

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

JASON O'GRADY, MONISH  
BHATIA, and KASPER JADE,

*Petitioners,*

vs.

SUPERIOR COURT OF THE  
STATE OF CALIFORNIA,  
COUNTY OF SANTA CLARA,

*Respondent,*

APPLE COMPUTER, INC.

*Real Party in Interest.*

No. H028579

Santa Clara County Superior Court  
Case No. 1-04-CV-032178

The Hon. James Kleinberg, Judge

APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA FOR LEAVE TO ADOPT THE BRIEF OF  
AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM OF THE  
PRESS, *ET AL.*, IN SUPPORT OF PETITIONERS

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TO THE HONORABLE CONRAD L. RUSHING, Presiding Justice, Court of Appeal, Sixth Appellate District:

Pursuant to Rule 13 of the California Rules of Court, the American Civil Liberties Union of Northern California (ACLU-NC) respectfully requests permission to adopt the brief of amici curiae Reporters Committee for Freedom of the Press, *et al.*, in support of Petitioners.

The American Civil Liberties Union of the Northern California is the regional affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization with over 400,000 members dedicated to the defense and promotion of the guarantees of individual liberty secured by the state and federal Constitutions. From its earliest days, the ACLU-NC has worked to protect and preserve freedom of the press and has been an outspoken advocate for protecting the confidentiality of a journalist's sources. The ACLU-NC has also been at the forefront in supporting efforts to ensure that the Internet remains a free and open forum for the exchange of information and ideas.


The subpoena at issue in this case threatens the ability of journalists to protect the confidentiality of their sources, and hence, their ability to keep the public informed, whether the journalist is reporting using traditional media or via the Internet. The breadth of the trial court's ruling would put in jeopardy the ability of any journalist to report information allegedly containing trade secrets, regardless of the importance of that information to the public and regardless of whether the journalist lawfully obtained it.

The brief submitted by Amici Curiae Reporters Committee for Freedom of the Press, *et al.* ("the Reporters Committee brief"), received by this Court on April 8, 2005, persuasively explains why the journalist's privilege must apply to a journalist's email in the hands of its email service provider; why the trial court erred in not requiring that Apple exhaust alternative means of obtaining the information it seeks; and why California's trade secret law does not automatically vitiate the journalist's privilege or subject a journalist to sanctions for disclosing that information when it concerns a matter of public interest and was lawfully obtained by the journalist. Rather than repeat those arguments, the ACLU-NC respectfully requests leave to adopt the Reporters Committee amicus curiae brief as its own.

Dated: April 12, 2005

Respectfully submitted,

Ann Brick  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF  
NORTHERN CALIFORNIA

By   
ANN BRICK  
Attorneys for Amicus Curiae

PROOF OF SERVICE BY U.S. MAIL

Jason O'Grady, Monish Bhatia, and Kaper Jade v. Apple  
Computer, Inc.

Case No. H028579

I, Leah Cerri, declare that I am a citizen of the United States,  
employed in the City and County of San Francisco; I am over the  
age of 18 years and not a party to the within action or cause; my  
business address is 1663 Mission Street, Suite 460, San Francisco,  
California, 94103.

On April 12, 2005, I served a copy of the attached

APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA FOR LEAVE TO ADOPT THE  
BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS, *ET AL.*, IN SUPPORT OF  
PETITIONERS

on each of the following by placing a true copy in a sealed  
envelope with postage thereon fully prepaid in our mail basket for  
pickup this day at San Francisco, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and  
correct. Executed on April 12, 2005, at San Francisco, California.

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Leah Cerri