

1 purchase—an Apple-Labeled Computer Hardware System if they wish to have the Mac OS operate
2 sans kernel panic or an infinite loop.

3 4 **APPLE’s Misuse of Copyrights via the EULA**

5 47. In addition to technically preventing the Mac OS from operating on any Mac OS Capable
6 Computer Hardware System and that is not an Apple-Labeled Computer Hardware System, the
7 EULA for the Mac OS X Leopard and MAC OS X Leopard Server (collectively referenced herein
8 as the aforementioned Mac OS), specifically—and, again, by APPLE’s own admission in paragraph
9 22 of its First Amended Complaint—states:

10 “1. General. The software (including Boot ROM Code) . . . accompanying this
11 License whether preinstalled on Apple-labeled hardware, on disks, in read only
12 memory, or any other media or in any other form (collectively the ‘Apple Software’)
13 are licensed, not sold, to you by Apple Inc. (‘Apple’) for use **only under the terms
14 of this License**”

15 2. Permitted License Uses and Restrictions.

16 A. Single Use. This license allows you to install, use and run (1) copy of the Apple
17 Software on a single **Apple-labeled computer** at a time. **You agree not to install,
18 use, or run the Apple Software on any non-Apple-Labeled computer or enable
19 another to do so.**

20 (emphasis added).

21 48. Thus, as a pre-condition of a license to the Mac OS, APPLE leverages its copyrights in the
22 Mac OS to require customers to agree to install, use, or run the Mac OS on—and only on—Apple-
23 Labeled Computer Hardware Systems. As such, a customer is prohibited from seeking out and
24 choosing any other computer hardware system that is not an Apple-Labeled Computer Hardware
25 System—including but not limited to a Mac OS Capable Computer Hardware System—on which to
26 install, use, and run the Mac OS.

27 49. PSYSTAR is informed and believes, and thereon alleges, that APPLE misuses its copyrights
28 in the Mac OS to force purchases of Apple-Labeled Computer Hardware Systems for use in
conjunction with the Mac OS. APPLE, therefore, has attempted to (and continues to) leverage the