

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE INTERNET ARCHIVE,

Plaintiff,

v.

JOHN JAY HOFFMAN, Attorney General of the
State of New Jersey; *et al*,

Defendants, in their official capacities.

Civil Action No.:

**DECLARATION OF BREWSTER KAHLE PURSUANT TO 28 U.S.C. § 1746 IN
SUPPORT OF PLAINTIFF INTERNET ARCHIVE'S MOTION FOR A
TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

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Attorneys for Plaintiff Internet Archive

I, Brewster Kahle, of full age, certify, declare, and state:

1. The facts contained in the following declaration 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 (<http://archive.org>). I submit this declaration in support of the Internet Archive's application, on an emergent basis, for temporary restraints or a preliminary injunction against the enforcement of Section 12(b)(1) of the Human Trafficking Prevention, Protection, and Treatment Act.

3. I am a member of the National Academy of Engineering and the American Academy of Arts and Sciences. And in 2012, I was inducted into the Internet Hall of Fame for my technological, commercial, and policy advances in helping expand the Internet's reach.

4. Founded in 1996 and located in San Francisco, the Internet Archive works to prevent the Internet and other "born-digital" materials from disappearing into the past. The Internet Archive is a 501(c)(3) non-profit that was founded to build an Internet library. 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 material authored by third parties.

5. In late 1999, the Internet Archive started to include more well-rounded collections. 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 has collected and displayed web materials on behalf of the Library of Congress, the National Archives, many 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 crawls and archives about 100 million web pages per day.

8. On May 6, 2013, Governor Chris Christie signed into law the “Human Trafficking Prevention, Protection, and Treatment Act,” P.L. 2013, c. 51. Section 12(b)(1) of this law creates a new criminal offense for “advertising commercial sexual abuse of a minor,” a provision under which Internet libraries like the Internet Archive (and any other Internet provider that hosted third-party content) could be criminally prosecuted if it “knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in this State and which includes the depiction of a minor” and did not verify and maintain copies of government-issued identification proving the age of individuals appearing in such advertisements.

9. The Internet Archive does not have the resources, personnel, or ability to screen the totality of the materials that it archives, nor does it have the resources, personnel, or ability to maintain records about the age of individuals appearing in content that it archives.

10. The Internet Archive currently maintains over 300 billion web pages archived from 1996 to (nearly) the present from web sites around the world, including archives of third-party content posted to websites like Craigslist and Backpage.com.

11. As of 2012, the Internet Archive had over two million unique users per day across all of its services and added 15,000 registered users per month.

12. As of 2012, the Internet Archive circulated 3.4 million texts, 1.3 million audio files, and six hundred thousand video files that are downloaded by tens of millions of users each month.

13. As of 2012, the general public uploaded about 1,000 items per day to our collections.

14. While the Internet Archive preserves for itself the ability to remove content at its own volition and occasionally does so for a variety of reasons, 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. Given that during the regular course of its operations the Internet Archive inevitably archives and makes available copies of *some* content that may result in criminal liability for the content's original authors under Section 12(b)(1) of the Human Trafficking Prevention, Protection, and Treatment Act—including content from sites like Backpage.com which was singled out by the legislators who drafted this new law as a basis for combatting such content—the Internet Archive has a reasonable fear of prosecution under the new statute.

16. Section 12(b)(1) of the Human Trafficking Prevention, Protection, and Treatment Act is currently scheduled to go into effect on July 1, 2013. Violation of this section of the Act is a first-degree crime that carries with it a minimum fine of \$25,000 in addition to the other statutory penalties for a first degree offense.

17. Should the Internet Archive seek to proceed by regular motion practice to challenge this section of the Act, the earliest its motion could be made returnable before the Court would be August 5, 2013, the first motion day in August.

I declare under penalty of perjury that the foregoing is true and correct. Executed June 25, 2013, in San Francisco, California.



BREWSTER KAHLE