DECLARATION OF MATTHEW JAMES SAG

I, Matthew James Sag, declare as follows:

1. I am a Professor at the Loyola University Chicago School of Law in Chicago, Illinois, where I have taught since 2011. I am the Associate Director of the Institute for Consumer Antitrust Studies and a Distinguished Fellow of the Searle Center on Law, Regulation, and Economic Growth at Northwestern University School of Law. I have personal knowledge of the matters stated in this declaration and could competently testify to them if called as a witness.

My Background in Legal Research

2. Since 2004, I have had a series of appointments in U.S. law schools, where I have focused on the area of Intellectual Property. My research focuses on the intersection of law and technology, especially as it relates to copyright, trademark, patent and competition law. My work is informed by economic theory, and empirical methods.

3. My education was at the Australian National University where I completed a Bachelor of Arts and a Bachelor of Laws (with honors) in 1997. Subsequent to that, I served a clerkship with the Honorable Justice Paul Finn at the Federal Court of Australia.

4. My research often focuses on an empirical of court filings. For example, in my paper "Copyright Trolling, An Empirical Study," 100 Iowa Law

Review 1105-1146 (2015), I examined the recent astonishing rate of growth of multi-defendant John Doe litigation in United States district courts over the period of a decade. This paper may be viewed at the following URL: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404950

5. To conduct this research, I created a database of all copyright cases filed in the all federal district courts circuits between January 1, 2001 and June 30, 2014, then examined the cases to determine which ones qualified as multi-defendant John Doe (MDJD) litigation and which of those were related to pornography. My research showed that, in 2013, pornography MDJD suits accounted for the majority of copyright suits filed in 11 federal districts: Alabama (SD), District Of Columbia, Illinois (CD), Illinois (ND), Indiana (ND), Maryland, Michigan (ED) Pennsylvania (ED), Tennessee (ED), Tennessee (WD) and Wisconsin (ED), a fact that was not well known and could only be determined by the kind of empirical research I was conducting for this paper.

6. In order to encourage further research on this topic, I have made available my underlying database for other researchers to use.

7. My most recent research extends this docket analysis to all federal IP claims, filed in all U.S. courts between 1994 and 2014. In "IP Litigation in United States District Courts: 1994 to 2014", forthcoming in the Iowa Law Review, I undertake a systematic analysis of more than 190,000 individual case dockets and

examine the subject matter, geographical and temporal variation within federal IP litigation over the last two decades. This research was made more difficult, more expensive, and ultimately less ambitious in scope because of the current PACER access regime. This paper may be viewed at the following URL: http://ssrn.com/abstract=2570803.

8. In another paper, "Predicting Fair Use," Ohio State Law Journal, Vol. 73:1 47-91 (2012), I gathered information on 280 fair use cases decided in U.S. District Courts between January 1, 1978 and May 31, 2011. The dataset combined publicly available information from written opinions and court records, as well as data from other sources such as company databases and directories of attorneys and law firms. This paper may be viewed at the following URL: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1769130

9. My research analyzed the predictability of fair use by investigating the impact of identifiable characteristics on fair use outcomes. I focused directly on the ex ante predictability of fair use and empirically test the significance of the characteristics of disputed uses that would be apparent to potential litigants before their cases go to trial. This approach makes it possible to test a number of doctrinal claims and intuitions that had not previously been subject to empirical scrutiny.

The Importance of Empirical Data For Legal Research

11. My research in the law attempts to verify prior theoretical work by examining real-world cases as well as to uncover new insights into the operations of our courts through the use of empirical data.

12. My work is not conducted in isolation; I am part of a growing number of researchers examining the operation of our courts through the use of real-world data.

13. The lack of availability of the raw materials we need to conduct this research, in particular the opinions, orders, motions, and other materials in U.S. District Court and U.S. Court of Appeals dockets, is a significant impediment in our work.

14. The cost of obtaining materials is certainly a significant, indeed prohibitive impediment in conducting this form of research. At $0.10/page, it is impossible to systematically examine a large number of documents, particularly during the preliminary stages of research when we are still uncertain precisely which data needs to be collected. For example, due of the cost that would have been involved, I was forced to abandon my aim of developing measures of case intensity by examining individual dockets in my most recent project, “IP Litigation in United States District Courts: 1994 to 2014”.

15. Cost is not the only important factor; the technical structure of the PACER system, its limited search capabilities, its lack of facilities for bulk downloading and sophisticated notification and alerts are also limiting factors.

16. Empirical research should be verifiable and repeatable. Open data is not just a matter of academic integrity; it is also essential so that where one researcher makes a mistake, that error is detectable. Furthermore, open data allows other researchers to build on the work that has been done already without reinventing the wheel. It is thus vital that we are able to redistribute any underlying data that is public, such as the court documents we examine.

17. The experiment that Public.Resource.Org (Public Resource) has outlined and for which this affidavit is submitted, would be an invaluable for researchers like me. In particular, having a full database of all the materials for one or more court would enable us to conduct textual analysis in a way that is simply not possible today.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and this declaration was executed this 2nd day of April, 2015, at Chicago, Illinois.

By _____
Matthew James Sag