	http://www.jdsupra.com/post/documentViewer.aspx?fid=71c36ae4-28f4-4ae9-998d-7dbb5f8bc	
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7	Attorneys for Plaintiff Apple Computer, Inc.	
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF SANTA CLARA	
10		
11	Apple Computer, Inc.,	Case No. 104-cv-032178
12	Plaintiff,	COMMISSION
13	v.	
14	Doe 1, an unknown individual, and Does 2-25, inclusive,	
15	Defendants.	
16		
17	WHEREAS, a certain civil action is pending in the Superior Court for Santa	
18	Clara County, California in which Apple Computer, Inc. ("Apple") is plaintiff and	
19	defendants are unknown individuals; and	
20	WHEREAS, Apple believes that Nfox.com, an entity that provides	
21	collocation and e-mail server services for Powerpage.org, is likely to have information	
22	relating to the identity of the proper defendant or defendants; and	
23	WHEREAS, Apple has requested that the Clerk of the Court issue	
24	a commission for a subpoena seeking documents from Nfox.com and/or its owner Karl	
25	Kraft; and	
26	WHEREAS, the documents requested by Apple are identified in the	
27	Attachment hereto;	
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COMMISSION

WHEREAS, pursuant to California Code of Civil Procedure Section 2026(c), the Clerk may issue a commission for deposition in a foreign jurisdiction; and WHEREAS, pursuant to California Code of Civil Procedure Section 2029, the Court will honor commissions from another state for deposition in California; and NOW THEREFORE, the Court requests that process issue requiring the attendance and enforcing the obligations of Nfox.com and Karl Kraft to produce documents. Any document production may be effectuated and/or enforced by the methods authorized under the laws of the State of Nevada. Kri Loke Executive Office (Cley

DATED: February 4, 2005

<u>ATTACHMENT</u>

DEFINITIONS AND INSTRUCTIONS

Unless the context indicates otherwise, the following words and phrases have the meanings given:

- 1. "You" or "your" mean and refer to Nfox.com, its employees, agents, representatives and attorneys, and its corporate predecessors, successors, affiliates, divisions, branches, subsidiaries and related entities, and all persons acting for or on its behalf; and Karl Kraft, his agents, representatives and attorneys, and all persons acting for or on his behalf.
- 2. Your production must include requested documents, materials and files from any file server, mainframe computer, mini computer, personal computer, notebook or laptop computer, personal data assistant, or other storage device, including but not limited to e-mail. All requested files that are still on storage media and identified as erased, but are still recoverable, shall be included.
- 3. The term "document" is used as interpreted under the California Civil Code and the California Evidence Code and includes, without limitation, all originals and copies, duplicates, drafts, and recordings of any written, printed, graphic, photographic, electronic or otherwise recorded matter, however produced or reproduced, and all writings, as defined in California Evidence Code § 250, of any nature, whether on paper, magnetic tape, electronic or optical media or other information storage means, including film, tapes, computer disks or cards, or personal data assistant memory; and where any such items contain any marking not appearing on the original or are altered from the original, then such items shall be considered to be separate original documents.
- 4. The term "relate," "related," "relates," or "relating" means concerning, referring to, summarizing, reflecting, constituting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, comprising, showing, commenting on, evidencing, describing or otherwise relating to the subject matter.
 - 5. As used herein, "all," "any," "each," or "every" means "all, any, each and

6. All documents shall be produced in the booklet, binder, file, folder, envelope, or other container in which the documents are kept or maintained by you. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings. Documents attached to each other should not be separated.

- 7. In the event any document is withheld on a claim of attorney/client privilege or work product immunity, provide a detailed privilege log that describes the nature and basis for your claim and the subject matter of the document withheld, in a manner sufficient to disclose facts upon which you rely in asserting your claim, and to permit the grounds and reasons for withholding the document to be identified. Such description should, at a minimum:
 - a. state the date of the document;
 - b. identify each and every author of the document;
 - c. identify each and every person who prepared or participated in the preparation of the document;
 - d. identify each and every person who received the document;
 - e. identify each and every person from whom the document was received;
 - f. state the present location of the document and all copies thereof;
 - g. identify each and every person having custody or control of the document and all copies thereof;
 - h. describe the subject and purpose of the document; and
 - i. provide sufficient further information concerning the document and circumstances thereof to explain the claim of privilege or immunity and permit the adjudication of the propriety of that claim.
- 8. If a document once existed, but has been lost, destroyed, erased or otherwise is no longer in your possession, identify the document and state the details concerning the loss or destruction of such document, including the name and address of the present custodian of any such document known to you.

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DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents relating to the identity of any person or entity who supplied information regarding an unreleased Apple product code-named "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:

- (a) all documents identifying any individual or individuals who provided information relating to the Product ("Disclosing Person(s)"), including true name(s), address(es), internet protocol ("IP") address(es), and e-mail address(es);
- (b) all communications from or to any Disclosing Person(s) relating to the Product;
- (c) all documents received from or sent to any Disclosing Person(s) relating to the Product; and
- (d) all images, including photographs, sketches, schematics and renderings of the Product received from or sent to any Disclosing Person(s).

Dated: February 4, 2005

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GEORGE A. RILEY DAVID R. EBERHART DHAIVAT H. SHAH IAN N. RAMAGE O'MELVENY & MYERS LLP

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David R. Eberhart

Attorneys for Apple Computer, Inc.

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