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APPLE COMPUTER, INC.,

Plaintiff,

v.

DOE 1, et al.,

Defendants.

No. 1-04-CV-032178

**DECLARATION OF DAN GILLMOR IN
SUPPORT OF PROTECTIVE ORDER**

Date: April 8, 2005
Time: 8:30 a.m.
Location: Department 14
Judge: Hon. James Kleinberg

I, Dan Gillmor, of Palo Alto, California, declare:

1. I am submitting this Declaration in support of Monish K. Bhatia, Kasper Jade and Jason D. O'Grady's Motion for a Protective Order.

2. I have been asked by Movants' counsel to address two related questions, based on my review of the contents of the "O'Grady's Power Page" web site (www.powerpage.org),

1 published by Movant O'Grady, and the "Apple Insider" web site (www.appleinsider.com),
2 published by Movant Jade, as well as the articles published on those sites regarding Apple
3 Computer, Inc.'s upcoming product code-named "Asteroid": (1) whether Power Page or Apple
4 Insider qualifies as a newspaper, magazine or other periodical publication, and (2) whether the
5 publishers, editors and authors of the Power Page and Apple Insider sites' content are engaged in
6 the process of journalism, i.e., whether they are seeking, gathering, receiving or processing
7 information with an intent to disseminate that information to the public.

8 3. I personally reviewed the contents of the Apple Insider site, including the November
9 23, 2004 article regarding Apple's "Asteroid" product,¹ a true and correct copy of which is
10 attached hereto as Exhibit A. I last accessed the Apple Insider site on February 8, 2005.

11 4. I also personally reviewed the Power Page site, as well as the four articles regarding
12 Apple's "Asteroid" product published by Power Page on November 19, 22, 23 and 26 of 2004.
13 True and correct copies of those articles as provided by Movants' counsels are attached hereto as
14 Exhibits B, C, D and E, respectively. (The stories are no longer available on the Power Page site.)
15 I last accessed the Power Page site on February 8, 2005.

16 5. In my expert opinion, based on 24 years of experience as a journalist and my
17 knowledge of online publishing and the practice of journalism, (1) Apple Insider and Power Page
18 are, like newspapers and magazines, news periodicals; and (2) the publishers, editors and authors
19 connected with Apple Insider and Power Page are engaged in the process of journalism,
20 disseminating information to the public that they have sought, gathered, received or processed with
21 that intent.

22 6. The fact that the news content provided by Apple Insider and Power Page is
23 published on the Internet rather than on paper is of no account in evaluating whether these are news
24 periodicals whose staffs are engaged in the process of journalism. It is not the medium, but the
25 nature of the content and the process resulting in that content that are decisive. Both print
26 magazines and online magazines share the essential characteristics of journalism.

27
28 ¹ See <<http://www.appleinsider.com/article.php?id=756>>.

1 7. The Internet is used to disseminate news by traditional newspaper publishers and
2 broadcast news companies, such as *The New York Times*, *The San Jose Mercury News*, and CNN,
3 oftentimes before that news has otherwise been published or broadcast. True and correct copies of
4 the front pages of those news organizations' web sites as of February 8, 2005 are attached hereto as
5 Exhibits F, G and H, respectively.

6 8. The Internet is also used to publish news content that is available exclusively online.
7 For example, the news magazines *Slate* (www.slate.com), *Salon* (www.salon.com) and *C|Net News*
8 (www.news.com) are available only on the Internet, yet are unquestionably news periodicals whose
9 staff members are engaged in the process of journalism. True and correct copies of the front pages
10 of the *Slate*, *Salon* and *C|Net* web sites as of February 8, 2004 are attached hereto as Exhibits I, J
11 and K, respectively.

12 9. Online news periodicals are now often the first source for breaking news. See, e.g.,
13 Verne Kopytoff, "Web logs come of age as source of news," *San Francisco Chronicle*, January 24,
14 2005² (discussing the web log or "blog" phenomenon) and Jim Hu, "AOL shutting down
15 newsgroups, *C|Net News*, January 25, 2005³ (acknowledging that "The newsgroup shutdown was
16 first reported on Spam Kings, the Web log of Brian McWilliam."). True and correct copies of
17 these articles as published online are attached hereto as Exhibits L and M, respectively.

18 10. Coverage by online news periodicals has in several cases made important
19 contributions to public debate. See, e.g., Lev Grossman, "Meet Joe Blog," *Time Magazine*, June
20 21, 2004⁴ (describing, inter alia, how online news sites' coverage of Senator Trent Lott's
21 comments at Senator Strom Thurmond's 100th birthday party eventually led to Lott's ouster as
22 Senate majority leader); and Lev Grossman, "Blogs Have Their Day," *Time Magazine*, June 21,
23 2004⁵ (describing how "three amateur journalists" discredited documents used in CBS's story on
24 President George Bush's national guard service through their online news site). True and correct
25

26 ²See [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/01/24/BUGCEASV4R1.DTL&type=printable)
27 [bin/article.cgi?file=/chronicle/archive/2005/01/24/BUGCEASV4R1.DTL&type=printable](http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/01/24/BUGCEASV4R1.DTL&type=printable).

³ See < http://news.com.com/AOL+shutting+down+newsgroups/2100-1032_3-5550036.html>.

⁴ See <<http://www.time.com/time/archive/preview/0,10987,1101040621-650732,00.html>>.

⁵ See <<http://www.time.com/time/archive/preview/0,10987,1009913,00.html>>.

1 copies of these articles as published online are attached hereto as Exhibits N and O, respectively.

2 11. Apple Insider and Power Page are both also similar to my own online news
3 publishing in format and process. Both sites, like my online column published my Knight Ridder's
4 SiliconValley.com, described infra, are "web logs" of news content collected from public and
5 private sources and disseminated to the public.

6 QUALIFICATIONS

7 12. In 1981, I graduated Phi Beta Kappa from the University of Vermont with a B.A. in
8 Political Science. In 1982 I was a Herbert J. Davenport Fellow at the University of Missouri
9 School of Journalism, and from 1986 to 1987 was a Journalism Fellow at the University of
10 Michigan.

11 13. I have worked as a professional journalist since 1981. From 1981 to 1994, I served
12 as a reporter or columnist for *The Valley Voice* of Middlebury, Vermont (Reporter, 1981-82), *The*
13 *Times Argus* of Barre-Montpelier, Vermont (Reporter, 1982-84), *The Kansas City Times* (Reporter,
14 1984-88), and *The Detroit Free Press* (Reporter and Columnist, 1988-94).

15 14. I have worked as a freelance journalist as well, writing articles for a variety of
16 newspapers and magazines including *The New York Times*, *The Boston Globe*, *The Economist*,
17 *Wired*, and *Computerworld*.

18 15. I began working for *The San Jose Mercury News* in 1994 as a once-a-week
19 technology columnist and editor of the personal technology section. I became a full-time
20 columnist in 1997, writing two to three columns per week on the technology business as well as
21 social and political issues relating to technology. A selection of my *Mercury News* columns is
22 available online.⁶

23 16. In 1999, while continuing to serve as a technology columnist for the paper, I began
24 writing daily news items for an online column, "Dan Gillmor's eJournal,"⁷ published by
25 SiliconValley.com. That news site, like the *Mercury News*, is owned and published by Knight
26 Ridder, the second-largest newspaper publisher in the United States. I continued to write items for

27 _____
⁶ See <http://www.siliconvalley.com/mld/siliconvalley/business/columnists/dan_gillmor/>.

28 ⁷ See <<http://weblog.siliconvalley.com/column/dangillmor/>>.

1 the eJournal until January 15, 2005. Attached hereto as Exhibit P is a true and correct copy of the
2 eJournal's contents for December 2004, my last full month.⁸

3 17. The eJournal was published in a style known as "blogging," i.e., it was a "web log"
4 or "blog" of news items published daily or near-daily and presented in reverse chronological order.
5 This format is similar to that used by Apple Insider and Power Page.

6 18. I have in the past used information from Apple Insider for news items published in
7 the eJournal, and have read both Apple Insider and Power Page for information on Apple
8 Computer and other technology topics. Of particular note, I published an eJournal story about
9 Apple's "Asteroid" product on November 25, 2004⁹ using as a source Apple Insider's November
10 23, 2004 news item on the same product.¹⁰ A true and correct copy of my story is attached hereto
11 as Exhibit Q.

12 19. In 2004, I published *We The Media: Grassroots Journalism by the People, for the*
13 *People*, a book examining how Internet-enabled journalism is impacting the media landscape with
14 a focus on "grassroots" journalism published online by "citizen reporters." See DAN GILLMOR,
15 *WE THE MEDIA* (O'Reilly Media Inc., 2004).¹¹

16 20. At the end of 2004, I left Knight Ridder to found Grassroots Media Inc., a California
17 corporation dedicated to fostering grassroots journalism by combining the best principles and
18 practices of professional journalism with the knowledge and energy of citizens who want to
19 contribute to the news process.

20 21. I continue to publish technology news stories on my new blog,¹² with a focus on
21 news about technology-enabled grassroots journalism. A true and correct copy of my blog's front
22 page as of February 8, 2005 is attached hereto as exhibit R.

23 22. I have won or shared in several regional and national journalism awards. Among
24 them: My eJournal was one of two Online News Association 2004 winners for online commentary,

25 ⁸ See <http://weblog.siliconvalley.com/column/dangillmor/archives/2004_12.shtml>.

26 ⁹ See <<http://weblog.siliconvalley.com/column/dangillmor/archives/011055.shtml>>.

27 ¹⁰ See <<http://www.appleinsider.com/article.php?id=756>>

28 ¹¹ The full text of the book is available for free download at
<<http://www.wethemedia.oreilly.com>>.

¹² See <<http://dangillmor.typepad.com/>>.

1 and my work for the Mercury News was part of several recent winning Mercury News entries in
2 the "Best in Business" awards from the Society of American Business Editors and Writers.

3 23. During my career as a journalist, I have been a moderator, panelist or speaker at
4 scores if not hundreds of events ranging from the World Economic Forum to the local Lion's Club.
5 I continue to speak frequently on the topic of online journalism. For example, in recent weeks I
6 have spoken at Harvard University's Kennedy School of Government ("Blogging, Journalism and
7 Credibility" conference); the Poynter Institute ("Web + 10" conference); and the University of
8 Minnesota (several journalism classes and a panel about blogging), and am scheduled to speak in
9 the near future at the University of North Carolina (talk on citizen journalism); the Conference
10 Board (Council on Corporate Communications Strategy); Harvard University (Nieman
11 Foundation); and the South by Southwest Interactive conference, among others. In late May I will
12 be the keynote speaker at the World Editors Forum in Seoul, South Korea. I have also been a
13 visiting lecturer at the University of Hong Kong's Journalism and Media Studies Centre for the
14 past six years.

15 I declare under penalty of perjury under the laws of the California that the foregoing is true
16 and correct. Executed on this the _____ day of February 2005.

17
18
19 By _____
20 Dan Gillmor