

**Full Correspondence re Ofcom complaint about “Wikileaks: Secrets and Lies” More4 documentary**

From: Adam Burton [Administration Assistant, Ofcom]

To: Julian Assange

Date: Dec 21, 2011 3:24 PM

Reference: 1-195128617

Dear Mr Assange,

True Stories: Wikileaks: Secrets & Lies, More4, 29 November 2011, 22:00

Thank you for submitting a Fairness and Privacy complaint to Ofcom. Your complaint is receiving attention and we will contact you again in due course.

We note that you mention submitting a more detailed complaint in the next few days. Please make sure this additional material reaches us by 9 January 2011.

In the meantime, please find attached our guidelines for the handling of Fairness and Privacy complaints and Sections 7 and 8 of the Broadcasting Code.

Kind regards,

:: Adam Burton  
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Complaints Analysis and Tracking  
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From: Julian Assange  
To: Adam Burton  
Date: Jan 9, 2012 11:59 PM

Dear Adam Burton,

Thank you for your email. I attach various documents as evidence of my complaint against the More4 True Stories documentary. As previously notified, the programme contained multiple breaches of the Fairness and Privacy sections of the Ofcom Broadcasting Code, the full details of which are set out below.

The documents are:

A - 6/7/2011 Email from Tilly Cowan, Assistant Producer, Oxford Films to my assistant Sarah Harrison

B - 6/7/2011 Email from Sarah Harrison to Tilly Cowan

C - 7/7/211 Email from Tilly Cowan to Sarah Harrison

D - 14/7/2011 Email from Tilly Cowan to Sarah Harrison

E - 21/7/2011 Email Sarah Harrison clarification request

F - 22/7/2011 Email Tilly Cowan clarification response

G - 18/8/2011 Email Tilly Cowan to Sarah Harrison

H - 22/8/2011 Email Sarah Harrison to Tilly Cowan

I - 23/8/2011 Email Tilly Cowan to Sarah Harrison

J - 17/11/2011 Email Julian Assange to Patrick Forbes, Producer, Oxford Films

K - 18/11/2011 Email Patrick Forbes to Julian Assange

L - Link to transcript of phone call Julian Assange to Patrick Forbes 16/11/2011  
<http://wikileaks.org/Guardian-s-WikiLeaks-Secrets-and.html> (this link also sets out many other substantive points of my complaint)

M - Link to Wikileaks Statement on Daniel Domscheit-Berg 20/8/2011  
<http://wlcentral.org/node/2171>

N - MOU Guardian Letter for Package 3 - 30/7/2010 (PDF)

The first thing to say is that the above emails clearly show misrepresentation and deception on the part of Oxford Films to gain my collaboration in the documentary (breach of Clause 7.14 - Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception). The producers claimed (Doc C): "We are setting out to make a definitive factual account of the WikiLeaks affair. It will focus on the core of the 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....". Wikileaks' participation was premised on this being the case. (cf Clause 7.3 - 'contributors should... be told the nature and purpose of the programme') Other representative examples are: Doc A - "We are honestly not at all interested in the personal life of Julian" (see my point below about content highly prejudicial to my appeal against extradition six days after broadcast, and ongoing legal case/s. The provisions of Clause 7.3 regarding preview rights discussed below is also relevant here); Doc C - "but this is not a media-focused story I want to stress" (cf Clause 7.3 - 'be informed about...wherever possible, the nature of other likely contributors'). This was such a crucial point for us we sought clarification (Doc E) but were never told that Nick Davies or Daniel Domscheit-Berg had been interviewed, despite all interviews with key contributors having been completed and editing started by the time my interview took place: Doc G - "it would actually suit us to interview Julian after all the other interviews -not least because they're happening in the next two weeks and will have been completed by the 2nd September." (cf Clause 7.3 - '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'). I still knew nothing of either the involvement or extent of these two interviewees (or James Ball) by the time of my phone call to the producer on 16th November (Doc L). My assistant specifically told Tilly Cowan in a phone call prior to the pre-interview meeting on 17 August how the Guardian

and Domscheit-Berg had hidden agendas and were not credible. None of the other media partners she suggested the producers contact – and nearly all of the names mentioned in the above emails and during the pre-interview meeting: Josh Steiber, Ethan McCord, Naomi Colvin, a Kenyan contact, etc – do not appear in the finished programme. The documentary interviews eight WikiLeaks critics, five from the Guardian, but only one person from WikiLeaks, and none from more than 90 other organizations who have worked with WikiLeaks, with the exception of two brief interviews with Der Spiegel. No opportunity to partake was offered to anyone with expertise to speak on the Swedish case (cf Clause 7.9 – ‘broadcasters should take reasonable care ... that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute’. See also my detailed notes below on the editing of the programme.); Lastly, Doc F – “We would like to have Julian in the film because he was of course at the epicentre of the entire story and can tell us how it happened in more comprehensive detail than anyone” and Doc I – “we want Julian's account of events as the central protagonist... 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” are both deeply deceptive, given that the finished programme actually contains 8 minutes’ footage from my interview, compared with 30 minutes of airtime given to Guardian interviewees and 6 minutes to Domscheit-Berg, who had little to no involvement in Wikileaks post-February 2010 and none at all after 25 August 2010 (Docs J and M). (cf Clause 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.’)

It is clear from the above that my participation in the programme did not meet the criteria of ‘informed consent’ and therefore the producer cannot rely on the release form signed by me on 11 November. I formally withdrew my consent to the use of all interview footage, footage supplied by Sunshine Press Productions and footage of Ellingham Hall on 17 November (Doc J). Consent to use Wikileaks’ trademarks and logo, which features extensively in the programme, was never given in the first place. No payment was made to us either in respect of my interview or for footage provided by us at AP rates that was used in the programme.

Secondly, the programme as broadcast on 29 November contained material highly prejudicial to my High Court extradition appeal, due to be heard six days later on 5 December, including other interviewees who have no first-hand knowledge of events discussing the Swedish allegations in detail. I am legally barred from publicly discussing the allegations against me so the use of such material introduces inherent bias in the programme. No attempt to remedy this by interviewing any of the lawyers, prosecutors, legal experts or witnesses with the authority to provide a background, explain or discuss the controversy in Sweden was made. (See also my detailed notes on editing below in respect of remarks attributed to Donald Bostrom in the programme.) Clearly, the way the programme deals with the events in Sweden – and the inordinate amount of time spent on them – breaches the provisions of the Fairness and Privacy clauses many times over: Clause 7.2, I have not been treated fairly; Clause 7.3, I was not offered the opportunity to preview the programme (while the Guardian was – see Patrick Forbes’ comments re preview rights in Doc K) or given any information about whether I would be able to effect changes to it; Clause 7.6, the programme has not been edited fairly – see my detailed notes below; Clause 7.7, guarantees that the programme would not cover “the personal life of Julian” or “any

unrelated legal proceedings” were not honoured (Docs A, C); Clause 7.8, the re-use of footage shot in a nightclub in Iceland has been spliced together with highly defamatory remarks about me in a way that creates unfairness; Clause 7.9, material facts and potential interviewees have been presented, disregarded or omitted in a way that is unfair to me – see my detailed notes on the editing of the programme and my comments about an ‘anti-American’ agenda by the Guardian below; Clause 7.11, despite the producer’s claims in a phone call (Doc L) that I am given the ‘last word’ “absolutely every time, the sequence cuts to you”, I am not given adequate or timely opportunity to respond to significant, and libellous, allegations of wrongdoing – see detailed notes on edit; Clause 7.14, the producers misrepresented how the programme would treat the Swedish case to gain my collaboration; Clause 8.10, my reasonable expectation of privacy has been infringed by the re-use of footage of me dancing in an Icelandic nightclub – the videographer filmed under conditions of confidentiality, which he admits in the original YouTube posting.

As noted in my 17 November letter to Patrick Forbes (Doc J): “While you and Channel 4 have both OFCOM and legal obligations to present accurately and impartially, I note here that you have extra moral and legal obligations in relation to the courts and to myself. Your broadcast issues on November 29. On December 5, two high court judges at the Royal Courts of Justice will decide whether I am to be extradited or whether I may appeal to the Supreme Court. Your promo, broadcast and resulting publicity will occur during the time when the judges have retired to consider the matter. Given that the legal basis of the appeal is entirely whether the requested appeal point is of general “public interest”, the judgment is political and will be influenced by your broadcast. If the broadcast is adverse, it may lead to a chain of events which would see my incarceration or killing in the United States. Similarly, other courts, including the Grand Jury currently sitting in Washington, a future and highly politicised Swedish criminal trial, Manning’s military trial, a future criminal trial against myself in the United States, and/or the administrative hearings currently being conducted by the European Commission into the banking blockade against WikiLeaks may be affected. Likewise, the political will of the Australian and British governments to intervene on my or Mr Manning’s behalf may be adversely affected by untruths or partial reportage broadcast by the film or its promo.”

A third point is that two very clear themes emerge in the final edited version which betray the fact that the programme is driven by the Guardian’s own agenda, and that of a producer eager for US market sales. First, the programme makes concerted attempts to redefine my role – through interview questions put to me and by other means – and returns frequently to the question of how I am to be defined – hacker, activist, systematizer, engineer, as anything but a journalist or publisher it seems. Second, the introduction of the word ‘American’ in wholly inaccurate contexts, ie in relation to ‘informants’, ‘dirty tricks’ etc, occurs throughout. This is deliberate, untruthful and designed to paint me as ‘anti-American’ and the Guardian as pro-US. I’ve highlighted a few instances in capitals in my detailed notes on the editing of the programme below, but the programme contains many other less obvious examples of this agenda-setting by the Guardian. The Guardian’s senior investigations executive David Leigh was made an advisor to the production and did “timetabling” and “fact-checking” but this was not disclosed to Wikileaks or to the audience (see Docs C, F, I, J, K, L). The Guardian was paid for its involvement, whereas Wikileaks was not – this too was not disclosed to the audience (Docs J, K, L). I do not accept Patrick Forbes’

assertion that this payment related purely to commercial rights (I cannot see any Guardian material in the finished programme to which this would apply). Neither does the programme make any mention of material facts regarding Wikileaks' ongoing dispute with the Guardian – I list these below in the Further breaches of Ofcom's Broadcasting Code section. Lastly, The Guardian was given preview privileges for the documentary whereas WikiLeaks was refused such access to fact-check (Doc K). Luke Harding and James Ball from the Guardian previewed it on 27 November 2011 – both tweeted about it. Note that in Forbes' letter he says preview rights are only granted in advance within limited parameters, which is inequitable and unfair treatment if agreed with Guardian staff but not Wikileaks. (Relevant clauses: 7.2, 7.3 – other contributors, significant changes, rights and obligations, previews, 7.9, 7.11, 7.14)

#### Further breaches of Ofcom's Broadcasting Code

Clause 7.7 – We were told in the pre-interview meeting there would be no narrator (see Doc L and my notes on the editing, which show that much of the defamation of myself and my organisation is done via the voiceover narration.) Patrick Forbes also blatantly denies that there is voiceover narration during my phone call to him of 17 November (Doc L).

Clause 7.9 – The programme omits crucial facts:

- The banking blockade is not even mentioned, neither is the ongoing, documented in the public record, legal harassment of WikiLeaks volunteers by US authorities.
- That David Leigh broke a written agreement (Doc N) and revealed a secret decryption key, which led to the publishing of the unredacted cables. Patrick Forbes said over the telephone that the interview was made prior to the "fuss over the password" (Doc L). This argument does not hold water as the final programme includes events up to my High Court appearance on 2 November. The programme completely obscures the fact that David Leigh was responsible for the publication of the unredacted cables, and says that this was an incomprehensible and reprehensible decision made by WikiLeaks.
- It repeats – with embellishment this time – the libellous statement attributed by David Leigh to me that "they're informants, they deserve to die". The programme does not mention that John Goetz and Holgar Stark of Der Spiegel, who were also present at the dinner, have no recollection of me making such a remark. In a meeting with Oxford Films John Goetz specifically denied my making this remark but was never asked about it when actually interviewed. I have denied it publicly many times but am given no opportunity to respond directly to this allegation. This is intentional libel.
- That David Leigh violated a written legal agreement between WikiLeaks and The Guardian (Doc N) that the material would not be passed to third parties (The New York Times), published before the publishing date, or be kept in an insecure manner. David Leigh has admitted that he deliberately went behind editor Alan Rusbridger's back to break the agreement in a case study by Columbia University: <http://jrnetsolserver.shorensteince...>
- Daniel Domscheit-Berg is interviewed as a critic of WikiLeaks, but no attention is given to the role he has played in a) stealing funds, sabotaging the

organisation b) deleting (according to his account) thousands of submissions revealing war crimes and corruption in finance institutions, profiteering and unleashing the chain of events that led to the publishing of the unredacted diplomatic cables (see Doc M). Despite two public statements issued by Wikileaks about Domscheit-Berg, on 9 February 2011 and 20 August 2011 and later provided directly to the producer, no attempt has been made to fact-check this individual and he has been misrepresented as “Wikileaks Spokesperson”.

Clause 7.11 – I am not given appropriate and timely opportunity to respond to serious allegations of wrongdoing:

- No opportunity is given to respond directly to Nick Davies’ extraordinary allegation that I have lied about the Swedish case – about which he has no first-hand knowledge – and the editing further creates the impression that ‘untruthfulness’ relates to the Swedish allegations. I am legally barred from speaking about the allegations or the criminal investigation but Wikileaks could have countered his remarks about ‘US dirty tricks’ with, say, the actual tweet (note, singular) from our Twitter archive.
- No opportunity is given to respond directly to the allegation of “informants deserve to die” remark – Wikileaks can provide evidence John Goetz/Holgar Stark cannot recall the remark being made.
- No opportunity is given to respond to the libellous statement made that the release of unredacted cables was a reprehensible and irresponsible decision by Wikileaks.

#### Notes on edit

In the pre-title sequence the narrator v/o states: “Have the actions of one man turned triumph to disaster?” over screenshot of newspaper headline “Julian Assange Swedish Rape Claims”.

Claims my teenage nickname was Mendax “given to lying” instead of Splendide Mendax “nobly untruthful”, which is a teenage joke on handles being inherently untrue. It is self-referential, not a psychoanalysis 20 years ahead of its time!

DDB is described as recruited as a German deputy, Berlin-based computer programmer, labelled as “Wikileaks spokesperson”. He was only a spokesperson in Germany, was only involved with Wikileaks from 2008, with little or no involvement from February 2010 and none after 25 August 2010. He was not present during any of the following releases: Collateral Murder, Afghan War Diaries, Iraq War Logs, Cablegate.

Screentext “April 5, 2010 Washington Press Club” c/to clip from Collateral Murder with v/o “edited for maximum impact, he calls it Collateral Murder” - no explanation that the full original footage released in tandem. C/to comments on it from DDB, despite his non-involvement.

Section on Manning equates me with Adrian Lamo, described in screentext as Grey Hat Hacker and of No Fixed Abode and “one of Assange’s few rivals for most famous hacker in the world. He earned his cult status after breaking into a string of secure databases” – this narrative link implies I am still a hacker

breaking into secure databases, as opposed to something I did more than 20 years ago.

After Lamo i/v, cut is to Guardian headline "Hacker turns in US soldier over Wikileaks Iraq video" and DDB i/v explaining it's "worst thing" for leak orgs when potential source is arrested. Narrator v/o over Berlin street scenes - "arrest prompts a furious row within Wikileaks....docs arrive anon so is Manning their source? And if he is, what responsibility do they owe him? WL has a mountain of unpublished secrets from same source... Julian wants to keep going, Daniel doesn't", then the cut is back to DDB i/v. The supposed 'last word' the producer claims is always given to me is clearly an answer to a tangential question: "well, it is nice to help courageous people who seek justice but they enter into a larger process..." (I have already explained in an earlier i/v segment Wikileaks' procedures "for source protection purposes") then c/to DDB again: "we should have stopped thinking about ourselves at that moment". No explanation given that from February 2010 DDB had no direct involvement in Wikileaks' work. After ad break there is an i/v section where I describe myself as "systematiser" and "engineer" (apart from the very beginning, none of the questions put to interviewees are ever audible). Narrator v/o over footage of Guardian offices "BM's arrest leaves Wikileaks split over what to do" - no 'split' internally, DDB was not 'internal' at this point.

Long section with i/vs Nick Davies, Rusbridger, Leigh, Keller, Schmitt, me, Georg Mascolo, John Goetz detailing the media alliance setup. Talks of security arrangements - "all very cloak and dagger" says Schmitt, Leigh talks of "a shredder" - but omits that Guardian broke them all.

Next section details analysis of Afghan War Logs using combination of v/o narration, Leigh, Schmitt, Davies i/vs, tracking screenshots of war logs data and footage from Afghanistan (some very odd - sepia-toned/clearly dramatized), hospitalized casualties. Deals with TF373 but Guardian takes all the credit - omits that I found this story by searching 'children' in the AFG data and told the Guardian about it.

Cuts to i/v with me explaining that higher levels of secrecy (than the data's classified status) "leaked through into it". Part 2 concludes with Schmitt i/v about asking me about BM, the "never heard his name" quote, Goetz i/v saying I'm just the middleman, leading into severe criticism of Lamo.

Part 3: Starts with i/v segment where I'm asked whether I see myself as "journalist" or "activist", then Leigh i/v starts ad hominem attacks such as "carried himself like a cult leader" and "we started making jokes early on that people around Julian were drinking the Koolaid" c/to Schmitt about the skipping incident, back to Leigh about sleeping in my clothes "all these things made you feel you were dealing with someone who wasn't quite from the same planet as the rest of us"

Screen text July 10, 2010 (note US date format throughout programme - obviously eye on US sales potential). V/o narration: "an unexpected issue threatens the mould-breaking alliance between hacks and hacker" - in line with prog's obvious theme throughout to redefine me as not a journalist.

I/v with Davies explains moral and legal reasons for redaction. Cut to Leigh "WL had a mindset that was very different to our mindset. They wanted to dump it all

out. 'That's what we do' said Julian". Leigh tells his little story – says it stuck in everyone's minds (we can counter with evidence from John Goetz but are not given the opportunity to do so) – and quote is now "Well, they're AMERICAN informants, they deserve to die" – This is new embroidery, he's never included 'American' before. Leigh i/v is intercut with soft-focus footage of a night-time restaurant, to add authenticity.

I've denied this libel multiple times publicly yet 'last word' given after Leigh makes allegation is a cut-back to me saying "there was no row at all, only hints of a conversation" – obviously not a response to a direct question about this allegation.

v/o gives impression that dispute with the Guardian is only about the treatment of informant names – i/vs with Schmitt and Mascolo giving their positions, then Davies saying "what finally got through to Julian was the political point..." Schmitt i/v "to his credit, overnight he did rethink this..." (so earlier i/vs give misleading impression of the length of this dispute). Narrator: "dispute over, the project's back on". Series of i/vs with newspaper editors, all self-congratulatory. Leigh v/o over Frontline footage "we turned Julian and Wikileaks into global rock stars".

Nick Davies i/v and v/o says "The Times went to WL website and found documents which clearly put into jeopardy the safety of identifiable Afghan civilians" – leads into highly edited soundbite "blood on hands" (repeated twice) contextualised by Nick Davies saying WL had "handed the initiative back to the Pentagon" and "we had just made their job easier for them or to be clear Julian Assange had just made their job easier for them" – then edits back to full soundbite included the words "could have..." No opportunity to respond given to me.

DDB – recruited as a German deputy, labelled as "Wikileaks spokesperson" – is not challenged by interviewer when he claims "we hadn't taken care of redactions" "things shifted to publishing for the sake of publishing" "becoming the kind of organisation that does things because no one can stop you" – ie he had little to no involvement in WL operations post-February 2010 and none after 25 Aug. This information was published by Wikileaks in February 2011 so producer should have fact-checked and prepped interviewer properly. No mention of sabotage being the reason for DDB suspension – published on Wikileaks website from 1 Sept – so facts were available to producer. No opportunity to respond is given to me. Instead c/to i/v with Chris Heben, US Navy Seal/poss. member of Task Force 373. Cut to quote US official that the leaks puts troops in danger. Finally cuts to response from me about informant names in Afghan Diaries.

Part 4: opens with interview with me re our "precarious position" and that threats against WL were the reason for giving copy of cables to Guardian "for safekeeping". Cuts to i/v with Leigh about password, says told "it would expire in a matter of hours"/ treats it as "souvenir". Does mention it finishes with "this little hash symbol" – plonker! Leigh finishes with news of phone call telling him "Julian's gone to Sweden and got arrested for rape".

Davies i/v re hearing the news – intercut with Espressen headline and shots of London – says he doesn't believe it initially, discusses various explanations including "outside possibility it could be some wrongdoing by the US", finishes



with Donald Bostrom telling him "My friend I'm sorry to tell you, it's true". No context to explain that Bostrom only telling him the news was true, not the allegations (clear from Bostrom's police witness statement that he doesn't believe the allegations). No opportunity to partake offered to Bostrom. No opportunity to respond given to me. Using this i/v segment therefore introduces bias which cannot be remedied.

Dancing in Iceland footage with Leigh v/o "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, even though they had very much wanted him to". "After he had had sex with these women in quick succession and misconducted himself with both of them, they had got together and one of the things they had wanted him to do was to have an Aids test".... Quotes Bostrom (Bostrom not given opportunity to take part in programme - he would make it clear that he told police he doesn't believe AA's story) "by the time he's agreed it's 10 past 5 on a Friday and you can't find a clinic open so they go to the police." (Littered with factual inaccuracies, ie. they were already at police station 4pm, using words like "jumping on" is outrageous libel, deliberately prejudicial to my case.)

Cuts to tracking shot of Guardian headline "Wikileaks founder Julian Assange in web furore over Swedish rape claims" then c/to DDB i/v - again subtitled as "wikileaks spokesperson" and claiming he heard about it "while on holiday" - "it was bad." (screen shot of Espressen frontpage) "However we tried to approach this internally it boiled down to the fact..." (not challenged by interviewer although easy for producer to factcheck DDB was on holiday in Iceland and no longer involved in WL by this date. Met Kristinn, Birgirta, Ingi and Anke same day). Narrator v/o: "Assange talks to the police once then leaves Sweden, claiming this isn't just a rape inquiry but something more sinister". Maybe false suspicion, not claim. Cut to Sky news? presenter saying "Julian Assange says his own country's intelligence service warned him of a dirty tricks campaign shortly before he was the subject of a rape allegation. Assange says all the allegations against him are untrue". Cut back to DDB "that's what he told everybody. That he had been warned about some kind of subversive CIA attack. That was the initial response that's been printed all over the world. That's what people started to believe..." I'm not given any opportunity to respond directly to these libels. Cut to news footage outside February hearing. Cut back to DDB i/v saying "we said that maybe means you step back for a bit". Cut to ITV News footage of Jemima Khan at December hearing.

Nick Davies i/v starts: "to see Julian tweeting and giving mainstream media comment which clearly suggested this was some kind of AMERICAN dirty trick was very distressing because the guy is supposed to stand for truth and that wasn't true". Claims WL tweet re 'dirty tricks' is that I have "misled the world by claiming, or hinting, that there was some kind of AMERICAN conspiracy behind it". There is no mention of the fact that the first prosecutor cancelled the arrest warrant and dropped all but one minor allegation of 'molestation' within 24 hours, so in context 'dirty tricks' might be a fair assumption at the time. Edit does not make clear Davies can have had no first-hand knowledge of events - 'last word' producer claims is always given me is in fact a cutaway to Daily Mail headline "Supporters dismissed rape accusations against Wikileaks founder Julian Assange but the two women involved tell a different story" then cut to me talking about what the case has revealed to me about Swedish/US/EU relationships and power elites. No opportunity (or possibility) to respond directly to these libels.

Narrator v/o: "Once back in London he acts swiftly to deal with those inside Wikileaks critical of his leadership. He suspends DDB for disloyalty, insubordination and destabilisation in a time of crisis". Inaccurate and misleading. Producer could easily have fact-checked that DDB suspended 25 August 2010 (after sabotaging mail server) and sacked 14 Sept. I wasn't back in London until beginning October 2010. DDB given chance to respond, I'm not given opportunity to comment at all.

Analysis of Iraq War Logs – combination of Davies, Leigh, Ball i/vs intercut with tracking shots of data, stills of Abu Ghraib torture, and Iraqi killings/casualties. Narrator v/o "Davies no longer happy to be main point of contact with Assange because of his desire for TV coverage of the Afghan War Diaries." Davies i/v griping about this, claiming a contractual guarantee and "we had kept everything secret. Secrecy was essential because UK media law makes it so easy for the Pentagon to go to court and get an order to prevent us publishing" - cut to my response about "credit stealing, whoring UK media industry and Nick Davies is a part of that industry" - cut back to Nick saying "if he said that to someone else there's a chance he'd be believed but he was saying it to me, I'd had multiple conversations about this agreement. He made it up, but I think he believes the things that he invents so when he says that to me I think that he believes it at that moment [stop projecting, Nick]... and it's the same when, for example, he's talking about the two women in Sweden and tries to pretend this is all dirty tricks by the Pentagon I think he believes it"... "I think most people who get close to him go through this process, you start off liking him and then suddenly ... monster appears from behind the scenes...you suddenly discover this extraordinarily dishonest man. I don't know that I have ever met a human being as dishonest as Julian." Impossibly strong statement which was picked up by the press and libelled me (Davies has met David Leigh for a start!) Not given opportunity to respond directly.

AFTER ad break: Segment where I talk about corruption of large media groups. Narrator v/o footage of War Logs press release. "Increasingly frayed alliance holds together just long enough to get the Iraq War Logs out". Headline from Guardian. Footage of Clinton statement. Narrator v/o screenshot of NYT headline "Wikileaks founder on the run, trailed by notoriety" and tracking shots of article: "It claimed the Swedish case was having a terrible effect on internal morale". Bill Keller i/v saying "all of my exchanges with Julian Assange have consisted of him complaining to me or haranguing me about things that the NYT had done".

Cut to me: "sleazy hit piece full of factual inaccuracies that could easily have been fact-checked" Narrator v/o: "Furious, Julian insists that the New York Times are out. They will have no part in the release of the last and most significant batch of documents from that initial leak; a quarter of a million secret reports from US ambassadors" - implies reason for not wanting NYT involved in Cablegate is personal gripe over "sleazy hit piece" - no mention that the NYT told Pentagon about earlier releases, killed the Task Force 373 story, libelled Manning, etc.

Keller, Leigh i/vs giving their positions re the fallout/Leigh passing copy of his "memory stick" cables to NYT - intercut after this Leigh quote with me saying "I find that deplorable" but that is the only opportunity to respond I'm given - then goes on to more Leigh, Rusbridger and Mascolo i/vs - very unbalanced.

Section on Manning's treatment narrated by Leigh i/v. Leigh makes point this treatment may be "to break him in the hope he will implicate Assange in some kind of conspiracy that the Americans can indict him for." Plus i/v with David House.

Narrator explains "back in media land a tentative truce agreed, all the original partners are back in plus at Assange's insistence two new ones, El Pais and Le Monde. No sooner had peace broken out than the NYT threaten it. They're going to tell the White House what they plan to publish". Cut to i/v Keller "but of course we'd get their reaction", Leigh "for God's sake don't tell them we've got it too", my i/v segment: "the organisation you're exposing should not know before the victims... Keller once said I'm not his kind of journalist, well thank god I'm not". On to i/vs with NYT deputy ed, PJ Crowley, Ian Katz, Leigh and Rusbridger (saying his lawyers warned him he could be extradited).

Part 5: includes footage of US figures calling for my assassination, lots of shots of Guardian headlines, Clinton on "sorry" tour, footage of Tunisia intercut with comments from Rusbridger, Goetz and me.

Cut to ITV News "Behind bars tonight, the founder of WL website is refused bail" Narrator: "but increasingly another set of images is grabbing the attention of the world's cameras" v/o images of prison van being papped and footage from court appearances. Nick Davies i/v: "There were a series of terrible misjudgements by Julian. First of all, the failure to properly redact the Afghan material, was hugely damaging. Secondly I think his 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" then cutaway to my arrival at Belmarsh hearing. Back to Davies "Wikileaks' moral and political authority flows from the fact of truth-telling and you cannot do that and then also tell lies to the world, it doesn't work." Cutaway to Frontline Afghan press release with ND v/o "If you look at the moral standing that Julian Assange had on that Sunday night when we published the Afghan War Diaries it was potentially huge... look where he stands now, way way down from moral high ground and that's not just a loss of moral authority, it's a loss of political impact, it's a loss of credibility and insofar as there is this character Bradley Manning awaiting trial it's a loss of potential benefit that might have gone in his direction" (Narrator v/o explains extra Manning charges inc death penalty one) and the response is given to DDB (NB only second time interviewer is heard actually asking a question) DDB blames continuing publication after Manning's arrest for his predicament. No 'last word' is given to for me to respond directly to these libels. The single largest total attack on my credibility over the past year has come from the Guardian itself.

Narrator v/o "to worldwide condemnation, Julian Assange announces he is planning to put out all cables with nothing blacked out" over screenshot of Guardian newspaper headline "Wikileaks publishes full cache of unredacted cables. Former media partners condemn Wikileaks' decision to make public documents identifying activists and whistleblowers" - No mention of the Guardian breaking contractual arrangements over the security of the cables, no mention of: pros and cons of doing so in context that they had already leaked; Wikileaks contacting the State Dept; of DDB/Leigh actions that had led to the leak - and cuts straight to comment from DDB "That's about the worst decision I'm aware of... back to the difference between a pro-whistleblowing organisation and an anti-secrecy one... there's a big, big difference [interviewer: and the

difference is?] One is a responsible thing and the other isn't." Cuts to Nick Davies (initially v/o over shot of Guardian article with photo of computer screen with WL LOGO and legend 'Information wants to be free') "It's like a Greek tragedy you've seen a triumph turned to disaster... I don't doubt that the NYT and the Guardian has made mistakes along the way... but ultimately the triumph has become a disaster because of one man's personality flaws" Cut to me seems only tangentially relevant - obviously not an answer to a direct question about what happened. "There is a view that one should never be permitted to be criticised for being even possibly in the future engaged in a contributory act that might be immoral. And that that type of arse-covering is more important than actually saving people's lives. That it is better to let 1000 people die than risk going to save them and possibly run over someone on the way. That is something that I find to be philosophically repugnant."

Prog ends with footage of media scrum outside court then screen text on black background "November 2nd 2011 High Court rejects Julian's appeal. Julian is appealing - again" followed by "[no date] Wikileaks suspends all publishing". WL suspended publication on 27 October due to the financial blockade imposed by Visa, Mastercard et al. By omitting this date and swapping the order of events prog creates libellous falsehood that publication suspended due to the court decision.

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From: Sophie Argent [Standards Executive, Ofcom]  
To: Julian Assange  
Date: Jan 20, 2012 12:16 PM

Dear Mr Assange,

I am the Standards Executive responsible for assessing the next steps in relation to your complaint (known as the "Entertainment Decision").

I note from your complaint form (re-attached for your convenience) that in addition to making a complaint in relation to unfairness in the programme as broadcast, you also state that your privacy was unwarrantably infringed in the programme as broadcast and refer to Practice 8.10 of Ofcom's Broadcasting Code (the "Code"). However, on reading this part of your complaint, it appears to raise matters which relate to presentation of facts, as set out in Practice 7.9 of the Code rather than unwarranted infringement of privacy.

Consequently, I would be grateful if you could clarify whether you still wish for Ofcom to consider this part of your complaint under unwarranted infringement of privacy and if so, please can you specify why you believe your privacy was infringed in the programme as broadcast? If not, please can you confirm to me that you are happy for Ofcom to consider this aspect of your complaint solely under section 7 of the Code.

Please can you respond to me on the matters raised above as soon as possible and in any event by Thursday 26 January 2012.

Yours sincerely,

:: Sophie Argent

Standards Executive  
Fairness and Privacy Team  
Content, International and Regulatory Development (CIR)  
Direct Line: 020 7981 XXXX  
Email: [XXXXXXXXXXXX@ofcom.org.uk](mailto:XXXXXXXXXXXX@ofcom.org.uk)

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From: Julian Assange  
To: Sophie Argent  
Date: Jan 22, 2012 10:25 PM

Dear Sophie Argent,

Thank you for your email. I take it you have seen my full complaint, submitted to Adam Burton on 9th January, which includes my detailed notes on the editing of the programme?

Yes, I do want the Reykjavik nightclub footage to be considered under both clauses: Practice 7.9 as regards unfairness by overdubbing it with remarks that are highly prejudicial to my extradition case, and to other ongoing legal cases, in the voiceover narration; and Practice 8.10 as its re-use in the programme represents an unwarranted infringement of my privacy.

As detailed in my full complaint, the video was shot in a private nightclub, which may be a public place in one sense but should still afford me a reasonable expectation of privacy. Further, although the videographer sought my permission to film me I only agreed to it on the basis that the footage was for his personal use only, conditions of confidentiality which he later broke - something he admitted when he originally uploaded it to YouTube, and again when interviewed a short time later by Forbes magazine (see page 2):

<http://www.forbes.com/sites/kashmirhill/2011/03/31/leaked-video-of-julian-assange-dancing/>

I have no knowledge of how the programme's producer sourced this footage as he did not tell me of his intention to use it or seek my consent to its use. However, the circumstances - and confidentiality - of the original filming were easily checkable by him. There is no public interest justification that warrants the re-use of this footage in the programme, per the Section 8 meaning of 'warranted':

"...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. 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."

I cannot see how footage of me dancing in a nightclub meets any of those criteria, or indeed adds anything at all to what was purported to be "a definitive factual account of the Wikileaks affair [focusing] on the core of the story, the substance, content and impact of the Iraq, Afghanistan and diplomatic cables..."; its use is therefore purely voyeuristic.

I hope this gives you the information you require.

Kind regards,

Julian Assange

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From: Sophie Argent  
To: Julian Assange  
Date: Jan 25, 2012 8:37 AM

Dear Mr Assange,

Thank you for your response and clarifying your complaint. I did receive the full complaint which you sent to my colleague Adam Burton.

I will be in touch in due course with the Entertainment Decision.

Yours sincerely,

:: Sophie Argent  
Standards Executive

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From: Julian Assange  
To: Sophie Argent  
Date: Feb 12, 2012 7:47 PM

Dear Sophie Argent,

I believe the Entertainment Decision on my complaint about More4's Wikileaks: Secrets & Lies was due around 8 February. Is there a problem?

Kind regards,

Julian Assange

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From: Sophie Argent  
To: Julian Assange  
Date: Feb 14, 2012 4:06 PM

Dear Mr Assange,

Ofcom has decided to take your complaint forward to the next stage (that is, investigation and decision) and I attach a copy of Ofcom's Entertainment Decision. I also attach a copy of Ofcom's Procedures for the consideration and adjudication of Fairness and Privacy complaints ("the Procedures"). Please read these carefully and refer to them for guidance.

A copy of your complaint has been sent to the broadcaster with a request for the following material by 14 March 2012:

- § a response to the complaint;
- § a transcript of the programme;
- § a timecoded recording and transcript of your unedited contribution to the programme; and,
- § copies of any relevant records and correspondence.

When this material arrives we will forward it to you. Ofcom will then prepare its "preliminary view" on the substance of your complaint. Both you and the broadcaster will have an opportunity to submit your representations on the "preliminary view". Please refer to paragraphs 1.23 to 1.26 of the Procedures for further information on this process.

Ofcom will give each party full access to all relevant material produced by the other. You should only submit representations and relevant material to Ofcom when requested to do so. Ofcom will not normally accept submission of any additional representations or material once it has proceeded to draft its final adjudication. Whether such material is admitted will be at Ofcom's discretion.

Please note that you must comply with all deadlines set by Ofcom. Extensions will only be granted in exceptional circumstances. It may have an adverse effect on your case if you fail to meet any deadlines set out in the Procedures or Ofcom's correspondence to you. It is important that you, and any other person who needs to know about your complaint, treat all correspondence, documents and other material concerning your complaint, except those already in the public domain, as confidential (see paragraph 1.33 of the Procedures for further information about non-disclosure).

I will be in touch when I hear further from the broadcaster.

Yours sincerely

:: Sophie Argent  
Standards Executive

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Ofcom Entertainment Decision

Complaint by Mr Julian Assange  
True Stories: WikiLeaks: Secrets and Lies, More 4, 29 November 2011  
Case No. 1-196583661  
Material Considered

- . Complaint form dated 18 December 2011;
- . Emails to Ofcom from Mr Assange dated 10 and 22 January 2012; and

. Recording of programme.

## Introduction

On 29 November 2011, Channel 4 broadcast on its channel More 4 an episode from its True Stories strand of documentaries, entitled: "WikiLeaks: Secrets and Lies". The programme chronicled the history of WikiLeaks, which was described in the programme as "the biggest leak of secrets in history. In its wake, dictators fall, wrongdoing is uncovered and a superpower is humbled". The programme featured extracts of interview footage of the complainant, Mr Julian Assange, and other contributors who were involved with WikiLeaks and Mr Assange.

After a brief introduction, the programme featured footage from Mr Assange's interview in which he was shown responding to the question of why he started WikiLeaks. The programme then cut immediately to the programme's narrator who gave a brief biography of Mr Assange and revealed that Mr Assange had "attended 37 schools as a child" and that, while studying at Melbourne University in Australia, he had:

"established himself as Australia's foremost hacker. His tag: mendax-translation; given to lying. In 1996 he was prosecuted for a hack into telecoms giant Nortel; his conviction [was] one of the world's earliest".

The narrator stated that Mr Assange set up WikiLeaks as a "website openly committed to whistle-blowing" in 2006, and that as "the secrets poured in" he had hired a "Berlin-based computer programmer" called Mr Daniel Domscheit-Berg. Footage from Mr Domscheit-Berg's interview was then broadcast. He was described in text shown in screen as a "WikiLeaks spokesperson" and explained how and why he became involved with WikiLeaks. Excerpts from Mr Domscheit-Berg's interview were featured throughout the programme. The programme included interview footage from Mr David Leigh, the investigations editor at The Guardian newspaper, who described his first meeting with Mr Assange at a journalist conference in Norway in March 2010 and his impressions of him. Mr Leigh said that during this meeting, Mr Assange had shown him footage of US soldiers shooting civilians in Iraq. This footage, known as the "Collateral Murder footage", was also broadcast in the programme. Mr Leigh remarked that in releasing this footage, Mr Assange was "providing a great journalistic service".

A contribution from Mr Adrian Lamo, who was introduced as "one of Assange's few rivals for most famous hacker in the world" was also featured in the programme. The programme explained that Mr Lamo had been in contact with Mr Bradley Manning, a US serviceman who was charged with supplying classified information to WikiLeaks after Mr Lamo informed the US authorities that Mr Manning had allegedly confessed to leaking information to WikiLeaks. The narrator said that Mr Manning's arrest had prompted an internal split at WikiLeaks, with Mr Assange wanting to continue releasing material and Mr Domscheit-Berg wanting to stop. The programme moved on to discuss the meeting which took place at The Guardian newspaper headquarters in London attended by representatives from The New York Times, Der Spiegel (an important newsmagazine in Germany) and Mr Assange. This meeting was the culmination of an agreement between Mr Nick Davies (a special correspondent at The Guardian) and Mr Assange, to disclose the next batch of "secrets" (the "Afghan War Logs") through a "media alliance". During this part of the programme, Mr Leigh stated that Mr Assange had carried himself as "a cult leader" and "made you feel you were dealing with someone who wasn't quite from the same planet as the rest of us". Mr Davies stated in the programme that



for moral and political reasons, the newspapers and magazines involved were always aware that they could not publish anything “which might get someone hurt on the ground”. Therefore, it was important that the material “did not identify any sensitive locations or sensitive methods of operations”. Mr Leigh added that at this point it became apparent that Mr Assange and WikiLeaks had a “very different mindset” because they just wanted to “dump out all the data”. Mr Leigh explained that they had tried to warn Mr Assange of the possible reprisals that informants might suffer if he published the material, but Mr Assange had replied “they’re American informants, they deserve to die”. The programme then cut to footage taken from Mr Assange's interview in which he said “there was no row at all...only hints of a discussion”.

The programme then included archive footage from 25 July 2010 when the various media partners published, in conjunction with WikiLeaks, the “Afghan War Logs”. Mr Davies said that after the material had been published, The Times newspaper had gone to the WikiLeaks website and had discovered information which “clearly put in jeopardy the safety of identifiable Afghan civilians”. Mr Domschieltt-Berg stated that, in his view, the WikiLeaks story had now changed to “publishing for the sake of publishing” and that it was “becoming the kind of organisation that does things because no one can stop you”.

Mr Assange stated in the programme that he was in “a precarious position” and that in late July 2010, he had to go into hiding. Consequently, he had given a copy of a password which would allow access to 250,000 diplomatic cables (“the Diplomatic Cables”) to Mr Leigh for “safe-keeping”. Mr Leigh then said that while he was reading this material, he received a telephone call from Mr Davies who told him that Mr Assange had been arrested on suspicion of rape<sup>1</sup>. Mr Davies expressed his disbelief at the allegations and had called the WikiLeaks co-ordinator, Mr Donald Bostrom, who said: “I am sorry to tell you it’s true”. Footage of Mr Assange dancing in a nightclub in Iceland was shown accompanied by Mr Leigh stating that Mr Assange had:

“upset these two women by his incontinent sexual behaviour which had involved, it would appear, jumping on them and not using a condom even though they had very much wanted him to.”<sup>1</sup>

Mr Davies remarked that he found it “distressing” that Mr Assange was suggesting that the rape allegations were “some kind of American dirty trick” because “the guy is supposed to stand for truth and that wasn’t true”.

The programme then referred to the publication of the “Iraq War Logs” and stated that at this point, although Mr Davies had wanted to continue publishing, he was not prepared to “be the main point of contact with Mr Assange.” This was because Mr Assange had approached a number of television stations to cover the Afghan war diaries, despite WikiLeaks' contract with The Guardian newspaper, and because it was necessary for the material to be kept secret because otherwise the Pentagon might prevent the media outlets involved from publishing it. The programme then cut to interview footage of Mr Assange who said that Mr Davies was a part of the UK media industry which he viewed as a “credit-stealing, credit-whoring and back-stabbing industry”. Mr Davies further stated that he had never “met a human being as dishonest as Julian [Assange]”.

When the “Iraq War Logs” were published, the programme stated that The New York Times had run a personal profile of Mr Assange which he described as a

“sleazy hit piece full of factual inaccuracies”. The programme’s narrator said that Mr Assange was furious and consequently decided that The New York Times would have “no part in the release of the last and most significant batch of documents...”. However, the programme went on to state that a “pact” was subsequently formed between the existing media partners (i.e. The Guardian, Der Spiegel and The New York Times), Mr Assange and two new media partners (Le Monde and El Pais<sup>2</sup>) for the release of the “Diplomatic Cables”. Archive footage of Mr Assange arriving at court and news items detailing Mr Assange’s refused bail application was then shown in the programme. Mr Davies commented that:

“WikiLeaks moral and political authority flows from the fact of truth-telling and you cannot do that and then also tell lies to the world, it doesn’t work”.

The programme then went on to detail Mr Assange’s decision to publish “all the cables with nothing blacked out” despite facing worldwide condemnation, including from his “former media partners”. Mr Domscheit-Berg described the decision as “anti-secrecy” rather than “pro-whistle blowing” and Mr Davies said that it was “a Greek tragedy...but ultimately it had become a disaster because of one man’s personality flaws”. Immediately following Mr Davies’ comments, Mr Assange was shown stating that:

“There is a view that one should never be permitted to be criticised for being even possibly engaged in a contributory act that might be immoral. And that that type of arse-covering is more important than actually saving people’s lives. That it is better to let 1000 people die than risk going to save them and possibly run over someone on the way. That is something that I find to be philosophically repugnant.”

The programme concluded with on-screen text stating: “November 2nd 2011 High Court rejects Julian’s appeal<sup>3</sup>. Julian is appealing - again”. This is followed by: “WikiLeaks suspends all publishing”.

Following the broadcast of the programme, Mr Assange complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the programme as broadcast.

#### The Complaint

Mr Assange completed a Fairness and Privacy Complaint Form dated 18 December 2011 which was received by Ofcom on 19 December 2011. Further material relating to his complaint was submitted to Ofcom by email on 10 and 22 January 2012.

#### Unjust or unfair treatment

In summary, Mr Assange complained that he was treated unjustly or unfairly in the programme as broadcast in that:

a) The programme did not obtain Mr Assange’s informed consent to appear in the programme. In particular, Mr Assange complained that:

i) The programme makers misrepresented to him what the programme would focus on.

ii) He was not made aware of other key contributors who would be appearing in the programme.

iii) Opportunities to preview the programme were not offered to him but were offered to other contributors such as The Guardian newspaper.

b) The programme presented, disregarded and omitted material facts in a way that was unfair to Mr Assange. In particular, Mr Assange complained that the programme:

i) Broadcast material which was highly prejudicial to his extradition hearing (which was held a few days after the programme was broadcast), and other potential hearings related to the allegations of rape or WikiLeaks. Mr Assange said that the programme included comments from interviewees, who had no first-hand knowledge of the allegations he faced. In addition, the programme did not interview any of Mr Assange's legal team who had the authority to provide information on the allegations.

ii) Omitted crucial facts, such as:

. That Mr Leigh had broken a written agreement and had revealed a secret decryption key which led to the publishing of the "unredacted cables" [i.e. the U.S. Diplomatic Cables]. Instead, the programme said that this was an incomprehensible and reprehensible decision made by WikiLeaks;

. Attributing the statement "they're American informants, they deserve to die" to Mr Assange but failing to mention that two individuals, Mr Goetz and Mr Stark, who were also present at the time this statement was supposed to have been made, have no recollection of Mr Assange making such a statement;

. Failing to mention that Mr Domscheit-Berg (whose status was misrepresented by being described as a "WikiLeaks spokesperson" in the programme) had: stolen funds and sabotaged WikiLeaks; deleted thousands of submissions revealing war crimes and corruption in financial institutions; profited from and unleashed the chain of events that led to the publishing of the unredacted Diplomatic Cables. After February 2011 [Note: this date is wrong; it should be February 2010], Mr Domscheit-Berg had little to no involvement with WikiLeaks operations after [wrong; should be 'before'] being sacked on 14 September 2010. Mr Assange added that all this information was available in two public statements issued by WikiLeaks;

. Disregarding the fact that the reason that Mr Assange did not want The New York Times to be involved in the publishing of the Diplomatic Cables was because The New York Times had told the Pentagon about earlier releases; and

. Disregarding the banking blockade against WikiLeaks and the ongoing harassment of WikiLeaks volunteers. Mr Assange said that the programme gave the impression that WikiLeaks suspended publication because of his impending court hearing when, in fact, WikiLeaks suspended publication on 27 October 2011 due to financial blockades that were imposed on WikiLeaks, before the High Court made its decision on 2 November 2011.

iii) The programme portrayed Mr Assange as "anti-American" and a "hacker" rather than a journalist or publisher.

c) Mr Assange was not given a timely and appropriate opportunity to respond to the allegations made in the programme. In particular, Mr Assange stated that he

was not given direct questions to answer in relation to many of the allegations stated in the programme.

#### Unwarranted infringement of privacy

In summary, Mr Assange complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

d) Footage that was filmed of Mr Assange in a nightclub in Iceland was broadcast in the programme without his consent.

Mr Assange said that the person who recorded the video sought his permission to film him in the nightclub and that Mr Assange agreed to this on the basis that it would be for his personal use only. However, it was broadcast in the programme and Mr Assange had no knowledge of how the programme's producer sourced this footage. Mr Assange said that he could not understand why this footage had been included in the programme or why it was relevant.

Please refer to the complaint form and any accompanying material for full details.

#### Relevant legislation

Under section 110(1) of the Broadcasting Act 1996 (as amended) ("the Act"), and subject to the remaining provisions of Part V of the Act, Ofcom has a duty to consider and adjudicate on complaints which relate:

(a) to unjust or unfair treatment in programmes,<sup>4</sup>

Or

(b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.

These complaints are collectively referred to as "fairness complaints" by virtue of section 110(4) of the Act. Part V of the Act (and in particular sections 111 and 114) sets out a number of statutory criteria which must be satisfied before a fairness complaint can be entertained by Ofcom.

#### Ofcom's Jurisdiction:

##### "The Person Affected"

Section 111(1) of the Act provides that a "fairness complaint may be made by an individual or by a body of persons, whether incorporated or not, but ... shall not be entertained by Ofcom unless made by "the person affected" or by a person authorised by him to make the complaint for him".

"the person affected" is defined by section 130 of the Act as follows:

(a) In relation to any unjust or unfair treatment in programmes, it means a participant in the programme in question who was the subject of that treatment or a person who, whether such a participant or not, had a direct interest in the subject-matter of that treatment. ("Participant" is further defined by section 130 as meaning a "person who appeared, or whose voice was heard, in the programme").

And,

(b) In relation to any unwarranted infringement of privacy, it means a person whose privacy was infringed.

Under section 111(7)(a) of the Act, Ofcom may refuse to entertain a complaint of unjust or unfair treatment “if the person named as the person affected was not himself the subject of the treatment complained of and it appears to Ofcom that he did not have a sufficiently direct interest in the subject-matter of that treatment to justify the making of a complaint with him as “the person affected”.

In relation to Mr Assange’s complaint of unjust or unfair treatment, Ofcom is satisfied that Mr Assange meets the definition of “the person affected” as defined in section 130(a) above. Since Mr Assange appeared in the programme and his complaint of unfair treatment relates to the matters discussed in the programme, Ofcom considers that he was therefore a “participant” in the programme who was the “subject of” the treatment complained of. In any event, Ofcom considers that Mr Assange also has a “direct interest” in the subject matter of the programme because his involvement in WikiLeaks (the website he had founded) was the main focus of the programme.

In relation to Mr Assange’s complaint of unwarranted infringement of privacy, Ofcom considers that Mr Assange satisfies the definition of “the person affected”, since he complains that his privacy was infringed by the broadcasting of footage which he alleges was not filmed for inclusion in the programme.

#### “Reasonable time”

Section 111(5) of the Act provides that “Ofcom may refuse to entertain a fairness complaint if it appears to Ofcom not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast or, as the case may be, included in a licensed service.”

In this respect, Paragraph 1.10 of Ofcom's “Procedures for the consideration and adjudication of Fairness and Privacy complaints” (“Ofcom's Fairness and Privacy Procedures”) (dated 1 June 2011) provides that complainants should submit their complaint to Ofcom within 20 working days after broadcast of the relevant programme, and that, ordinarily, Ofcom will not accept a complaint which is submitted after this deadline. Ofcom notes that Mr Assange submitted his complaint on 19 December 2011, which was 14 working days after the programme was broadcast (i.e. 29 November 2011). Accordingly, Ofcom is satisfied that it was made within the normal period (i.e. 20 working days) set out by Paragraph 1.10 of Ofcom’s Fairness and Privacy Procedures.

#### “Legal proceedings”

Sections 114(2) of the Act provides that Ofcom shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to Ofcom:

- (a) that the matter complained of is the subject of proceedings in a court of law in the United Kingdom, or
- (b) that the matter complained of is a matter in respect of which the complainant or the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for Ofcom to consider a complaint about it.

Ofcom is aware that the decision on whether or not Mr Assange should be extradited to Sweden where he faces criminal allegations, is currently being considered on appeal by the Supreme Court in the United Kingdom. Ofcom is also aware that the extradition proceedings relate to the investigation of allegations of rape and assault in Sweden, and that therefore there are active

proceedings in Sweden related to these allegations. However, Section 114(2) of the Act only precludes Ofcom from entertaining a complaint where it is the “subject of proceedings in a court of law in the United Kingdom” (emphasis added by Ofcom). Therefore Ofcom will only consider whether the extradition proceedings in the Supreme Court in the United Kingdom will prevent Ofcom from entertaining Mr Assange's complaint, as set out below.

Under Section 114(2)(a) of the Broadcasting Act 1996 (as amended), Ofcom is precluded from entertaining or proceeding with the consideration of a fairness complaint if it appears that the matter complained of is the subject of legal proceedings in a court of law in the UK. The equivalent legal constraint which was previously set out in Section 55(4) of the Broadcasting Act 1981<sup>5</sup> was considered in *R v BCC Ex parte Thames Television*, when the court rejected a narrow construction of the provision. In particular, the court considered whether the relevant complaints did in fact “substantially marry up” with the subject of the relevant proceedings. Therefore, Ofcom is precluded under section 114(2)(a) of the Act from entertaining or proceeding with consideration of a fairness complaint when the matter complained of is the subject of, or substantially the same as the subject of, the proceedings.

In light of the above and having examined all the material before it, it is Ofcom's view that Mr Assange's complaint to Ofcom is not the subject of, or substantially the same as the subject of the proceedings in the Supreme Court in the UK. The proceedings there concern a specific question as to whether a European Arrest Warrant “is a valid Part 1 European Arrest Warrant issued by a “judicial authority” for the purpose and within the meaning of the Extradition Act 2003.”<sup>6</sup> Although Mr Assange mentions the current proceedings in his complaint and the programme also refers to the proceedings, Ofcom considers that the subject matter of the complaint as set out in heads a) to d) above concern how Mr Assange was portrayed in the programme. Therefore, Ofcom considers that the matter complained of is not the subject of, or substantially the same as the subject of, the proceedings in the Supreme Court. The result is that, notwithstanding the proceedings in the Supreme Court, Ofcom is not precluded from considering Mr Assange's complaint under section 114(2)(a). In relation to section 114(2)(b), Ofcom notes that Mr Assange has specified that he has not commenced any legal action with regard to his complaint. The current proceedings in the Supreme Court (as detailed above) concern his possible extradition to Sweden and therefore will not provide him with a “remedy” in respect of his complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast. Therefore, Ofcom does not consider that it would be inappropriate under this section of the Act, to consider Mr Assange's complaint.

#### “Frivolous”

Section 114(2)(c) of the Act provides that “Ofcom shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to Ofcom that the complaint is frivolous.”

Ofcom will normally consider a complaint to be “frivolous” if in its opinion the complaint is unsustainable. Normally this is because the complainant has not provided reasonable grounds on which to base a complaint of unjust or unfair treatment or unwarranted infringement of privacy and therefore, the complaint is on its face without substance and there is not a case for the relevant broadcaster to answer. In that context, it does not appear to Ofcom that Mr Assange's

complaint is “frivolous”. This is because, on the face of it, there appear to be sustainable grounds of complaint for the broadcaster to answer in this case.

Inappropriate for “any other reason”

Section 114(2)(d) of the Act provides that “Ofcom shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to Ofcom that for any other reason it is inappropriate for Ofcom to entertain, or proceed with the consideration of, the complaint.”

Ofcom considers that there does not appear to be “any other reason” why it would be inappropriate for Ofcom to entertain, or proceed with the consideration of, Mr Assange’s complaint in the circumstances of this case.

Decision

Ofcom has entertained Mr Assange’s fairness complaint and it will be considered as it is set out under “Entertained Complaint” below.

Entertained Complaint:

Unjust or unfair treatment

In summary, Mr Assange complained that he was treated unjustly or unfairly in the programme as broadcast in that:

a) The programme did not obtain Mr Assange’s informed consent to appear in the programme. In particular, Mr Assange complained that:

- i) The programme makers misrepresented to him what the programme would focus on.
- ii) He was not made aware of other key contributors who would be appearing in the programme.
- iii) Opportunities to preview the programme were not offered to him but were offered to other contributors such as The Guardian newspaper.

b) The programme presented, disregarded and omitted material facts in a way that was unfair to Mr Assange. In particular, Mr Assange complained that the programme:

i) Broadcast material which was highly prejudicial to his extradition hearing (which was held a few days after the programme was broadcast), and other potential hearings related to the allegations of rape or WikiLeaks. Mr Assange said that the programme included comments from interviewees, who had no first-hand knowledge of the allegations he faced. In addition, the programme did not interview any of Mr Assange’s legal team who had the authority to provide information on the allegations.

ii) Omitted crucial facts, such as:

. That Mr Leigh had broken a written agreement and had revealed a secret decryption key which led to the publishing of the “unredacted cables” [i.e. the U.S Diplomatic Cables]. Instead, the programme said that this was an incomprehensible and reprehensible decision made by WikiLeaks;

. Attributing the statement “they’re American informants, they deserve to die” to Mr Assange but failing to mention that two individuals, Mr Goetz and Mr Stark, who were also present at the time this statement was supposed to have been made, have no recollection of Mr Assange making such a statement;

. Failing to mention that Mr Domscheit-Berg (whose status was misrepresented by being described as a “WikiLeaks spokesperson” in the programme) had stolen funds and sabotaged WikiLeaks; deleted thousands of submissions revealing war crimes and corruption in financial institutions; profited and unleashed the chain of events that led to the publishing of the unredacted Diplomatic Cables. After February 2011 [date is wrong; February 2010], Mr Domscheit-Berg had little to no involvement with WikiLeaks operations after [wrong; before] being sacked on 14 September 2010. Mr Assange added that all this information was available in two public statements issued by WikiLeaks;

. Disregarding the fact that the reason that Mr Assange did not want The New York Times to be involved in the publishing of the Diplomatic Cables was because The New York Times had told the Pentagon about earlier releases; and

. Disregarding the banking blockade against WikiLeaks and the ongoing harassment of WikiLeaks volunteers. Mr Assange said that the programme gave the impression that WikiLeaks suspended publication because of his impending court hearing when, in fact, WikiLeaks suspended publication on 27 October 2011 due to financial blockades that were imposed on WikiLeaks, which was before the High Court made its decision on 2 November 2011.

iii) The programme portrayed Mr Assange as “anti-American” and a “hacker” rather than a journalist or publisher.

c) Mr Assange was not given a timely and appropriate opportunity to respond to the allegations made in the programme. In particular, Mr Assange stated that he was not given direct questions to answer in relation to many of the allegations stated in the programme.

#### Unwarranted infringement of privacy

In summary, Mr Assange complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

d) Footage that was filmed of Mr Assange in a nightclub in Iceland was broadcast in the programme without his consent. Mr Assange said that the person who recorded the video sought his permission to film him in the nightclub and that Mr Assange agreed to this on the basis that it would be for his personal use only. However, it was broadcast in the programme and Mr Assange had no knowledge of how the programme’s producer sourced this footage. Mr Assange said that he could not understand why this footage had been included in the programme or why it was relevant.

Please refer to the complaint form and any accompanying material for full details.

<sup>1</sup>On 7 December 2010, Mr Assange was arrested, pursuant to a European Arrest Warrant which was issued in response to a request made by Swedish police to question Mr Assange on allegations of sexual assault.

<sup>2</sup> Le Monde and El Pais are high profile broadsheet daily newspapers in France and Spain respectively.

<sup>3</sup> This relates to Mr Assange’s appeal in relation to being extradited to Sweden to stand trial for allegations of rape.

<sup>4</sup> Section 130 of the Act defines “unjust or unfair treatment” as including “treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged.”



<sup>5</sup> The wording used in section 114(2) of the Broadcasting Act 1996 is similar to one originally used in section 55(4) of the Broadcasting Act 1981, which provided as follows: "The Commission shall not entertain, or proceed with the consideration of, a complaint if it appears to them (...) that the unjust or unfair treatment or unwarranted infringement of privacy complained of is the subject of proceedings in a court of law in the United Kingdom".

<sup>6</sup> Information provided on the Supreme Court website.

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From: Julian Assange  
To: Sophie Argent  
Date: Feb 15, 2012 1:46 AM

Dear Sophie Argent,

Many thanks for your email confirming Ofcom's Entertainment Decision, and for the PDFs outlining the basis of the Decision and the Fairness and Privacy procedures. Can you clarify a couple of points for me please?

Either Oxford Films or Channel 4 – I'm not sure which one as I don't know who the ultimate rights holder is – has begun an aggressive sales and marketing campaign into other territories. This appears to be a relatively recent development. Arte broadcast the programme over its network tonight (Germany, France, cable in six other countries, CBC Canada and Australia's SBS), and NBC Universal plans to broadcast it on its CNBC network on 1 March. Is the producer or broadcaster in breach of any of Ofcom's procedures if they continue to distribute the programme in this way while knowing that an Ofcom investigation is already under way?

I would like to contact the networks who have made these acquisitions to warn them of the substantial issues regarding accuracy, fairness and privacy infringement contained in the programme. Can you confirm that it is acceptable for me to make my Ofcom complaint (just the wording of the complaint, not the underlying evidence) available to them provided I make clear that it is to be treated as strictly confidential and not for publication?

I would appreciate a rapid response on this, and any guidance Ofcom can offer on preventing the global dissemination of the many serious and highly prejudicial libels in this programme.

Yours sincerely,

Julian Assange

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From: Sophie Argent  
To: Julian Assange  
Date: Feb 15, 2012 2:55 PM

Dear Mr Assange,

Thank you for your email. In relation to your queries, I will get back to you as soon as possible.

Yours sincerely,

:: Sophie Argent

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From: Sophie Argent  
To: Julian Assange  
Date: Feb 16, 2012 4:02 PM

Dear Mr Assange,

Thank you for your email.

In response to your first query (i.e. whether a broadcaster would be in breach of any of Ofcom's procedures by continuing to distribute a programme which is subject to an investigation), please note that Ofcom does not have any power to dictate whether broadcasters/programme makers should be selling or marketing a programme which is the subject of an investigation by Ofcom. In these circumstances, it would be a decision for the broadcaster/relevant distributor to assess and – if it wishes – to take the risk that Ofcom may subsequently find the programme complained about has breached Ofcom's Broadcasting Code.

Regarding your second query, please take careful note of paragraph 1.33 headed "Non-disclosure" of Ofcom's procedures for the handling of fairness and privacy complaints (please see the full text as emailed to you on 14 February 2012). This paragraph makes clear that you are able to make "public the fact that a complaint has been made or that Ofcom is investigating a case" and make public very broadly what your complaint is about. However please note that the procedures underline that **"parties are subject to the requirement of non disclosure in relation to all other material [my emphasis] submitted and communications/correspondence entered into in relation to the complaint"** (such as any unedited footage provided by the broadcaster or any response from the broadcaster). Further, once a complaint has been entertained, all parties are under an obligation to ensure that they do not take any steps which could "compromise or risk compromising, a fair decision on the matter by Ofcom or otherwise constitute, in Ofcom's opinion, an abuse of process."

Please do not hesitate to contact me if you have any further queries.

Yours sincerely,

:: Sophie Argent

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From: Julian Assange  
To: Sophie Argent  
Date: Feb 21, 2012 4:38 PM

Dear Sophie Argent,

Thank you for your email of 16 February. Comments noted - thank you.

I see from the Entertainment Decision that Ofcom has requested the full uncut footage of my interview from the producer. Can I please ask that Ofcom also requests the full uncut footage of interviews given by all Der Spiegel interviewees, in light of these Twitter comments from Holger Stark of Der Spiegel:

[https://twitter.com/#!/holger\\_stark/status/169830954980999169](https://twitter.com/#!/holger_stark/status/169830954980999169)  
[https://twitter.com/#!/holger\\_stark/status/169831313300398080](https://twitter.com/#!/holger_stark/status/169831313300398080)  
[https://twitter.com/#!/holger\\_stark/status/169831748933402624](https://twitter.com/#!/holger_stark/status/169831748933402624)

He means, of course, October/November 2010 not 2011, which he later corrected. The context to the above remarks is outlined in the link below, where the significance of Ofcom reviewing the Der Spiegel footage for my complaint should be clear.

<http://mmcetera.blogspot.com/2012/02/continued-controversy-over-wikileaks.html>

Kind regards,

Julian Assange

---

From: Sophie Argent  
To: Julian Assange  
Date: Feb 23, 2012 2.45 PM

Dear Mr Assange,

Thank you for your email.

The material I have requested so far should be sufficient for Ofcom to reach a decision on your complaint. However, if Ofcom considers that it does need additional footage/statements in order to ensure that it can fairly and properly adjudicate on the complaint then we may request further information/material.

All material that Channel 4 submit in relation to the complaint will be made available to you and will be forwarded to you once we receive this.

Yours sincerely,

:: Sophie Argent

---

From: Julian Assange  
To: Sophie Argent  
Date: Mar 4, 2012 9:05 PM

Dear Sophie Argent,

Thank you for your email of 23 February, and apologies for the delay in responding.

While I understand that Ofcom feels the material it has already requested is enough, I do feel the unedited footage of the interviewees from Der Spiegel could be crucial to reach an underlying understanding of who is telling the truth, ie. these are people who are outside the well-known battle between Wikileaks and the Guardian.

As I pointed out in my original submission, John Goetz of Der Spiegel, who was present at the same dinner David Leigh talks about in the programme, complained his denial that I ever made the alleged remark "They're informants, they deserve to die" was not used by the producer. Likewise, Holgar Stark's tweets (copied below for your convenience) indicate that the explanations Der Spiegel gave in their filmed interviews of the underlying reason for the breakdown in Wikileaks' Cablegate partnership with the Guardian were cut from the final version. Both of these go to the heart of my complaints under Clause 7.9 about the programme omitting crucial facts, and Clause 7.11 about being denied a chance to respond to serious allegations of wrongdoing.

[https://twitter.com/#!/holger\\_stark/status/169830954980999169](https://twitter.com/#!/holger_stark/status/169830954980999169)  
[https://twitter.com/#!/holger\\_stark/status/169831313300398080](https://twitter.com/#!/holger_stark/status/169831313300398080)  
[https://twitter.com/#!/holger\\_stark/status/169831748933402624](https://twitter.com/#!/holger_stark/status/169831748933402624)

Can I therefore respectfully ask that Ofcom reconsiders this point?

Kind regards,

Julian Assange

---

From: Sophie Argent  
To: Julian Assange  
Date: Mar 8, 2012 4:05PM

Dear Mr Assange,

We have noted your request and will consider this when Channel 4 submits its statement next week. Please note that Channel 4 are required to keep all material in relation to the programme and your complaint in the event that Ofcom requests such additional material.

I will keep you updated on the progress of your complaint.

Yours sincerely,

:: Sophie Argent

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From: Sophie Argent  
To: Julian Assange  
Date: Mar 14, 2012 2:21 PM

Dear Mr Assange,

Please see attached, for your information only at this stage, the response from Channel 4 along with supporting material, in relation to your complaint as entertained on 14 February 2012. Ofcom will now begin to prepare its Preliminary View on your complaint and you will have an opportunity to make your submissions on the Preliminary View, once this has been prepared and sent to you. As stated in Ofcom's procedures, please ensure that all correspondence, material and documentation related to the complaint are kept confidential.

Please note that a copy of the unedited footage will be sent to your postal address that we have on file for you. I would be grateful if you could confirm receipt of the attached email and the unedited footage when it arrives.

Yours sincerely,

:: Sophie Argent

Attached: Channel 4 Julian Assange Ofcom response (pdf)  
Wikileaks Secrets and Lies programme transcript (pdf)  
Wikileaks Secrets and Lies Julian Assange interview transcript (pdf)  
Julian Assange release co-signed (pdf)  
Wikileaks Inside Assange's War on Secrecy pages 110-112 (pdf)  
FW Hi Sarah copy of email trail

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From: Julian Assange  
To: Sophie Argent  
Date: Mar 26, 2012 7:20 PM

Dear Sophie Argent,

Thank you for your 14 March email and attachments.

I confirm I have now received the CD of the unedited interview footage and will respond in detail to the material and the various attachments in due course.

Kind regards,

Julian Assange

---

From: Sophie Argent  
To: Julian Assange  
Date: Jun 11, 2012 2:53 PM

Dear Mr Assange,

Ofcom is now in a position to let you have a Preliminary View respect of your complaint and I attach a copy. As set out in Ofcom's "Procedures for the consideration and adjudication of Fairness and Privacy complaints" that was sent to you with Ofcom's Entertainment Decision, the Preliminary View has been considered by Ofcom's Content Board.

You now have an opportunity to make representations on the Preliminary View, if you wish to do so. Please ensure that all your comments are directly relevant to Ofcom's Preliminary View on the existing complaint that you have already made to Ofcom, and which we have agreed to reach a decision on (i.e. the entertained complaint as set out in the Entertainment Decision sent to you on **14 February 2012**). You are not able to make any new grounds of complaint at this stage.

It may assist you, when making any representations, to know that Ofcom will only consider comments that go to show your belief that the Preliminary View is flawed in that, for instance, it contains a significant mistake of fact; or has been reached by a failure of process; or that undue or insufficient weight has been given to a piece(s) of evidence.

Please note that when providing any representations, do so as concisely as possible and, where you can, by reference to the various headings or sub-headings of complaint set out in the Preliminary View.

Please let me have any representations by **25 June 2012**. Once I have received your representations I will forward them and the Preliminary View to the broadcaster for their representations, a copy of which I will send to you.

Once we have received and considered all the representations, we will make a final adjudication. Please note that if Ofcom considers that it is necessary to obtain further information from either party to ensure that it can fairly and properly adjudicate on the complaint, Ofcom may seek such information.

May I also remind you that Ofcom's published rules and procedures require that the parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint during the course of the investigation.

Yours sincerely,

**:: Sophie Argent**

Attached: Assange Preliminary View to parties pdf

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From: Julian Assange  
To: Sophie Argent  
Date: Jun 13, 2012 9:37 AM

Dear Sophie Argent,

Thank you for your 11 June email enclosing Ofcom's Preliminary View decision. I will respond in full by the 25 June deadline.

As you know, there has been a lengthy delay since Ofcom's initial Entertainment Decision of 14 February and Channel 4's response of 14 March. Are you able to outline for me an exact schedule of the various stages until Ofcom's Final Adjudication is made? On what date is the final decision likely to occur?

We have received some evidentiary material - which does have some bearing on Ofcom's investigation into the WikiLeaks Secrets & Lies documentary - but which also has much wider ramifications. We are therefore obviously anxious to publish this information as soon as possible, as it is of little value to WikiLeaks and to me personally if it only becomes known four months down the road.

We therefore intend to publish this material as part of the wider matter to which it relates - and ahead of my formal response to Ofcom's Preliminary View in order to avoid it falling within Ofcom's confidentiality restrictions once formally submitted as part of my complaint.

Please let me have the investigation's forward schedule, and your agreement in principle to this approach, as a matter of urgency.

Yours sincerely,

Julian Assange

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From: Julian Assange  
To: David Best  
Date: Jun 13, 2012 12:07 PM

Dear David Best,

I understand Sophie Argent is out of the office until 15 June. I have requested an urgent response to the email below. Could you expedite this please?

Many thanks.

Julian Assange

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>

> Dear Sophie Argent,

>

> Thank you for your 11 June email enclosing Ofcom's Preliminary View decision. I will respond in full by the 25 June deadline.

>

> As you know, there has been a lengthy delay since Ofcom's initial Entertainment Decision of 14 February and Channel 4's response of 14 March. Are you able to outline for me an exact schedule of the various stages until

Ofcom's Final Adjudication is made? On what date is the final decision likely to occur?

>

> We have received some evidentiary material – which does have some bearing on Ofcom's investigation into the WikiLeaks Secrets & Lies documentary – but which also has much wider ramifications. We are therefore obviously anxious to publish this information as soon as possible, as it is of little value to WikiLeaks and to me personally if it only becomes known four months down the road.

>

> We therefore intend to publish this material as part of the wider matter to which it relates – and ahead of my formal response to Ofcom's Preliminary View in order to avoid it falling within Ofcom's confidentiality restrictions once formally submitted as part of my complaint.

>

> Please let me have the investigation's forward schedule, and your agreement in principle to this approach, as a matter of urgency.

>

> Yours sincerely,

>

> Julian Assange

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From: David Best  
To: Julian Assange  
Date: Jun 13, 2012 9:34 AM

Dear Mr Assange

Thank you for your email of 13 June 2012. I will respond to your queries in Sophie Argent's absence.

In relation to your first query about the next stages in the complaint process, these are set out in Ofcom's Procedures for the consideration and adjudication of Fairness and Privacy complaints ("Ofcom's Procedures") which were sent to you when your complaint was entertained on 14 February 2012. However, in brief, the following outline will give you a sense of what to expect from the next stages:

- Ofcom receives your representations on the preliminary view and Channel 4's statement by 25 June 2012;
- Your representations and the preliminary view are then sent to Channel 4 who will be given 10 working days in which to make any representations. Once these are received, a copy will be sent to you for your information.
- Once Ofcom has received and considered the representations both from you and Channel 4, it will then make its final adjudication. Ofcom may seek further information from either party if it thinks it necessary to ensure that it can fairly and properly adjudicate on the complaint.
- When Ofcom considers it has gathered and considered the relevant evidence and representations from the parties, it will draft the final adjudication in which it will decide whether the complaint is upheld or not (or upheld in part).
- Before the final adjudication is published in Ofcom's Broadcasting Bulletin (until which time it remains under strict embargo), the parties will be provided with a draft adjudication and will be given 48 hours for the purposes of correcting factual inaccuracies only.



Please note that this is just an outline and I urge you to refer to Ofcom's Procedures in which the stages in the complaint consideration process are set out in full.

Owing to the nature of complaint handling process, it is not possible to give any exact dates for when Ofcom's final decision will be made and sent to the parties. However, Ofcom aims to complete its complaint process within 90 working days of the complaint being entertained.

Turning to the second point made in your email about your intention to publish material some of which, you say, has some bearing on Ofcom's investigation into your complaint, I refer you to Paragraph 1.33 of Ofcom's Procedures. You will appreciate that without knowing the nature of the material, Ofcom is not able to agree or disagree with the approach you intend to take. Nor would it be appropriate for Ofcom to offer you advice about what material you can or cannot publish. It is really a matter for you, though I must urge you to consider the provision in Ofcom's Procedures on this point and whether what you intend could be regarded as being with the spirit of the non-disclosure provision. I reproduce Paragraph 1.33 below for your ease of reference:

### **Non Disclosure**

1.33 Subject to any relevant obligations, it is an essential part of the integrity of Ofcom's processes and its ability to adjudicate fairly that the parties concerned, both complainant and broadcaster, abide by all Ofcom's published rules and procedures. These require, for example, that parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint ~~(-20-)~~ during the course of the investigation (see text box below). This requirement of non disclosure does not limit what Ofcom can publish in its decision at the end of the investigation.

### **Non Disclosure**

Parties (complainants, broadcasters, Ofcom and any relevant third parties) may, unless otherwise indicated, make public the fact that a complaint has been made or that Ofcom is investigating a case. They may also use information which is already in the public domain.

However, all parties are subject to the requirement of non disclosure in relation to all other material submitted and communications/correspondence entered into in relation to that complaint or case. ~~(-21-)~~ Prior to Ofcom's final decision, the identity of a complainant may only be disclosed by the broadcaster or a third party to those with a direct interest in the matter complained of. Moreover, once a complaint has been entertained, no party should take any steps which could - whether intentionally or not - compromise, or risk compromising, a fair decision on the matter by Ofcom or otherwise constitute, in Ofcom's opinion, an abuse of process.

Failure to follow these requirements may result in Ofcom ceasing to consider the party's representations.

**20.-**Ofcom is obliged to meet various statutory obligations relating to the disclosure of information (for example, under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004). Such obligations do not allow the use of exemptions by Ofcom in an arbitrary fashion. Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations and nothing in these Procedures can prevent Ofcom from doing so.

**21.**-Ofcom may withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the broadcaster will be notified that relevant material has been withheld and the reasons why.

I hope you find my response useful and we look forward to receiving your representations on the preliminary view and Channel 4's statement by 25 June 2012.

Yours sincerely

David Best

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From: Julian Assange  
To: Sophie Argent  
Date: Jun 25, 2012 11:39 PM

Dear Sophie Argent,

Thank you for your email of 11 June enclosing Ofcom's Preliminary View. I set out below my response to it and to Channel 4's 14 March response to Ofcom's Entertainment Decision.

In view of my pending asylum application or my extradition my assistant XXXXXXXXXXXX will administer my complaint about the Wikileaks': Secrets and Lies programme, and Ofcom's investigation of it, on my behalf if I am no longer able to do so personally. XXXXXXXXXXXX will liaise with my legal advisers and have access to this email account from then on, so please continue to use this address for all correspondence. Could you please confirm by return that Ofcom's investigation of my complaint can continue on this basis?

Your colleague David Best informs me that Ofcom normally endeavours to reach a final adjudication within 90 days of its Entertainment Decision. As we are already a month beyond that 90 days, can you please tell me roughly how much longer Ofcom's investigation process will take?

Yours sincerely,

Julian Assange

Attached: Full pre-production email correspondence chain  
Signed witness statement John Goetz, Der Spiegel  
Translation of pgs 165-167, Staatsfeind WikiLeaks, Marcel  
Rosenbach/Holgar Stark, Der Spiegel  
Response to Preliminary View

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From: Sophie Argent  
To: Julian Assange  
Date: Jun 26, 2012 3:43 PM

Dear Mr Assange,

Thank you for your email and the attachments. In accordance with the procedures, your response along with the supporting documentation you provided and Ofcom's preliminary view will be sent to Channel 4 for their representations. Channel 4 will have 10 working days to submit a response, if they wish to do so. Ofcom will then prepare its final adjudication on your complaint.

As stated in your email, Ofcom aims to finalise its adjudication within 90 days from the date of investigation. Unfortunately, due to a variety of reasons, it is not always possible to meet this deadline. However, I will keep you and/or XXXXXXXXXXXX updated via this email address, once Channel 4 have had an opportunity to comment.

Please do not hesitate to contact me if you have any other queries.

Yours sincerely,

:: Sophie Argent  
Standards Executive  
Fairness and Privacy Team  
Content, International and Regulatory Development (CIR)  
Direct Line: 020 7981 XXXXX  
Email: XXXXXXXXXXXX@ofcom.org.uk

:: Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
020 7981 3000  
[www.ofcom.org.uk](http://www.ofcom.org.uk)

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From: Julian Assange  
To: Sophie Argent  
Date: Jun 29, 2012 11:22 AM

Dear Sophie Argent,

I would like to draw your attention to something which it appears may be a breach of Ofcom's Non-disclosure rule stating that any correspondence between the parties during the course of Ofcom's investigation should not be disclosed to third parties.

In this 20 June 2012 article in the *Daily Mail*, Stephen Glover quotes directly from the programme transcript pdf, as supplied to me by Ofcom on 14 March.

<http://www.dailymail.co.uk/debate/article-2162383/Julian-Assange-The-useful-idiots-lionised-amoral-cowardly-Mr-Assange-ended-looking-utter-tweets.html#ixzz1ynVMDZ00>

"Mr Assange proved so difficult and overbearing that he fell out with his collaborators at *The Guardian*, with the reporter Nick Davies describing him as an 'extraordinary, dishonest man'.

The WikiLeaks founder struck back, calling *The Guardian*'s David Leigh 'deplorable', and at one stage threatened to sue the newspaper. He labelled British journalism as the most 'credit-stealing, credit-whoring, back-stabbing industry' he had ever encountered. Some may think such a description could be more aptly applied to him."

All these quotes are exactly as they appear in the programme transcript pdf, and two of them do not appear anywhere else in the press according to a Google search. Unless Mr Glover has personally recorded the *Wikileaks Secrets & Lies* programme when it was originally broadcast on 29 November 2011, and kept a copy, I doubt his recall could be that exact six months after broadcast. More4 never made this programme available on their website, and indeed there is no copy of it anywhere on the internet.

You should also note that what Nick Davies actually said on air was "an extraordinarily dishonest man" (the wording as reported in the press at the time of broadcast), which has been mistyped in the programme transcript pdf as "an extraordinary dishonest man" (prog transcript pg 62). I never called David Leigh "deplorable" in my interview - I said that about the *New York Times* taking the cables to the White House for vetting (interview transcript pg 27) - but due to the producer's dishonest editing it appears in the programme transcript as a comment about David Leigh (programme transcript pg 68).

Without additional evidence, I would not be prepared to say who I think might be responsible if this is genuinely a breach of Ofcom's non-disclosure rules, but I would be grateful if the matter could nevertheless be investigated.

Yours sincerely,

Julian Assange

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From: Sophie Argent  
To: Julian Assange  
Date: Jul 3, 2012 11:43 AM

Dear Mr Assange,

Thank you for your email in relation to the potential breach of Ofcom's non-disclosure requirement. With reference to our procedures, we do not consider that this raises any issues in relation to paragraph 1.33 at present, because the substance of the material has already been broadcast. However, we will keep this under review and take necessary action if we think that the integrity of the process is being undermined.

We have also been made aware of the following material published on the WikiLeaks website. I would like to take the opportunity to remind you again of Ofcom's non-disclosure requirement. As stated above, we will take action if we

consider that the disclosure is compromising or risks compromising our decision or is an abuse of process.

[http://www.wikileaks.org/IMG/pdf/Statement\\_by\\_John\\_Goetz.pdf](http://www.wikileaks.org/IMG/pdf/Statement_by_John_Goetz.pdf)

yours sincerely,

:: Sophie Argent  
Standards Executive  
Fairness and Privacy Team

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From: Sophie Argent  
To: Julian Assange  
Date: July 16, 2012 5:11 PM

Dear Mr Assange,

Please find attached the statement from Channel 4 in relation to Ofcom's preliminary view.

Ofcom is now preparing the Adjudication on your complaint.

Yours sincerely,

**:: Sophie Argent**

Standards Executive

Fairness and Privacy Team

Content, International and Regulatory Development (CIR)

Direct Line: 020 7981 3225

Email: [sophie.argent@ofcom.org.uk](mailto:sophie.argent@ofcom.org.uk)

\*\*\*\*\*

From: Julian Assange  
To: Sophie Argent  
Date: July 17, 2012 10:38 PM

Dear Sophie Argent,

Thank you for your email of 3 July giving Ofcom's position regarding the Daily Mail article and enclosing the link to John Goetz' signed witness statement on WikiLeaks' website. My apologies for the delay in replying.

Mr Goetz' statement is the material referred to in my email to you of 13 June, in which I

sought guidance on Ofcom's non-disclosure rules. WikiLeaks published the statement on our website – without publicising that fact – prior to submitting it as part of my formal response to Ofcom's Preliminary View precisely so as not to interfere with Ofcom's non-disclosure requirements. We wanted to ensure this evidentiary material remained available over the coming months, given that there is no set deadline for completion of Ofcom's inquiry.

As mentioned in my 13 June email, this evidentiary material has wider ramifications than the present investigation and I wonder if I might once more seek specific guidance from Ofcom about its use outside of Ofcom's investigation of the WikiLeaks: Secrets & Lies programme? We would like to also submit this material to the Leveson Inquiry as it is relevant to false statements made during oral testimony given by one witness to the Inquiry (who also features in the WikiLeaks: Secrets & Lies programme) while under oath, which Lord Justice Leveson may wish to either investigate within the parameters of the Inquiry itself, or to pass to the police.

I cannot see anything in the non-disclosure rules which covers the use of material submitted as part of an Ofcom investigation for another, parallel investigation, especially in circumstances where such disclosure may lead to a criminal investigation. Can you advise please how this would impact Ofcom's non-disclosure requirements?

Yours sincerely,

Julian Assange

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From: Julian Assange  
To: Leveson Inquiry Solicitors Team  
Date: Jul 24, 2012 6:04 PM

Subject: Nick Davies Oral Evidence to Leveson Inquiry 29 Nov 2011

Dear Leveson Inquiry Solicitors Team,

On 29 November 2011 Nick Davies of the Guardian newspaper appeared before the Leveson Inquiry to give his oral testimony on Module 1 of the Inquiry.

A report of Mr Davies' oral testimony appeared in the Daily Telegraph on 29 November 2011, part of which I reproduce below:

<http://www.telegraph.co.uk/news/uknews/leveson-inquiry/8923348/Leveson-Inquiry-One-or-more-NOTW-journalists-deleted-voicemail-from-Milly-Dowlers-mobile.html>

He said the issue emerged during the Guardian's coverage of the U.S. war logs from Afghanistan obtained by the whistle-blowing website WikiLeaks.

'It became apparent that the material contained information which could get people on the ground in Afghanistan seriously hurt,' he said.

'They are implicitly identified as sources of information for the coalition forces.'

But Mr Davies claimed WikiLeaks founder Julian Assange's attitude was that Afghans who gave information to the coalition forces should die anyway.

He said Mr Assange told him: 'They deserve to die, they are informers, they are collaborators.'

The journalist added: 'I would love to have been able to go to a specific advisory body and say, "where is the public interest here?" in order to be able to show it to him, to persuade him.'

The same text also appeared in the Daily Mail:

<http://www.dailymail.co.uk/news/article-2067610/Leveson-inquiry-Brooks-Coulson-knew-routine-hacking.html>

The part of his testimony given to the Inquiry by Mr Davies which pertains to me, and to remarks he attributes to me, was knowingly and intentionally false. It repeats a libel first made by his fellow Guardian reporter David Leigh in his book WikiLeaks: Inside Julian Assange's War on Secrecy (published 1 February 2011 - relevant pages attached), in which Mr Leigh falsely states that I made the remark "They're informants, they deserve to die" during a discussion about redacting informant names from the Afghan War Diaries dataset at a 21 July 2010 dinner at El Moro restaurant in London. The Afghan War Diaries were subsequently published by WikiLeaks, the Guardian, the New York Times and Der Spiegel magazine. The dinner was attended by Marcel Rosenbach and John Goetz of Der Spiegel, David Leigh of the Guardian, and myself. Nick Davies was not present at the dinner, nor have I ever said to him: "They deserve to die, they are informers, they are collaborators" on any other occasion, or made this remark to any other person.

I attach a signed witness statement by John Goetz of Der Spiegel confirming that I never made the "they're informants, they deserve to die" remark at the dinner, which Mr Goetz attended, as is claimed in David Leigh's libellous book. I also attach a translation of an excerpt from Marcel Rosenbach and Holgar Stark of Der Spiegel's book Staatsfeind Wikileaks (published in Germany on 24 January 2011) which describes the same dinner and which clearly shows that I readily entered into the discussion of redactions for the Afghan War Diaries, envisaged a technical solution to the problem, and went on to hold back 15,000 field reports for further review in line with WikiLeaks' harm minimisation policy. There is no mention in Staatsfeind Wikileaks of my making 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 published by Guardian reporter David Leigh.

This link gives an alternative translation of this excerpt, for verification of its accuracy:

<http://ccwlja.wordpress.com/2011/06/03/staatsfeind-wikileaks-harm-minimization-and-the-afghan-war-logs/>

I appreciate, of course, that it is a very serious matter to make allegations of perjury in respect of someone's oral testimony to a judicial inquiry. I also appreciate that my assertion that Mr Davies has made false statements to the Leveson Inquiry while under oath is based on newspaper reports of the proceedings rather than sight of the Inquiry's transcript of that day's hearing, and that the Inquiry Team will first wish to verify exactly what Mr Davies said during his oral testimony against the 29 November transcript before taking the matter any further.

Nick Davies' role as a witness to the Inquiry is uniquely central. The Leveson Inquiry was set up to investigate the phone-hacking scandal and decide upon the future regulation of press standards in the UK on the back of Mr Davies' reporting of the hacking of Milly Dowler's voice messages and resulting public outcry, and his witness testimony therefore carries especial weight. He has in fact given oral evidence twice, submitted two detailed witness statements, commented on the current state of UK press standards and regulation, and offered suggestions regarding future regulatory bodies for the Inquiry's consideration.

Clearly a judicial inquiry must have confidence in the integrity of the sworn evidence of its witnesses and Lord Justice Leveson and the Inquiry Team may wish to investigate further whether the matter I have outlined above has compromised that confidence.

Yours sincerely,

Julian Assange

Attached: Signed statement by John Goetz.pdf  
staatsfeind-wikileaks.pdf  
Wikileaks Inside Assange's War on Secrecy pages 110-112-1.pdf

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From: Sophie Argent  
To: Julian Assange  
Date: Jul 25, 2012 9:22 AM

Dear Mr Assange,

Thank you for your email.

In relation to the submission of the witness statement to the Leveson inquiry, Ofcom does not object to you submitting this to the Inquiry. However, please inform the Leveson Inquiry at the time of submission, that this document has been submitted to Ofcom and explain that it is subject to Ofcom's requirement of public non disclosure.

With regard to the use of the witness statement outside of Ofcom's investigation in general, I would again like to remind you that Ofcom may take action if we consider that any wider disclosure compromises or risks compromising our decision or is an abuse of process. Please note that in relation to any material from the broadcaster, which was provided to you in the



course of this investigation by Ofcom, you will need to seek permission from the broadcaster first if you wish to use this material outside of the investigation.

Yours sincerely,

:: Sophie Argent  
Standards Executive

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From: Leveson Inquiry Solicitors Team  
To: Julian Assange  
Date: Jul 26, 2012 11:22 AM

Dear Mr Assange

Thank you for your email, the contents of which are noted. I will forward this to the Counsel team and if the Inquiry has any further questions, I will come back to you.

Many thanks

Abi Brooks

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From: Julian Assange  
To: Sophie Argent  
Date: Aug 2, 2012 10:55 AM

Dear Sophie Argent,

Thank you for your 25 July email regarding our submission of John Goetz' witness statement to the Leveson Inquiry. Your comments are noted and I will let the Inquiry know of Ofcom's need for public non-disclosure.

Thank you also for your 17 July email enclosing Channel 4's second response and confirming that Ofcom will now prepare its final adjudication. As Channel 4 notes, my submission introduced no new grounds, although there was plenty of additional evidence to back the points made in my original complaint. I will leave it to Ofcom to decide how Channel 4's latest assertion that a restaurant was too noisy for anyone to be sure of what they heard - and therefore Mr Goetz' statement is "of no evidential value" - ties in with the David Leigh book excerpt they earlier submitted as evidence, which states: "There was, for a moment, silence around the table", and Mr Leigh narrating on screen during the programme: "this stuck in everybody's minds because there was a sort of a pause, as a little chill went round the table, he said well they're American informants they deserve to die" (transcript pg 44).

You state that Ofcom is now in a position to prepare its final adjudication. However, Channel 4 anticipates that Ofcom may request further information I assume they mean the interview footage of the Der Spiegel journalists - before doing so to resolve "a significant dispute of

fact between the complainant and the broadcaster" in light of my new evidence, and that they are willing to supply such further information.

Channel 4 goes on to say that my second submission does not challenge Ofcom's Preliminary View - when indeed I do, throughout - and that I make no case for errors of fact or process on Ofcom's part. This is incorrect as I state clearly in my submission that Ofcom's Preliminary View is flawed by a failure of its investigative process in not obtaining the unedited interview footage of the Der Spiegel participants, which will resolve many of my substantive arguments about misrepresentation.

As you know, I alerted Ofcom early on to independent statements made by the Der Spiegel journalists indicating that the unedited Der Spiegel interview footage would show such misrepresentation and I therefore respectfully insist that Ofcom now requests this footage from Channel 4 before reaching its final adjudication.

Yours sincerely,

Julian Assange

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From: Sophie Argent  
To: Julian Assange  
Date: Sep 6, 2012 10:03 AM

Dear Mr Assange,

Thank you for the representations that you made on Ofcom's Preliminary View on your complaint.

Ofcom has now finalised its Adjudication, following representations from you and Channel 4, and it will be published in Ofcom's Broadcast Bulletin. A copy of the Adjudication will be sent to both parties shortly before publication.

Yours sincerely,

:: Sophie Argent

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From: Sophie Argent  
To: Julian Assange  
Date: Sep 10, 2012 9:53 AM

Dear Mr Assange,

Further to my email to you on 6 September 2012, please find attached Ofcom's adjudication on your complaint. This will be published in Ofcom's Broadcast Bulletin at 10am today.

Yours sincerely,

Sophie Argent

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