

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

JOHNS-BYRNE COMPANY, an Illinois corporation,  
Petitioner,  
v.  
TECHNOBUFFALO LLC, a California limited liability company; MEDIA TEMPLE, INC., a California corporation; GOOGLE, INC., a Delaware corporation, and AT&T, INC., a Delaware corporation,  
Respondents.

Case No. 2011-L-009161

FILED LAW DIVISION  
2011 SEP 26 AM 3:16  
CIRCUIT COURT OF COOK COUNTY  
LAW DIVISION

**RESPONDENT TECHNOBUFFALO LLC'S RESPONSE  
IN OPPOSITION TO PETITION FOR DISCOVERY**

Respondent TechnoBuffalo LLC, by its undersigned attorneys, submits the following Response in Opposition to the Petition for Discovery brought by Johns-Byrne Company ("JBC").

1. On September 1, 2011, JBC filed a petition pursuant to Supreme Court Rule 224 ("Petition") to initiate discovery against TechnoBuffalo and three other respondents.
2. TechnoBuffalo opposes the Petition and requests that the Court deny it on the basis that TechnoBuffalo may not be compelled to disclose its source under the laws of either Illinois or California. Further, JBC's attempt to obtain discovery regarding TechnoBuffalo's source from the other respondents is intended to circumvent settled law regarding the reporter's privilege by obtaining indirectly what JBC may not obtain directly. Accordingly, the Petition should be denied as to all respondents.
3. TechnoBuffalo operates the technology-focused website [www.technobuffalo.com](http://www.technobuffalo.com). The website is a leading purveyor of technology news to over one million readers per month. As

described on the website, TechnoBuffalo's "articles cover a breadth of technology-related issues and topics from the everyday uses to the business side of the industry.... Each article provides value to the reader through editorial commentary, descriptive 'how-to' guides, and immersive video." (*See* Exhibit A, Affidavit of Jonathan Rettinger, ¶ 4.)

4. TechnoBuffalo's reporters gather, write and edit news for publication through various electronic, video and print news media. They post articles, reviews, video and other content on the website ten or more times per day. These generate approximately seven million page views per month. TechnoBuffalo's reporters and content also have appeared in or on Wireless Week, Fox Business News, Business Insider, The Huffington Post, CNBC, The Wire Report and the Daily Mail. (*Id.*, ¶ 5.)

5. On August 17, 2011, TechnoBuffalo posted a story about Motorola's Droid Bionic smartphone, as well as photos of the Key Features and Tricks and Tricks pages from the phone's manual. A redacted version of the story was attached to the Petition. (*Id.*, ¶ 8.)

6. TechnoBuffalo obtained the information and photos disclosed in its August 17 story from a confidential source who asked that his/her name not be disclosed. TechnoBuffalo's President, Jonathan Rettinger, received the information and photographs, and communicated with the source about them. Rettinger then asked another TechnoBuffalo reporter to draft an article using the information Rettinger obtained from the source. (*Id.*, ¶ 7-9.)

7. The Petition seeks disclosure of the identity of TechnoBuffalo's source, as well as all documents related to the August 17 article.

8. Regardless of whether this Court applies the law of Illinois, where JBC is located, or the law of California, where TechnoBuffalo is located, TechnoBuffalo is not obligated to disclose the identity of its confidential source or produce documents relating to the source.

9. The Illinois reporter's privilege statute provides as follows: "No court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act." 735 ILCS 5/8-901. Key terms in the Act are defined as follows:

(a) "reporter" means any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis; and includes any person who was a reporter at the time the information sought was procured or obtained.

(b) "news medium" means any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation; a news service whether in print or electronic format; a radio station; a television station; a television network; a community antenna television service; and any person or corporation engaged in the making of news reels or other motion picture news for public showing.

(c) "source" means the person or means from or through which the news or information was obtained.

735 ILCS 5/8-902.

10. California protects reporters under both the California Constitution, Cal. Const. art. I, § 2(b), and California's Evidence Code, Cal. Evidence Code § 1070. The two provisions are nearly identical in scope. They both provide legal protections to journalists seeking to maintain the confidentiality of an unnamed source or unpublished information obtained during newsgathering:

A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication . . . or any person who has been so connected or employed, shall not be adjudged in contempt [by a body with legal authority] for refusing to disclose the source of any information procured . . . or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television,

or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information or communication to the public.

As used in this subdivision, 'unpublished information' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

Cal. Const. art. I; *see also* Cal. Evidence Code § 1070. In a civil case in which the reporter is not a party California's shield law offers absolute protection.

11. TechnoBuffalo is entitled to the protections of the reporter's privilege under both Illinois and California law. Further, the First Amendment of the U.S. Constitution provides newsgatherers such as TechnoBuffalo with a qualified privilege against disclosure of confidential sources and information provided by confidential sources. The applicable laws and constitutional amendments also prevent JBC from obtaining indirectly through discovery on Media Temple, Inc., Google, Inc. and/or ATT&T, Inc. what it cannot obtain directly from TechnoBuffalo.

12. TechnoBuffalo reserves the right to seek reimbursement for the reasonable expenses of complying with the requirements of any Order entered as a result of the Petition pursuant to Supreme Court Rule 224, which provides that such expenses shall be "borne by the person or entity seeking the discovery." S. Ct. R. 224(c).

WHEREFORE, TechnoBuffalo respectfully requests that the Court enter an order denying JBC's Petition for Discovery in all respects, and granting TechnoBuffalo its attorneys' fees, as well as any other relief that the Court deems just and appropriate.

TECHNOBUFFALO LLC

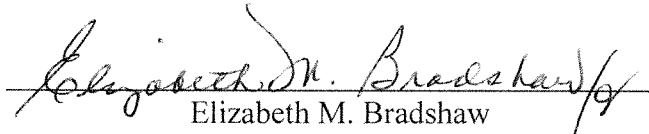
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One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Elizabeth M. Bradshaw, hereby certify that on the 26th day of September, 2011, I caused to be served a true and correct copy of Respondent TechnoBuffalo LLC's Response in Opposition to Petition for Discovery upon the following, by United States mail and electronic mail.

Anthony C. Valiulis  
David A. Eisenberg  
Much Shelist Denenberg Ament &  
Rubenstein, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606-1615

  
Elizabeth M. Bradshaw

# EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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JOHNS-BYRNE COMPANY, an Illinois corporation,	)	
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v.	)	Case No. 2011-L-009161
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	)	
Respondents.	)	

**AFFIDAVIT OF JONATHAN RETTINGER**

I, Jonathan Rettinger, under oath state:

1. My name is Jonathan Rettinger. I am President of TechnoBuffalo LLC and one of its reporters.
2. I am over the age of 18, am under no legal disability and if called to testify in this matter, would testify based on my personal knowledge and in agreement with this Affidavit.
3. TechnoBuffalo is a California limited liability company with an office in Irvine, California. It has no offices, employees or reporters in Illinois.
4. Since it was founded in 2009, TechnoBuffalo has operated the website [www.technobuffalo.com](http://www.technobuffalo.com). The website is a leading purveyor of technology news to over one million readers per month. As described on the website, "The content on TechnoBuffalo is created by a team of professional writers that are self-proclaimed tech-



enthusiasts. Our articles cover a breadth of technology-related issues and topics from the everyday uses to the business side of the industry. In order to breathe life into our content, we make frequent use of video to supplement our text content. Posts on TechnoBuffalo are not simply rehashes of news found on other sites. Each article provides value to the reader through editorial commentary, descriptive 'how-to' guides, and immersive video."

5. TechnoBuffalo's reporters gather, write and edit news for publication through various electronic, video and print news media. They post articles, reviews, video and other content on the website ten or more times per day. These generate approximately seven million page views per month. TechnoBuffalo's reporters and content also have appeared in or on Wireless Week, Fox Business News, Business Insider, The Huffington Post, CNBC, The Wire Report and the Daily Mail.

6. TechnoBuffalo assures potential news sources that their identities will be kept secret if they request anonymity.

7. During the month of August 2011 a source provided information to TechnoBuffalo regarding the Motorola Droid Bionic smartphone. The source expressly requested that his/her identity be kept confidential and not disclosed.

8. The information and photographs provided by the confidential source were included in a story TechnoBuffalo posted on the website on August 17, 2011. That article is referenced in, and a redacted copy was attached to, the Petition.

9. I personally communicated with the confidential source and reviewed the information and documents he/she provided. No other TechnoBuffalo reporter or staff

member communicated with the source or has any information regarding the source's identity.

FURTHER AFFIANT SAYETH NOT.

  
Jonathan Rettinger

State of California )

County of Orange )

Subscribed and sworn to (or affirmed) before me on this 26th day of September, 2011, by JONATHAN RETTINGER, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature  SEAL

