



BEST LEGAL  
DEPARTMENTS 2015

WIKIMEDIA

BY BRIAN GLASER

# The Wiki-Snipers

A NONPROFIT PIONEERS A PRACTICE IN WHICH ITS  
COMMUNITY IS TREATED AS CO-COUNSEL.

**COMMUNITY. MISSION.** Those are the key words you hear over and over at the Wikimedia Foundation. The legal department, in-house clients and even outside counsel repeat them like mantras. And while general counsel Geoff Brigham says them as much as anyone, he does so with feeling. “They’re not empty words—they cannot be empty words,” he emphasizes, because Wikimedia’s community of writers, editors, photographers and other volunteers around the world are the engine that powers Wikipedia and the WMF’s other projects. “They’re the reason we’re here.”

To understand why we’ve chosen Wikimedia as one of this year’s Best Legal Departments, let’s begin with the WMF’s mission “to empower and

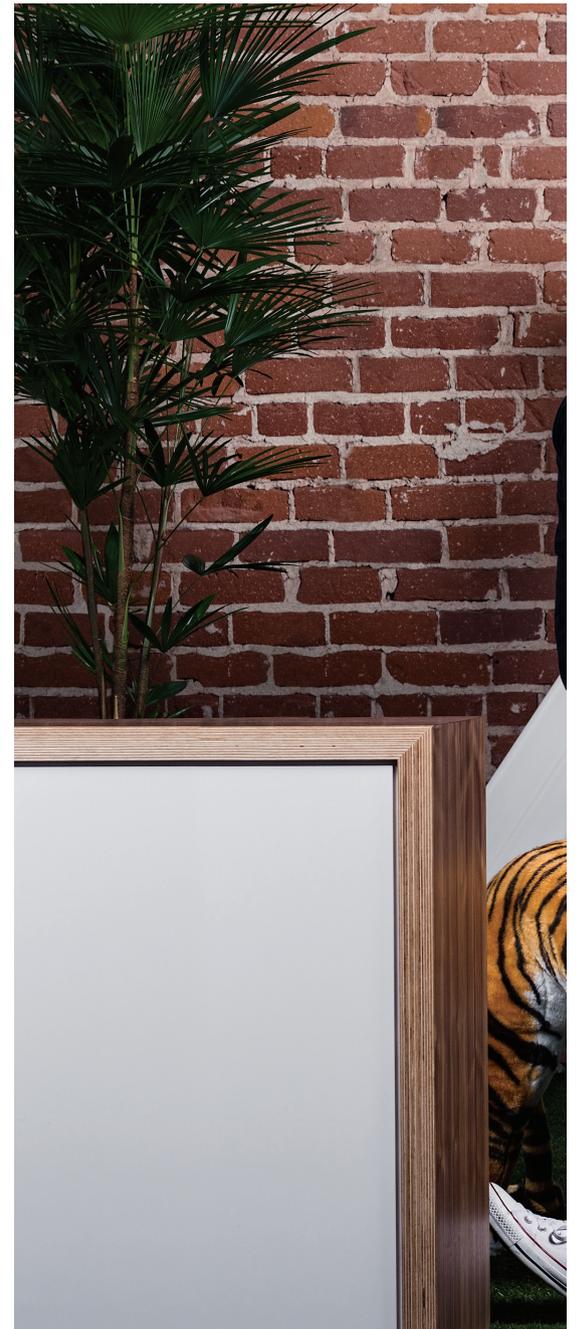
engage people around the world to collect and develop educational content under a free license or in the public domain, and to disseminate it effectively and globally.”

It’s not too different from Google’s mission “to organize the world’s information and make it universally accessible and useful.” But Google Inc. is a for-profit company with a fiduciary duty to its shareholders; the San Francisco-based Wikimedia Foundation is a nonprofit that is funded by donors and oversees 15 freely accessible online properties, including the flagship Wikipedia, Wikimedia Commons (photos and videos), Wikibooks (digitized public-domain books) and Wikispecies (a database of living and fossil species).

Everything on these properties is

available under Creative Commons licensing, and the content is created and managed by volunteers. The sites are accessed in more than 200 languages by half a billion people per month. And WMF’s legal department has all of six lawyers.

Brigham’s tight-knit team is, in many ways, the model of gender, ethnic and experiential diversity that many in-house departments aspire to. Providing legal support for WMF’s staff of about 250 are two senior legal counsel, Michelle Paulson and Yana Welinder; three legal counsel, Manprit Brar, Stephen LaPorte and Jacob Rogers; and paralegal Rachel Stallman. While each lawyer has official specialties, the breadth and depth of topics for which the department is responsible means





WIKIMEDIA'S LAWYERS, PARALEGAL, INTERNS AND MASCOT (RORY)

PHOTOGRAPHY BY WINNI WINTERMEYER

that they all have to be ready to work on just about anything.

How does Brigham's team do it all? The WMF's executive director, Lila Tretikov, puts it this way: "You can have an army of soldiers, or you can have a team of snipers. They're a team of snipers."

Brigham laughs when he hears that, but he's also quick to expand on the metaphor. "We have an army," he says, "which is our community." Becoming a member of this community, he suggests, means that they're passionate about knowledge—and the legal issues that affect their topics. So his army can, when called upon, be somewhat like a team of 100,000 paralegals. And while Brigham is careful to note that they are not lawyers, "they become specialists in certain parts of the body of law—they

care about copyright violations, and they immediately, when they see those violations, take action."

**THE VOLUNTEER COMMUNITY HAS A** number of set processes for dealing with issues before they become legal problems. If someone reports a copyright violation or claims information is defamatory, a community editor has online resources and guidelines to determine if it's something that can be fixed quickly or needs to be escalated to the lawyers.

The result is a self-policing system that puts out most fires before they require the legal department's attention. LaPorte says that only two or three issues a month typically get escalated, and last year the WMF received just

eight Digital Millennium Copyright Act takedown notices. When you consider the volume of content, that's as close to zero as a legal team could ask.

Which is not to say that the snipers aren't ready to do battle. The WMF is a frequent advocate in debates and litigation about online privacy and public policy, and in March, Wikimedia was one of the plaintiffs that filed a lawsuit against the National Security Agency over its "upstream" surveillance of Internet traffic.

The scale of content means that inevitably the community is going to be sued. "People don't like what's said about them on the Internet, no matter how true it may be," says senior counsel Paulson. "And they think litigation might be the answer."

**WE LIKE:** Clear sense of mission; plain-language work product **COULD DO BETTER:** Leading public policy debates

When volunteer writers or editors become targets, the WMF department has to walk a tricky line: Volunteers are active stakeholders in WMF properties, but they are not employees and cannot be the legal department’s clients. So the team has developed strategies to protect the sites and the community.

One way they do this is through programs that provide financial support for users who have been sued. This includes directing funds to cover legal fees and giving the community access to lawyers around the world. “We look for people who understand what our mission is—they buy into it, and they see themselves as defenders of it,” says Paulson.

Patrick Gunn, who is partner in charge of Cooley’s San Francisco office and one of the foundation’s outside counsel, says, “I don’t think I have other clients with such an expansive and ambitious mission as the WMF.” And while the content of much of the legal work he does for Wikimedia is fairly typical, Gunn says he has had to adapt his process to the foundation’s focus on involving the users. “We will find ourselves working with the legal department and also with their community,” he notes, and those interactions with the community often will shape the legal strategy. “They tell me the points to push.”

Brigham does bring a more traditional corporate

approach to assembling an outside counsel network. Before he joined Wikimedia in 2011, he was deputy GC at eBay Inc., and prior to that had a long career at the U.S. Department of Justice. During his seven years at eBay, Brigham developed relationships with outside counsel who are well-versed in legal issues facing Web-based organizations, many of whom now work with Wikimedia. And he taps into AdvanceLaw, a coalition that connects GCs with vetted attorneys who do quality work at reasonable prices.

But the most potent tool Wikimedia brings to filling its outside counsel pool is its recognizable public profile. “We have a strong brand,” says Brigham. “People want to represent us.”

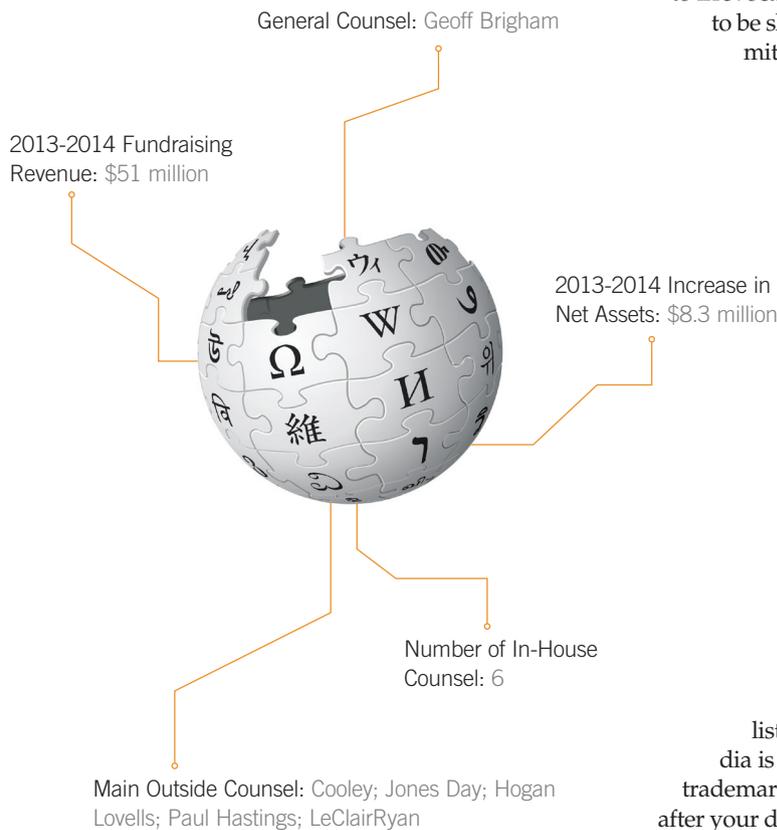
**WIKIMEDIA’S SAN FRANCISCO OFFICES ARE ACROSS THE street from Yelp and a few minutes away from Twitter. The vibe in the office is decidedly Silicon Valley, right down to the free snacks.**

But to understand how their ethos diverges from the for-profit Web companies that surround it, step into one of the bathrooms. Next to the sinks are baskets filled with mouthwash, hair care products and other toiletries. They’re not put there by management. Each basket is filled by WMF employees. Above the baskets is a sign that reads: “This basket exists for one reason: the free and open sharing of personal grooming items. By submitting these items, you agree to irrevocably release them. If you do not want your items to be shared and redistributed at will, then do not submit them here.”

It’s a cheeky nod to the rules that govern Wikipedia and the other online wiki-projects. But the baskets also are well-stocked because the employees are not joking about working together for the greater good.

“The Internet needs public parks,” says Brigham, who sees the WMF’s projects as the public spaces that balance the business-driven environments that make up more and more of the Web. Of the 100 most-visited websites, Wikipedia is the only nonprofit. (Google and Facebook occupy the top spots.) “I have nothing against the for-profit world,” he says. “I’ve loved all my other jobs. At eBay I felt we were empowering small business owners economically. But at Wikipedia I have a role along with our community, along with my colleagues, of making sure we’re defending the public parks of the Internet for the future.”

Any public park has a sign at the entrance listing the rules for using the space—and Wikimedia is no different. Only its rules are about things like trademark use and online privacy instead of cleaning up after your dog.





GC GEOFF BINGHAM VIEWS WIKIMEDIA'S  
COMMUNITY AS PARTNERS.

Despite the topics, these rules have to be as clear as those outside the playground.

Take, for example, the WMF's trademark policy. Like all of Wikimedia's policies, it's posted on a freely accessible Web page, and readers can click the "View History" button to see when and how it's changed. The first thing you'll see is the question that probably brought you to it in the first place: "May I use the Wikimedia marks?" This is followed by three broad varieties of answers: 1) "YES, please!" 2) "YES, but ..." 3) "Sorry, NO." Each of these is followed by links to information relevant to the situation at hand.

Then there's the policy itself, which is five short paragraphs followed by eight subcategories of use and an FAQ. What you won't find is legalese or lawyerly flourishes in which a paragraph is used when a sentence will do. In subsection 3.1, "Use of trademarks on the Wikimedia sites," the entirety of the explanatory text is: "You may use and remix the Wikimedia marks on the Wikimedia sites as you please."

"As general counsel, as a legal department, you have to think broader than simply the legal issues," Brigham says about the policy. "You need to protect your trademarks, but you need to do it within a context—our community." He notes that when his department drafts language on a complex legal issue like IP law, the goal is to produce something that people will actually read and understand. And the policy itself is open-source, so other groups that are looking to draft a similar policy can use it as a starting point.

**WIKIMEDIA'S TRADEMARK POLICY ALSO OFFERS A WINDOW** into how the community is a partner to the legal depart-

ment's work rather than simply a beneficiary. As they were drafting the policy—which was done, as with all of their operating documents, in full view of their community—the department was registering the WMF's various marks with the U.S. Patent and Trademark Office, including the logo of the community (a green globe surrounded by two blue arcs and one red arc).

A year later, the department applied for European Union trademark protection of the logo. "A certain community member said: We don't want that, we want it to be absolutely free, 100 percent," says Brigham. This was in March 2013, but the mark had been registered with the PTO since 2012, and the EU paperwork was already drafted and filed. Instead of viewing the deal as done and ignoring a lone dissenting voice, the GC opened the topic up to a full community consultation. When that process showed a lack of consensus for registering the mark (even though it would be free to use), the WMF legal team went through the process of unregistering it with the PTO and withdrawing the request from the EU.

It's easy to imagine a legal department that had to go through registering and then unregistering a mark being a little annoyed, perhaps embarrassed, or at least not dwelling on it. But Brigham seemed happy to discuss it—and anyway, the whole tale is right there for all to see in detail at [bit.ly/1IIYbfC](http://bit.ly/1IIYbfC).

"When you sign up for this job, you sign up for understanding the community and its history," says Brigham. "I think I missed a cue, but we corrected it—and we corrected it Wikimedia-style." ■