

CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION  
PURSUANT TO PROTECTIVE ORDER

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LTD., SAMSUNG ELECTRONICS AMERICA,  
14 INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,  
19 Plaintiff,  
20 vs.  
21 SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
22 ELECTRONICS AMERICA, INC., a New  
York corporation; SAMSUNG  
23 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,  
24 Defendant.  
25

CASE NO. 11-cv-01846-LHK

**DECLARATION OF BYUNGIL KIM IN  
SUPPORT OF OPPOSITION TO APPLE  
INC.’S MOTION FOR ADVERSE  
INFERENCE JURY INSTRUCTIONS  
DUE TO SAMSUNG’S SPOILIATION OF  
EVIDENCE**

**Date: June 26, 2012  
Time: 10:00 a.m.  
Place: Courtroom 5, 4th Floor  
Judge: Hon. Paul S. Grewal**

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27 **FILED UNDER SEAL**

28 PUBLIC REDACTED VERSION

**DECLARATION OF BYUNGIL KIM**

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I, Byungil Kim, hereby declare as follows:

1. I am a professor at Hanyang University, School of Law. I submit this declaration in support of Samsung's Opposition to Apple Inc.'s Motion for Adverse Inference Jury Instructions Due to Samsung's Spoliation of Evidence. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I would and could testify competently thereto.



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<sup>1</sup> See APPENDIX I for the full text of the provisions of the Personal Information Protection Act cited in this section.



<sup>3</sup> According to Article 2(1) of the Personal Information Protection Act, the term "personal information" means information that pertains to a living person, including the full name, resident registration number, images, etc., by which the individual in question can be identified, (including information by which the individual in question cannot be identified but can be identified through simple combination with other information).

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<sup>5</sup> See **APPENDIX II** for the full text of the provisions of the Constitution cited in this section.

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<sup>6</sup> See **APPENDIX III** for the full text of the provisions of the Communications Network Act cited in this section.

<sup>7</sup> The full title of the statute is “the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.”

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<sup>8</sup> See **APPENDIX IV** for the full text of the provisions of the Communication Secret Protection Act cited in this section.

<sup>9</sup> Under Article 4 of the Communication Secret Act, postal mail or its contents, when obtained through illegal inspection, and the contents of communications, when acquired or recorded through illegal wiretapping in violation of Article 3, shall not be admitted into evidence in a trial or disciplinary procedure.

<sup>10</sup> See **APPENDIX V** for the full text of the provisions of the Criminal Code cited in this section.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 24th of May, 2012, in Seoul, Republic of Korea.

*Byungil Kim*  
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Byungil Kim



**APPENDIX I**

**Personal Information Protection Act**

**Article 2 (Definitions)**

- (1) The term "personal information" means information that pertains to a living person, including the full name, resident registration number, images, etc., by which the individual in question can be identified, (including information by which the individual in question cannot be identified but can be identified through simple combination with other information)

**Article 15 (Collection and Use of Personal Information)**

- (1) A personal information manager may collect personal information and use it for the intended purpose of collection in any of the following cases:
1. Where he/she has obtained the consent of a subject of information;
  2. Where there exist special provisions in any Act or it is inevitable to fulfill an obligation imposed by or under any Act and subordinate statute;
  3. Where it is inevitable for a public institution to perform its affairs provided for in any Act and subordinate statute, etc.;
  4. Where it is inevitably necessary for entering into and performing a contract with a subject of information;
  5. Where it is deemed obviously necessary for physical safety and property interests of a subject of information or a third person when the subject of information or his/her legal representative cannot give prior consent because he/she is unable to express his/her intention or by reason of his/her unidentified address, etc.;
  6. Where it is necessary for a personal information manager to realize his/her legitimate interests and this obviously takes precedence over the rights of a subject of information. In such cases, this shall be limited to cases where such information is substantially relevant to a personal information manager's legitimate interests and reasonable scope is not exceeded.

**Article 75 (Fines for Negligence)**

- (1) A person who falls under any of the following cases shall be punished by a fine for negligence not exceeding 50 million won:
1. A person who collects personal information, in violation of Article 15 (1);
  2. A person who fails to obtain the consent of a legal representative, in violation of Article 22 (5);
  3. A person who installs and operates the image data processing equipment, in violation of Article 25 (2).



1 **APPENDIX II**

2 **Constitution**

3 **Article 17**

4 The privacy of no citizen shall be infringed.

5 **Article 18**

6 The privacy of correspondence of no citizen shall be infringed.

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1 **APPENDIX III**

2 **Act on Promotion of Information and Communications Network Utilization and**  
3 **Information Protection, Etc.**

4 **Article 22 (Consent to Collection and Use of Personal Information)**

5 (1) A provider of information and communications services shall, whenever it intends  
6 to collect personal information of a user purposely to use it, notify the user of the  
7 following matters and obtain consent from the user. The same shall apply in cases  
8 where it intends to change any of the following matters:

- 9 1. Purposes of collection and use of the personal information;
- 10 2. Items of personal information that it intends to collect; and
- 11 3. Period of time during which it intends to possess and use the personal  
12 information.

13 (2) A provider of information and communications services may collect and use  
14 personal information of a user without the consent under paragraph (1) in any of  
15 the following cases:

- 16 1. If the personal information is necessary in performing the contract on  
17 provision of information and communications services, but it is obviously  
18 difficult to get consent in an ordinary way due to any economic or technical  
19 reason;
- 20 2. If it is necessary in settling the payment for charges on the information and  
21 communication services rendered; and
- 22 3. If a specific provision exists in this Act or any other Act otherwise.

23 **Article 49 (Protection of Secrets, etc.)**

24 No one shall mutilate another person's information processed, stored, or transmitted through an  
25 information and communications network, nor shall infringe, misappropriate, or divulge another  
26 person's secret.

27 **Article 71 (Penal Provisions)**

28 A person falling under any of the following subparagraphs shall be punished by imprisonment  
with prison labor for not more than five years or by fine not exceeding 50 million won:

1. A person who collects personal information with consent of the relevant user in  
violation of Article 22 (1) (including cases to which the aforesaid provision shall  
apply mutatis mutandis pursuant to Article 67);
2. A person who collects personal information that is likely to seriously undermine  
rights, interests, or privacy of a person without consent of the relevant user in  
violation of Article 23 (1) (including cases to which the aforesaid provision shall  
apply mutatis mutandis pursuant to Article 67);
3. A person who uses or furnishes a third party with personal information, or who  
knowingly received such personal information for profit or for any other wrongful

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purpose, in violation of Article 24, 24-2 (1) or (2), or 26 (3) (including cases to which any of the aforesaid provisions shall apply mutatis mutandis pursuant to Article 67);

4. A person who entrusts someone with handling of personal information with consent of the relevant user in violation of Article 25 (1) (including cases to which the aforesaid provision shall apply mutatis mutandis pursuant to Article 67);
5. A person who mutilates, infringes, or leaks personal information in violation of Article 28-2 (1) (including cases to which the aforesaid provision shall apply mutatis mutandis pursuant to Article 67);
6. A person who knowingly receives any leaks personal information for profit or for any other wrongful purpose in violation of Article 28-2 (2);
7. A person who furnishes someone with or uses personal information without taking necessary measures in violation of Article 30 (5) (including cases to which the aforesaid provision shall apply mutatis mutandis pursuant to Article 30 (7), 31 (3), or 67);
8. A person who collects personal information of a child of less than 14 years old without consent of his/her legal representative in violation of Article 31 (1) (including cases to which the aforesaid provision shall apply mutatis mutandis pursuant to Article 67);
9. A person who conveys or circulates a malicious program in violation of Article 48 (2);
10. A person who causes a trouble to an information and communications network in violation of Article 48 (3);
11. A person who mutilates another person's information or who infringes, misappropriates, or divulges another person's secret in violation of Article 49.



1 **APPENDIX IV**

2 **Communication Secret Protection Act**

3 **Article 3 (Protection of Secrets of Communications and Conversation)**

4 (1) No person shall censor any mail, wiretap any telecommunications, provide the  
5 communication confirmation data, record or listen to conversations between others  
6 that are not made public, without following the provisions under this Act, the  
7 Criminal Procedure Act or the Military Court Act:

8 Provided, That the following cases shall be governed by the Acts concerned:

9 **Article 4 (Prohibition of Use of Contents of Mail from Illegal Inspection and Contents  
10 of Telecommunications from Illegal Wiretapping as Evidence)**

11 Mail or its contents obtained through illegal inspection and the contents of communication  
12 acquired or recorded through illegal wiretapping in violation of Article 3 shall not be  
13 admitted as evidence in a trial or disciplinary procedure.

14 **Article 16 (Penal Provisions)**

15 (1) Any person falling under any of the following subparagraphs shall be punished by  
16 imprisonment with prison labor for not more than 10 years or by suspension of  
17 qualification for not more than 5 years:

- 18 1. A person who has censored any mail, wiretapped any telecommunications  
19 or recorded or eavesdropped on any conversations between other  
20 individuals in violation of the provisions of Article 3; and
- 21 2. A person who has disclosed or leaked the substances of communications or  
22 conversations he has learned in a manner referred to in subparagraph 1.

23 **Article 18 (Criminal Attempts)**

24 Attempts of the crimes prescribed in Articles 16 and 17 shall be punished.  
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1 **APPENDIX V**

2 **Criminal Code**

3 **Article 316 (Violation of Secrecy)**

4 (1) A person who opens a sealed or other secretly composed letter, document, or  
5 drawing shall be punished by imprisonment or imprisonment without prison labor  
6 for not more than three years or by a fine not exceeding five million won.  
7 <Amended by Act No. 5057, Dec. 29, 1995>

8 (2) Any person who detects the contents of another person's sealed or secretly  
9 designed letter, document, drawing, picture, or special media records, such as  
10 electromagnetic records, using any technical means, shall be subject to the same  
11 punishment as referred to in paragraph (1).  
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