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**FILED**  
 06 APR -4 PM 3:18  
 RICHARD W. WELLS  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

*Ad*  
*Chamber*

8 Attorneys for Plaintiff and Counterclaim-Defendant  
 9 INTERNET ARCHIVE

**ORIGINAL**

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

13 INTERNET ARCHIVE,  
 a California 501(c)(3) non-profit organization,

14 Plaintiff,

15 v.

16 SUZANNE SHELL,  
 17 a Colorado resident,

18 Defendant.

CASE NO.: C 06 0397 JSW

**INTERNET ARCHIVE'S AMENDED  
 NOTICE OF MOTION AND MOTION  
 TO DISMISS COUNTERCLAIMS**

Date: May 19, 2006  
 Time: 9:00 a.m.  
 Before: Hon. Jeffrey S. White  
 Location: Courtroom 2, 17th Floor

19 **AND RELATED COUNTERCLAIMS**

20  
 21 **TO DEFENDANT AND COUNTERCLAIM-PLAINTIFF:**

22 PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 8(a)(2) and  
 23 (e) and 12(b)(6) and 17 U.S.C. § 301(a) of the United States Copyright Act, plaintiff and  
 24 counterclaim-defendant Internet Archive ("Internet Archive" or "the Archive") moves to dismiss  
 25 with prejudice defendant and counterclaim-plaintiff Suzanne Shell's ("Shell") counterclaims for  
 26 (1) Civil Theft / Conversion; (2) Breach of Contract; and (3) Racketeering ("Counterclaims").  
 27 Internet Archive's motion shall be heard on May 19, 2006, at 9:00 a.m., or as soon thereafter as  
 28 the matter may be heard, before the Honorable Judge Jeffrey S. White in Courtroom 2, 17<sup>th</sup> Floor

AMENDED NOTICE OF MOTION  
 AND MOTION TO DISMISS  
 Case No. C 06 0397 (JSW)

1 of the United States District Court for the Northern District of California, San Francisco  
2 Division, 450 Golden Gate Avenue, San Francisco, California.

3 This motion is made on the grounds that the Counterclaims fail to use a short and plain  
4 statement showing that the pleader is entitled to relief; are not simple, concise, and direct; fail to  
5 state a claim upon which relief may be granted; and/or are preempted by the Copyright Act.  
6 Further, the Counterclaims cannot be amended to state a claim.

7 This motion is based on this Amended Notice of Motion and Motion, the supporting  
8 Memorandum of Points and Authorities submitted to this court on March 31, 2006, with Internet  
9 Archive's original Notice of Motion and Motion to Dismiss Counterclaims, the [Proposed] Order  
10 Granting Internet Archive's Motion to Dismiss, the materials on file in this action, and any  
11 argument submitted at the hearing on this motion.

12 DATED: April 4, 2006

PERKINS COIE LLP

13  
14 By Kenneth B. Wilson  
Kenneth B. Wilson

15  
16 Attorneys for Plaintiff and Counterclaim-Defendant  
INTERNET ARCHIVE

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**PROOF OF SERVICE**

I, Sherrye Andrews, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action. My business address is Perkins Coie LLP, 180 Townsend Street, 3rd Floor, San Francisco, California 94107-1909. I am personally familiar with the business practice of Perkins Coie LLP. On April 4, 2006, I served the following document(s):

**INTERNET ARCHIVE'S AMENDED NOTICE OF MOTION AND MOTION TO DISMISS COUNTERCLAIMS**

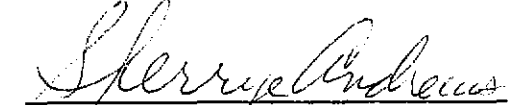
by placing a true copy thereof enclosed in a sealed envelope addressed to the following parties:

Suzanne Shell *In Pro Se*  
14053 Eastonville Road  
Elbert, Colorado 80106  
dsshell@ix.netcom.com

- (By Mail) I caused each envelope with postage fully prepaid to be placed for collection and mailing following the ordinary business practices of Perkins Coie LLP.
- (By Hand) I caused each envelope to be delivered by hand to the offices listed above.
- (By Facsimile/Telecopy) I caused each document to be sent by Automatic Facsimile/Telecopier to the number(s) indicated above.
- (Electronic Transmission) I caused each document to be sent by electronic mail to the email address indicated above.

I declare under penalty of perjury under the laws of the United States that the above is true and correct and that this declaration was executed at San Francisco, California.

Dated: April 4, 2006

  
Sherrye Andrews