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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 IN AND FOR THE COUNTY OF SANTA CLARA

24 APPLE COMPUTER, INC.,

25 Plaintiff,

26 v.

27 DOE 1, et al.,

28 Defendants.

No. 1-04-CV-032178

**DECLARATION OF PROFESSOR
THOMAS GOLDSTEIN IN SUPPORT OF
NON-PARTY JOURNALISTS' MOTION
FOR A PROTECTIVE ORDER**

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

I, Thomas Goldstein, declare:

1. I am currently Professor of Journalism and Mass Communications and Director of the Mass Communications Program at the University of California at Berkeley. In my career, I have been a working journalist (primarily at The New York Times); an observer of press practices

1 as a press secretary (for New York Mayor Edward I. Koch); a freelance writer of books and
2 magazines articles, often about press practices; a journalism educator, holding the deanships of the
3 journalism schools at the University of California at Berkeley and Columbia, and a frequent
4 speaker on journalism topics. In these roles, I have often dealt with questions about the nature and
5 role of journalism, and about the intersection of journalism and law, especially issues of freedom of
6 the press and the rights of journalists.

7 **MY BACKGROUND AND EXPERTISE**

8 2. I hold graduate degrees in both journalism and law. I received my M.S. (with
9 honors) in Journalism from the Columbia University Graduate School of Journalism in 1969 and
10 my J.D. from Columbia University Law School in 1971. I received my B.A. *cum laude* from Yale
11 College in 1967. I also studied at the Institute of Criminology, Cambridge University, England,
12 from 1971 to 1972.

13 3. I was a legal reporter and business columnist for the *New York Times* from 1973 to
14 1979. I have also served as a reporter for the *Wall Street Journal* and the Associated Press wire
15 service.

16 4. From 1980 to 1982 I was Press Secretary to New York Mayor Edward I. Koch.

17 5. Before my present appointment to the University of California at Berkeley, I held
18 the following academic positions: From 1997 to 2002 I was Dean and Professor at the Graduate
19 School of Journalism, Columbia University, and for part of that time was Henry R. Luce Professor.
20 From 1988 to 1996 I was Dean and Professor of the Graduate School of Journalism of the
21 University of California at Berkeley, where I was Acting Professor and Professor from 1984 to
22 1988. I have also served as the Frank Russell Chair of Business and Journalism at Arizona State
23 University, the McClatchy Visiting Professor at Stanford University, the Lombard Visiting
24 Professor at the Kennedy School of Government at Harvard University; the Gannett Distinguished
25 Visiting Professor at the University of Florida, Gainesville, and Adjunct Professor at the Graduate
26 School of Journalism, New York University.

27 6. I am currently the West Coast Editor of the Columbia Journalism Review, a leading
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1 academic journal about journalism.

2 7. I have written three books (two about journalism and one about legal writing), have
3 edited another about journalism, and expect to publish two more this year.

4 8. I write frequent articles, reviews, and commentary about journalism, law, and other
5 subjects in a wide variety of newspapers and periodicals.

6 9. I give speeches about current issues in journalism regularly to both academic and
7 general audiences.

8 10. I have served on the boards of numerous journalism prizes, including the Pulitzer
9 Prize and the Online Journalism Awards. I have also served as a consultant to news organizations,
10 journalism schools, and other journalistic institutions. This work, along with my other career
11 experiences, has exposed me to a broad cross-section of American journalism as it is currently
12 practiced.

13 11. I have served as an expert witness in approximately 20 lawsuits.

14 12. A complete copy of my curriculum vitae and a list of recent cases in which I served
15 as an expert are attached as Exhibit A.

16 **THE PRACTICE OF JOURNALISM**

17 13. Journalism is not a monolithic field, and generalizations about journalism are often
18 wrong. Journalists come in all shapes and sizes, and they reach audiences in all sorts of ways.

19 14. Journalism in America, unlike law or medicine, is an uncredentialed occupation.
20 No one gets to say who can or cannot be a journalist. This freedom to be a journalist is no accident
21 but is fundamental to the structure of our government and society. The First Amendment was
22 enacted against the background of a two-hundred-year struggle in England and America to free the
23 press from a system of royal licensing and censorship that strictly controlled who could publish and
24 what could be published. The First Amendment, by guaranteeing a free press, did away with any
25 possibility of limiting or regulating who can be a journalist or what practices they must follow.

26 15. As such, there are no barriers to entry into the field. It is as true now as it was in
27 earlier times that many journalists, including many great journalists, lack any formal academic
28

1 training in journalism and have only a modest formal education of any sort.

2 16. There is no all-encompassing definition of journalism or journalists. What
3 distinguishes journalism from other activities is not the formal training or credentials of its
4 practitioners but the activities those practitioners engage in. Journalists are those who gather, sift,
5 analyze, verify, prepare, and present information to an audience. They collect unorganized and
6 fragmented bits of data, information, and observation and through a process of organization,
7 analysis, selection, and presentation, they digest and transform that raw information into something
8 that exceeds the sum of its parts in its usefulness to its audience. Journalists search for the truth so
9 they can present it to their audience. No single code of conduct governs journalism beyond the
10 notion that journalists strive for accuracy in the information they present to their chosen audience.

11 17. The techniques of journalistic newsgathering include attempting to observe
12 significant events first-hand as well as the skilled analysis and presentation of information
13 contained in documents created by others, especially by significant persons or organizations.
14 Perhaps the most important newsgathering technique, however, is communicating with other
15 people—sources—who possess information on the subject that is being reported. Knowledgeable
16 people who are willing to talk to journalists are their primary means of finding out information.
17 Often a reporter is unable to observe significant events first-hand. Significant documents often are
18 inaccessible, and a reporter has no power to compel their production. But almost always there is a
19 source, someone knowledgeable who is willing to talk.

20 18. Oftentimes, however, the most knowledgeable and credible sources are, for very
21 good personal reasons, unwilling to talk on the record and therefore seek a promise of
22 confidentiality as a precondition to disclosing information to a journalist. Journalists extend
23 promises of confidentiality and honor those promises scrupulously even at great personal cost,
24 including imprisonment for contempt.

25 19. Protecting confidential sources is the glue that holds together the journalistic
26 enterprise. It is an essential newsgathering technique for reporting on government affairs. It is
27 equally essential in reporting on corporations.

28 20. The term “trade press” describes journalism that focuses on a particular trade or

1 industry. Specialized trade journalism has a long and honorable history. Many journalists get their
2 start in the trade press covering a particular business or industry. Many fine journalists spend their
3 entire careers in that branch of the press, deriving great satisfaction from being able to specialize
4 deeply in a subject. The trade press is often very narrowly focused, and aims at what may be a
5 relatively small and specialized audience. Because of its specialization, however, a trade
6 publication can often analyze issues in much greater depth than can a general-interest publication.
7 The trade press is engaged in the practice of journalism just as much as is the *New York Times*.

8 21. The trade press is to be distinguished from “house organs,” or other publications
9 controlled by those who are the subjects of the publication’s reporting. House organs and other
10 similar publications are a form of public relations or marketing. By contrast, the trade press, like
11 journalism in general, strives for editorial independence from the persons and institutions it reports
12 about.

13 22. Just as journalism does not depend on the breadth or narrowness of either its subject
14 or audience, it likewise does not at all depend on the medium by which it is transmitted to its
15 audience. Reporting can be presented to an audience in print, over radio and television, and
16 through photographs and graphics as well as words.

17 23. Journalism has always been quick to embrace new communications technologies
18 and turn them into channels for news distribution. The Internet is the latest medium for
19 distributing reporting to an audience.

20 24. In part, what is journalistically significant about the Internet is that it dramatically
21 decreases the cost of publishing and distributing news. This is of importance to both audiences and
22 journalists. For audiences, publication on the Internet may be the only feasible means of
23 distribution of news on specialized topics of interest to a small and dispersed audience. For
24 journalists, Internet publication may be the only available medium for publication of some or all of
25 their reporting. Many established journalists, in addition to publishing in more traditional media,
26 also use the Internet to publish additional reporting that, because of space or other limitations,
27 cannot otherwise be published.

28 25. The Internet is a journalistic medium both for established news organizations and

1 for new entrants. Some Internet news publications are offshoots of established newspapers,
2 magazines, or television networks and stations. Others are new enterprises that publish only
3 online.

4 26. Just as news distributed on the Internet is not essentially different from news
5 distributed through other media, so too journalists who publish on the Internet are not essentially
6 different from journalists who publish in more traditional media. Both types are engaged in
7 seeking out truthful information and accurately presenting it to an audience.

8 27. The publication of newspapers and magazines on a daily, weekly, or monthly news
9 cycle has always been a reflection of economic, not journalistic, choice. There is always a tension
10 between the urgency of “breaking” news and the economic and technical obstacles to instantly
11 convey news to an audience. The trend of technology has been to compress the news cycle by
12 making communication both cheaper and faster. Advances in printing technology during the
13 nineteenth century and the resulting revenues from cheap mass-market newspapers, for example,
14 made it both technically and economically feasible by the end of the century for newspapers to
15 offer multiple daily editions, updating the news during the day. And the advent of radio and then
16 television made hourly or even continuous news broadcasts feasible.

17 28. The Internet is the latest example of technology shortening the news cycle. Because
18 publication on the Internet is so inexpensive, it allows news to be published as frequently as the
19 publisher desires, making it especially suitable for breaking news. Many established print
20 publications, like the *New York Times* or *Newsweek*, have web sites that not only reprint reporting
21 from their print versions but also offer more frequently updated reporting both on the stories
22 reported in their print versions and additional, online-only stories as well. Other Internet
23 publications like *Salon* and *Slate*, which are considered to be magazines, only publish online, with
24 new articles appearing continuously through the day.

25 29. What makes these online news publications, regardless of the frequency or rigidity
26 of their publishing schedules, no different than the newspapers and magazines of past generations
27 is that they carry on a continuing journalistic enterprise. This stable public identity is important
28 both to the publication’s audience and to the journalists who report for it. For the audience, the

1 subject-matter focus, accuracy, and trustworthiness of the publication become a known quantity
2 over time that the audience can rely on. For the journalists, the publication's good reputation gives
3 them strong incentives to maintain and increase its accuracy, newsworthiness, and usefulness to its
4 audience.

5 **THE NEWS SITES INVOLVED IN THIS CASE ARE ONLINE PUBLICATIONS THAT**
6 **PUBLISH JOURNALISM**

7 30. I have reviewed the "O'Grady's PowerPage" web site (www.powerpage.org),
8 published by Jason O'Grady, and the "Apple Insider" web site (www.appleinsider.com), published
9 by "Kaspar Jade." I have also reviewed the articles published on these sites regarding Apple
10 Computer, Inc.'s upcoming product code-named "Asteroid." A copy of the PowerPage articles is
11 attached as Exhibit B and a copy of the Apple Insider article is attached as Exhibit C.

12 31. O'Grady's PowerPage and Apple Insider are examples of the trade press that I
13 discussed earlier. What O'Grady and Jade do is journalism—seeking out accurate information, and
14 presenting it to their audiences. They specialize in coverage, sometimes critical, of Apple, its
15 products, and the broader industry of Apple-compatible products. Just because Apple does not
16 want these publications to report on its activities does not mean that they are not news publications.
17 They are certainly not house organs or marketing arms of Apple. Indeed, Apple's displeasure with
18 these publications and their coverage of it is a mark of their editorial independence. If they
19 published only stories sanctioned by Apple at times approved by Apple, they would not be
20 practicing journalism but marketing. Likewise, the fact that these sites separate advertising from
21 editorial content on their web pages also shows their journalistic purpose. Separating editorial and
22 advertising content so that the reader knows which messages are independent journalism and which
23 messages are paid for by a self-interested party is a hallmark of journalism.

24 32. In particular, the PowerPage and Apple Insider articles about Asteroid are
25 journalism that "broke" a story that was previously unknown to the public. The four PowerPage
26 stories, published over the course of a week, develop progressively greater details about the
27 Asteroid product. Apple Insider's story appears to be based on a number of different sources,
28 including some sources in Asia. PowerPage's November 26 story even corrects one of the details

1 in Apple Insider's November 23 story and also refers to a story about Asteroid published in a third
2 online publication, createdigitalmusic.com—a typical instance of healthy journalistic competition
3 leading to more, and more accurate, information for the audience.

4 33. O'Grady's PowerPage and Apple Insider are online publications that are the
5 electronic equivalent of print publications like newspapers or magazines, including specifically
6 magazines like Macworld that similarly report on Apple, its products, and the industry of
7 Apple-compatible products. (Macworld also has an online version at www.macworld.com that
8 includes not only content from the print magazine but online-only reporting). From the
9 declarations of O'Grady and Jade, I understand and believe that PowerPage has regularly published
10 online since 1995, that Apple Insider has regularly published online since 1998, that each typically
11 publishes one or more stories per day, and that each of these web sites receives hundreds of
12 thousands of visits per month. From this, I conclude that they are continuing journalistic
13 enterprises with a stable public identity, no different than a newspaper or magazine. They are not
14 evanescent, one-time-only postings on the Internet. Over time these publications have established
15 a track record, reputation, and identity with their audiences.

16 34. If called as a witness I could and would testify competently to the foregoing.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on February _____, 2005.

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22 _____
23 Thomas Goldstein
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