

# Tech blogger won't be charged in Apple iPhone case

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(AP) -- Prosecutors said Wednesday that they will not bring charges against a tech blogger who bought an Apple iPhone prototype after it was found at a bar in March 2010 in a case that ignited an unusual First Amendment debate.

San Mateo County Assistant District Attorney Morley Pitt said charges were not filed against [Gizmodo.com](#)'s Jason Chen or other employees, citing California's shield law that protects the confidentiality of journalists' sources.

"The difficulty we faced is that Mr. Chen and Gizmodo were primarily, in their view, engaged in a journalistic endeavor to conduct an investigation into the phone and type of phone it was and they were protected by the shield law," said Pitt.

"We concluded it is a very gray area, they do have a potential claim and this was not the case with which we were going to push the envelope."

Chen's house was raided and his computer seized after Gizmodo posted images of the prototype. The website and other media organizations objected, saying the raid was illegal because state law prohibits the seizure of unpublished notes from journalists.

"We feel there was not a crime to begin with and still believe that, and are pleased the DA's office has an appropriate respect for the [First Amendment](#)," said Thomas J. Nolan Jr., a lawyer for Chen.

Prosecutors did, however, file misdemeanor charges against Brian Hogan, 22, and Sage Wallower, 28, the two men who found and sold the device, which had been left at a Redwood City bar by an Apple Inc. employee.

Hogan was charged with one count of misappropriation of lost property; Wallower with misappropriation of lost property, and possession of stolen property. Each faces a maximum of a year in county jail, plus fines and probation.

"Clearly the phone was left in the bar, and clearly Mr. Hogan took the phone and knew what he had," Pitt said. "Shortly after that he made the wrong choice, and instead of returning the phone to the owner or to Apple he turned to a friend of his and concocted the scheme to sell the phone to Gizmodo."

Hogan's attorney said his client has no criminal background and regrets not returning the [phone](#).

"Although we do not believe that charges of any kind should have been filed, Brian fully accepts responsibility for his actions," the attorney, Jeffrey Bornstein, said in a statement.

Apple referred calls to the district attorney's office. An attorney for Wallower could not be immediately identified.

Gaby Darbyshire, Chief Operating Officer of Gawker.com, which owns Gizmodo, said the company is pleased with the outcome of the case.

"While we have always believed that we were acting fully within the law, it has inevitably been stressful for the editor concerned, Jason Chen, and we are glad that we can finally put this matter behind us," she said in an email.

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