

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WOODHULL FREEDOM FOUNDATION, )  
HUMAN RIGHTS WATCH, ERIC KOSZYK, )  
JESSE MALEY, a/k/a ALEX ANDREWS, and )  
THE INTERNET ARCHIVE, )

Plaintiffs, )

v. )

THE UNITED STATES OF AMERICA )  
and JEFFERSON B. SESSIONS, in his )  
official capacity as ATTORNEY GENERAL )  
OF THE UNITED STATES, )

Defendants. )

Case No. \_\_\_\_\_

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**DECLARATION OF BREWSTER KAHLE**

Pursuant to 28 U.S.C. § 1746, I, BREWSTER KAHLE, hereby declare as follows:

1. The facts contained in the following affidavit are known to me of my own personal knowledge, and if called upon to testify, I could and would competently do so.

2. I am a computer engineer, advocate of universal access to knowledge, digital librarian, and founder of the Internet Archive, a 501(c)(3) organization located in San Francisco, California. (<http://archive.org>).

3. I am a member of the National Digital Information Infrastructure and Preservation Program of the Library of Congress, and in 2012, I was inducted into the Internet Hall of Fame for having made “significant contributions to the development and advancement of the global Internet” (<http://internethalloffame.org/about>).

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4. The Internet Archive works to prevent the Internet and other “born-digital” materials from disappearing into the past. It offers permanent access for researchers, historians, scholars, people with disabilities, and the general public to historical collections that exist in digital format. The vast majority of the material in the Internet Archive’s collection is authored by third parties.

5. The Internet Archive has archived web pages since it began in 1996, expanding to include other media types in its digital archives in late 1999. Today, the Internet Archive includes texts, audio, moving images, and software, as well as archived web pages in its collections. The Internet Archive also provides specialized services for adaptive reading and information access for the blind and other persons with disabilities.

6. The Internet Archive collects and displays web materials on behalf of the Library of Congress, the National Archives, most state archives and libraries, as well as universities and other countries, working to preserve a record for generations to come.

7. As part of its mission to create an accurate and historically relevant archive of the Internet, the Internet Archive regularly gathers “snapshots” – accessible copies – of content on the World Wide Web through its “crawling” and indexing processes. The Internet Archive currently crawls and archives approximately 80 million web pages per day.

8. The Internet Archive currently maintains over 330 billion web pages archived from 1996 to (nearly) the present from web sites around the world, including archives of third-party content posted to web sites like craigslist.org.

9. As part of its mission to build an Internet library, the Internet Archive maintains Open Library, which aims to create a public catalog of information about every book ever

published. Open Library also functions as a free digital lending library, providing access to over 2 million scanned public-domain works.

10. The Internet Archive scans and digitizes over one thousand books a day on behalf of libraries, museums, and authors. Many of those books are made available through the Internet Archive, and information on those books is added to Open Library's catalog.

11. Currently, the Internet Archive has over 1.4 million unique users per day across all of its services and adds about 100,000 registered users per month.

12. The Internet Archive circulates over 17 million texts, 5 million audio items, and 4 million video items that are downloaded by tens of millions of users each month.

13. The general public uploads over 20,000 items per day to our collections.

14. While the Internet Archive does at times remove content, it has no practical ability to evaluate the legality of any significant portion of the third-party content that it archives and makes available.

15. The Internet Archive relies upon the immunity from liability granted by 47 U.S.C. § 230 ("Section 230") for suits based on the content uploaded to the Internet Archive by third parties.

16. The Allow States and Victims to Fight Online Sex Trafficking Act ("FOSTA") amended §18 U.S.C. §1591, a federal anti-sex trafficking statute, defining "participation in a venture" to mean "knowingly assisting, supporting, or facilitating" conduct that leads to sex trafficking.

17. Under the amended §18 U.S.C. §1591, a speaker may be liable for an advertisement on their platform if that speaker knows that the advertisement is for sex

trafficking. However, for speech other than commercial advertising, a speaker is liable under a reckless disregard standard if that speech assists, supports, or facilitates sex trafficking.

18. FOSTA also amended the Mann Act, 18 U.S.C. §2421, by adding §2421A, which creates liability for an operator of an interactive computer service that “promotes or facilitates” prostitution.

19. FOSTA also created several exceptions to Section 230’s immunity. This includes creating both criminal and civil liability for platforms that host third-party content uploaded to their sites that would violate Sections 1591 or 2421A.

20. A House Report on FOSTA states a belief that “prostitution and sex trafficking are inextricably linked.”

21. I am afraid that FOSTA will result in the Internet Archive being subjected to federal criminal, state criminal, and civil liability for the content that it hosts. Some content, such as archives of particular websites, information about books, and the books themselves, could be construed as promoting or facilitating prostitution or assisting, supporting, or facilitating sex trafficking. Because Congress created exceptions to Section 230 for platforms that host content that would violate Sections 1591 and 2421A, I am concerned that the Internet Archive can no longer rely on Section 230 to bar state criminal and civil liability.

22. I am aware that FOSTA has resulted in significant actions by online platforms to remove speech or shutter their services because of concerns about potential liability. Such concerns and actions threaten to undermine free expression online.

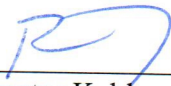
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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 27 th day of June 2018 at San Francisco, California.

  
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Brewster Kahle