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14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT OF CALIFORNIA**  
 16 **SAN FRANCISCO DIVISION**

17 FIRST UNITARIAN CHURCH OF LOS  
 18 ANGELES, *et al.*,  
 19 Plaintiffs,  
 20 v.  
 21 NATIONAL SECURITY AGENCY, *et al.*,  
 22 Defendants.

Case No: 3:13-cv-03287 JSW

**DECLARATION OF JOHN  
 SULLIVAN FOR FREE SOFTWARE  
 FOUNDATION IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

Date: February 7, 2014  
 Time: 9:00 A.M.  
 Hon. Jeffrey S. White  
 Courtroom 11 - 19th Floor

1 I, JOHN SULLIVAN, hereby declare:

2 1. I am the Executive Director of the Free Software Foundation. The facts contained in  
3 the following affidavit are known to me of my own personal knowledge and if called upon to testify,  
4 I could and would competently do so.

5 2. Our organization helped pioneer a worldwide free software movement and provides  
6 an umbrella of legal and technical infrastructure for collaborative software development  
7 internationally. We advocate for the freedom, privacy, and autonomy of computer users, primarily  
8 by making sure that the software running on their computers is fully under their control. Free “as in  
9 freedom” software users choose their software on ethical grounds according to these concerns, the  
10 same way many vegetarians reject meat or labor activists reject sweatshop clothing. Because free  
11 software is developed collaboratively and often by grassroots communities, it is a force for social  
12 change. Its developers are very aware of what corporate and government interests are being  
13 challenged with their software.

14 3. The collection of our phone records by the government has resulted in (1) harassment,  
15 membership withdrawal, and/or discouragement of new members, and (2) other consequences which  
16 objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.

17 4. I say this because of the following facts:

18 a. Many of our supporters are software developers working on an operating  
19 system to be used instead of Microsoft or Apple, called GNU/Linux. Unlike  
20 those proprietary operating systems, all of the code for GNU/Linux is  
21 publicly available for inspection and modification. A widespread motivation  
22 for developing software this way is to make it very difficult for “backdoors”  
23 such as those now known to be part of Microsoft Windows, to be introduced  
24 by the government or corporations. Even though their work is legal, because  
25 these developers know that their work may complicate government  
26 surveillance efforts, they are concerned about being targeted. A key

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1 organizational function of the FSF is to serve as an important point of contact  
2 and coordination between developers working on this project. If we cannot  
3 promise the confidentiality of our communications, this category of our  
4 supporters will think twice before associating with us or with other members  
5 through us.

6 b. Other of our software developer members are working in areas that are  
7 legally controversial. They work on free software to protect anonymity  
8 online, or to circumvent technological protection measures in order to access  
9 copyrighted works to which they have a legal right, or on encryption software  
10 that, while legal, may be used by criminals as well. These members are even  
11 more concerned about the privacy of their communications, living in fear that  
12 their work may be misconstrued as illegal.

13 c. As one of our members has told us directly, “While I do work very openly in  
14 my day to day life in free software, and I am quite clearly an outspoken  
15 advocate of free software, and the free software movement, the fact private  
16 communications may be turned over to the government would result in a sort  
17 of chilling effect. For instance, I would be reluctant to ask the FSF questions  
18 about the legal status of code with federal regulation, such as the implications  
19 of distributing cryptographic software under the GNU GPL, or questions  
20 regarding privacy software, such as Tor, for fear it may implicate me later,  
21 when someone else misuses such software. It would place me in an awkward  
22 situation, one where I cannot ask a question about software without being  
23 lumped into a group which may misuse such software. If I have misgivings  
24 about such things, as an open and outspoken free software contributor, I fear  
25 what the pseudo-anonymous contributors to free software communities must  
26 think.”

27 5. This chilling effect extends beyond our members who are software

1 developers, to members who are also just free software users and advocates. Many of our members,  
2 when they joined, have cited our work to support software that respects their privacy and freedom  
3 as a primary reason for their association. Any revelation that the records of the communications  
4 with us are being collected discredits us as an organization capable of protecting the very interest  
5 that motivated them to associate with us. As a concrete example, some of our supporters are  
6 refusing to attend the annual member conference we host in the United States, explicitly because of  
7 surveillance.

8 6. Finally, this chilling also affects our current staff and ability to hire new staff, who  
9 accept relatively low pay rates in order to do a job they feel can make a positive difference in the  
10 world. Knowing that doing this job puts them in the crosshairs of government surveillance is a  
11 powerful deterrent that threatens to make working for us just not worth it. Anything that  
12 complicates our ability to attract and retain quality staff directly undercuts our mission of building a  
13 strong association of free software supporters.

14 7. Since the disclosure of the Associational Tracking Program, we have lost the ability  
15 to assure our members and constituents, as well as all others who seek to communicate with us, that  
16 the fact of their communications to and with us will be kept confidential.

17 8. Prior to the disclosure, we assured confidentiality to those who contacted us. But we  
18 now know that those assurances were not true.

19 9. Moreover, the pattern of distortion and lawless conduct by the NSA, exacerbated by  
20 the intense secrecy of its activities, have left us unable to reassure our members and associates that  
21 additional forms of surveillance, as yet unconfirmed or actively denied by the government are not  
22 also occurring, leaving us with no alternative forms of confidential communication. This is  
23 extremely damaging for us, because the success of our movement depends concretely on the ability  
24 for dispersed individuals to collaborate freely and openly.

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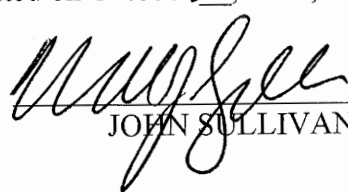
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October \_\_, 2013, at Boston, MA, 02110.

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JOHN SULLIVAN

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 30, 2013, at Boston, MA, 02110.

  
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JOHN SULLIVAN