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Fri Mar 4, 6:47 AM ET

By Dawn C. Chmielewski, Mercury News

In a case with implications for the freedom to blog, a San Jose judge tentatively ruled Thursday that Apple Computer can force three online publishers to surrender the names of confidential sources who disclosed information about the company's upcoming products.

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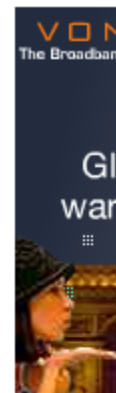
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Santa Clara County Superior Court Judge James Kleinberg refused to extend to the Web sites a protection that shields journalists from revealing the names of unidentified sources or turning over unpublished material.

Kleinberg offered no explanation for the preliminary ruling. He will hear arguments today from Apple's attorneys and the Electronic Frontier Foundation, a San Francisco digital rights group representing two of the three Web sites Apple subpoenaed -- Apple Insider and PowerPage.

The case raises issues about whether those who write for online publications are entitled to the same constitutional protections as their counterparts in more traditional print and broadcast news organizations.

Apple sought subpoenas in December against two online news sites that focus exclusively on its products: PowerPage (www.powerpage.org) and Apple Insider



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(www.appleinsider .com). The company filed a separate suit against Think Secret (www.thinksecret .com on Jan. 4.

Apple's argument Apple maintains that disclosures about an unreleased product, code-named "Asteroid," constituted a trade secret violation. The company asked the court to force the Web sites to identify the source of the leaks.

In its court filings, Apple argued that neither the free speech protections of the United States Constitution nor the California Shield Law, which protects journalists from revealing their sources, applies to the Web sites. The company said such protections apply only to "legitimate members of the press."

Subpoena fight The court earlier authorized Apple to serve subpoenas on the Web sites, seeking all documents related to Asteroid and information about anyone with knowledge of the postings about the product.

The Electronic Frontier Foundation fought the subpoenas, arguing the online publishers, like their print and broadcast counterparts, frequently rely on confidential sources to report on issues in the public interest.

"Compelled disclosure of journalists' sources would have a devastating effect on the free flow of information," said Kurt Opsahl, an EFF attorney. "It's the lifeblood of a functioning democracy. Therefore the courts have to understand the vital connection between the confidentiality of sources and the freedom of the press."

An Apple spokesman declined to comment on the case.

Adding support Thomas Goldstein, a former dean of the Columbia University Graduate School of Journalism who worked as a reporter for the New York Times, filed a brief in support of the Web sites.

"Just because Apple does not want these publications to report on its activities does not mean that they are not news publications," Goldstein wrote.

Contact Dawn C. Chmielewski at dchmielewski@mercurynews .com or (800) 643-1902.

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