

1 RICHARD R. WINTER, ESQ.
2 SARAH E. PACE, ESQ.
3 McBride Baker & Coles
4 500 West Madison Street
5 Chicago, IL 60661
6 (312) 715-5778

JAMES WHEATON, ESQ.; SBN 115230
FIRST AMENDMENT PROJECT
1736 Franklin, 8th Floor
Oakland, CA 94612
(510) 208-7744

7
8 KARL OLSON, ESQ.; SBN 104760
9 Levy, Ram, Olson & Rossi
10 639 Front Street, 4th Floor
11 San Francisco, CA 94111
12 (415) 433-4949

ROBERT CORN-REVERE, ESQ.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

13 Attorneys for Plaintiff
14 Daniel J. Bernstein

15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL J. BERNSTEIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

C 95-00582 MHP

**DECLARATION OF
TIMOTHY O'REILLY
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

HEARING DATE: August 2, 2002

TIME:

JUDGE: Marilyn Hall Patel

I, TIMOTHY O'REILLY, hereby declare:

1. I am the founder and CEO of O'Reilly & Associates, Inc. ("O'Reilly"), a publishing house specializing in books for computer programmers, system administrators, and users. O'Reilly started as a technical-writing consulting company in 1978 and published its first book in 1985. O'Reilly also sold some software between 1995 and 2001.

1 9. Many books that are published do not earn a profit. Books that sell fewer copies
2 than expected are subsidized by those that sell more copies than expected.

3 10. The total price for a complete set of O'Reilly's books is approximately \$12,000.
4 The average retail price is approximately \$40. O'Reilly's average profit per unit sold is
5 approximately \$2. If O'Reilly changed its prices to eliminate development, design, and
6 acquisition, and to cover only the costs of reproduction and distribution, O'Reilly would be
7 unable to stay in business.

8 I declare under penalty of perjury under the laws of the United States that the foregoing
9 is true and correct and that this Declaration was executed on this ____ day of April, 2002.

10
11 _____
12 TIMOTHY O'REILLY
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28