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10 July 2012

Sent by courier and email: Sophie.argent@ofcom.org.uk

Dear Sophie

**RE: TRUE STORIES: "WIKILEAKS: SECRETS AND LIES", MORE 4, 29TH NOVEMBER 2011
FAIRNESS AND PRIVACY COMPLAINT TO OFCOM FROM JULIAN ASSANGE –
CASE NO. 1-196583661**

I am responding to your email of 26th June 2012.

Under Ofcom's "Procedures for the consideration and adjudication of Fairness and Privacy complaints" ("the Ofcom Procedures") it states in paragraph 1.24 "*...After receiving any representations from the complainant Ofcom will provide both the preliminary view and those representations to the broadcaster, requesting its representations within 10 working days.*" Ofcom has given Channel 4 the opportunity pursuant to paragraph 1.24 of the Ofcom Procedures to make representations on the Preliminary View which has been sent to both parties. Julian Assange ("the Complainant") has made further lengthy submissions to Ofcom in a document entitled: "*Response to Channel 4 Ofcom submission and Ofcom Preliminary View*".

Ofcom has not yet considered this document but will do so along with any further representations we now make. Paragraph 1.25 of the Ofcom Procedures states: "*Once Ofcom has received and considered the broadcaster's and complainant's representations...on its preliminary view, it will then make its final Adjudication. 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 (for example, if there is a significant dispute of fact between the complainant and the broadcaster), Ofcom may seek such further information."

Having read his response document, we agree with the Complainant on only one point which is that *"none of the [response] introduces any new grounds to [his] complaint"*. Although Ofcom has not yet sought any *"further information"* we anticipate that the submission by the Complainant of a signed statement from John Goetz, on which he places heavy reliance, may be considered by Ofcom to amount to a *"significant dispute of fact between the complainant and the broadcaster"* and therefore we will address this in our representations. We are happy to answer any other requests for further information Ofcom deems appropriate but in our view this is the only new and substantive matter raised by the Complainant.

In his response, Mr Assange concedes that he was mistaken and it was in fact Marcel Rosenbach who, with his colleague from *Der Spiegel* John Goetz, attended the dinner at Moro restaurant in London along with Mr Assange and the *Guardian* reporters David Leigh and Declan Walsh, and not Holgar Stark as the Complainant asserted in his original complaint.

In Channel 4's Response to the Complaint we stated:

*"The dinner at Moro restaurant in London was attended by Julian Assange, Declan Walsh and David Leigh of the Guardian, and John Goetz and Marcel Rosenbach of Der Spiegel. Holger Stark of Der Spiegel told the Producers (on camera in his interview) that he was not there and was away at the time. Unsurprisingly perhaps, but Declan Walsh, the Guardian's Afghan correspondent, entirely supports David Leigh's account. In fact in the Guardian book "WikiLeaks Inside Julian Assange's War on Secrecy" co-authored by David Leigh, it is reported that Declan Walsh, who is quoted, was particularly concerned by this comment, which he calls "callous", on the basis of his knowledge of the country, and the virulence of its feuds, see **Appendix 6**. Marcel Rosenbach declined to be interviewed for the Programme and John Goetz would not discuss the dinner on camera. However, Mr Goetz did not at any time tell the Producers that Mr Assange did not make this statement."*

Channel 4 stands by this summary of the differing accounts of the dinner conversation. It is common ground that two people, both *Guardian* journalists, have a clear and specific recollection of what Mr Assange said and that Mr Assange denies there was such a disagreement. Only Mr Rosenbach and Mr Goetz can assist. Mr Rosenbach declined to be interviewed for the Programme and Mr Goetz would not discuss the matter on camera. The fresh point of dispute is that whilst we

assert that "*Mr Goetz did not at any time tell the Producers that Mr Assange did not make this statement*", Mr Goetz has now told Mr Assange that, at a meeting prior to his interview being recorded, he specifically told the director of the Programme, Patrick Forbes, in response to a direct question, that Julian Assange did not make the statement "*they're informants, they deserve to die*" at the Moro dinner.

There are two separate issues here which Mr Assange confuses in his response. First of all, and most significantly we argue, is what Mr Goetz said or did not say to the programme makers about the dinner and secondly: is this a matter that is capable of such a categorical and unqualified refutation?

On the first issue, Patrick Forbes confirms that Mr Goetz did not tell him that Julian Assange did not make the statement "*they're informants, they deserve to die*" and nor did he say any words to that effect. There is no independent record of the meeting to support one account over the other. Mr Goetz may well believe that he said this but Mr Forbes says that, had he done so, he would have raised the issue during his interview to see if he would be prepared to speak about it. Mr Forbes agrees that Mr Goetz told him he would not discuss the dinner on camera but that he did not give the reason that this was because it was a "*private meeting*".

On the second issue, the reliance that should be placed on the recollection, whilst we do not suggest Mr Goetz is untruthful and we must accept his account that he did not hear the disputed words, we would be surprised if he was categorically able to state that Mr Assange did not say them. Moro is a busy and noisy restaurant and we understand that the dinner was not in a private room. The dinner was attended by five journalists and it is hard to imagine that everyone would have been able to hear everything spoken by all of the other four men throughout the entire dinner. To this extent, the credibility of the categorical nature of this statement is open to question.

We hope that this clarifies the Channel's position. In our submission the statement from Mr Goetz takes the matter no further and there remains a conflict of accounts in relation to the Moro dinner, as the Programme reflected.

Turning to the rest of the Complainant's response we would like to make the following brief points:

1. The Complainant's response largely represents an attack on Channel 4's Response to the Complaint rather than a challenge to Ofcom's Preliminary View. Ofcom has not invited a second round of submissions and indeed the Ofcom Procedures do not allow for this. To

seek to add to or improve his complaint is an attempt to circumvent due process. The Complainant makes no case whatsoever that Ofcom has made errors of fact or law in reaching its Preliminary View.

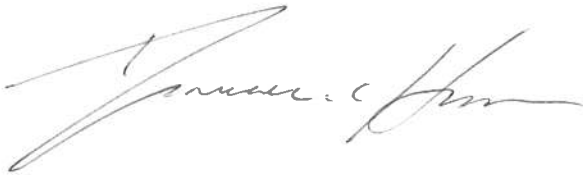
2. The Complainant places heavy and repeated reliance on the John Goetz statement which we have addressed above. We note that Mr Assange uses it to suggest that Mr Leigh's claims are libellous of him. He will no doubt take his own legal advice before publishing such assertions. We note the repeated references to libel peppered throughout the response. We draw Ofcom's attention to this as the Complainant should be reminded that Ofcom is determining and adjudicating on whether the Programme treated him unfairly or amounted to an unwarranted invasion of privacy and not on the truth or otherwise of disputed claims. To try to misuse the forum in this way is an abuse of process and suggests that this is merely a "stalking horse" for possible future unspecified legal action.
3. The Complainant expressly states he is intending to publish "*once the confidentiality requirements of this Ofcom investigation have been met...our (sic) full unedited footage of my interview for the programme – as well as all other materials submitted for Ofcom's adjudication – so that the public may judge for themselves the lengths to which the programme makers went to produce a biased and one-sided smear documentary to suit the agenda of those who, it is now clear, were from the start their unofficial co-production partners – the Guardian newspaper.*" We would ask that Ofcom reminds the Complainant that the submissions made to them, including unbroadcast material, remain confidential, save to the extent that they are directly quoted from in Ofcom's adjudication. There is a clear public interest, underpinned by Article 10, in licensees and programme makers feeling able to provide confidential production material such as emails and rushes to defend complaints to the regulator without fear that they will be published lock stock and barrel by a complainant at the end of the process. This is particularly important when the motivation of the complainant is to subvert the process of Ofcom and undermine its findings, made after due process, simply because the Complainant disagrees with them. In addition the copyright in the interview rushes is vested in the production company and so their intellectual property rights would also be infringed by the proposed publication

Having dealt with the statement from Mr Goetz and demonstrated it is of no evidential value whatsoever, our submission is that the Complainant's response raises no new issues that require either our detailed rebuttal or merit Ofcom's re-consideration or amendment of its

Preliminary View other than, if it deems it appropriate, to refer to the dispute between the parties regarding Mr Goetz's new account.

We consider that the Preliminary View should stand otherwise unamended.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dominic C Harrison', with a stylized flourish at the end.

Dominic C Harrison
Lawyer, Legal and Compliance