with Nick Davies, um or I got along with Nick Davies is perhaps better to put it” (i/v timecode 16.04.04, pg 18, not used), though I do go on to say he is a credit stealer (not used). I also remark at one point: “thank god I’m not Bill Keller’s type of journalist”. Although these are strong criticisms – “robust responses”, as Ofcom’s Preliminary View puts it – they are not ad hominem attacks of the type aimed at me throughout the programme. There are no ad hominem attacks to be found in my five-hour interview.

Channel 4’s response to paragraph d) of the Entertainment Decision – Infringement of Privacy

Channel 4 claims – and Ofcom’s Preliminary View concurs – “Mr Assange did not have a legitimate expectation of privacy in relation to this footage but that, if he did, the material was in the public domain to such a degree that it had lost any quality of privacy” in respect of footage of me dancing in an Icelandic nightclub which was posted on YouTube and apparently sold to the producer by the original videographer, who obtained my consent to its filming by stating it was for his personal use only, which has been publicly stated by the videographer, including on the Youtube video. Other faces in the video are blurred out. That this footage was available on the internet does not mean it “has lost any quality of privacy” to the extent it can be broadcast of terrestrial television in a primetime slot and redistributed to cable channels in Europe and the US and at a media convention in Texas attended by 20,000+ people.

Channel 4 does not attempt to make any public interest justification to address Clause 8.1 of the Broadcasting Code: “where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the

reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy." Public interest is defined in the Code as "Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public."

Instead, Channel 4 maintains that this clause can be trumped because "In considering whether or not the Complainants' privacy was unwarrantably infringed in the making or broadcast of the Programme Ofcom must first assess the extent to which they had a legitimate expectation of privacy in respect of the circumstances in which they were filmed." Astonishingly, Ofcom agrees and, ignoring the section of its own Code I have underlined above, goes on to say: "Having found that Mr Assange did not have a legitimate expectation of privacy in these circumstances, it was not necessary for Ofcom to go on to consider whether the use of the footage in the programme was warranted."

This footage is accompanied in the programme by David Leigh in voiceover narration giving a highly prejudicial and salacious account of the Swedish allegations of 'rape' against me. This is in clear contravention of Clause 7.8 of the Broadcasting Code: "Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material." The footage of me shot in a private Icelandic nightclub for private use has clearly been misused for another purpose and I invite Ofcom to rethink its approach to my complaint about use of this footage.

Lastly, Channel 4 claims "It was felt editorially justified, and indeed fairer, to show Mr Assange in a more informal setting rather than a more formal one such as a press conference or outside court", ignoring the fact that the programme contains the following cutaways to news footage of me: being 'papped' in a prison van arriving at court (December 2010); my arrival at Belmarsh Court (February 2011); in the midst of a media scrum outside the Royal Court of Justice (July 2011); and again at the 2 November High Court hearing. There is nothing 'fair' in the producer's editorial decision to use the nightclub footage in the way he does in this programme.

Please note that none of the above introduces any new grounds to my complaint – all additional documentation pertains directly to matters I raised in my original complaint, and which Channel 4's response fails to answer. I submit that Ofcom's preliminary decision is flawed in that it contains significant mistakes of fact (as detailed in my formal response here) and that it fails to give sufficient weight to the matters which I raised in my original complaint. I note also that on 21 February 2012 I requested that Ofcom obtain the unedited footage of the interviews of *Der Spiegel* journalists in furtherance of its investigation, in light of some of the above-included evidence which I forwarded to Ofcom on that date. I submit that Ofcom's preliminary decision is flawed in that it has been reached through a failure of process; that is, a failure to investigate properly substantive arguments I put forward that the programme misrepresented facts in order to produce a biased account of "the WikiLeaks story" favourable to the *Guardian* newspaper, even after I had produced independent confirmation from *Der Spiegel* journalists that the programme had misrepresented these facts and I had requested that Ofcom obtain the unedited footage of their interviews as evidence in its investigation.