

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: DMCA Section 512(h) Subpoena to
Google, LLC

Case No.: 7:25-mc-00554-NSR

MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA

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INTRODUCTION

Movant J. Doe (“Doe”) requests the Court quash a subpoena that uses a flimsy, picayune copyright claim as a pretext to unmask an anonymous speaker. Doe has been active in providing research tools for those seeking to understand and question the history of changing religious doctrine published by the Jehovah’s Witnesses, finding and enabling insights about the church’s unsuccessful prophecies, leadership scandals, and increased calls for donations and obedience. In this matter, the Watch Tower Bible and Tract Society (“Watch Tower”) asserts an underlying copyright claim based on a single link to a single document: a rough English translation of a free Watch Tower pamphlet that Doe generated using Google’s automated translation tool. Doe ran the document through Google Translate after another user posted the original, written in Tagalog, in a moderated community on the social media website Reddit. The pamphlet was widely expected to announce changes in the church’s policy of ostracizing those who ask challenging questions or dissent from their teachings. This is a topic of interest to many in Doe’s community, who speak anonymously in an effort to avoid such retaliation, and Doe shared a link to the results of their translation to assist the community’s understanding of the threat they might face and whether the Jehovah’s Witnesses leadership was saying different things in different languages.

This small act of community was entirely non-commercial, educational, and could not possibly harm any licensing market for the original work, if such a market even exists. Indeed, it was such a minimal “use” that it is hard to understand why Watch Tower would bother to pursue it, particularly since the document is no longer available at the identified link or any other location under Doe’s control. In the unlikely event that Watch Tower sued Doe for copyright infringement, a properly pled complaint would likely not survive a motion to dismiss.

For Doe, however, any such motion would come too late. The disclosure of Doe’s identifying information to Watch Tower will allow the Jehovah’s Witnesses organization to identify Doe using information they already have, due to Doe’s lifelong membership in the church. Doe’s lifelong experience makes Doe afraid to question or doubt religious doctrine or leadership in public. Doe knows that dissenting points of view are strongly discouraged in the Jehovah’s Witnesses community, and that those who express them are likely to be labeled “apostates” and excommunicated, or “disfellowshipped.” For Doe, like others who grow up and live their lives within the Jehovah’s Witnesses community, that label means alienation from friends, family, and coworkers.

The First Amendment protects anonymous speech precisely to prevent the harms Doe now faces. A party seeking to pierce anonymity via civil subpoena must consider five factors originally set forth in *Sony Music Ent. Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 564-65 (S.D.N.Y. 2004) and adopted in *Arista Recs., LLC v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010). These factors counsel strongly in favor of quashing the subpoena, because Doe’s sharing of this document constitutes a lawful fair use and because Watch Tower’s subpoena has not, and cannot, overcome the significant First Amendment interests at stake.

Chilling Doe’s speech deprives U.S. audiences of truthful information. Doe resides outside the U.S., but just as First Amendment protections for reporters apply to foreign publications that have U.S. audiences, so too should First Amendment protections for anonymity apply here. Further, disclosure would send a chilling message to others in the community—the majority of whom appear to be located in the U.S.—that questioning, criticism, or dissent may lead to legal action. Declaration of J. Doe in Supp. Mot. Quash Subpoena to Google, LLC Seeking Identity (“Doe Decl.”) ¶ 15. More broadly, having chosen to invoke U.S. law and

process to force a U.S. company to take action, Watch Tower (also a U.S. entity) should be required to respect U.S. free speech standards.

Finally, in the alternative, given the weakness of the underlying claim and the severe, irreparable harm disclosure would cause, the Court can and should exercise its inherent power to quash the subpoena.

STATEMENT OF FACTS

I. ORIGIN AND PURPOSE OF THE LINKED DOCUMENT

The Subpoena’s underlying copyright claim concerns a Google Drive link to a translation of a Watch Tower “Study Articles” pamphlet dated August 2024. Doe Decl. ¶ 12. Doe first saw the original document—which was published in Tagalog—in June 2024, when another anonymous user posted it in the “exjw” community, an online forum on the Reddit platform for questioning and former Jehovah’s Witnesses, in which Doe participates. *Id.* A third user sought help understanding the pamphlet, which was not yet available in English, because that user, Doe, and others in the community believed it contained information about changes in Jehovah’s Witnesses’ “disfellowshipping” policy. *Id.* Understandably, members of the “exjw” Reddit community are concerned about the organization’s practice of punishing those who question its leadership.

To assist with the study and understanding of church policy, Doe used Google’s automated translation tools to make a rough translation of the pamphlet. *Id.* Doe posted the result of the translation to Google Drive and shared a link with the “exjw” Reddit community so that the community could understand its contents. *Id.* Making a document like this legible to English readers enables the community to understand whether the church is saying different things to different audiences and gives dissenters a chance to foresee changes in how the church may treat them.

Doe is a lifelong member of the Jehovah’s Witnesses community. Doe Decl. ¶ 2. Most of Doe’s friends, family, and coworkers are Jehovah’s Witnesses. *Id.* Doe cares deeply about this religious community, but Doe has some questions, doubts, and concerns about aspects of the organization, including changes in its teachings and practices over the years. *Id.* ¶¶ 2, 6. Doe is known in this Reddit community, and to Watch Tower, for their research into Jehovah’s Witnesses’ doctrine.

In the “exjw” Reddit community, Doe is known for the research they do into historical Jehovah’s Witnesses publications. As part of this research, Doe created and shared an archive of historical Watch Tower publications, including many that are not available from official sources or for which official sources have been altered by Watch Tower. Doe Decl. ¶¶ 3-4. Doe also created and shared text- and data-mining software tools to analyze the frequency of use of particular words, phrases, and citations to Bible verses over time in Watch Tower publications. *Id.*

Doe’s intent was to provide their community with objective and unbiased information about Jehovah’s Witnesses’ teachings and share historical statements and beliefs of the Jehovah’s Witnesses that history has discredited, such as predictions of the date on which the world will end. *Id.* ¶¶ 6-7. Doe also hoped to enable others to understand how Watch Tower’s language and approach has changed over time by showing, for example, increases in calls for obedience and for donations. *Id.* ¶ 6.

Doe has never made any money, nor sought to do so, in connection with the activities described here. *Id.* ¶¶ 11, 13. Doe’s purposes have always been education, research, and community support. It was in this context that Doe created and shared the translation identified in the instant subpoena (“the Subpoena”). Watch Tower has also sent a subpoena requesting

Doe's identifying information to Cloudflare, Inc., a service Doe used to protect their anonymity. *In Re Subpoena to Cloudflare, Inc.*, Dkt. No. 7:25-mc-00555-KMK (S.D.N.Y.). Doe is also moving to quash that subpoena.

II. WATCH TOWER'S ATTEMPT TO UNMASK DOE FOR SHARING TRUTHFUL INFORMATION ABOUT JEHOVAH'S WITNESSES' DOCTRINE

Watch Tower is a non-profit corporation that assists the Governing Body of Jehovah's Witnesses organization. *See generally* "What is the Watch Tower Bible and Tract Society?," JW.org, <https://www.jw.org/en/jehovahs-witnesses/faq/watchtower-society/>; *see also Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 153 (2002) ("Watchtower Bible and Tract Society of New York, Inc., coordinates the preaching activities of Jehovah's Witnesses throughout the United States and publishes Bibles and religious periodicals that are widely distributed.").

Google, LLC ("Google") is a technology company that provides a wide range of online services, including Google Drive for cloud-based file storage.¹ Doe stored the document at issue in their Google Drive account. Doe Decl. ¶ 12. Google Drive also allows users to share links to specific files stored in a Google Drive account, and Doe used this feature to share a link to the document on Reddit. *Id.*

Watch Tower sent a DMCA takedown notice to Google on July 30, 2025 seeking the removal of the document. Google acknowledged receipt the following day and disabled access to the document. *See* Decl. of Melanie Baptiste Jean-Noel in Supp. Req. for DMCA Subpoena, Exh. A, ECF No. 4-1 (Dec. 4, 2025). Doe has not reposted the document. Doe Decl. ¶ 20.

¹ "What you can do with Drive," <https://support.google.com/a/users/answer/9310246?sjid=16022517291413482579-NC> (accessed Mar. 7, 2026).

Nevertheless, months later, Watch Tower served the Subpoena on Google. *See* Ord. Granting Subpoena, ECF No. 5 (Dec. 4, 2025). The Subpoena seeks the identity of the subscriber associated with the Google Drive account containing the document at issue, and any logs of IP addresses, including time stamps, used to access the account. *See* Req. for Issuance of DMCA Subpoena, Ex. A, ECF No. 1-1 (Dec. 4, 2025). Doe learned of the subpoena on or after December 18, 2025, when Doe viewed a YouTube video that discussed a subpoena served on Google. Doe Decl. ¶ 17. Based on that video, Doe determined that the subpoena referenced the single translated document Doe posted to Google Drive. *Id.*

The Court granted Doe leave to file this motion on January 23, 2026. Ord. Granting Letter Motion for Conference, ECF No. 15. As of the date of this motion, Doe understands that Google is holding production of the requested information pending the outcome of this motion or an amicable resolution of this matter. *See* Decl. of Elizabeth Femia in Supp. Mot. Quash Subpoena to Google, LLC (“Femia Decl.”) ¶ 4.

III. THE HARMFUL EFFECTS OF FORCED DISCLOSURE ON DOE AND OTHERS.

Doe has worked to maintain anonymity when sharing information in the “exjw” community and elsewhere online. Doe Decl. ¶ 14. Doe wishes they could share their research, research tools, and other documents and information openly and publicly, but in Doe’s experience, different opinions—and even questions—are strongly discouraged within the Jehovah’s Witnesses community. *Id.* ¶ 2, 20. The Jehovah’s Witnesses organization responds to people who regularly voice such concerns by labeling them “apostates” and excommunicating or “disfellowshipping” them. *Id.*

If Watch Tower receives the information sought in the Subpoena, the organization will likely be able to match that information to Doe's membership information it has on file, allowing Watch Tower to identify Doe. *Id.*

Doe fears that identification will lead current Jehovah's Witnesses to distance themselves from Doe or shun Doe entirely. *Id.* ¶¶ 2 & 16. Once a person is "disfellowshipped," other Jehovah's Witnesses, including friends and family members, cut off nearly all social interactions. *Id.* Doe has personal knowledge of people in their community who have been shunned by Jehovah's Witnesses due to the opinions they have voiced. *Id.* Media reports and studies from around the world also report the fact and harm of disfellowshipping in the Jehovah's Witnesses community. *See* Femia Decl. ¶ 3, Ex A. Individuals who have left the Jehovah's Witnesses, including those who have been involuntarily shunned for making choices the church disapproves of, have attested to the harm and total social isolation that comes from "disfellowshipping." *See id.* These accounts describe the long-term and profound mental suffering that ex-adherents feel when their close friends and families shun them in accordance with the explicit and implicit pressures of the Jehovah's Witnesses community. *See id.*

Watch Tower's actions have already stopped the flow of truthful information online. The document has been removed. Doe Decl. ¶ 20. If Watch Tower succeeds in unmasking Doe's identity, it will chill Doe's online speech permanently and Doe will not feel comfortable sharing truthful information about the Jehovah's Witnesses. *Id.*

Doe is not a resident of the United States. Doe Decl. ¶ 15. However, Watch Tower's subpoena invokes U.S. process to force a U.S. company to disclose personally identifying information in connection with communications that targets U.S. users, among others. The

subpoena is directed to Google, LLC, a U.S. company based in Mountain View, CA.² The document at issue was available to users around the world, including in this country.

ARGUMENT

I. THE DMCA SUBPOENA PROCESS SHOULD NOT BE A TOOL TO IDENTIFY AND INTIMIDATE RELIGIOUS DISSENTERS AND CRITICS.

A. The Court Should Apply A Robust Test Given the Core Speech Interests at Stake.

It is well established that the First Amendment protects the right to anonymous speech. *Antonyuk v. James*, 120 F.4th 941, 1003 (2d Cir. 2024); *Arista Recs.*, 604 F.3d at 118 (citing *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 199–200 (1999); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341–42 (1995)). Protecting the right to speak anonymously protects “unpopular individuals from retaliation—and their ideas from suppression.” *McIntyre*, 514 U.S. at 357.

As the Second Circuit has made clear, the right to speak anonymously applies in full force to online speech. *Cornelio v. Connecticut*, 32 F.4th 160, 170 (2d Cir. 2022) (“The First Amendment protects this interest in anonymous speech as much on the internet as in other fora.”). In fact, the internet is a “particularly effective forum for the dissemination of anonymous speech,” and this, in turn, encourages a robust and expansive exchange of ideas. *Sony Music*, 326 F. Supp. 2d at 562 (citing *Doe v. 2TheMart.Com, Inc.*, 140 F. Supp. 2d 1088, 1092, 1097 (W.D. Wash. 2001) (“Internet anonymity facilitates the rich, diverse, and far ranging exchange of ideas” and thus “the First Amendment right to speak anonymously[] must be carefully

² See “*Google LLC*,” Bloomberg, <https://www.bloomberg.com/profile/company/8888000D:US> (last visited Mar. 6, 2026) (listing company address as 1600 Amphitheatre Parkway Mountain View, CA 94043).

safeguarded.”). Like the ability to speak anonymously in pamphlets at the time of the nation’s founding, the ability to speak anonymously online today allows individuals to express themselves freely without fear of retaliation or “social ostracism.” *McIntyre*, 514 U.S. at 341-42.

Accordingly, while litigants may unmask anonymous speakers in appropriate circumstances, those requests must satisfy First Amendment scrutiny. *See, e.g., In re R. 45 Subp. Issued to Cablevision Sys. Corp. Regarding IP Address 69.120.35.31*, No. 08MC347 ARR MDG, 2010 WL 1686811, at *2-3 (E.D.N.Y. Apr. 26, 2010) (granting motion to quash subpoena to an internet service provider that sought to identify an anonymous poster on a message board).

Section 512(h) subpoenas are no exception. *See In re DMCA Sec. 512(h) Subp. to YouTube (Google, Inc.)*, 581 F. Supp. 3d 509, 515 (S.D.N.Y. 2022). To determine whether to quash a Section 512(h) subpoena, courts must weigh the need for disclosure against the First Amendment interests at stake. Courts in this Circuit consider five factors when conducting this balancing: “(1) [the] concrete[ness of the plaintiff’s] showing of a prima facie claim of actionable harm, ... (2) [the] specificity of the discovery request, ... (3) the absence of alternative means to obtain the subpoenaed information, ... (4) [the] need for the subpoenaed information to advance the claim, ... and (5) the [objecting] party’s expectation of privacy.” *Arista Records*, 604 F.3d at 119 (adopting test set forth in *Sony Music*, 326 F. Supp. 2d at 564–65) (the “*Sony/Arista* factors”).

Here, the Court should apply this test mindful that Doe has engaged in paradigmatic First Amendment-protected activity: public education and critical commentary on religious teachings and practices. In *Sony* and *Arista*, the underlying copyright claim concerned peer-to-peer file sharing of popular music, something the *Sony Music* court determined “qualifies as speech, but only to a degree” because it is not “true expression.” *Sony Music*, 326 F. Supp. 2d at 564. The

court contrasted file sharing with activity “seeking to communicate a thought or convey an idea,” such as participating in an online chat room or posting on an internet bulletin board. *Id.* An underlying claim that does not implicate “purely expressive” speech raises “less risk that disclosure of...identity will have a chilling effect on actual expressive activity.” *In re Rule 45 Subpoena Issued to Cablevision Sys. Corp. Regarding IP Address 69.120.35.31*, No. 08-347 ARR MDG, 2010 WL 2219343, at *9 (E.D.N.Y. Feb. 5, 2010).

Doe’s effort to share an English translation of a document explaining critical changes to Jehovah’s Witnesses doctrine was intended to facilitate community education and commentary and is therefore precisely the “true expression” that *Sony Music* distinguished from file sharing. It is speech that seeks to encourage discussion and “communicate a thought” about matters of public concern. *Sony Music*, 326 F. Supp. 2d at 564; *see In re R. 45*, 2010 WL 2219343, at *9.

Doe’s online expression would be significantly chilled if Watch Tower is able to unmask their identity. Doe Decl. ¶ 20. Where the speech at issue is core First Amendment-protected expression, enforcing an unmasking subpoena could enable a litigant “to impose a considerable price on [another’s] use of one of the vehicles for expressing his views that is most likely to result in those views reaching the intended audience.” *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 980-81 (N.D. Cal. 2005); *see In re R. 45*, 2010 WL 2219343, at *9 (recommending motion to quash subpoena seeking to identify anonymous message board user given strong First Amendment interests at stake).

B. Watch Tower’s Copyright Claims Are Meritless Because Doe Has Engaged in a Non-Infringing Fair Use.

The *Sony/Arista* factors and the balance of interests strongly counsel in favor of quashing Watch Tower’s subpoena. Most significantly, Watch Tower cannot make out a *prima facie* claim of actionable harm because Doe’s website constitutes lawful fair use. *See Tufenkian Imp./Exp.*

Ventures, Inc. v. Einstein Moomjy, Inc., 338 F.3d 127, 131 (2d Cir. 2003) (“The defendant can defeat a *prima facie* showing of infringement by proving that the doctrine of ‘fair use’ permits her employment of the plaintiff’s [work].”).³ This, on its own, is sufficient to warrant quashing the subpoena, all other factors aside. *See In re DMCA Sec. 512(h) Subp. to YouTube*, 581 F. Supp. 3d at 509 (quashing subpoena after finding fair use because “if the fair use inquiry demonstrates that [Movant] is not an infringer of Watch Tower’s copyrighted works, [then] the subpoena must be quashed”).

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.” 17 U.S.C. § 107. This “list of factors is not exhaustive,” and “some factors may prove more important in some contexts than in others.” *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 19 (“[W]e have understood the provision to set forth general principles, the application of which requires judicial balancing, depending upon relevant circumstances, including ‘significant changes in technology.’”) (citation omitted).

All four factors favor fair use here. Moreover, Doe’s work satisfies the “ultimate test of fair use,” which asks “whether the copyright law’s goal of ‘promoting the Progress of Science and useful Arts’ would be better served by allowing the use than by preventing it.” *Blanch v. Koons*, 467 F.3d 244, 251 (2d Cir. 2006) (cleaned up).

³ As a matter of law, a fair use is not a *prima facie* infringement. *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151-52 (9th Cir. 2015) (“Fair use is not just excused by the law, it is wholly authorized by the law.”).

1. The Purpose and Character of the Use Strongly Favor Fair Use.

The first factor examines the commercial or noncommercial character of the use; the transformativeness of the use; and the relationship of the use to the purposes of copyright. We address each of these issues in turn.

a. Doe’s use was noncommercial.

“There is no doubt that a finding that copying was not commercial in nature tips the scales in favor of fair use.” *Google LLC*, 593 U.S. at 32. Doe provided this document to the public without any fees at all, and with no expectation of commercial gain. Doe Decl. ¶ 13. The use is therefore not commercial in nature. *See Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 922 (2d Cir. 1994), as amended (July 17, 1995) (“The commercial/nonprofit dichotomy concerns the unfairness that arises when a secondary user makes unauthorized use of copyrighted material to capture significant revenues as a direct consequence of copying the original work.”).

b. Doe’s use was transformative.

A transformative use is one that “adds something new, with a further purpose or different character.” *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 528 (2023) (citation omitted). An “altered purpose or context of the work, as evidenced by surrounding commentary or criticism” can be transformative, even if the work is not altered. *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 84 (2d Cir. 2014).

Watch Tower disseminates its study guides as religious instruction to Jehovah’s Witnesses.⁴ Doe, in contrast, posted the translated study guide as part of ongoing critical review

⁴ *See* The Watchtower (Jan. 2026), at 32 (available at <https://www.jw.org/download/?issue=202601&output=html&pub=w&fileformat=PDF%2CEPUB%2CJWPUB%2CRTF%2CTXT%2CBRL%2CBES%2CDAISY&alllangs=0&langwritten=E&txtCMSLang=E&isBible=0>) (“This publication ... is provided as part of a worldwide Bible educational work.”).

of Watch Tower doctrine by a community of questioning members and former members concerned about their risk of being disfellowshipped. Doe Decl. ¶¶ 7, 12. This change in context and purpose is transformative under the first fair use factor. *Swatch Grp.*, 756 F.3d at 84-85 (despite using identical language, “Bloomberg’s message—‘This is what they said’—is a very different message from Swatch Group’s—‘This is what you should believe.’”); *see also Authors Guild v. Google, Inc.*, 804 F.3d 202, 214 (2d Cir. 2015) (a transformative use is one that “communicates something new and different from the original or expands its utility, thus serving copyright’s overall objective of contributing to public knowledge.”).

Moreover, Doe’s use of the translation in a context of criticism is transformative because at the time Doe posted the translation, the study guide containing this critical information was available only to Tagalog speakers. Doe Decl. ¶ 12. Providing the information to a new audience had “at least an arguably transformative character.” *Swatch Grp.*, 756 F.3d at 85.

In addition, Doe’s use is also because Doe’s audience—participants in the “exjw” community on Reddit—sought access to the document in English, not for its aesthetic, creative, or religious merit, but to learn the facts it contained about changes in the church’s policy on disfellowshipping. Doe Decl. ¶ 12; *A.V. ex rel. Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 640 (4th Cir. 2009) (use was transformative where it was “completely unrelated to expressive content.”).

c. Use of the study guide for criticism furthered a purpose the law favors.

The doctrine of fair use “allows the public to use copyrighted works ‘for purposes such as criticism, comment, news reporting, teaching ... and scholarship.’” *Art of Living Found. v. Does I-10*, No. 10-CV-05022-LHK, 2011 WL 5444622, at *6 (N.D. Cal. Nov. 9, 2011) (quoting 17 U.S.C. § 107). For example, the court in *Art of Living* considered the doctrine likely applicable

where the blogger “appear[ed] to have published the [materials] ... as part of a larger effort to” criticize the party seeking disclosure, specifically by “debunk[ing] the notion that the Art of Living Foundation and Ravi Shankar possess some ‘secret higher knowledge.’” *Id.*; see also *New Era Publications Intern., ApS v. Carol Pub. Grp.*, 904 F.2d 152 (2d Cir. 1990) (the use of copyrighted quotations in a biography of Church of Scientology founder L. Ron. Hubbard was protected fair use where the intended purpose of the work was to show that “Hubbard was a charlatan and the Church a dangerous cult”).

Fair use exists, in significant part, to protect uses that are unlikely to be permitted by the copyright owner. See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 585 (1994). Watch Tower’s hostility to dissent demonstrates that the research enabled by Doe’s uses simply would not take place if Watch Tower had the legal right to suppress it. This too supports fair use under the first factor.

2. The works are factual and published, favoring fair use.

The second fair use factor favors uses of primarily factual works, as facts themselves are not copyrightable. See *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 563 (1985) (“The law generally recognizes a greater need to disseminate factual works than works of fiction or fantasy.”).

Here, the document is a pamphlet purporting to present factual information about Jehovah’s Witnesses doctrine, and it is these factual claims that were of interest to the “exjw” community to which Doe directed the posted translation. “If the disputed use of the copyrighted work ‘is not related to its mode of expression but rather to its historical facts,’” any fictional or creative content in the work becomes less relevant. *Vanderhye*, 562 F.3d at 640 (quoting *Stewart v. Abend*, 495 U.S. 207 (1990)).

The scope of fair use is broader with respect to published works, and narrower with respect to unpublished works. *Harper & Row*, 471 U.S. at 564. That is because “the author’s right to control the first public appearance of his expression weighs against such use of the work before its release,” since the use of an unpublished work risks “supplanting the copyright holder’s commercially valuable right of first publication.” *Id.* at 562, 564. Where a work has already been “widely published,” by contrast, that fact “weighs a bit in favor of fair use.” *Lennon v. Premise Media Corp.*, 556 F. Supp. 2d 310, 325 (S.D.N.Y. 2008).

Here, the document was published prior to Doe’s use. While the document had been published in Tagalog but not in English, it had still been published, and an unofficial machine translation done to get the gist of the church’s policies towards those it viewed as apostates would be no substitute for any subsequent, authoritative proclamation on the subject in English in Watch Tower’s own words.

3. Because Doe’s required use of the entire pamphlet, the third factor does not weigh against fair use.

The third factor favors fair use where the amount of the original work used is “reasonable in relation to the purpose of the copying.” *Campbell*, 510 U.S. at 586. In other words, it asks whether the challenged use “employs more of the copyrighted work than is necessary, and whether the copying was excessive in relation to any valid purposes asserted under the first factor.” *Authors Guild v. HathiTrust*, 755 F.3d 87, 96 (2d Cir. 2014). “For some purposes, it may be necessary to copy the entire copyrighted work, in which case Factor Three does not weigh against a finding of fair use.” *Id.* at 98.

For example, the copying of entire books was held to be fair use in both *Authors Guild v. Google* and *Authors Guild v. HathiTrust*; the copying of entire movies was held to be fair use in *Sony*. In each of those cases, the copying of the entire copyrighted work was necessary to

effectuate the favored purpose and character of the defendant's use. If Google had only scanned part of the books, it would not have been able to compile a comprehensive search index; if HathiTrust had only scanned part of the books, it would not have been able to make the books readable by the visually impaired; if Sony's VCR could only record part of a movie, it would be useless for noncommercial time-shifting.

Just so here. Doe's sharing of the translated document is valuable specifically because it presents a complete picture of the change in doctrine announced in the pamphlet. If English-speaking readers were to understand the contents of the Tagalog document in order to assess any changes to the risks they faced by questioning church doctrine and leadership, they needed to know what it said in full. And the pamphlet had to be posted without censorship to have any credibility.

Because these are purposes for which it is "necessary to copy the entire copyrighted work," this is a case in which "Factor Three does not weigh against a finding of fair use." *Id.* at 98.

4. Because there is no market harm, but a public benefit, the fourth factor favors fair use.

The fourth fair use factor examines "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107. It looks to both "potential loss of revenue" and "the public benefits the copying will likely produce." *Google LLC*, 593 U.S. at 35. "The less adverse effect that an alleged infringing use has on the copyright owner's expectation of gain, the less public benefit need be shown to justify the use." *MCA, Inc. v. Wilson*, 677 F.2d 180, 183 (2d Cir. 1981).

Watch Tower provides its recent publications free of cost for the public to read, so Doe's posting of the translated study guide did not impact Watch Tower's revenues in any way. *See*

The Watchtower, *supra* n.4, at 32 (“This publication is not for sale. It is provided as part of a worldwide Bible educational work supported by voluntary donations.”). “A use that has no demonstrable effect upon the potential market for, or the value of, the copyrighted work need not be prohibited in order to protect the author’s incentive to create.” *Sony Corp. of Am. v. Universal City Studios, Inc.* 464 U.S., 450–51 (1984). Additionally, the context of Doe’s use was criticism, a use that Watch Tower was unlikely to license, which forecloses market harm under the fourth factor. *Campbell*, 510 U.S. at 592 (1994) (“[T]he unlikelihood that creators of imaginative works will license critical reviews or lampoons of their own productions removes such uses from the very notion of a potential licensing market.”).

In summary, all four statutory factors support a finding of fair use.

C. The Other *Arista* Factors Support Quashing the Subpoena.

1. Watch Tower Has Not Established That There Are No Alternative Means to Identify Doe.

Other than serving a similar subpoena on Cloudflare, Watch Tower has provided no evidence of other steps it has taken to identify Doe. A contention that there are no alternative means “must be supported by competent evidence.” *Malibu Media, LLC v. Doe*, No. 15-CV-1883 LTS KNF, 2015 WL 1780965, at *2 (S.D.N.Y. Apr. 10, 2015) (holding factor not met where “plaintiff’s submissions are devoid of any information describing what, if any, alternative means the plaintiff attempted to use”); *see also Sony Music*, 326 F. Supp. 2d at 566 (finding the factor met where plaintiffs explicitly outlined steps they took to identify the Doe defendant); *Strike 3 Holdings, LLC v. Doe*, No. 3:22-CV-301-VLB, 2022 WL 1050341, at *3 (D. Conn. Mar. 10, 2022) (finding the factor met with a declaration from a computer forensic expert describing why alternative means were impossible). The Cloudflare subpoena suffers from the same infirmity.

2. The Subpoenaed Information is Not Necessary to Advance a Claim, Because Any Claim is Pretextual.

Watch Tower has similarly failed to establish the fourth factor: that the subpoenaed information is necessary to advance a claim. Not only is Doe’s sharing of the document a lawful fair use, the allegedly infringing content has already been taken offline and is not available anywhere under Doe’s control. Doe Decl. ¶ 20.

3. The Disclosure of Doe’s Identity and Status as a Dissenter Will Violate Doe’s Expectation of Privacy and Cause Irreparable Harm to Doe.

The fifth factor—the objecting party’s expectation of privacy—weighs decisively against disclosure. Doe has a compelling expectation of privacy in their identity, and the harm from unmasking would be irreparable.

As the *Arista Records* court made clear, the privacy interest at stake is in Doe’s identity and anonymity. 604 F.3d at 124 (“The privacy claimed here is not for the information that the computer owner or user wishes to share but rather for his or her *identity*.”) (emphasis added). The fact that Doe has shared the archive and research tools with others does not undermine Doe’s privacy interest, because the privacy interest is *not* in the information Doe wishes to share. *Id.* (rejecting magistrate judge’s view that “‘any pretext of privacy’ on the part of a computer owner is ‘render[ed] void’ simply by ‘the notion [that he] allow[s] others to have access to [his] database’”).

Doe’s privacy interest in their identity is substantial for the same reason the First Amendment protects anonymous speech at all: without privacy in identity, those with unpopular or dissenting views—like Doe—cannot speak freely. *See Talley v. California*, 362 U.S. 60 (1960) (“Persecuted groups and sects...throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.”). The First Amendment protects a speaker’s

“desire to preserve as much of one’s privacy as possible” because the speaker may fear retaliation or face “social ostracism” for their words. *McIntyre*, 514 U.S. at 341–42. A similar privacy interest is also implied by the First Amendment’s protection of free religious exercise: “[f]ear of the consequences of the disclosure of one’s religious affiliation may be palpable and real at a certain point in history. There is, therefore, . . . implicit in the First Amendment’s guarantee of religious freedom, the right to choose whether or not to disclose one’s religious affiliation lest forced disclosure inhibit the free exercise of one’s faith.” *Johnson v. Washington Times Corp.*, 208 F.R.D. 16, 17 (D.D.C. 2002).

These are precisely the concerns at stake here. Doe’s identity as a participant in the “exjw” Reddit community remains unknown within the broader Jehovah’s Witnesses community. Disclosure would thus reveal Doe’s religious views, including concerns with aspects of the organization’s teachings and practices, and expose Doe to the very retaliation and ostracism the First Amendment is designed to prevent. This implicates not only Doe’s free speech rights, but also Doe’s right to free religious exercise, and the privacy interests rooted in both. Disclosure would also discourage others in the Jehovah’s Witnesses community from exercising those same rights for fear they too may be unmasked. *See Art of Living Found.*, 2011 WL 5444622, at *6 (“disclosure of the [blogger’s] identity could deter other critics from exercising their First Amendment rights.”).

There is also a heightened privacy interest if revealing an anonymous speaker’s identity would subject the speaker to community disapproval or substantial embarrassment. *See Strike 3 Holdings*, 2022 WL 1050341, at *3 (applying *Sony/Arista* test and finding privacy interest warranting protective order where underlying infringing material was pornography). If Doe’s questioning and criticism of the Jehovah’s Witnesses is made public, Doe may be treated as an

apostate and disparaged, disregarded, or shunned by friends, family members, and professional connections in the Jehovah's Witnesses community. Doe's privacy interest thus goes far beyond mere embarrassment and community disapproval. *See id.* The emotional harm to Doe will be overwhelming.

That harm, once done, cannot be undone by a subsequent favorable ruling. Before Doe ever has an opportunity to present defenses on the merits of Watch Tower's claim, Doe will already have lost what matters more: the right to communicate freely without impairing personal and professional relationships. Discovery, including the DMCA's rapid-fire subpoena process, is supposed to provide the parties with information they need for litigation, not impose extrajudicial penalties.

For these reasons, Doe has a strong privacy interest in protecting their identity that counsels strongly in favor of granting the motion to quash.

4. First Amendment Protections Apply to Foreign Nationals Where, As Here, a Party Seeks to Invoke U.S. Legal Process to Force a U.S. Company to Disclose Information in Connection with Communications Targeting U.S. Users.

Doe anticipates that Watch Tower will try to argue that First Amendment balancing should not apply to this motion because Doe is a foreign national. That assertion is wrong, for at least three reasons.

First, neither *Sony Music* nor *Arista Records* suggests that the First Amendment only applies to attempts to unmask online speakers when those speakers are U.S. citizens or physically present in this country. Indeed, in situations involving small numbers of speakers, a test tied to residence could threaten the ability of U.S. citizens to engage in anonymous speech by forcing them to disclose their nationality or location and thus imperil their anonymity in order to save it. Instead, as a sister circuit has rightly concluded, "the *nature of the speech* should be a

driving force in choosing a standard by which to balance the rights of anonymous speakers in discovery disputes.” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1177 (9th Cir. 2011) (citing *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160–61 (9th Cir. 2010); *Doe v. Reed*, 561 U.S. 186 (2010)) (emphasis added). Here, the critical nature of Doe’s speech and the chilling effects of disclosure make this Court’s consideration of the First Amendment essential.

Second, the underlying claim in this case concerns information of interest to—and directly shared with—a group comprised of many U.S. readers. Doe Decl. ¶ 12. The First Amendment protects the right of these U.S. readers to receive information and ideas, including those originating abroad or from foreign speakers. *See Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Lamont v. Postmaster Gen.*, 381 U.S. 301, 307 (1965) (finding First Amendment protection related to materials produced abroad); *Am. Acad. of Religion v. Chertoff*, 463 F. Supp. 2d 400, 414 (S.D.N.Y. 2006) (finding U.S. citizens have a First Amendment right to receive speech from non-U.S. speakers).

Courts in analogous contexts have recognized that people like Doe, who use U.S. platforms to communicate with U.S. and international audiences, can invoke First Amendment protections. *See, e.g. Mireskandari v. Daily Mail & Gen. Tr. PLC*, No. CV1202943MMMSSX, 2013 WL 12114762, at *6 (C.D. Cal. Oct. 8, 2013) (holding that allegedly defamatory statements published abroad were subject to First Amendment protections); *Estate of Klieman v. Palestinian Authority*, 293 F.R.D. 235, 241 (D.D.C. 2013) (reporter’s privilege applied to subpoena for documents related to a documentary produced in the United Kingdom); *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) (holding that a foreign media organization had a right of access to court documents under the First Amendment).

Third, and most broadly, Watch Tower is a U.S. organization relying on U.S. copyright law and legal process to force a U.S. company to disclose the identity of the poster. Watch Tower's use of U.S. legal machinery in this manner would not only silence Doe, but also chill dissent in an entire community of speakers, including many speakers based in the U.S. *See Ragbir v. Homan*, 923 F.3d 53, 71 (2d Cir. 2019) (holding use of U.S. legal process against non-citizen speaker implicated First Amendment concerns not only for that speaker, but for the broader community of people chilled by observing the government act against him). Watch Tower should therefore satisfy First Amendment scrutiny regardless of whether the Doe happens to be a foreign national.

II. THE SUBPOENA MUST BE QUASHED TO PROTECT DOE AND OTHERS FROM REPRISAL, OPPRESSION, UNDUE BURDEN, INTIMIDATION, AND HARASSMENT BY WATCH TOWER

In addition to and independent of First Amendment protections, courts have a duty to quash a subpoena that subjects any person to annoyance or oppression.

To start, Rule 45 mandates that courts quash a subpoena if it subjects a person to “undue burden.” Fed. R. Civ. P. 45(c)(3)(a)(ii). As described above, Watch Tower's subpoena imposes substantial burdens on Doe, who will be irreparably harmed if their identity is disclosed. I.C.3, *supra*. Though some courts have refused to grant third party standing to challenge a subpoena as unduly burdensome under Rule 45, the uniquely harmful effects of this subpoena, coupled with the de minimis nature of the underlying claim, counsel strongly in favor of granting Doe's motion to quash.

Moreover, Rule 45 must be read in conjunction with Rule 26, which protects both a “party or *person*” from oppressive or embarrassing subpoenas and discovery requests. Fed. R. Civ. P. 26(c)(1) (emphasis added); *see also In re Edelman*, 295 F.3d 171 (2d Cir. 2002) (reading Rules 45(c)(3)(A)(ii) and 26(c) “[t]ogether”); *In re Gen. Motors LLC Ignition Switch Litig.*, Nos.

14-MD-2543, 14-MC-2543, 2015 WL 4522778, at *6 (S.D.N.Y. July 24, 2015) (granting protection under Rule 26(c) to guard against “embarrassment, harassment, and invasions of privacy” of non-parties).

The Court here should exercise its power to restrict discovery. As the Supreme Court put it, “district courts should not neglect their power to restrict discovery where ‘justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Herbert v. Lando*, 441 U.S. 153, 177 (1979) (quoting Rule 26(c)); *see also Gambale v. Deutsche Bank AG*, No. 02 Civ. 4791, 2003 WL 115221, at *2 (S.D.N.Y. Jan. 10, 2003) (granting motion to quash subpoenas because such discovery “would subject plaintiff to necessary annoyance and embarrassment within the meaning of Rule 26(c)”). Under Rule 26, such protections include “forbidding the disclosure or discovery.” Fed. R. Civ. P. 26(c)(1)(A).

In assessing the need for protection, courts balance the burden the request imposes, the relevance of the information sought, the breadth of the request, and the litigant’s need for the information. *Herbert*, 441 U.S. at 177. Watch Tower cannot establish a true need for the information because Watch Tower’s underlying claims are likely to fail, given that Doe’s sharing constitutes a lawful fair use. I.B, *supra*.

Additionally, “[e]ven if relevant, discovery is not permitted . . . where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information.” *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990).

Here, Doe faces embarrassment, reputational harm, damage to longstanding and ongoing personal relationships, and the risk of exclusion from Doe’s lifelong religious community. These concerns are based on Doe’s firsthand experience in the Jehovah’s Witnesses community. They are reflected in Doe’s decision to communicate only anonymously, and to take down their

archive website since they learned of this subpoena. *See Doe Decl.* ¶¶ 14, 20. And they are substantiated by media reports of such exclusion resulting from disfellowshipping of dissenting and disaffiliated Jehovah’s Witnesses. *See Femia Decl.* ¶ 3, Ex. A.

In considering the burdens of disclosure, the Court should also weigh the significant First Amendment harm to others if Watch Tower is allowed to unmask dissenters in this manner. A case from a sister circuit provides clear guidance here. In that case, the plaintiff sought identifying information about a blogger who had published copyrighted materials “as part of a larger effort to debunk the notion that the Art of Living Foundation and Ravi Shankar possess some ‘secret higher knowledge.’” *Art of Living*, 2011 WL 5444622, at *6. Given the critical nature of the blogger’s comments in relation to such “political, religious, or literary” material, the court recognized that disclosure would have a chilling effect on the blogger as well as others. *See id.* That meant “disclosure of the [blogger’s] identity could deter other critics from exercising their First Amendment rights.” *Id.* (citing *Highfields*, 385 F. Supp. 2d at 980–81 (“When word gets out that the price tag of effective sardonic speech [includes disclosure of the speaker’s identity], that speech likely will disappear.”)). Taking these factors into account, and recognizing that the post at issue was a likely fair use, the court quashed the subpoena.

In this case, Doe shared a document that helped people better understand and assess changes in doctrine announced by a powerful religious organization with adherents around the world, including in this country. *Doe Decl.* ¶¶ 12, 15. The document contained truthful, factual information about a matter of public concern—the disfellowshipping practices of the Jehovah’s Witnesses. As such, it is analogous to the posts at issue in *Art of Living*, as is Watch Tower’s attempt to use the subpoena process to unmask an online speaker.

Given the manifestly pretextual nature of Watch Tower's claims, this Court should not allow Doe and others to suffer these harms.

CONCLUSION

For the foregoing reasons, Doe respectfully requests the Court grant the motion to quash Watch Tower's subpoena.

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Respectfully submitted,

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