

# Quarterly review

## Legal Team

Q4 - 2015/16

Approximate team size during this quarter: 11 FTE

*Time spent: strengthen 70%, focus 15%, experiment 15%*

*Public Version:*

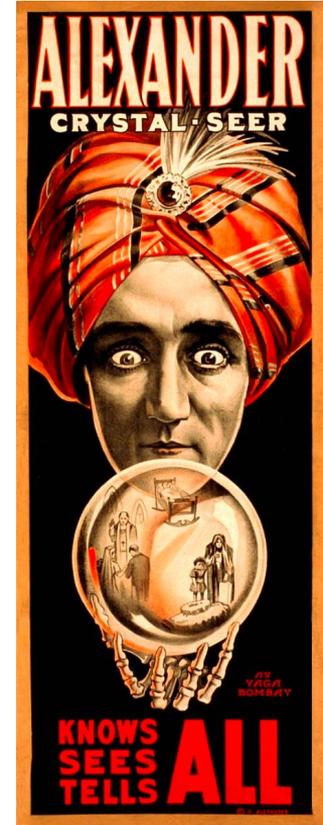
*Select items have been removed for confidentiality purposes*

*\*Temporary staff this quarter: 12 legal fellows/interns (no more than 7 at one time).*

- **Core.** Our core work remains in good shape.
  - **Trends.** Contract requests down (88→68 (↓23% YOY)); trademark permission requests up (31→46 (↑48% YOY)).
  - **Litigation.** We've had a mix of wins and losses. The wins affect us positively as a platform (such as intermediary liability). The losses affect limited site content (such as narrow copyright issues).
- **Public policy.** Our public policy work is building traction. We've submitted position papers to government bodies and wrote key blog posts while continuing to build relationships both inside and outside the Wikimedia movement.

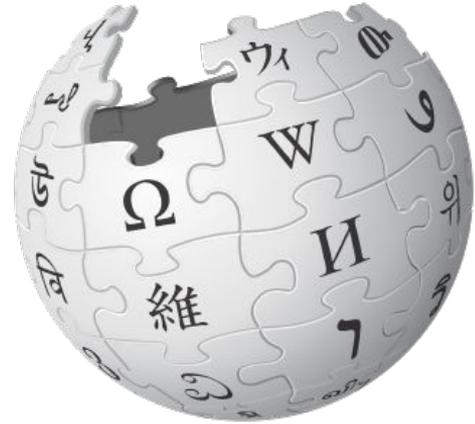
# Q4 - Legal

- **Developments:**
  - **Won fortune-teller case in France.** Elizabeth Teissier lost her appeal. The French court ruled that WMF is a hosting provider and doesn't control project content. She may appeal further.
  - **Won filmmaker case in Germany.** Evelyn Schels failed to force removal of her birthdate from Wikipedia based on privacy grounds.
  - **Lost museum case in Germany.** District court ruled that the Reiss-Engelhorn Museum's pictures of public domain art could receive copyright in Germany. WMDE successfully dismissed from the case. We filed an appeal.
  - **Lost WMSE case in Sweden.** Supreme Court sided with rightsholder organization, saying that pictures of copyrighted works can't be distributed online due to its reading of local statute. Supreme Court sent the case back to the district court for further arguments, where WMSE continues to defend.
  - **NSA lawsuit continues.** We filed reply brief and launched an [informational webpage](#).



# Q4 - Legal

- **Scam sites.** Went after domains that were misusing our trademarks to direct traffic to scam sites.
- **Misuse.** Filed oppositions to misleading TM registrations.
- **Parody.** Worked with a parody site to include a disclaimer.



**WIKIPEDIA**  
The Free Encyclopedia

# Q4 - Legal

- **Program Overview.** We've had **21 interns and fellows** in FY 15-16 from **13 different law schools**, including Harvard, Yale, Berkeley, and Vanderbilt.
  - ~**125 memos written** this FY, on topics including net neutrality, privacy, and copyright.
- **Privacy Fellows.** We have a **partnership with Georgetown**, which sponsors fellows who specialize in privacy. In FY 15-16, we've hosted **3 privacy fellows**.
- **Panel Event.** The summer intern team organizes an annual panel event highlighting a trending legal topic. Last year's mass digitization panel drew over **110 attendees**. This year's topic is artificial intelligence and the law.



Objective	Measure of success	Status
<p><b>Transition:</b> Support interim and permanent ED transition and recruitment.</p> <p><i>Team members involved: 4</i></p>	<ul style="list-style-type: none"><li>• Successful transition and location of strong ED candidates.</li><li>• Satisfaction of Board.</li></ul>	<ul style="list-style-type: none"><li>• Successful interim ED transition.</li><li>• Permanent ED selected.</li></ul>

# Q4 - Legal

Objective: Public Policy



Objective	Measure of success	Status
<p><b>Public policy:</b> Address and support, as appropriate, key issues that could threaten or compromise the mission and projects</p> <p><i>Team members involved: 5</i></p>	<p>Accomplishment of the following:</p> <ul style="list-style-type: none"><li>• Submissions on copyright reform in EU and US.</li><li>• Build relationships with Wikimedians interested in policy.</li><li>• Promote public domain government works.</li><li>• Develop a longer-term strategy for our copyright reform responses.</li><li>• Complete Berkman Center censorship study.</li></ul>	<ul style="list-style-type: none"><li>• Submitted comments to EU copyright consultations.</li><li>• Participated in US Copyright Office discussion on notice-and-takedown.</li><li>• Built relationships in LatAm &amp; EU. Held policy discussions at Wikimania.</li><li>• Opposed bill that would take California gov't works from the public domain.</li></ul> <ul style="list-style-type: none"><li>• Copyright reform response strategy not written.</li><li>• Censorship study will be completed in early July.</li></ul>

# Q4 - Legal

Objective	Measure of success	Status
<p><b>Core:</b> Excellent, quick legal advice and support on host of issues constituting 33 legal workflows.</p> <p><i>Team members involved: 11</i></p>	<p>Positive evaluative analysis (color:green) at the end of quarter for each workflow. Meet SLAs and KPIs. Workflows include WMF and user litigation, content and user data protection, privacy, trademarks, compliance, governance, Board duties, training, contracts, etc.</p>	<ul style="list-style-type: none"><li>● Core legal advice and daily operations to the satisfaction of ED and C-levels per KPI.</li><li>● Board work completed on time and according to protocol.</li><li>● Supported approval of annual plan.</li><li>● Launched new survey review process.</li><li>● Win in French fortune-teller case.</li><li>● Win in German filmmaker case.</li><li>● Turn-around rate for legal@ exceeded KPI.</li><li>● Trademarks percentage of successful applications met KPI.</li><li>● Contracts turn-around rate exceeded KPI.</li></ul> <ul style="list-style-type: none"><li>● Loss in German museum case.</li><li>● Loss in WMSE case.</li><li>● FY litigation wins at 60%, below KPI. 3 wins; 2 losses + NSA. Losses anticipated per litigation strategy.</li></ul>

# Q4 - Legal

Objective	Measure of success	Status
<p><b>Experiment:</b></p> <ul style="list-style-type: none"><li>Unplanned: Facilitate and provide bandwidth for unplanned innovative projects or needs with no or minimal legal hurdles (5%).</li></ul> <p><i>Team members involved: 4</i></p>	<ul style="list-style-type: none"><li>Satisfaction of ED and C-level peers.</li></ul>	<ul style="list-style-type: none"><li>Round 1 of the Labs terms of use consultation completed with feedback from Labs developers.</li></ul>

- ❑ **Core strong.** Daily maintenance of 33 core workflows, often requiring detailed analysis and resources.
- ❑ **Victory in French intermediary liability case.** In the Elizabeth Teissier case, the French appeals court held that the Wikimedia Foundation was a hosting provider and was therefore not liable for the information in the article about Ms. Teissier (which detailed many of the incorrect fortunes she had predicted). This sets an important precedent for future French cases in WMF's favor.
- ❑ **Victory in German privacy case.** The German district court ruled in our favor after Dr. Evelyn Schels sued the WMF to remove her birthdate from the article about her. The court held that the information was not private because Dr. Schels had published her birthdate in her dissertation and because of her position in society as a filmmaker.
- ❑ **Endowment finalization.** Provided support for finalizing the Wikimedia Endowment Advisory Board and the initial grant agreement from WMF to seed the Endowment.

- ❑ **US Copyright Office discussion participation.** Following our written comments on the topic last quarter, we spoke at a Copyright Office-led discussion on the DMCA's notice-and-takedown process. We emphasized the importance of community oversight of our copyright policies and warned against imposing additional burdens on platforms.
  
- ❑ **California anti-public domain bill defeated.** We opposed AB 2880, a bill in the California Senate that would allow the California state and local government to put copyright restrictions on work they create. EFF, Medium, Wikimedia DC, and other groups also expressed concern with the bill. The bill's author amended it to remove the offending provision.

- ❑ **Loss in German copyright case.** In the Reiss-Engelhorn Museum case, the German district court held that photographs of photographs contain enough skill and effort (e.g., lighting, angle, filters) to qualify for their own copyright under German law. We plan to appeal the case, emphasizing the impact the decision may have on the public domain.
- ❑ **Loss in WMF-funded Swedish copyright case.** The Swedish Supreme Court held for BUS (a rightsholder association) in its lawsuit against WMSE. BUS claimed WMSE's database of Commons photos of public art in Sweden infringed their copyright. Sweden has freedom of panorama (FOP), which allows people to take and share pictures of public art, but the Court said FOP does not apply to sharing pictures publicly on the Internet in this instance. The Court sent the case back to district court, where WMSE is currently continuing to defend.

# Q4 - Legal

## Appendix B: Legal Scorecard



Legal Scorecard	Q4	QoQ (Q4/Q3)	YoY	Type
Contract Requests	68	28% ↑ (68/53)	23% ↓ (68/88)	M
Trademark Permission Requests	46	28% ↓ (46/64)	48% ↑ (46/31)	M

## Appendix E: CC License Attributions



Slide 3	<u>Poster of Alexander Crystal Seer</u>	Public Domain
Slide 5	Photo by Stephen LaPorte and Jacob Rogers. Edited by Charles M. Roslof.	<u>Licensed under CC BY 3.0</u>
Slide 14	<u>Creative Commons icon by Creative Commons</u>	<u>Licensed under CC BY 4.0</u>