PETITION FOR DECLARATORY STATEMENT

BEFORE THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Pursuant to Section 120.565, Florida Statutes, and
Rule 28-105.002, Florida Administrative Code

Filed with:

Agency Clerk, Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302-1489
AgencyClerk@fdle.state.fl.us

Petitioner:

Name: _____

Mailing address: _____

City, State, ZIP: _____

Telephone: _____

Email: _____

Respondent:

Florida Department of Law Enforcement
Office of General Counsel
P.O. Box 1489
Tallahassee, FL 32302-1489

I. INTRODUCTION

Pursuant to section 120.565, Florida Statutes, and Florida Administrative Code rule 28-105.002, Petitioner respectfully requests that the Florida Department of Law Enforcement ("FDLE") issue a declaratory statement on how the "internet identifier" reporting requirements of section 943.0435, Florida Statutes, apply to Petitioner's own accounts, as described below.

Petitioner is an individual who is personally required to register with FDLE under section 943.0435 or 775.21. Petitioner asks only about Petitioner's own obligations and Petitioner's own accounts. Petitioner does not ask FDLE to determine the conduct of any other person.

II. STATUTORY PROVISIONS ON WHICH THE DECLARATORY STATEMENT IS SOUGHT

- **Section 943.0435, Florida Statutes**: the sexual offender registration statute, including its requirement that a registrant report internet identifiers to FDLE through the sheriff's office.
- **Section 775.21(2)(j), Florida Statutes**, which section 943.0435 uses to define "internet identifier": any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication.
- **Section 775.21(2)(m), Florida Statutes**, which defines "social Internet communication" as any communication through a commercial social networking website as defined in s. 943.0437, or application software. It excludes:
    a. communication whose primary purpose is facilitating commercial transactions involving goods or services;
    b. communication on a website whose primary purpose is disseminating news; and
    c. communication with a governmental entity.
- **Section 943.0437, Florida Statutes**, which defines "commercial social networking website."

In *Delgado v. Swearingen*, No. 4:16-cv-501 (N.D. Fla. 2018), the court summarized the statute as requiring registration of usernames a registrant *uses* to communicate over the internet *directly with another user*, subject to the exceptions above, and not usernames used only on sites that do not let users create web pages or profiles.

III. PETITIONER'S PARTICULAR SET OF CIRCUMSTANCES

1. Petitioner is required to register as a sexual offender under section 943.0435 or 775.21, Florida Statutes, and reports to the _____ County Sheriff's Office.
2. Petitioner has reported the internet identifiers Petitioner understands the statute to require.
3. Petitioner holds, or wishes to begin using, the accounts listed in the table below. Petitioner seeks FDLE's interpretation *before* using or continuing to use them, so that Petitioner can comply with the law.
4. Failing to report a required internet identifier is a felony under section 943.0435. An arrest alone, even one that does not end in a conviction, can bar a registrant from later petitioning for removal under section 943.0435(11). Petitioner therefore cannot safely find out the answer by guessing.

Petitioner's accounts for which he requests the Declaratory Statement

Platform	How Petitioner uses it	Can users message each other directly?

IV. HOW THE STATUTE SUBSTANTIALLY AFFECTS PETITIONER

Section 943.0435 applies directly to Petitioner. Petitioner must decide whether each account above has to be reported. A wrong answer exposes Petitioner personally to arrest and a felony charge.

Petitioner's interest is immediate and concrete. Petitioner holds or plans to use these specific accounts now. Petitioner cannot comply with confidence because the definitions in section 775.21(2)(j) and (m) do not plainly answer how they apply to these accounts, and local registration offices have interpreted them differently. FDLE is the agency that administers the registry, so its interpretation is the one that should govern Petitioner's compliance.

V. QUESTIONS PRESENTED

Petitioner asks FDLE to declare whether the identifiers associated with the accounts listed in Section III requires Petitioner to report them. In addition:

1. Must Petitioner report the username of a streaming platform, such as YouTube, Netflix or Hulu that Petitioner uses only to watch videos, on a platform with no private user-to-user messaging?
2. If Petitioner has already reported a Gmail address. Must Petitioner separately report the other applications automatically provisioned by Google (ex: Google Drive, Google Docs, Google Photos) which Petitioner can use only to store files and does not use to communicate with anyone?
3. Must Petitioner report the username Petitioner uses to post public comments on a website that allows public comments but no private messages between users?

4. Must Petitioner report the identifier of a social media page whose primary purpose is advertising and selling the goods or services of Petitioner's business, given the exclusion in section 775.21(2)(m)1?

5. Must Petitioner report the username of an online shopping site (ex: eBay or Amazon) that Petitioner uses only to buy and sell items, where Petitioner's only messages are with buyers or sellers about those transactions, given the exclusion in section 775.21(2)(m)1?

6. Must Petitioner report an identifier for a dormant account that Petitioner has not accessed or used since being required to register Internet Identifiers? In other words, does the reporting duty arise from the account's existence, or from Petitioner's use of it to send or receive social Internet communication?

VI. THIS PETITION IS A PROPER USE OF SECTION 120.565

This Petition meets the requirements of section 120.565 and rule 28-105.001.

1. **Petitioner is substantially affected.** Petitioner is an individual who must comply with registration laws, and faces arrest if Petitioner gets the answer wrong.

2. **The questions concern Petitioner's own circumstances.** Each question describes a specific account that Petitioner holds or plans to use, and how Petitioner uses it. None is a hypothetical.

3. **Petitioner does not ask about anyone else's conduct.** Petitioner asks only what Petitioner must report. Rule 28-105.001's limit on "determining the conduct of another person" does not apply.

4. **Possible application to others is not a bar.** In *Florida Department of Business & Professional Regulation v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999), the Florida Supreme Court held that an agency may issue a declaratory statement even though its answer may apply to others in similar circumstances. The Court noted that the Legislature requires declaratory statements to be published precisely because the agency will apply the same interpretation to others who are similarly situated.

5. **No rulemaking is required.** Petitioner does not ask FDLE to adopt a new policy. Petitioner asks FDLE to apply the existing statutory definitions in section 775.21(2)(j) and (m) to Petitioner's specific facts. That is exactly what section 120.565 provides for.

VII. RELIEF REQUESTED

Petitioner respectfully requests that FDLE issue a declaratory statement answering each question in Section V as it applies to Petitioner's circumstances, within 90 days of filing as section 120.565(3) requires.

Respectfully submitted. Date: _____

Signature: _____

Printed name: _____

CERTIFICATE OF FILING

I certify that this Petition was filed with the Agency Clerk, Florida Department of Law Enforcement, by email to AgencyClerk@fdle.state.fl.us and/or by U.S. Mail to P.O. Box 1489, Tallahassee, FL 32302-1489, on _____.

Signature: _____