

YEVGENIY PRIGOZHIN'S TROLLS RECOIL FROM SUNLIGHT

The other day, I noted that the government had turned the table on Concord Consulting, the Yevgeniy Prigozhin company that funded his troll operation, by asking for some pre-trial subpoenas. The reception of that motion by one of our new guests suggested that the trolls were not responding kindly to treatment to their own medicine.

Concord's response did not disappoint.

The trollish Eric Dubelier complained that if he had to comply with this subpoena, he risks breaking Russian law.

Here, if the Court were to issue the government's requested subpoena, Concord would be able to demonstrate that the request would cause Concord to violate Russian law on Russian soil— a result that is improper under controlling law. See *In re Sealed Case*, 825 F.2d at 498 (party challenging subpoena on basis that it would require the party to violate foreign law bears burden of making such a showing) (per curiam). Specifically, if Concord, individuals acting on its behalf, undersigned counsel, or its Russian counsel were to produce the information requested in the government's proposed subpoena to the government pursuant only to a U.S. subpoena,² they would likely be subject to legal jeopardy in Russia under criminal and other laws.

Treason, hacking, anti-sanction laws – Concord lists a parade of legal jeopardy with complying with this subpoena.

Dubelier even complains that complying with the

parts of the subpoena asking for information on co-defendants charged with identity theft in the US might fall afoul of Russian privacy law.

The materials requested in items 6, 7, 8 and 9 also include documents that, if they exist, would constitute and/or contain personal data that, if Concord had such data, Concord would be generally forbidden by law from producing to the U.S. government or any third-party without each individual's consent under Article 7 of Russian Federal Law 152-FZ, "On Personal Data," paragraph 1 of Article 3 of which defines the term "personal data" broadly as "any information relating to an individual who is directly or indirectly identified or identifiable[.]"

I won't take time to wade through his citations. Some (about the propriety of the subpoena, for example) are bullshit. Others pose interesting questions about the intersection of corporate persons and international law similar to others already raised by this prosecution.

But Concord's response to some of its own medicine sure has produced an amusing response on the part of the trolls.

Update: Here's the government's reply, which lays out details of how it knows Concord has the subpoenaed materials. It also notes that Concord chose to mount a defense, and therefore should not now be able to hide behind its foreign status.

Additionally, Concord voluntarily chose to appear in this case. And, as the Court well knows, Concord has obtained substantial discovery and continues to seek additional information about how the United States detected its activities and detects and responds to related activities more generally. Foreign entities should not lightly be

permitted to come to U.S. courts while shielding themselves from the same obligations that would apply to American defendants. Cf. *In re Grand Jury Proceedings Bank of Nova Scotia*, 740 F.2d 817, 828 (11th Cir. 1984) (explaining that where a bank “voluntarily elected” to do business abroad, it “accepted the incidental risk of occasional inconsistent governmental actions” and “cannot expect to avail itself of the benefits of doing business here without accepting the concomitant obligations”).

[snip]

Concord next contends (Doc. 273, at 13-16) that because it is a foreign corporation located abroad, it cannot be issued a subpoena to produce documents in connection with this case. In particular, Concord urges that its trial counsel “has no authority to accept” a trial subpoena (*id.* at 14) and that the Court, in any event, lacks personal jurisdiction over Concord and therefore cannot order it to produce records (*id.* at 14-16). Concord ignores the critical fact that it is properly a party in this case. The Court therefore can issue orders to Concord concerning this case. That includes a trial subpoena—an order to produce records that are relevant to and admissible in the case.

[snip]

In fact, after Concord initially disputed whether it had been properly served with a summons in this case, the Court confirmed that defense counsel was authorized “to enter a voluntary appearance in this matter and to subject [Concord] to the jurisdiction of this Court.” 5/9/18 Tr. 4-5. The Court clarified that Concord understood “that by doing so, it must also comply In

fact, after Concord initially disputed whether it had been properly served with a summons in this case, the Court confirmed that defense counsel was authorized “to enter a voluntary appearance in this matter and to subject [Concord] to the jurisdiction of this Court.” 5/9/18 Tr. 4-5. The Court clarified that Concord understood “that by doing so, it must also comply with the Federal Rules of Criminal Procedure, the rules of this Court, and with the orders of this Court,” and defense counsel agreed. *Id.* at 5. A trial subpoena is an order of this Court issued in this case pursuant to the Federal Criminal Rules. Yet Concord (through that same counsel) now suggests that the Court has no authority to issue such an order to Concord. Indeed, this raises the question whether Concord believes that the Court has personal jurisdiction with respect to other orders issued in this case, such as the protective order governing the extensive discovery provided to the defense, or the Court’s scheduling order requiring Concord to provide the government with trial exhibits.