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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SANTA CLARA**

15 Apple Computer, Inc.,  
16 Plaintiff,  
17 v.  
18 Doe 1, an unknown individual, and Does  
19 2-25, inclusive,  
20 Defendants.

Case No. 104-cv-032178

**DECLARATION OF DAVID R.  
EBERHART IN SUPPORT OF  
PLAINTIFF APPLE COMPUTER,  
INC.'S OPPOSITION TO MOTION  
FOR PROTECTIVE ORDER BY  
MONISH BHATIA, KASPER JADE  
AND JASON D. O'GRADY**

21 I, David R. Eberhart, declare and state as follows:

22 1. I am an attorney at law, duly licensed and admitted to practice in all  
23 of the courts of the State of California. I am a partner in the law firm of O'Melveny &  
24 Myers LLP, attorneys of record for plaintiff Apple Computer, Inc. ("Apple"), and make  
25 this declaration in support of Apple's Opposition to Motion for Protective Order by  
26 Monish Bhatia, Kasper Jade and Jason D. O'Grady. I have personal knowledge of the  
27 facts set forth in this declaration, and if called as a witness, I could and would testify  
28 thereto.

2. On December 14, 2004, the Court issued its Order Granting Apple's  
*Ex Parte* Application for Discovery and Issuance of Commissions, thereby authorizing  
Apple to take specific document discovery of [www.powerpage.org](http://www.powerpage.org) ("PowerPage"),  
[www.appleinsider.com](http://www.appleinsider.com) ("AppleInsider"), and [www.thinksecret.com](http://www.thinksecret.com) ("Think Secret").

1           3.       Thereafter, Apple pursued discovery from PowerPage through the  
2 registered owner of that site: Red Widget. Apple received a written response from the  
3 owner of Red Widget, in which he represented that: (a) he knew that Jason O'Grady could  
4 be contacted through his attorneys at EFF; but (b) Red Widget had no documents relating  
5 to information posted on PowerPage or that were responsive to Apple's other document  
6 requests. Red Widget also represented that it was not the owner of PowerPage. Later, the  
7 registration information for PowerPage was changed to indicate that Mr. O'Grady was the  
8 owner of PowerPage. There is no outstanding subpoena to Red Widget.

9           4.       Apple has never issued a subpoena to Mr. O'Grady or PowerPage.

10          5.       Apple issued a subpoena to AppleInsider but, despite reasonable  
11 efforts to effect service of that subpoena, Apple's service efforts failed. The subpoena has  
12 now expired, and there is currently no subpoena outstanding to AppleInsider.

13          6.       Apple secured the issuance of a New York subpoena to ThinkSecret  
14 and effected service of the same. Counsel for ThinkSecret subsequently represented to me  
15 that ThinkSecret possesses no responsive documents.

16          7.       After the issuance of the Court's December 14 Order, Mr. Karl Kraft  
17 communicated with my colleague George Riley. Subsequently, Mr. Kraft communicated  
18 to me that his company, Nfox.com, hosts e-mail accounts for Powerpage.org and that the  
19 accounts contained numerous e-mail messages containing the word "Asteroid."

20          8.       On February 4, 2005, the Court issued its Order Granting Apple's *Ex*  
21 *Parte* Application for Discovery and Issuance of Commissions that authorized Apple to  
22 take specific documentary discovery of Nfox.com and Karl Kraft (the "Nfox Parties").

23          9.       Apple served California subpoenas on the Nfox Parties on February  
24 4, and Nevada subpoenas on the Nfox Parties on February 11. As authorized by the  
25 Court, each of the subpoenas requested the following documents from the Nfox Parties:

26               All documents relating to the identity of any person or entity who  
27 supplied information regarding an unreleased Apple product code-named  
28 "Asteroid" or "Q97" (the "Product"), including postings that appeared on  
PowerPage.com (the "Website") on November 19, November 22,  
November 23, and November 26, 2004. These documents include:

1 (a) all documents identifying any individual or individuals  
2 who provided information relating to the Product ("Disclosing  
3 Person(s)"), including true name(s), address(es), internet protocol  
4 ("IP") address(es), and e-mail address(es);

5 (b) all communications from or to any Disclosing Person(s)  
6 relating to the Product;

7 (c) all documents received from or sent to any Disclosing  
8 Person(s) relating to the Product; and

9 (d) all images, including photographs, sketches, schematics  
10 and renderings of the Product received from or sent to any  
11 Disclosing Person(s).

12 10. To this date, none of the Nfox Parties has objected to the subpoenas,  
13 either verbally or in writing. Mr. Kraft has represented to me that he will comply with  
14 any order of the Court.

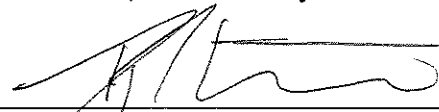
15 11. Other than as set forth above, Apple has not issued or served in this  
16 action any other discovery.

17 12. The PowerPage website is located at [www.powerpage.org](http://www.powerpage.org). True and  
18 correct copies of several page images reflecting Powerpage's submission policies are  
19 attached as Exhibit A. These pages were viewed and printed on February 25, 2005.

20 13. A true and correct copy of the Code of Ethics of the Society of  
21 Professional Journalists is attached at Exhibit B. As of February 25, 2005, this document  
22 may be found at the Internet address [www.spj.org/ethics\\_code.asp](http://www.spj.org/ethics_code.asp).

23 I declare under penalty of perjury under the laws of the State of California  
24 that the foregoing statements are true and correct.

25 Executed at San Francisco, California, this 25<sup>th</sup> day of February, 2005.

26   
27 \_\_\_\_\_  
28 David R. Eberhart

SF1:577741.2

# **EXHIBIT A**

O'GRADY'S  
>> 8th ANNIVERSARY  
PUBLISHING SINCE 1995

# POWERPAGE.ORG

YOUR MOBILE TECHNOLOGY DESTINATION  
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## Contact the PowerPage

Before contacting the PowerPage please review the following:

1. If your comments are interesting or newsworthy, **do not** email us! Instead please post a brief story to the PowerPage NewsWire. Follow the Get Published link at the top of every page. Please remember to include HTML, links, contact, price and availability information in your submission. Fame and fortune await.
2. The best way to reach Jason is via Instant Message:
  - PowerPage02 - iChat/AIM (primary)
  - jason\_ogrady - Yahoo Messenger (less often)
3. To send an email use the form below and include as much information as possible. Due to the high volume of SPAM we receive, your email could get lost. Email is not 100% reliable and we recommend that you use IM instead. We **do not** accept press releases via email.

The PowerPage advocates the first ammendment and your right to privacy:

- We prefer to receive text emails with X.509 digital signatures
- We do not store IM logs
- Our email form below is anonymous.
- SPAM is reported to the FTC, SpamCop and Abuse.net

If your matter requires maximum privacy, please use an anonymous remailer (messages can take 2-48 hours to arrive):

- Riot Anonymous Remailer with SSL Encryption (in Italy, free)
- Freedom Project Remailer without SSL (in USA, free)
- Yahoo listing of Anonymous Remailers



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In the event of an outage, you can keep up with Jason at his [Blog](#) and reach him at (his last name) at g mail dot com. updated 12-29-2004

Contact Form

\* Denotes a required field.

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**Your**

**Email**

**Address\*** (Please include a valid email address if you'd like a response. Messages from real email addresses are more credible than anonymous messages. Email addresses are confidential and are never published. [Privacy Policy](#).)

**Subject\***

**Message\***

Send message

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# **EXHIBIT B**



Improving & Protecting Journalism

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## Code of Ethics

[Ethics](#) > SPJ Code of Ethics

### Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

### Ethics Resources

[Ethics Code](#)

[Ethics News](#)

[Ethics Hotline](#)

[SPJ Ethics Listserv](#)

[Other Ethics Sources](#)

[SPJ Ethics Committee](#)

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### Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

#### Journalists should:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.



- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

## Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

### Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

## Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

### Journalists should:

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.

- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

## Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

### Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.
- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

The SPJ Code of Ethics is voluntarily embraced by thousands of writers, editors and other news professionals. The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society's members.

Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984, 1987 and 1996.

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