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U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

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INTERNET ARCHIVE
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COPY

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

06 0397

13 INTERNET ARCHIVE,
14 a California 501(c)(3) non-profit organization,
15 Plaintiff,
16 v.
17 SUZANNE SHELL,
18 a Colorado resident,
19 Defendant.

CASE NO.:
**COMPLAINT FOR
DECLARATORY RELIEF OF
COPYRIGHT NON-
INFRINGEMENT**

20
21 Plaintiff Internet Archive ("Plaintiff" or "Internet Archive") hereby alleges for its
22 Complaint against Defendant Suzanne Shell ("Defendant" or "Shell"), on personal knowledge as
23 to its own acts and on information and belief as to the actions of others, as follows:

24 **The Parties**

25 1. Plaintiff Internet Archive is a 501(c)(3) public non-profit organization with its
26 principal place of business in San Francisco, California. Internet Archive's mission is to build an
27 "Internet library," with the purpose of providing researchers, historians, scholars, and the public
28 at large with permanent access to historical collections of information that exist in digital format.

1 century ago. . . . Digitized information, especially on the Internet, has such rapid turnover these
2 days that total loss is the norm. Civilization is developing severe amnesia as a result; indeed it
3 may have become too amnesiac already to notice the problem properly. The Internet Archive is
4 the beginning of a cure – the beginning of complete, detailed, accessible, searchable memory for
5 society, and not just scholars this time, but everyone.”

6 9. In an effort to accommodate Web site authors who do not want a historical record
7 made of their sites, Internet Archive provides information on its Web site advising Web site
8 owners how to remove sites from the historical archives. Internet Archive has also removed
9 documents from the Wayback Machine upon request by the Web site author or publisher.

10 **FIRST CAUSE OF ACTION**

11 (Declaratory Relief)

12 10. Internet Archive repeats and re-alleges the allegations of paragraphs 1 through 9
13 of the Complaint as if fully set forth herein.

14 11. On December 12, 2005, Internet Archive’s Copyright Agent received an email
15 from Shell asserting that she owned a registered copyright in the Web site www.profane-
16 justice.org and complaining about Internet Archive’s inclusion of Web pages from the
17 www.profane-justice.org Web site in its historical archive.

18 12. In the December 12, 2005 email, Shell threatened to sue Internet Archive for
19 copyright infringement and to seek actual and/or statutory damages from Internet Archive,
20 including any additional liability created by third parties who accessed the www.profane-
21 justice.org Web site through the Wayback Machine.

22 13. In response to the December 12, 2005 email, Internet Archive immediately
23 removed the Web site from the Wayback Machine. As a result, the www.profane-justice.org
24 Web site is no longer available through the Wayback Machine.

25 14. Not satisfied with Internet Archive’s reasonable response of removing the
26 www.profane-justice.org Web site from the Wayback Machine, Shell has repeatedly reiterated
27 her threat to sue if Internet Archive remains unwilling to offer her a monetary settlement.
28

1 Specifically, Shell has advised Internet Archive that she will file suit unless the Internet Archive
2 pays her the sum of \$100,000.00.

3 15. Prior to filing this action, Internet Archive contacted Shell in an effort to
4 determine whether there was something short of monetary compensation that would satisfy her
5 concerns. Shell responded that unless Internet Archive will pay her, she intends to file suit.

6 16. As a non-profit organization, Internet Archive is neither willing, nor able to settle
7 this matter by providing Shell with monetary compensation.

8 17. Shell has a history of being litigious, as described in an article entitled "Beyond
9 Contempt" which was published at the URL [http://www.westword.com/issues/2005-02-](http://www.westword.com/issues/2005-02-10/news/feature.html)
10 [10/news/feature.html](http://www.westword.com/issues/2005-02-10/news/feature.html). According to the Westword.com article, Shell is under an injunction from
11 the State Supreme Court of Colorado for the unauthorized practice of law in connection with her
12 advocacy on behalf of individuals accused of child abuse and neglect.

13 18. As further evidence of her litigious nature, Shell offers a "reward" in the form of a
14 percentage of any payment received, or damages awarded to, anyone reporting copyright
15 infringement of the materials posted on her www.profane-justice.org Web site.

16 19. As a result of Shell's statements, demands, and litigious reputation, Internet
17 Archive has a reasonable apprehension that Shell will file suit against Internet Archive for
18 copyright infringement and that such a suit is imminent.

19 20. Internet Archive has not violated Shell's copyrights. Internet Archive made fair
20 and permissible use of the www.profane-justice.org Web site for the purpose of offering
21 permanent access for researchers, historians, scholars, and the public to historical collections that
22 exist in digital format.

23 21. There exists an actual, justiciable, and legal controversy between Internet Archive
24 and Shell regarding whether Internet Archive has infringed Shell's copyrights and whether
25 Internet Archive made fair and permissible use of the www.profane-justice.org Web site.

26 22. Internet Archive therefore desires, and is entitled to, a judicial determination and
27 declaration pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 that Internet
28

1 Archive is not liable for infringing Shell's copyrights and that it made fair and permissible use of
2 the www.profane-justice.org Web site.

3 **Prayer for Relief**

4 WHEREFORE, Internet Archive requests that the Court enter judgment in its favor and
5 against Shell on its Complaint as follows:

- 6 A. Declaring that Internet Archive is not liable for infringing Shell's copyrights;
7 B. Declaring that Internet Archive made fair and permissible use of the
8 www.profane-justice.org Web site;
9 C. Awarding Internet Archive its costs incurred in this action, together with
10 reasonable attorney's fees pursuant to statute;
11 D. Granting such other and further relief as this Court may deem just and proper.

12 Dated: January 20, 2006

PERKINS COIE LLP

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15 By: Kenneth B. Wilson
Kenneth B. Wilson

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17 Attorneys for Plaintiff INTERNET ARCHIVE
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that there are no persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding other than the named parties.

Dated: January 20, 2006.

PERKINS COIE LLP

By Kenneth B. Wilson
Kenneth B. Wilson

Attorneys for Plaintiff INTERNET ARCHIVE