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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 ELECTRONIC FRONTIER FOUNDATION,) NO. 07-CV-05278-SI
17 Plaintiff,)
18 v.) **DECLARATION OF KURT OPSAHL IN**
19 OFFICE OF THE DIRECTOR OF NATIONAL) **SUPPORT OF MOTION FOR AWARD**
20 INTELLIGENCE,) **OF ATTORNEY’S FEES AND COSTS**
21 Defendant.)
22)
23)

Date: May 16, 2008
Time: 9:00 a.m.
Courtroom: 10, 19th Floor

24 1. I am an attorney of record for the plaintiff in this matter and a member in good
25 standing of the California State Bar, and am admitted to practice before this Court. I have personal
26 knowledge of the matters stated in this declaration. If called upon to do so, I am competent to
27 testify to all matters set forth herein.
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1 2. I am Senior Staff Attorney at Plaintiff Electronic Frontier Foundation (“EFF”),
2 which is a nonprofit corporation established under the laws of California with its principal place of
3 business in San Francisco.

4 3. EFF generally represents clients without charge in precedent-setting litigation of
5 national importance involving novel and complex issues arising from the intersection of new
6 technology with privacy rights, free press and free expression rights, and other civil liberties.
7 Nevertheless, EFF attorneys have hourly rates for purposes of cases in which EFF is entitled to
8 attorneys’ fees.

9 4. For 2007, my rate was \$425 per hour. For 2008, my rate is \$525 per hour.

10 5. EFF has been paid its attorney’s fees at its prevailing hourly rates in other cases. In
11 *Apple v. Does* (Santa Clara Superior Ct., Case No. 1-04-CV-032178), EFF was paid my attorneys
12 fees at my 2006-2007 rate. In *In re Sony BMG CD Technologies Litigation*, (S.D.N.Y. Case No
13 1:05-cv-09575-NRB), EFF was paid my attorney’s fees at this rate as part of the settlement of the
14 action in June 2006. Similarly, in *OPG v. Diebold*, 337 F.Supp.2d 1195 (N.D.CA 2004), EFF was
15 paid its attorney’s fees after a summary judgment victory at our 2004 hourly rates.

16 6. My rates are well within the prevailing hourly rates in the San Francisco Bay Area
17 for lawyers of comparable education, expertise, and experience who handle matters of the type
18 involved in this litigation.

19 7. In 1997, I received my Juris Doctor degree from the University of California at
20 Berkeley School of Law (Boalt Hall), where I was an editor of both the California Law Review and
21 the Berkeley Technology Law Journal.

22 8. Before joining EFF in 2004, I worked for the law firms of Perkins Coie LLP (1999-
23 2004) and Severson & Werson PC (1997-1998). In addition, I was the Research Fellow to
24 Professor Pamela Samuelson at the University of California at Berkeley, School of Information
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1 Management & Systems (1998-1999). I have authored more than 15 articles for legal publications,
 2 and was a co-editor of the *Electronic Media and Privacy Law Handbook* (ISBN 1879650118). In
 3 2007, I received a California Lawyer of the Year (CLAY) Award for Media Law.

4 9. After a careful review of our files on the case, I have estimated the minimum
 5 number of hours I spent on the preliminary injunction motion¹ and this declaration as follows:
 6

<u>Date</u>	<u>Task</u>	<u>Hours</u>
10/25/07	Legal research on Preliminary Injunction argument; review and revise PI motion, factual development for PI motion	3.50
10/26/07	Review and revise PI motion; factual development for PI motion	2.75
10/29/07	Review and revise PI motion	1.25
11/09/07	Review and analysis of ODNI opposition to PI motion	1.50
11/12/07	Analysis of response to ODNI opposition to PI motion	0.50
11/13/07	Help draft reply to ODNI opposition to PI motion	2.25
11/16/07	Review and revise reply to ODNI opposition to PI motion	0.50
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Total 2007 hours:		12.25
4/8/08	Draft declaration in support of fee motion	0.75
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Total 2008 hours:		0.75

19 10. In total, I spent no fewer than 13 hours on the preliminary injunction motion and
 20 this declaration, with 12.25 hours spent in 2007 when my hourly rate was \$425 per hour
 21 (\$5,206.25) and 0.75 hours spent in 2008 when my hourly rate was \$525 per hour (\$393.75). At
 22 my hourly rates during the relevant timeframe, my total fees are \$5,600.00.
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27 ¹ The hours detailed here do not include time spent on other aspects of the litigation, or in
 28 reviewing and informing the public about the documents provided by ODNI.

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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 April 11, 2008 in San Francisco, California.

/s/ Kurt Opsahl
Kurt Opsahl