

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re Ex Parte Application of Kiyomichi Ohashi

Plaintiff

v.

Defendant

Civil Action No. 20-mc-80045-TSH

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Cloudflare, Inc.

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Place: Jonathan Polland, Esq. Gordon & Polland LLP
1412 Oxford Street
Berkeley, CA 94709 jp@gordonpolland.com

Date and Time: 03/25/2020 9:30 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/20/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of attorney

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing Kiyomichi Ohashi, who issues or requests this subpoena, are: Jonathan Polland, Esq., Gordon & Polland, 1412 Oxford Street, Berkeley, CA 94709, jp@gordonpolland.com, 415-814-1329

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20-mc-80045-TSH

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*

on *(date)* _____

I served the subpoena by delivering a copy to the named person as follows:

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows.

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information.

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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EXHIBIT A TO SUBPOENA ON CLOUDFLARE, INC.

I. Definitions:

1. The word "DOCUMENT", or any variant thereof, shall further include, but not be limited to, all written, typed, printed, recorded, tape-recorded, transcribed graphic or other reproduced matter or memorialization in any form pertaining to or describing, referring or relating to, directly or indirectly, in whole or in part, the matter that is the subject of a particular request including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, bank statements, bank and savings passbooks, leaflets, books, files, records, memoranda, conference reports, working papers, routing slips, diaries, calendars, appointment books, logbooks, tie sheets, proposals, quotations, memoranda of understanding, checks, canceled checks, statements of account, broker's record or statements, ledgers, billing registers, receipts, books of account, invoices, tape recordings, computer materials, working papers or memoranda, all notations on the foregoing and all copies thereof, as well as each summary, table, graphic, chart, compilation, report, study, tabulation, tally, diagram, drawing, map, illustration or statistical analysis, by whomever prepared, now or formerly in your actual or constructive possession, custody or control. Where a DOCUMENT has been prepared in several copies, or where additional copies have been made that are not identical or are no longer identical by reason of subsequent notation, highlighting or other modification of any kind whatsoever including, but not limited to, notations on the back of pages thereto, each nonidentical copy shall be considered a separate DOCUMENT. DOCUMENT shall also include electronically- stored information, which shall be produced in PDF format with Bates numbering and appropriate confidentiality designations, along with searchable metadata databases.
2. "SUBJECT WEBSITE" means the website which is identified by the following URL:
<https://sonshi.xyz/images/1/1a/Sekuharataibatsu.png>
3. "ACCOUNT" means any Cloudflare account through which any service of Cloudflare, Inc. (including CDN (Content Delivery, Network) services and DNS (Domain Name Server) services) have been provided for the SUBJECT WEBSITE as of February 4, 2020.

II. Documents to Be Produced:

1. All DOCUMENTS identifying the creator or holder of the ACCOUNT from the date the ACCOUNT was created to the date of production in response to this subpoena, including all names, addresses (including those registered as billing addresses), e-mail addresses (including those registered at the time the ACCOUNT was created and those registered as PayPal accounts), and telephone numbers.

2. All DOCUMENTS identifying the webhosts of the SUBJECT WEBSITE.

3. All DOCUMENTS showing all access logs (including dates, times, IP addresses, access types) for the ACCOUNT for the past six months, including access logs for each login (namely, login history of the ACCOUNT).

4. All DOCUMENTS identifying the member(s) joined to the ACCOUNT for the past six months, including all email addresses of the member(s) of the ACCOUNT.

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Attorneys for Applicant Kiyomichi Ohashi



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TSH

CV 20 80045 MISC.

In re Ex Parte Application of
KIYOMICHI OHASHI,
Applicant.

Case No.

**[PROPOSED] ORDER GRANTING
KIYOMICHI OHASHI'S EX PARTE
APPLICATION FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782
PERMITTING DISCOVERY FOR USE
IN FOREIGN PROCEEDING**

This matter comes before the Court on the Ex Parte Application of Kiyomichi Ohashi for an order pursuant to 28 U.S.C. § 1782 granting Mr. Ohashi leave to obtain discovery from Cloudflare, Inc. ("Cloudflare") for use in a contemplated proceeding in Japan (the "Application").

The Court, having fully considered the papers on file and submitted herewith, and good causing appearing:

HEREBY GRANTS the Application of Mr. Ohashi.

**[PROPOSED] ORDER GRANTING KiyOMICHI OHASHI'S EX PARTE APPLICATION FOR AN
ORDER PURSUANT TO 28 U.S.C. § 1782 PERMITTING DISCOVERY FOR USE IN FOREIGN
PROCEEDING**

1 IT IS HEREBY ORDERED THAT KIYOMICHI OHASHI IS GRANTED LEAVE TO
2 issue a subpoena for documents in substantially the same form attached as Exhibit B to the
3 Application (the "Subpoena") directing Cloudflare to produce the documents requested in the
4 Subpoena at the offices of counsel for Mr. Ohashi, Gordon & Polland LLP, 1412 Oxford Street,
5 Berkeley, California 94709, email: jp@gordonpolland.com, or another location mutually agreeable
6 to Mr. Ohashi and Cloudflare.
7

8 IT IS FURTHER ORDERED THAT, KIYOMICHI OHASHI and Cloudflare shall comply
9 with the following requirements so that interested persons have an opportunity to contest the
10 Subpoena if they wish:

11 1. At the time of service of the Subpoena, Mr. Ohashi must also serve a copy of this Order
12 on Cloudflare.

13 2. Within 10 calendar days of service of the Subpoena and this Order, Cloudflare shall
14 notify each of the account holders and account users within the scope of the subpoena that their
15 identifying information is sought by Mr. Ohashi, and shall serve a copy of this Order on each such
16 person.
17

18 3. Cloudflare and/or any person whose identifying information is sought may, within 21
19 days from the date of the notice, file a motion in this Court contesting the Subpoena (including a
20 motion to quash or modify the Subpoena).
21

22 4. Alternatively, any person whose identifying information is sought may, within 21 days
23 from the date of the notice, advise Cloudflare in writing of any objections he or she has to
24 disclosure of the information and the bases for any such objections. Within 10 days of receipt of
25 any such objections, Cloudflare shall so advise the Court.

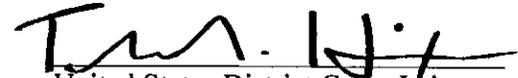
26 5. If any person contests the Subpoena or objects to any portion of it, Cloudflare shall
27

1 preserve, but not disclose, the information sought by the Subpoena pending resolution of that
2 contest or objection.

3 6. Any information Mr. Ohashi obtains pursuant to the Subpoena may be used only for
4 purposes of the anticipated action in Japan for trespass, unlawful business interference and related
5 torts, and Mr. Ohashi may not release such information or use it for any other purpose, absent a
6 Court order authorizing such release or use.
7

8 IT IS SO ORDERED.

9
10 DATED: February 19, 2020 _____


United States District Court Judge
UNITED STATES MAGISTRATE JUDGE

20 MAG 1860

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re Grand Jury Subpoena to Cloudflare, Inc.
dated February 18, 2020, USAO Reference
No. 2020R00203

§ 2705(b)
Non-Disclosure Order
to Service Provider

SEALED

Upon the application of the United States pursuant to 18 U.S.C. § 2705(b):

1. The Court hereby determines that there is reason to believe that notification of the existence of the attached subpoena will result in one or more of the following consequences, namely, endangering the life or physical safety of an individual; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Accordingly, it is hereby ORDERED:

2. Cloudflare, Inc. (the "Provider") shall not, for a period of one year from the date of this Order (and any extensions thereof), disclose the existence of this Order or the attached subpoena, to the listed subscriber of the account referenced in the subpoena, or to any other person, except that the Provider may disclose the attached subpoena to an attorney for the Provider for the purpose of receiving legal advice.

3. This Order and the Application upon which it was granted are to be filed under seal until otherwise ordered by the Court, except that the Government may without further order provide copies of the Application and Order as need be to personnel assisting the Government in the investigation and prosecution of this matter, and disclose these materials as necessary to comply with discovery and disclosure obligations in any prosecutions related to this matter.

Dated: New York, New York

~~FEB 18 2020~~

S/Barbara Moses

UNITED STATES MAGISTRATE JUDGE

Barbara Moses
United States Magistrate Judge
Southern District of New York