



United States of America v. Apple, Inc.

Opening Statement

June 3, 2013



linked nature of the web were sacrificed. Apps were not as easily linked or searchable. Because the iPad allowed the use of both apps and web browsing, it was not at war with the web model. But it did offer an alternative, for both the consumers and the creators of content.

Publishing and Journalism

With the iPod, Jobs had transformed the music business. With the iPad and its App Store, he began to transform all media, from publishing to journalism to television and movies.

Books were an obvious target, since Amazon's Kindle had shown there was an appetite for electronic books. So Apple created an iBooks Store, which sold electronic books the way the iTunes Store sold songs. There was, however, a slight difference in the business model. For the iTunes Store, Jobs had insisted that all songs be sold at one inexpensive price, initially 99 cents. Amazon's Jeff Bezos had tried to take a similar approach with ebooks, insisting on selling them for at most \$9.99. Jobs came in and offered publishers what he had refused to offer record companies: They could set any price they wanted for their wares in the iBooks Store, and Apple would take 30%. Initially that meant prices were higher than on Amazon. Why would people pay Apple more? "That won't be the case," Jobs answered, when Walt Mossberg asked him that question at the iPad launch event. "The price will be the same." He was right.

The day after the iPad launch, Jobs described to me his thinking on books:

Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at \$9.99. The publishers hated that—they thought it would trash their ability to sell hardcover books at \$28. So before Apple even got on the scene, some booksellers were starting to withhold books from Amazon. So we told the publishers, "We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway." But we also asked for a guarantee that if anybody else is selling the books

"Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at \$9.99. The publishers hated that...."

"So we told the publishers, 'We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway.'"



DX-086

Solstice Books - Publisher Update
Date: Tue, 15 Dec 2009 21:29:23 -0800
From: Eddy Cox <eddy@apple.com>
To: Steve Jaffe <eddy@apple.com>
Bcc: Kevin Stoll <kevin@apple.com>, Keith Mason <keith@apple.com>
Message-ID: <170150F8B-0C91-468D-B064-43569636075@apple.com>

Steve,

Here is what I
will answer to
these deals for
approval from

Many of the

- worldwide re-
- market expect
- In the US, co
- capital value
- books having
- market (18 mo
- each of them
- exact book m
- marketplace
- Random House
- Penguin (1.2
- Harper & B
- Simon & Sch
- Hachette (6.5

- available in a
- rich metadata
- covers and all
- no image was
- preview is us
- open to provi
- many outgros
- no one likes t
- no one likes t
- upward
- generally New
- India, Europe
- all of them ha
- their current b
- with it, I don't

Confidential

- redownloads are fine
- digital wholesale prices are the same as the physical product - roughly 50% of suggested retail price
- asked about and are interested in doing bundles, especially for series
- interested in including extra material (video, audio, images) as part of deluxe editions
- open to promotional opportunities to introduce ebooks
- pre-order up to 6 months ahead of book launch
- very happy with level of sales reporting we can provide, which is better than Amazon

- Amazon is definitely not liked much because of selling below cost for NYT Best Sellers and not being upfront on their deal with them (e.g. didn't know about text to speech)
- Amazon customer mostly all over 45 years old
- Google was either not liked or indifferent; no one views them as a serious ebook commerce partner; with new settlement being proposed any book in print must opt-in and Google can only show 20% of the content so it is more of a preview

- everyone is interested in ad campaign that is co-funded; biggest issue is they have very small generic marketing funds since they can't charge it back to an author, will think more about the implications but want to do it

Here is some publisher specific data -

Hachette

- Unhappy with \$9.99 price point, one of three major publishers to announce its intention to hold back ebooks at time of hardcover release (up to four months). Other two publishers are Simon & Schuster and HarperCollins
- Very open to the idea of window of exclusivity for higher priced new release content
- Looking for to propose price points
- 3k titles available as eBooks
- very much focused on bestsellers
- their content is delivered by third-party company based on Austin (also shared by two other major publishers)

RandomHouse

- 12k titles available as eBooks; adding another 10k in the first half of 2010
- doesn't like the \$9.99 price point, but doesn't want or support windowing, hasn't said so publicly
- very aggressive approach to what eBook rights they believe they hold, claiming worldwide rights for 55% of their catalog
- new contracts pay authors the same for physical or digital (30% of revenue); old contracts pay 50% of revenue for digital

Penguin

- 10k titles available as ebooks
- not happy about \$9.99 price point, but hasn't announced a position publicly; clear from the CEO, though, that they don't view a \$9.99 eBook as sustainable model competing with much higher priced physical books
- 20% of their sales come from new releases with wholesale prices above \$10

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APLEBOOK00434144

"Hachette

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* * *

RandomHouse

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* * *

Penguin

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DX-086

Subject: Books - Publisher Update
Date: Tue, 15 Dec 2009 21:29:33 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Kevin Saul <ksaul@apple.com>, Keith Moerer <kmoerer@apple.com>
Message-ID: <E7050FBB-0C9E-463D-8B64-4356996546DB@apple.com>

Steve,

Here is what I have found after meeting with 3 publishers today. Tomorrow, we see 3 more. This will account for over 60+% of the book sales. Nothing scared me or made me feel like we can't get these deals done right away. **Clearly, the biggest issue is new release pricing and they want a proposal from us.** Everyone was ecstatic to see Apple and what it could mean for their industry.

Many of the answers were the same from every publishers. Below are those -

- worldwide consumer book market - \$40 billion (North America is \$25.1 billion)
- market expected to grow 2.7% annually over the next 3 years
- In the US, consumer books are 42% of the market, education/technical is 58%
- digital sales was 2% last year and will be 4.2% this year - includes ebooks and audio downloads
- books basically have three tiers - hardcover (0-12 months), trade paperback (12 month on), mass market (18 months on)
- each of these tiers has many price points
- most book never go mass market and stay trade

• **marketshare**

Random House 16.4%
Penguin 11.9
Haper 9.8
Simon & Sch 8.7
Hachette 6.9

- available in ePub format (original book are in InDesign)
- rich metadata is available (author, bio, date written, genre, etc)
- covers and illustrations are in hi-res color
- no ratings are available on books
- previews is usually at least the entire first chapter
- open to providing full search in the book with book preview ala what Amazon does for physical
- many categories currently underserved because of b&w screens - cookbooks, travel, kids, etc
- no one likes text to speech because of audiobooks and have disabled it on Amazon
- no one likes the book lending on Nook; one publisher is participating with a few titles (too limited anyways)
- generally North American rights held by US publishers. UK publishers control UK, Australia, India. Europe is mostly an open territory, with US and UK publishers both able to sell there
- all of them have some iPhone book apps but all agree that it should be in a book store
- their current DRM is 5 device limit but as we explained how FairPlay worked everyone was fine with it; I don't foresee this being an issue as our explanation is rock solid

Exhibit 13
Cue
03/12/13

K. Schroeder
for the FBI

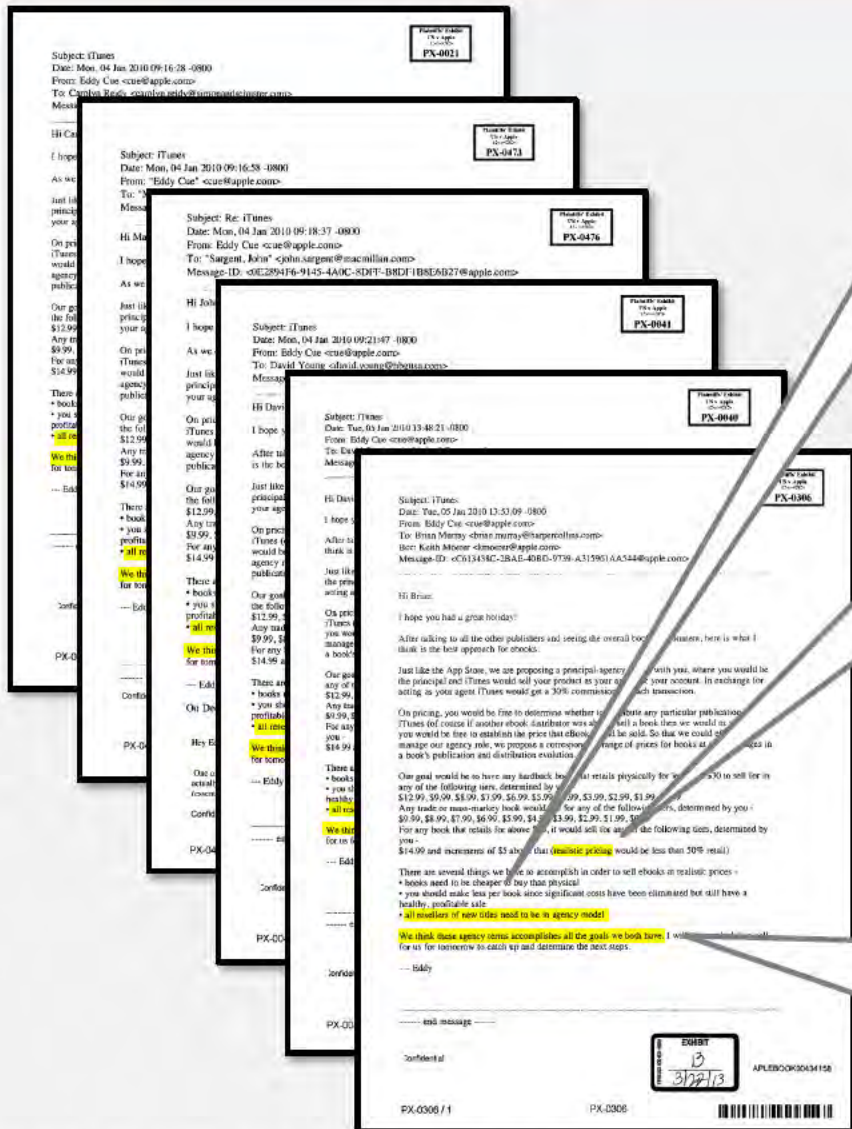
“Clearly, the biggest issue is new release pricing and they want a proposal from us.”

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APLEBOOK00434143



Apple Sends Publishers Identical Proposed Deal Terms



“[A]ll resellers of new titles need to be in agency model....”

“...realistic pricing....”

“We think these agency terms accomplishes all the goals we both have.”



PX-0521 and PX-0174

Threats Exhibit
US v Apple
10-00000
PX-0521

From: "Thomas, Maja" <Maja.Thomas@hugoboss.com>
Sent: Tuesday, January 15, 2010 03:30:51 PM
To: "Young, David" <David.Young@hugoboss.com>
Cc: "Boris, Doreen" <Doreen.Boris@hugoboss.com>, "Mikael, Tom" <Tom.Mikael@hugoboss.com>, "Kreier, Michael" <Michael.Kreier@hugoboss.com>, "Tessa, Carol" <Carol.Tessa@hugoboss.com>, "Solomon, Einar" <Einar.Solomon@hugoboss.com>, "DeYoung, Neil" <Neil.DeYoung@hugoboss.com>, "Michael, Kenneth" <Kenneth.Michael@hugoboss.com>
Subject: Apple

CONFIDENTIAL AND PRIVILEGED

Eddy Cue reiterated their goals to us again today:

"They want to represent a material part of our ebook business, 10-20% in the first year, or they aren't interested in making the investment to build the store."

"They are not willing to open an ebook store that is not price competitive, or where they'd need to sell at a loss to be competitive."

"They want the ebook price to be competitive with (i.e. less than) the highly discounted physical prices in the market."

"They believe that this is the best chance for publishers to challenge the 9.99 price point; otherwise they will continue to supply to consumer through third parties, in effect cementing consumer expectation at 9.99 as a top price."

"They believe that windowing is not a sustainable model, and poses a very significant threat. Eddy also suggested that the device will attract non-traditional ebook buyers and predicts an increase price in legitimate stores (Apple run) to purchase from third parties."

"The device will attract non-traditional ebook buyers and predicts an increase price in legitimate stores (Apple run) to purchase from third parties."

"They believe that this is the best chance for publishers to challenge the 9.99 price point...."

The Wall Street Journal

"Apple has advised us that the ceiling for ebook pricing is indeed \$14.99, for books sold for up to \$30.00. For NYT bestsellers it is \$12.99. Eddy was willing to create an additional tier, in order to move 24.99 to an ebook maximum price of \$11.99, instead of 1."

HBG00013352

Threats Exhibit
US v Apple
10-00000
PX-0174

From: Morikosh, Madeline
To: Chase, Amanda; Updike, Jess; Van Matkin, Nina; Shatz, Matt; Maloney, Nihan; Marlin, Matthew; Dorris, Markus; Weber, Andrew; Vaughn, Chelsea; Thompson, David; Demayo, Joan; Fischbach, Kelly
Sent: 1/10/2010 2:28:50 AM
Subject: privileged & confidential: call with Keith from Apple

Keith and I spoke earlier this evening. I would say it was a good call. In that I did learn a bit more and, if nothing else, I was able to give him insight into why we're feeling stuck in evaluating our next move. I'm still feeling unclear on what our best next move is, but I can at least report on the content of the conversation.

When I learned (some of this is clarification, not completely new) how they got to their proposal:

- o Eddy felt it was the only way to get all publishers committed to simultaneous digital-print release. They think ebook delay is a disastrously bad move and so they think a key role they need to play is to bring those publishers back to simul release, and the only way to do that is through price protection.
- o Eddy has been particularly focused on the NYT bestseller prices (Keith suggested Eddy may be overestimating the impact of the NYT files on the sales mix), both for digital and print. They decided they had to come up with a way that would move the whole market off 9.99 and they took an agency model as the only way to do it.
- o They don't want to get into the business if it means either losing money or being uncompetitive. Because they may be overestimating the impact of new hardware releases, the mix, they are concluding they'll lose money in a wholesale model.
- o If not for the above dynamics, they would be comfortable with a model, since that's what they have in their other content stores. They would take our whole market off 9.99. But

"They decided they had to come up with a way that would move the whole market off 9.99 and they think an agency model is the only way to do it."

- o He asked if we would share what portion of our sales (units and revenue) come from the following slices: 1) NYT hardcovers, 2) other hardcovers in their first year, 3) trade paper in first year, 4) trade paper afterwards, 5) mass market in first year, 6) mass market afterwards. David: double?
- o He and Eddy have been studying the Jan 1 NYT list and comparing prices in print and digital across Amazon, BN, Walmart, and what those prices would be under this model. He's going to ask Eddy if he can send that to us. But we can do this exercise ourselves, too. I'll get a grid started.



Random House Confidential Business Information

RH-USDOJ-00001850

PX-0174 / 1

PX-0174





PX-0613

From: Eddy Cue <cue@apple.com>
Sent: Tuesday, January 26, 2010 11:16 AM
To: Reidy, Carolyn <UReidC@cs.com>
Subject: Re: Thanks

Plaintiff Exhibit
U.S. Apple
11-cv-00559
PX-0613

The PR contact is -
Kate Cotton
katec@apple.com

eddy

On Jan 26, 2010, at 11:53 AM, Reidy, Carolyn wrote:

> Eddy: I think I will go into withdrawal now that I don't have to discuss Fidelity A or Chase G(f) anymore!
> I take it from the time of this email that you didn't get out of New York last night—either that or you are an early riser in California!
> If you didn't get out, I hope that's good news for our industry, and not because you ran into airport delays.

> I too believe this will be a great moment in book publishing. For having that Wednesday's event will erase any lingering feeling of failure at not having been able to move you further out of your "box" (she said dryly) and will sustain us as we move through the next steps in this process of changing the industry.

> I did alert Stephen King yesterday afternoon that UNDER THE DOME might be featured from the stage tomorrow (you do like him) to be fully aware of anything happening involving him) and he was extremely pleased to hear that. He will also be ready with a positive comment (about being happy to see books made even more available from such a good retailer—he's a huge iTunes fan) if the press goes to him for a comment (the second reason I alerted him)—they usually do try and get comments from him on anything that is digital related when his book(s) are even tangentially mentioned.

> I look forward to seeing you on Wednesday, too.
> You were going to send me a PR name I can press on?
> Carolyn

> -----Original Message-----
> From: Eddy Cue (apple.com@apple.com)
> Sent: Tuesday, January 26, 2010 9:51 AM
> To: Reidy, Carolyn
> Subject: Thanks

> Hi Carolyn,

> I feel like I have to send you an email and tell, everyday don't! You are not leader of the book industry appreciate all your efforts in making this happen. I really believe this will be great moment in book publishing.

> I look forward to seeing you on Wed!
> Eddy



CONFIDENTIAL

DOJ-SS0075849

STATE-DOJ-00002927



Carolyn Reidy



**SIMON &
SCHUSTER**

“I’m hoping that Wednesday’s event... will sustain us as we move through the next steps in this process of changing the industry.”



Eddy Cue



“You are a real leader of the book industry.”



PX-0094

From: Sargent, John
Sent: Tuesday, February 9, 2010 12:15 PM (GMT)
To: 'Somerfield, Benita' <BenitaS@flfw.com>
Subject: RE: Congratulations?

Plausibly Excluded
US v Apple
Case No. 10-00000
PX-0094

Actually, the deal that 5 of us did with Apple meant someone was gonna have to do it. Just luck of the draw that it was me. As it turned out I did a good job (thankfully). Interesting in that we did the Apple deal with no contact with other publishers, yet when Jobs announced he had 5 on the agency plus things were clear. The optics make it look like I stood alone, but in the end I had no doubt that the others would eventually follow. (Doesn't mean Amazon couldn't have kept those buy buttons off though...)

-----Original Message-----
From: Somerfield, Benita [mailto:BenitaS@flfw.com]
Sent: Tuesday, February 09, 2010 7:03 AM
To: Sargent, John
Subject: RE: Congratulations?

Uh-huh.
You are.
What you did, what you accomplished is major for this industry. And people will react to you differently forever...so...get used to it! No one else had the nerve nor the brains to pull this off, and Amazon would have remained the big bully in the schoolyard.

-----Original Message-----
From: Sargent, John [mailto:John.Sargent@macmillan.com]
Sent: Tuesday, February 09, 2010 7:03 AM
To: Somerfield, Benita
Subject: RE: Congratulations?

Hero indeed. It is actually pretty strange. People react differently to me now. Am hoping it all blows over quickly.

-----Original Message-----
From: Somerfield, Benita [mailto:BenitaS@flfw.com]
Sent: Tuesday, February 09, 2010 7:00 AM
To: Sargent, John
Subject: RE: Congratulations?

Great!
I'm very happy to hear that you got everything you needed. Maybe your 15 minutes of fame are over (happily) for you. But...you are the hero of this saga!

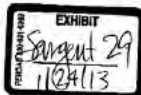
The 18th is good for me.
Looking forward to seeing you then and good luck to us both getting out of here on Thursday. D

-----Original Message-----
From: Sargent, John [mailto:John.Sargent@macmillan.com]
Sent: Tuesday, February 09, 2010 6:52 AM
To: Somerfield, Benita
Subject: RE: Congratulations?

Can do the 18th or the 19th. The quote, and the only thing I have said to the press, is "We are delighted to be back in business with Amazon" - it happens to be true! My 15 minutes of fame is over, as it should be. We signed a deal with Amazon Friday night at 5:00. Not perfect, but we got everything we needed. Back to business as usual, at least for now! Hope you get to Florida. I'm supposed to fly out Thursday to Utah...

“The optics make it look like I stood alone, but in the end I had no doubt that the others would eventually follow.”

Confidentiality requested by Sidney Austin LLP
pursuant to Tex. Bus. & Com. Code, Section 15.10(i)
and any other applicable state laws



MAC 0039617

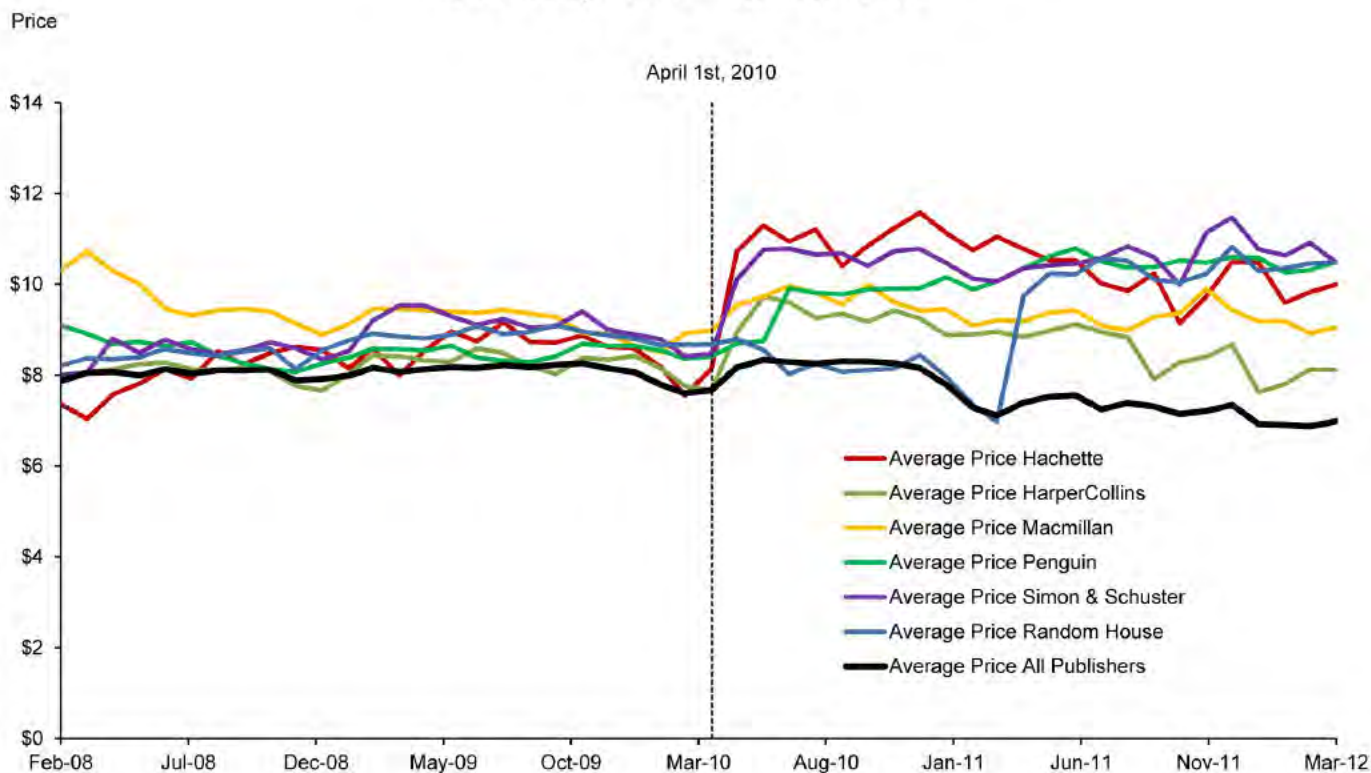




DX-434

CONTAINS MATERIAL DESIGNATED AS HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER

**Average eBook Retail Prices for Sony, Amazon, Barnes & Noble, Apple,
Google, Books-A-Million, and Kobo**
February 2008 – March 2012



Source: Sony Transactions Data, Amazon Transactions Data, Barnes & Noble Transactions Data, Apple Transactions Data, Google Transactions Data, Books-A-Million Transactions Data, Kobo Transactions Data



e-Book Business Prior to Apple's Entry





Wholesale Model for Print Books



Publisher

Establishes list price for book
and sells it to retailer for
percentage of list price
(usually 50%)



Retailer

Establishes
retail price for
consumer



Consumer

Pays
retail price



Original Wholesale Model for e-Books



Publisher

Establishes digital list price typically 20% lower than print list price and sells book to retailer for percentage of digital list price (usually 50%)

EXAMPLE

\$25 list price, \$20 digital price



Wholesale price sold to the retailer



Retailer

Establishes retail price for consumer

EXAMPLE



Retail price sold to consumer



Consumer

Pays retail price

EXAMPLE





Publishers Revise Wholesale Model for e-Books



Publisher

Establishes digital list price
equal to print list price and
sells book to retailer for
percentage of digital list
price (usually 50%)

EXAMPLE

\$25 list price, **\$25** digital price



Wholesale price sold
to the retailer



Retailer

Establishes
retail price for
consumer

EXAMPLE



Retail price sold
to consumer



Consumer

Pays
retail price

EXAMPLE





PX-0219

Plaintiff's Exhibit
US v Apple
1:09-cv-0102
PX-0219

From: Young, David
Sent: Monday, January 19, 2009 08:21:22 AM
To: ARNAUD NOURRY[ARNOURRY@hachette-livre.fr]
Subject: RE: e-books



Arnaud Nourry



"I am told Random House is concerned about the future of e-books and the potentially dominant role played by Google and Amazon.

Would it make sense for the 2 of us to have meetings / diner [sic] with Markus Dohle, Brian Murray, John Sargent and whoever, in order to discuss options?"

Arnaud



David Young



"I am having dinner with that group on January 29 and will raise the matter then."

PX-0219 / 1

PX-0219





PX-0274

Plaintiff's Exhibit
EVE - Apple
ID#A15333
PX-0274

From: MURRY ARNAUD
Sent: Friday, August 14, 2009 01:30:40 PM
To: David Young@hbgusa.com
Subject: Re: scanned eBook article

I fully support your decision David. I do not understand why the industry is not yet at full speed on this!
best!
Arnaud

Le 14 août 2009 à 18:55, "Young, David" <David.Young@hbgusa.com> a écrit :

> Arnaud:
>
> I thought you should be aware of this article as it has implications
> on our decision to delay the Kennedy autobiography. It nicknamed me
> to read "a hardcover book usually sells for \$25 to \$35, while and e-
> book sells for less than \$10". There is that switched \$9.99 price
> point becoming a de facto standard. You should know that I have
> been told by a reliable source that the publishers voted for the Dan
> Brown to be delayed but they were over-ruled by Markus who is
> apparently 'obsessed' by his desire to meet Jeff Bezos: why this
> should matter to him and what he thinks he would gain from such a
> meeting is beyond me. He appears to be an appeaser which is not
> good with them being the market leader - let's change that!
>
> We have brought forward the publication of EMK's book to September
> 14 through brilliant work by Ken and his team. We hope, therefore,
> to publish when the Senator is still alive so that all subsequent
> press coverage can consider his life informed from his point of view
> rather than other published sources. Vicki and EMK are thrilled by
> the new date. We have decided to postpone the publication of the
> eBook edition until December 26 saying that we wanted the public to
> first experience the print edition as it contained over 100 colour
> photographs and paintings, many that have never been seen before
> (and could not be seen well on any of the existing eBook devices).
> Amazon were here this week, offering their bribes and threatening
> dire consequences over any delay. They may well not wait the HC
> edition but we'll just have to front that out. Completely
> confidentially, Carolyn has told me that they are delaying the new
> Stephen King, with his full support, but will not be announcing this
> until after Labor Day so that she can have an enjoyable vacation!
> For the same reasons, I have asked Maja etc not to make any
> statements or send updated ONIX feeds until August 31 when I will be
> back in the office.

>
> No comment required from you, and I am sorry to send this whilst you
> are on vacation, but I felt it important to keep you up to date with
> this particular issue. I think it would be prudent for you to
> double delete this from your email files when you return to your
> office.

> My best,
>
> David

>
> This may contain confidential material. If you are not an intended
> recipient, please notify the sender, delete immediately, and
> understand that no disclosure or reliance on the information herein
> is permitted. Hachette Book Group, Inc. may monitor email to and
> from our network.
> <eBook Article.PDF>

CONFIDENTIAL

HBG-NOUA000049238

PX-0274 / 1

PX-0274



“Completely confidentially, Carolyn has told me that they are delaying the new Stephen King, with his full support, but will not be announcing this until after Labor Day so that she can have an enjoyable vacation!”





PX-0274

Plaintiff's Exhibit
US v Apple
Exhibit 0274
PX-0274

From: NOURRY ARNAUD
Sent: Friday, August 14, 2009 01:30:40 PM
To: David.Young@hbgusa.com
Subject: Re: scanned eBook article

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Arnaud

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>
> My best,
>
> David

>
> This may contain confidential material, if you are not an intended
> recipient, please notify the sender, delete immediately, and
> understand that no disclosure or reliance on the information herein
> is permitted. Hachette Book Group, Inc. may monitor email to and
> from our network.
> <eBook Article.PDF>



CONFIDENTIAL

HBG-NQUA000049238

PX-0274 / 1

PX-0274



"I think it would be prudent for you to double delete this from your email files when you return to your office."



Competition and collaboration

Competition for the attention of readers will be most intense from digital companies whose objective may be to disintermediate traditional publishers altogether. This is not a new threat but we do appear to be on a collision course with Amazon, and possibly with Google as well. It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy. This is the context for the development of the Project Z initiatives in London and New York. We shall be prepared to discuss these, and the London project in particular, when we meet next month but there will be significant costs and risks.

The supply chain

The growth of e-books, and of other digital formats, will certainly reduce the requirement for physical storage and transportation. We shall need to review our warehousing infrastructure, especially in the US, with the goal of reducing the number of warehouses we operate. Our planning in this area is still at an early stage.

despite the potential availability of profitable new agency clients, because of the uncertainty surrounding the growth of the physical book market and the possibility that Australia may move towards an open market during the life of this plan.

Global publishing

The present copyright model is under threat from readers, digital channels and, in the case of Australia, from Government. We therefore need to take a more global approach to our publishing in anticipation of the demise of the territorial copyright regime. The trend toward global publishing presents numerous threats, particularly in the area of piracy, but should work to the relative advantage of companies with international networks and recognised brands. We are making a start with a more co-ordinated approach to the publication of classics and business books, with more categories – children's publishing included – likely to follow in time. Our digital strategy, content management programme, international sales and workflow design are already managed on a global basis but we shall probably need to add other functions to the list during the next three years.

The reorganisation of the UK companies has brought a closer alignment with the US management structure and this should be helpful in realising our global objectives. Finally, we must continue to invest in emerging market opportunities and will introduce changes in management responsibility in October to give additional emphasis to these territories.

Free

Pricing will be a major preoccupation over the life of this plan. The emergence of a new generation of multi-purpose e-book readers, appealing to a younger audience, will require a more sophisticated approach to mobile technology and more creative pricing. We shall try to resist the momentum towards free content through the development of new pricing models. Bundling, micro-content, subscription and pay-per-view will all play a role. This will, as we know, necessitate investment in our inadequate rights systems.



“Competition and collaboration”

“...we do appear to be on a collision course with Amazon, and possibly with Google as well.”

“It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy.”



PX-0344

From: Moonves, Leslie <leslie.moonves@cbs.com>
Sent: Wednesday, September 23, 2009 2:58 PM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Cc: Ianniello, Joseph <Joseph.Ianniello@cbs.com>
Subject: RE: EBooks

Plaintiff Exhibit
US v Apple
Case No. 1:09-cv-01770
PX-0344

Carolyn,

I enjoyed the discussion. Depending on Stephen King's reaction, that might be an excellent first step to change the equation here. I don't mind the fight as long as we can win it. I look forward to more discussion.

Leslie

From: Reidy, Carolyn [mailto:Carolyn.Reidy@Simonandschuster.com]
Sent: Wednesday, September 23, 2009 11:11 AM
To: Moonves, Leslie
Cc: Ianniello, Joseph
Subject: EBooks

Leslie:

Thank you for the discussion this morning about our proposed eBook terms. You are absolutely correct: we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices. Your excellent and direct questions made me realize that I do need to have a better idea of how the rest of the negotiation will go before we can begin it. And of course you were right that without a critical mass behind us Amazon won't "negotiate," so we need to be more confident of how our fellow publishers will react if we make a move like this. While I am fairly sure that at least two of them would quickly follow us, our conversation made me feel that I need to shore up that confidence.

Stephen King comes in tomorrow to discuss what to do about his novel. I believe he is thinking of holding back the eBook release of UNDER THE DOME until after Christmas. We will propose to him that he let us offer these new terms on his book alone -- rather than not release it, offer it to Amazon and other retailers on the "new terms" so that it's their choice whether to sell it or not. If he agrees (and I can't predict), it might be an interesting experiment as to Amazon's and other publishers' reactions.

We will keep thinking of how to attack the problem (as we perceive it) of current eBook pricing; as you realize, we think it's too important to ignore. But clearly we need to "gather more troops" and ammunition first!

More to come.

Carolyn



CONFIDENTIAL

SS00028729

PX-0344 / 1

PX-0344



"You are absolutely correct: we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices."

"And of course you were right that without a critical mass behind us Amazon won't 'negotiate,' so we need to be more confident of how our fellow publishers will react if we make a move like this."

"We will keep thinking of how to attack the problem (as we perceive it) of current eBook pricing.... But clearly we need to 'gather more troops' and ammunition first!"



Apple's Entry





Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314

December 10, 2009



Brian Murray



HarperCollins



On December 10 at 9:47, Mr. Murray sends an internal e-mail concerning his call with Mr. Cue



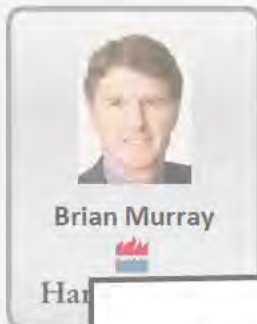
HarperCollins

PX-304



Apple Facilitates Publisher Communication

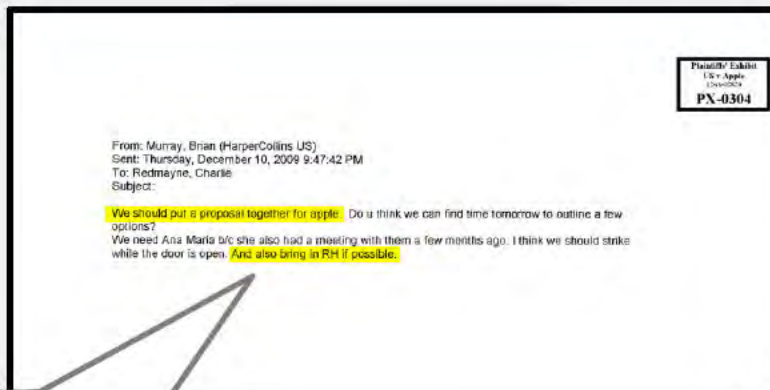
December 8, 2009



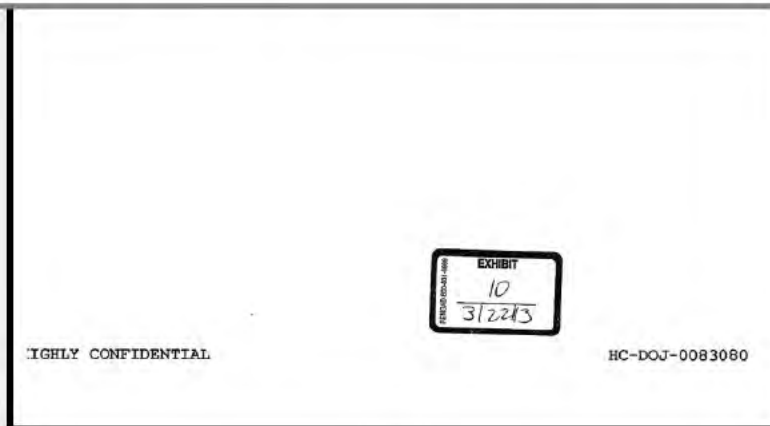
On December 8, 2009, Apple reaches out to Mr. D. for the following day



PX-0314



“We should put a proposal together for Apple.
... And also bring in RH if possible.”



PX-304



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314

December 10, 2009



Brian Murray



HarperCollins



On December 10 at 9:47, Mr. Murray sends an internal e-mail concerning his call with Mr. Cue



HarperCollins

PX-304

December 10, 2009



Brian Murray



HarperCollins



On December 10 at 9:52, Mr. Murray e-mails Mr. Dohle



Markus Dohle



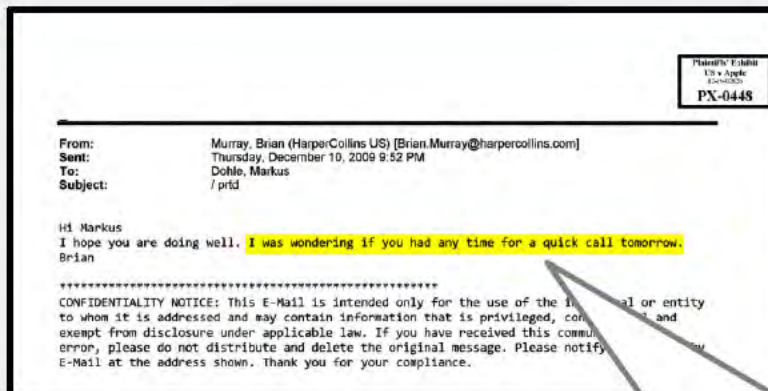
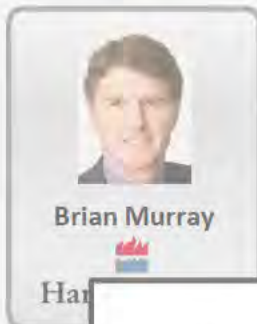
RANDOM HOUSE

PX-0448

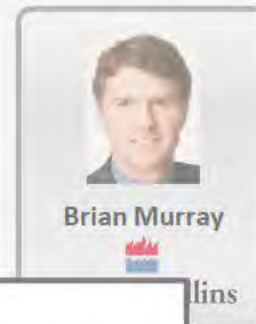


Apple Facilitates Publisher Communication

December 8, 2009



December 10, 2009

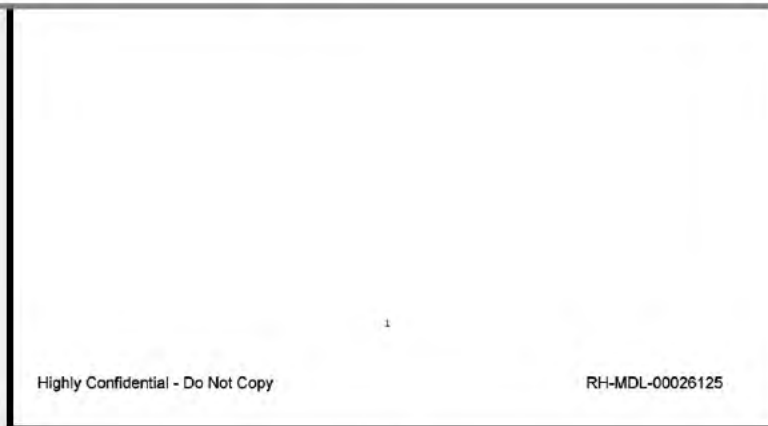


“I was wondering if you had any time for a quick call tomorrow.”

On Dec 10, 2009, at 9:52, mails
reaches of
and Mr. Dohle
for the following day



PX-0314



PX-304



PX-0448



“David Young.... Much happier cuz of meeting. Not spoil fun.... Check in after. Dinner in Jan. Top Man talks different language. Not \$9.95.”



PX-0299

Plaintiff's Exhibit
US v Apple
Case#0299
PX-0299

From: Young, David
Sent: Thursday, December 17, 2009 08:53:31 PM
To: Reidy, Carolyn(Carolyn.Reidy@Simonandschuster.com)
Subject: RE:



Carolyn Reidy



SIMON &
SCHUSTER

“David: do you have a phone number for Eddie Cue...? He didn’t have a card when got to me (we were last and he left here to go to the plane) – or even an email address? I want to take up your suggestion to email him about the ‘term sheet’...”



David Young



hachette
BOOK GROUP

“Email is cue@apple.com. I’ll send you his phone number tomorrow.”

CONFIDENTIAL

HBG-YOUNG000103571

PX-0299 / 1

PX-0299





Apple Provides Information to Publishers About Other Publishers

other publishers want = \$13-\$15 range, get by including extra material

They do the campaign
TV + outdoor advertising / not.
Reading + eBooks
Want \$100 mill - 1/2 + 1/2!!
Now two - kids + over 4.5 - who read
+ own their machines
Robinson Patman not apply

Bug Model

other publishers want = \$13-\$15 range, get by including extra material

Sts - 20-30% discount ebk > pbk.
- disnt to retailer 30-40%
- retailer still disnt 30% more
=> \$30 -> \$17
all parties whole / same

Macmillan - offer enhanced only to follow screen + color (not Amazon)

floor, not a MAP (min. price / actually is a minimum selling price).
Apple / retailer sells below
amount they bought it at / publisher, can't sell
apple not worried - low cost provider strategy.

Enhance like pre-readers, etc.

Macmillan - offer enhanced only to follow screen + color (not Amazon)

back of book ads.
link in book (browser / internet connectivity)
free form splash page for directly related to book
Author App.
not other bks not by author
link to sites

Reporting -
usage; sales; market share data
users: non-ID w/zip data

CONFIDENTIAL

SS00029308

PX-0159

PX-0359



PX-0036

PROCESSED
12/18/09
PX-0036

Subject: Re: New July Today
From: Keith Moore <kmoores@apple.com>
To: Kevin Systrom <ksystrom@apple.com>
Tel: Eddy Cue <ecue@apple.com>
Date: Thu, 17 Dec 2009 05:57:39 -0800

Couple of other things I just thought of

Hi Kevin:

* CEO is on

* signed M

enhanced v

On Dec 17,

Kevin Systrom

MacMillan

* CEO has

info, video

* MacMillan

subject to M

* CEO was

proposed to

* MacMillan

HarperCollins

* A clarific

another 96

* WW rights

* Have lots

books yet

* production

should be

Generally turned on unless contractual issue. Small issue for them.

Book lending - they allow it subject to rights constraints, I lend at a time. We spoke about household lending, ie, our DRM ecosystem.

St. books in ebooks

mobi, epub file most often (everything in that) - send through Ingram

excited about launch

AAP best bet for advertising idea

They really worried about piracy and like apple b/c DRM that will get us to day and date

Worried about library players

First to talk about withdrawal rights, because of reversion rights to authors

HarperCollins

Interested in agency model to fix Amazon pricing (we said no)

They have lots of ww rights (compared to others)

Rights and Publishing Overview page in their prezzi has other info like 6 400 ebooks (400+ ww rights)

9 000 ebooks by July 2010

interested in "enhanced" ebook at some time as hardcover

Simon and Shuster

Great meeting

Tried to meet with us for a long time. Very happy we're there

Impossible to participate at those numbers re advertising idea (total budget 25m for year), and thought AAP is conservative and didn't think could do either

Most aggressive of publishers

Very interested in doing lots of linking from books, upsell etc. (will be good partner)

They hate Amazon pricing

“Interested in agency model to fix Amazon pricing (we said no)”

Apple Confidential

PX-0036 / 1

Apple Confidential

APPLEBOOK-01601745

PX-0036 / 3

PX-0036-003





Apple & Publisher Conspiracy Commences

"I want to update you [on] all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes."

Exhibit 16
Cue
03/12/13
K. Schroeder
cm, rpr, ovr
PX-0056

From: Eddy Cue [cuc@apple.com]
Sent: Friday, December 18, 2009 10:45 PM
To: Dohle, Markus
Subject: iTunes

Hi Markus,

I am back in NY for a vacation. And you back in NY? Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes. If not, can I call you?

Eddy



RANDOM HOUSE

Markus Dohle

Exhibit 16
Cue
03/12/13
K. Schroeder
cm, rpr, ovr

Highly Confidential - Do Not Copy

PX-0056 / 1

PX-0056



PX-0056

Exhibit 16
Cue
03/12/13
K. Schroeder
cm, rpr, ovr
PX-0501

From: Eddy Cue [cuc@apple.com]
Sent: Saturday, December 19, 2009 3:44 AM (GMT)
To: Sargent, John [john.sargent@macmillan.com]
Subject: iTunes

Hi John,

I am back in NY for a vacation. Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes.

Eddy



MACMILLAN

John Sargent

Confidentiality requested by Sidney Austin LLP
pursuant to Tex. Bus. & Com. Code, Section 15.106
and any other applicable state law

PX-0501 / 1

PX-0501



PX-0501

Exhibit 16
Cue
03/12/13
K. Schroeder
cm, rpr, ovr
PX-0502

From: Eddy Cue [cuc@apple.com]
Sent: Friday, December 18, 2009 9:38 PM
To: Reidy, Carolyn [Carolyn.Reidy@simonandschuster.com]
Subject: iTunes

Hi Carolyn,

I am back in NY for a vacation. Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes.

Eddy



SIMON &
SCHUSTER

Carolyn Reidy

CONFIDENTIAL
PX-0502 / 1

PX-0502



PX-0502



Apple & Publisher Conspiracy Commences



December 21
10:33 a.m.



Speak for
10 minutes and
45 seconds



**SIMON &
SCHUSTER**

Carolyn Reidy



Apple

Eddy Cue

PX-0788



December 21
12:17 p.m.



Speak for
17 minutes and
37 seconds



RANDOM HOUSE

Markus Dohle



Apple

Eddy Cue

PX-0788



December 21
12:48 p.m.



Speak for
11 minutes



MACMILLAN

John Sargent



Apple

Eddy Cue

PX-0788



PX-0043

Subject: Book Publisher Update
Date: Mon, 21 Dec 2009 15:01:05 -0800
From: "Eddy Cue" <cue@apple.com>
To: "Steve Jobs" <sjobs@apple.com>
Message-ID: <244AB9F9-5825-47B4-81E4-EE65148DD24D@apple.com>

Plaintiff Exhibit
UK v Apple
12-000000
PX-0043

I had good meetings with 3 publishers. All the talks went well and everyone understood our position and thought it was reasonable. They saw both the plus (solves Amazon issue) and negative (little less than they would like). They came up with exceptions (e.g. Harry Potter & Stephen King) where the book list for more \$35 and \$12.99 is too low. I told to focus on the other 99% and we can figure out how to solve the exceptions. They are all going to call me back by Wed.

Eddy

----- end message -----

“They saw both the plus (solves Amazon issue) and negative (little less than they would like).”

Exhibit 17
Cue
03/12/13
K. Schroeder
csr, rpr, ccr

Confidential

APLEBOOK-00013734

PX-0043 / 1

PX-0043





PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Photocopy/Exhibit
US v Apple
13-cv-0000
PX-0540

I will play with this today...30% margin will be steep...30% to them - [redacted] to the author and then [redacted] to us - based on a \$12.99 price...much less than we get now. I realize we can't keep what we have but this will be a real big change...more to come.

From: Reidy, Carolyn
To: Eulau, Dennis; Selleck, Michael; Rivlin, Elisa; Hirschhorn, Elinor H.
Sent: Mon Dec 21 12:03:33 2009
Subject: Apple -- CONFIDENTIAL

Eddy Cue phoned me this morning (rather than come in for a visit). He wanted to relay his conclusions, having met with all the major publishers and looked at the online retailing market once he got home. He had four points:

1. It is important that Apple make "at least some money" on the endeavor of selling eBooks, so a 30% margin, like they have in the APP Store, is essential to them; they "need that".

2. It is important to Apple that there be "some level of reasonable pricing." They feel the only way to get this is for the industry to go to the agency model, like with the APP store - so the publisher sets the prices to the consumer; they feel it's a "better way to do it", unlike our usual terms of sale.

3. When he looked at sales in the "physical world", he noticed new releases were being sold for \$8-15 (I don't know if he means physical books being sold online or physical books being sold in physical outlets, but a quick check of three of our titles on Amazon agrees with this conclusion for their current book pricing of bestsellers.) Therefore they feel that new release eBooks should be priced at \$12.99 - this is for "normal books" that have a SRP of \$25-30 in the physical form. Thus they'd be sold for "a little less than the real world".

Obviously publishers would make less than in the physical world, but we'd also remove costs and perhaps sell more. Would we make the same, he asked? I told him our models, worked on this summer, implied that pricing to the consumer would be around that price.

I asked if that meant Apple thought all eBooks should be priced the same. He said no, he thought pricing could vary from 99 cents to \$12.99 but he thought only "specialized" books, including books with color in them, which they hoped to sell, could/should be higher. I explained our thinking on Stephen King (not wanting to penalize the paper book reader), but didn't get a specific reaction.

When I asked, "so you see no retail discounting," he said: "You are doing the discounting, you are directly offering the consumer a bargain."

When they thought it through, they didn't think anything else would keep the market from its current "craziness."

4. We would have to "get everyone else to go to the agency model." When I said, "but of course we can't talk to our competitors," he said he didn't mean other publishers, but our accounts - to which I replied, if we make these our terms, then they are our terms.

In conclusion he asked that after we've had time to digest and discuss this, we write him an email with our reactions and thoughts.

"Therefore they feel that **new release eBooks should be priced at \$12.99....**"

"It is important to Apple that there be 'some level of reasonable pricing.' They feel the only way to get this is for the industry to go to the **agency model....**"

"We would have to 'get everyone else to go to the agency model.'"

CONFIDENTIAL

SS00028855



PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Photocopy/Exhibit
US v Apple
Case No. 09-00000
PX-0540

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From: Reidy, Carolyn
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Sent: Mon Dec 21 12:03:33 2009
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In conclusion he asked that after we've had time to digest and discuss this, we write him an email with our reactions and thoughts.

"When they thought it through, they didn't think anything else would keep the market from its current pricing 'craziness.'"

CONFIDENTIAL

SS00028855



PX-0336

Plausibly Exhibit
US v Apple
KJ-00000001
PX-0336

From: Dohle, Markus
Sent: Tuesday, December 22, 2009 2:35 PM
To: McIntosh, Madeline; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Subject: Re: Privileged and Confidential Attorney-Client Communication

Eddy said I would get the additional information "in the next days". I think he will fly back to CA today - so I have to wait until tomorrow to contact him again.

----- Original Message -----

From: McIntosh, Madeline
To: Dohle, Markus; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Sent: Tue Dec 22 05:39:05 2009
Subject: Re: Privileged and Confidential Attorney-Client Communication

Fascinating. I think this can work for us. We have a small team who have pulled together a good model that allows us to play with different discount, pricing and royalty scenarios with relative ease. I think that team (incl Amanda, Nina, Chelsea) are meeting today, so this is good timing. We'll work on gathering any intel we can re what sort of fees Apple collects in their apps model.

Markus, did Eddy give you a sense of when he will be taking the next step (sending us information)?

----- Original Message -----

From: Dohle, Markus
To: McIntosh, Madeline; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Sent: Tue Dec 22 04:22:27 2009
Subject: Privileged and Confidential Attorney-Client Communication

Dear all:

I had a good conversation with Eddy Cue today. He said he had meetings with all major houses to discuss their positions last week.

As you know he is against windowing. He also thinks that book prices are becoming too low - he is worried about the consumer perception. Therefore he suggests an "agency model" - APL is used to it in their apps business. The model puts the retailer in a distributor role receiving a service fee for every book sold - publishers would set the end consumer prices.

He assumes that if we did find a new IOS model which would provide APL with an acceptable margin, Amazon would lower the prices again following again their loss leadership strategy.

He said he would provide us with some data regarding his idea/model. He also said that he would call some publishing peers to discuss. APL's launch date would be end of March.

I told him I have doubts that Amazon would lower the prices again once we would establish a sustainable ebook business model for the market. I also indicated that Amazon would not accept a distributor model. He answered that windowing could be used to establish a distributor model on print pub date for ebooks (coming back to simultaneous publication).



Random House Confidential Business Information

RH-USDOJ-00032366

PX-0336 / 1

PX-0336



“He also thinks that book prices are becoming too low – he is worried about the consumer perception. Therefore he suggests an ‘agency model’....”



PX-0336

Exhibit Label
US v Apple
Transaction
PX-0336

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"I also indicated that Amazon would not accept a distributor model. He answered that windowing could be used to establish a distributor model on print pub date for ebooks (coming back to simultaneous publication)."



Random House Confidential Business Information

RH-USDOJ-00032386

PX-0336 / 1

PX-0336





PX-0317

Plaintiff Exhibit
US v Apple
Doc 000
PX-0317

From: Kot, Rick
To: McCall, Tim; Anderson, Kent
Sent: 3/24/2010 4:04:24 PM
Subject: RE: FYI

As you said, Tim, it's the Wild West, and it's going to be fun (?) to see how all this plays out.
If for any reason you'd ever need an editor to sit in on an Apple meeting, you know who to call.

From: McCall, Tim
Sent: Wednesday, March 24, 2010 12:00 PM
To: Anderson, Kent; Kot, Rick
Subject: RE: FYI

It's double-talk from Marcus. There was a price war under resell, and no one could connect reasons they're sitting on the sidelines and looking for a way to explain it to Apple. They have to move into the Apple space. Their authors and agents.

Agency is anti-price war territory. We don't need to compete with other publishers on the price of our books. We've always priced our books around the same price in the physical world, and will likely end up doing the same thing in the digital world. We all know when it comes to reading, I'm not going to read Sarah Palin if she's \$2 cheaper than Ted Kennedy, if what I really want to read is Ted Kennedy.

Tim
[REDACTED]

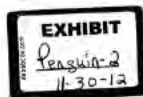
From: Anderson, Kent
Sent: Wednesday, March 24, 2010 11:39 AM
To: Kot, Rick; McCall, Tim
Subject: RE: FYI

Yet they seem to have no problem with The Girl with the Dragon Tattoo selling for \$5.50 in both kindle and physical edition on Amazon. Hmmm.

From: Kot, Rick
Sent: Wednesday, March 24, 2010 11:31 AM
To: McCall, Tim; Anderson, Kent
Subject: FYI

Don't know if you've seen this
<http://www.msn.com/2010/03/24/random-house-holding-out-from-bookstore-amid-fears-of-price-war/>

“Agency is anti-price war territory.”





Publishers Attempt to Force Amazon off \$9.99



Publisher

Establishes digital list price
equal to print list price and
sells book to retailer for
percentage of digital list
price (usually 50%)

EXAMPLE

\$28 list price, **\$28** digital price



Wholesale price sold
to the retailer



Retailer

Establishes
retail price for
consumer

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





An Agency Model Allows Publishers to Control Retail Price



Publisher

Establishes
retail price

EXAMPLE



Retailer

Sells to consumer
at retail price

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





Publishers Earn Less Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



\$9.99

\$7.00

Publisher receives 70% before
author royalties



Retailer

Sells to consumer
at retail price

EXAMPLE



\$9.99



Consumer

Pays
retail price

EXAMPLE



\$9.99



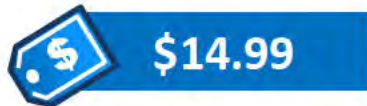
Publishers Can Raise Retail Prices Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



Retailer

Sells to consumer
at retail price

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





Publishers Can Raise Retail Prices Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



\$10.50

Publisher receives 70% before
author royalties



Retailer

Sells to consumer
at retail price

EXAMPLE



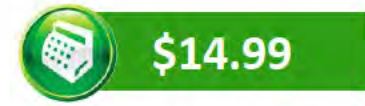
\$14.99



Consumer

Pays
retail price

EXAMPLE



\$14.99



Apple's and Publishers' Goals Align

Exhibit 19
Cue
03/12/13
K. Schroeder
csr, rpr, ccrr

Subject: iTunes
Date: Mon, 04 Jan 2010 09:16:28 -0800
From: Eddy Cue <cue@apple.com>
To: Carolyn Reidy <carolyn.reidy@simonandschuster.com>
Message-ID: <00677114-F680-4482-9C9B-D768F8AB34D1@apple.com>

Hi Carolyn,

I hope you had a great holiday in Paris!

As we discussed, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well) and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency role, we propose a corresponding range of prices for books at various stages in a book's publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for in the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 19
Cue
03/12/13

K. Schroeder
csr, rpr, ccrr

APLEBOOK00434150

PX-0021 / 1

PX-0021



January 4, 2010

E-mail from:



Eddy Cue

To:



Carolyn Reidy

“As we discussed, here is what I think is the best approach for ebooks.”

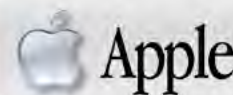


Apple's and Publishers' Goals Align

January 4, 2010

E-mail from:

To:



Eddy Cue



Markus Dohle

Subject: iTunes

Date: Mon, 04 Jan 2010 09:16:58 -0800

From: "Eddy Cue" <cue@apple.com>

To: "Markus Dohle" <mdohle@randomhouse.com>

Message-ID: <F307063E-161B-4CD8-B27B-A0FA04F34196@apple.com>

Please Exhibit
To: Apple
DocID: 625
PX-0473

Hi Markus,

I hope you had a great holiday in Germany!

As we discussed, here is what I think is the best approach for ebooks:

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would not sell); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency role, we propose a corresponding range of prices for books at various stages in a publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you - \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

APPLEBOOK00434608

PX-0473 / 1

PX-0473



“As we discussed, here is what I think is the best approach for ebooks.”



Apple's and Publishers' Goals Align

Subject: Re: iTunes
Date: Mon, 04 Jan 2010 09:18:37 -0800
From: Eddy Cue <cue@apple.com>
To: "Sargent, John" <john.sargent@macmillan.com>
Message-ID: <0E2894F6-9145-4A0C-8DFF-B8DF1B8E6B27@apple.com>

Plaintiff Exhibit
UN v Apple
Case No.
PX-0476

Hi John,

I hope you had a great holiday!

As we discussed, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could consistently manage our agency role, we propose a corresponding range of prices for books at various stages of a book's publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for any of the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

On Dec 21, 2009, at 3:50 PM, Sargent, John wrote:

Hey Eddy, Have been thinking. Consider this completely blue sky, just a bit of brainstorming.

One of the problems we face is that most companies have contracts under the discount model. So what happens if we actually have two terms of sale. 1) 30% agency model with no windowing. 2) Discount model that includes windowing (essentially no change from the current terms we offer)? Everyone decides which model to buy under.

Confidential

APPLEBOOK00434151



January 4, 2010

E-mail from:

To:



Eddy Cue



MACMILLAN

John Sargent

“As we discussed, here is what I think is the best approach for ebooks.”



Apple's and Publishers' Goals Align

January 4, 2010

E-mail from:



Eddy Cue

To:



David Young

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Mon, 04 Jan 2010 09:21:47 -0800
From: Eddy Cue <cue@apple.com>
To: David Young <david.young@hbgusa.com>
Message-ID: <953BE52E-855D-45E0-83E5-A40C6E07A6DE@apple.com>

Plastic Exhibit
US v Apple
12-1-0208
PX-0041

Hi David,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency we propose a corresponding range of prices for books at various stages in a book's production and distribution evolution.

It would be to have any hardback book that retails physically for less than \$35 to sell for in any of the following tiers, determined by you -

\$2.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 20
Cue
03/12/13

APPLEBOOK-00012465

K. Schroeder
csr, rpr, ccr

PX-0041 / 1

PX-0041





Apple's and Publishers' Goals Align

January 5, 2010

E-mail from:



Eddy Cue

To:



David Shanks

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Tue, 05 Jan 2010 13:48:21 -0800
From: Eddy Cue <cue@apple.com>
To: David Shanks <david.shank@us.penguinpub.com>
Message-ID: <CD65BB9B-AB16-4C88-B05F-E6145BD81381@apple.com>

Plaintiff's Exhibit
U.S. v. Apple
12-cv-02057
PX-0040

Hi David,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course, if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage the agency role, we propose a corresponding range of prices for books at various stages in a book's publication and distribution evolution.

It would be to have any hardback book that retails physically for less than \$30 to sell for in the following tiers, determined by you -

\$9.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you -

\$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 21
Cue
03/12/13

K. Schroeder
csr, rdt, ccr

APLEBOOK00434155

PX-0040 / 1

PX-0040





Apple's and Publishers' Goals Align

January 5, 2010

E-mail from:



Eddy Cue

To:



Brian Murray

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Tue, 05 Jan 2010 13:53:09 -0800
From: Eddy Cue <ecue@apple.com>
To: Brian Murray <brian.murray@harpercollins.com>
Bcc: Keith Moerer <kmoerer@apple.com>
Message-ID: <C613438C-2BAE-40BD-9739-A315961AA544@apple.com>

Plaintiff's Exhibit
US v Apple
12-cv-00457
PX-0306

Hi Brian,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent, iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes. You would also be free to establish the price that eBook would be sold. So that we could efficiently fulfill our agency role, we propose a corresponding range of prices for books at various stages in publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$30 to sell for in any of the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you - \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you -

\$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

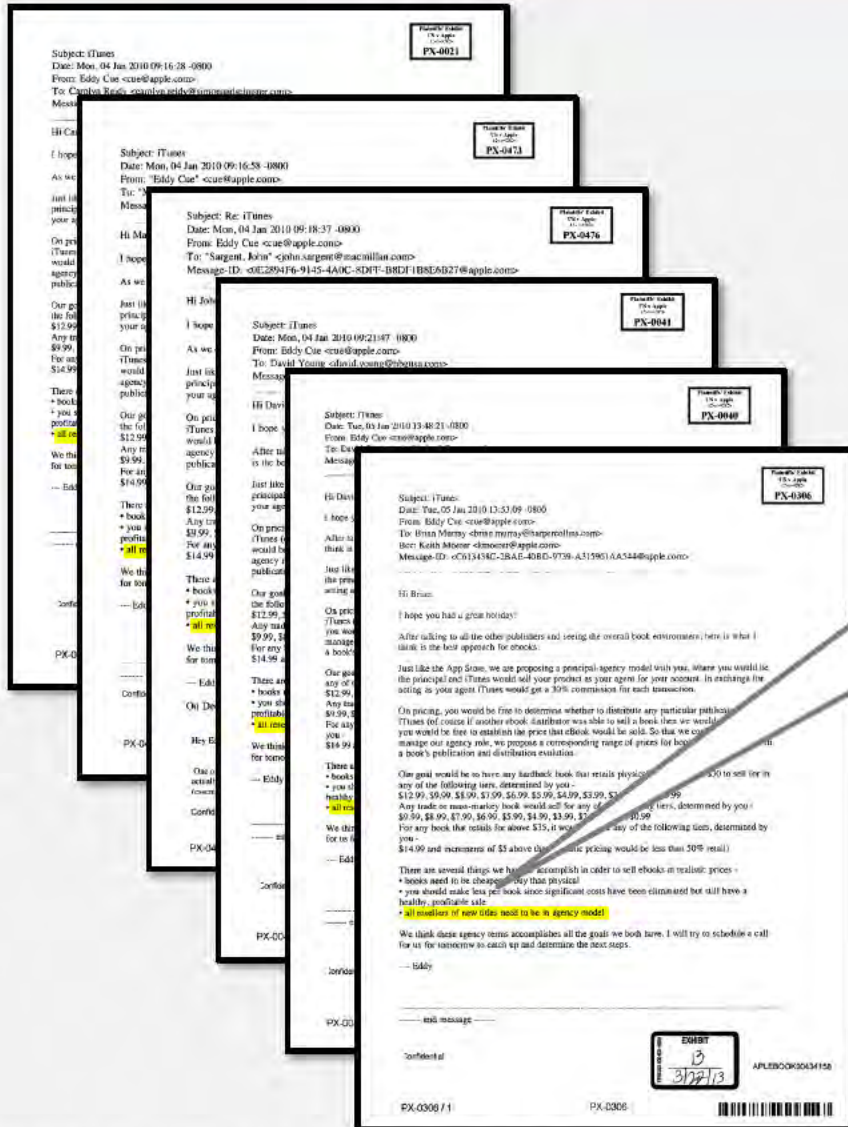


APPLEBOOK00434158





Apple Acts to Facilitate Conspiracy

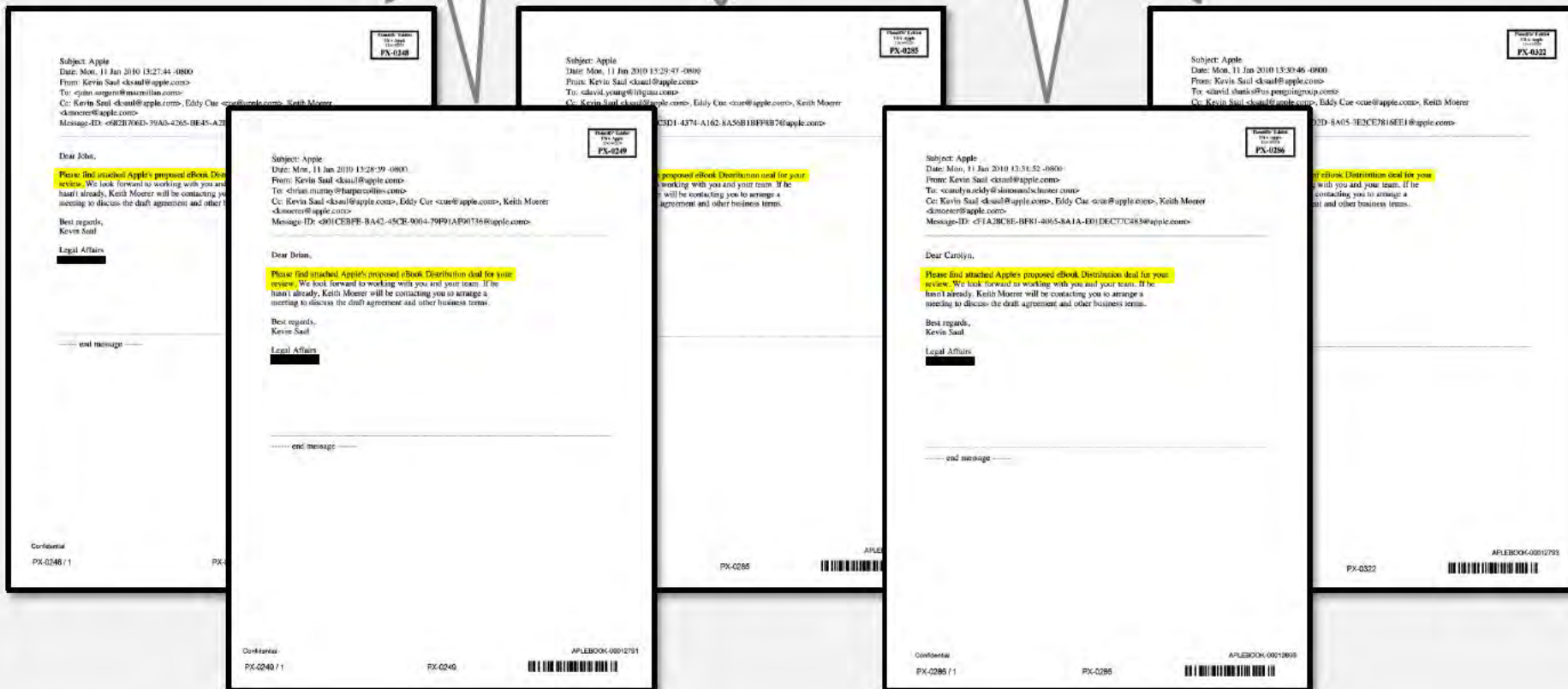


“[A]ll resellers of new titles need to be in agency model....”



January 11, 2010: Identical Draft Agreements Sent to Publishers

“Please find attached Apple’s proposed eBook Distribution deal for your review.”



PX-0248, PX-0249, PX-0285, PX-0286, PX-0322

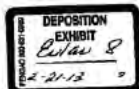


PX-0341

From: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Sent: Thursday, February 11, 2010 10:47 AM
To: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>; Rivlin, Elisa <Elisa.Rivlin@Simonandschuster.com>
Subject: FW: PRIVILEGED AND CONFIDENTIAL: APPLE

Plaintiff's Exhibit
C/A Apple
1/24/09
PX-0341

From: Reidy, Carolyn
Sent: Thursday, February 11, 2010 10:46 AM
To: Moorves, Leslie
Cei Janniello, Joseph
Subject: PRIVILEGED AND CONFIDENTIAL: APPLE



Dear Leslie:

I wanted to keep you up to date on the status of our eBook negotiations with accounts. I apologize in advance for the length of this email, but I wanted to give you a full picture because I believe that within a few weeks Amazon will try and punish us in some way.

As you know, we signed a one-year contract with Apple designating them as an Agent to sell eBooks for us, at a 30% fee. This enables us to set the price to the consumer on our eBooks, with certain agreed ceiling prices on some new releases and best sellers. The Apple iTunes eBook store will go live around the end of March (exact date not yet determined). **In order to not be in a situation whereby we must price our adult new release eBooks sold through Apple at \$9.99, undercutting one of the reasons for making the deal, we need to change our eBook selling terms with our other eRetailers before that date.**

While we told Amazon that we were going to change to the Agency model before the iPad was announced, we have not yet sent our new contract over to them. Before we had even drafted it, Macmillan, as you've seen in the press, flew out to discuss their new Agency terms with Amazon, and had a very ugly and public fight with them: for a week Amazon removed the "buy" buttons on all of Macmillan's physical books from the Amazon bookstore and removed all the eBooks entirely from its site. Amazon did come to terms with Macmillan on an agency approach, it appears, and in fact stated publicly that it would have to give in to Macmillan's demands for higher prices because of Macmillan's monopoly on its titles (we of course call it copyright). Their settlement with Macmillan was very quick and we believe it was because the backlash on their actions was so strong and negative. Their own consumers were incredibly vocal in their displeasure with Amazon, both for its "Big Brother" actions (removing sample chapters that customers had downloaded of Macmillan titles) an effect we have to believe they were not aware would happen; making it impossible for a customer to even list a Macmillan book on his/her wish list) and for presuming to decide what customers could or should buy (many customers said they could very well decide for themselves if books were worth more than \$9.99). Even though about 1/3 of the comments on the site supported Amazon and its pricing, a full half to two-thirds were extremely critical. Secondly, Wall Street punished Amazon severely, and it lost over 6% of its value in two days after taking down Macmillan's books.

I give you this background because it appears that Amazon has decided that we are the next "Apple publisher" they are planning to negotiate with. We have heard that other publishers with whom Apple has announced deals have sent revised terms to Amazon and each has been told that Amazon is not ready to talk to them. We, on the other hand, have just received from Amazon on Tuesday a copy of a contract based on the Agency model reflecting the terms they would like to see. We believe that Amazon's strategy is to take the publishers who have come to terms with Apple on one at a time from small to large, skipping Hachette because their CEO has been so clear in public that he has a "slush fund" precisely to withstand any shortage in sales caused by an Amazon "war."

“In order to not be in a situation whereby we must price our adult new release eBooks sold through Apple at \$9.99, undercutting one of the reasons for making the deal, we need to change our eBook selling terms with our other eRetailers before that date.”

CONFIDENTIAL

SS00031715

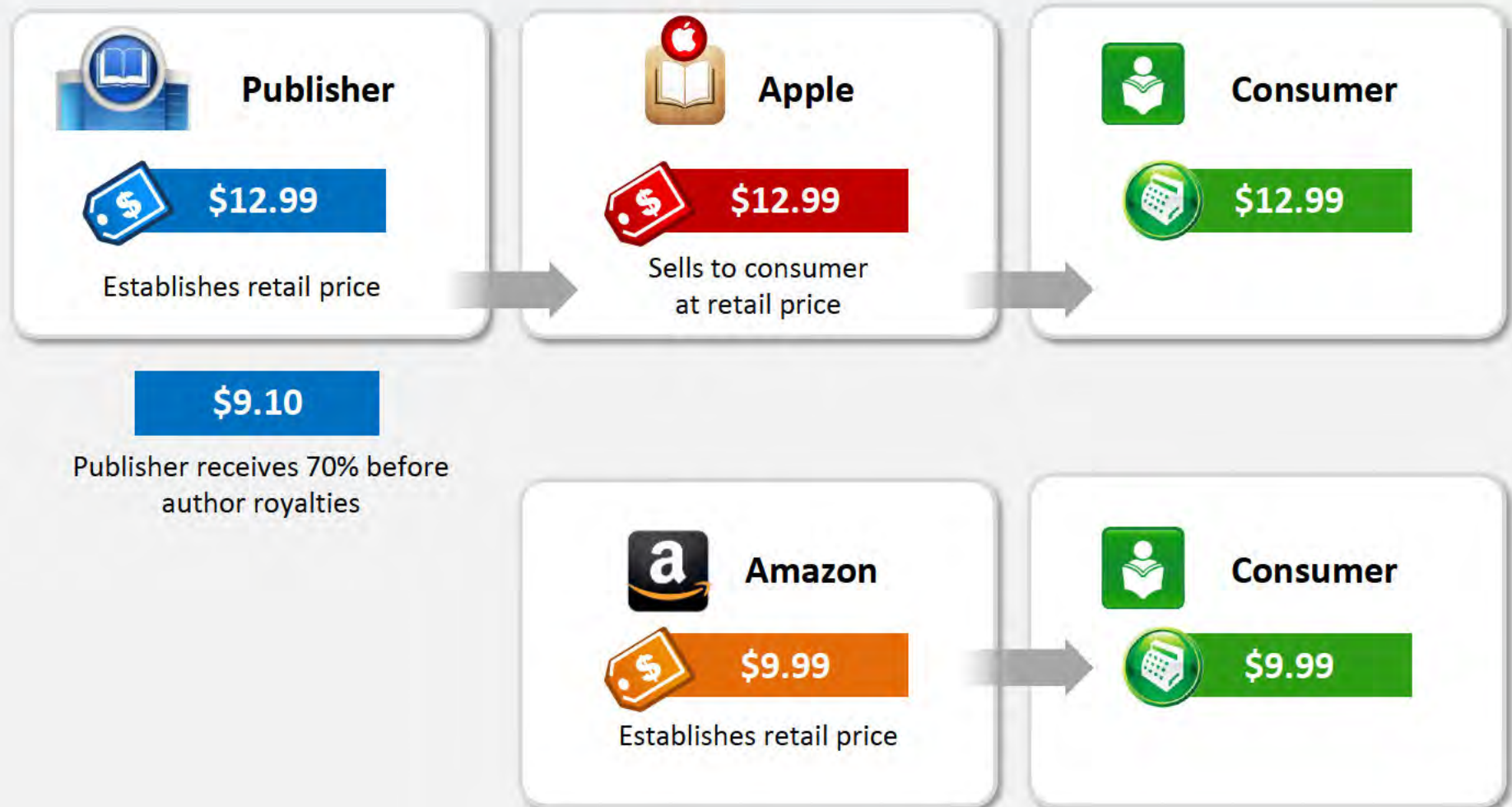
PX-0341 / 1

PX-0341



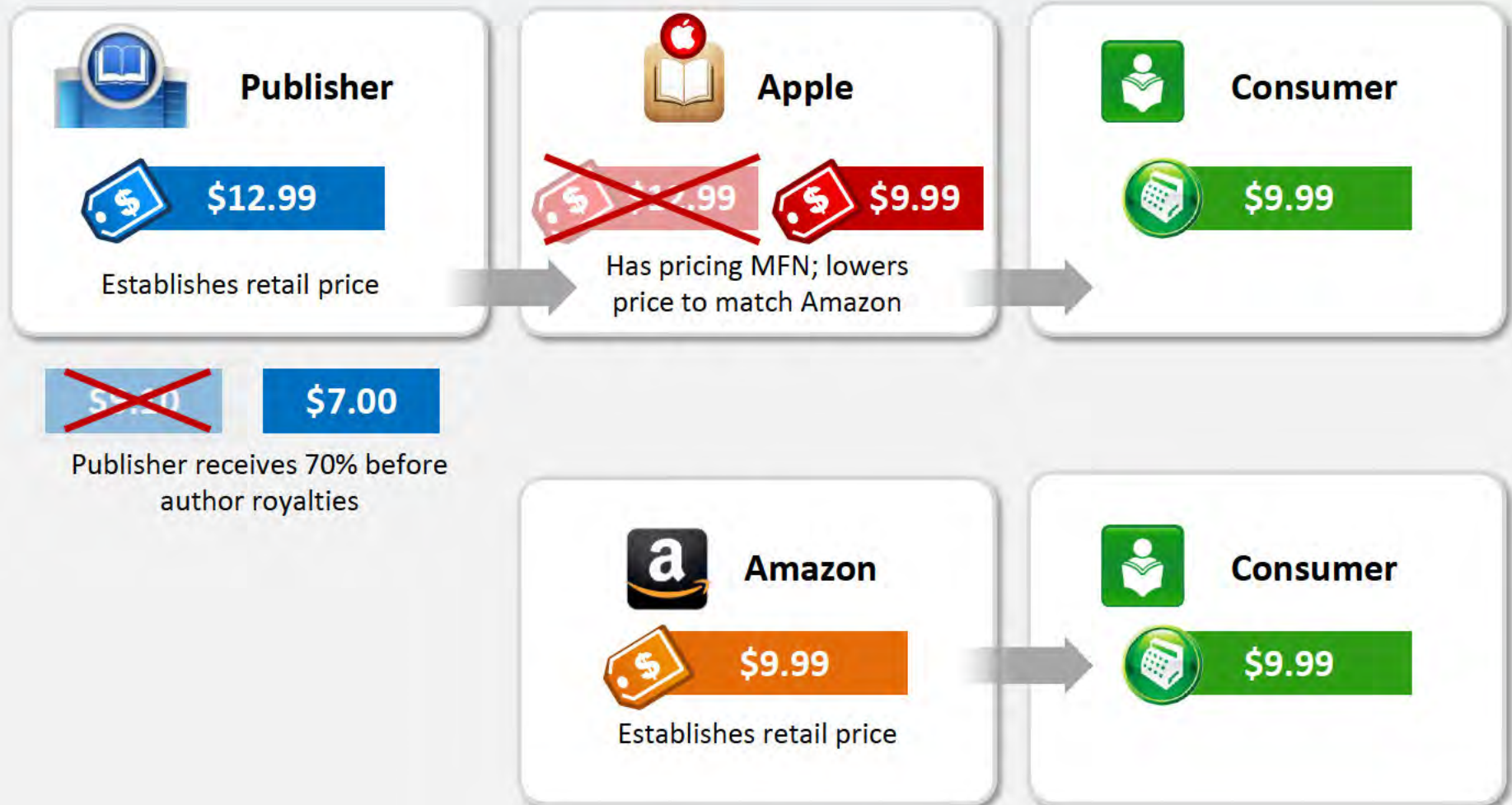


Apple's MFN Compels Publishers to Move All Retailers to Agency





Apple's MFN Compels Publishers to Move All Retailers to Agency





PX-0065

Exhibit
C-1 Apple
PX-0065

Subject: Re: today
Date: Tue, 13 Apr 2010 05:39:43 +0000
From: "Pete Alcorn" <palcom@apple.com>
To: "Oliver Schusser" <oschusser.o@euro.apple.com>
Message-ID: <F0CA20D7-7D1E-41AB-9C7E-0DC362660CBE@apple.com>

Yep, I'm very happy with the outcome. Thanks for that note to Corinna -- that should get us kicked into gear there.

Interesting conversation with Keith after about MFN. He definitely feels the pain and frustration of selling that MFN. I told him that I think he and Eddy made it at least halfway to changing the industry permanently, and we should keep the pads on and keep fighting for it. I might regret that later, but right now I feel like it's a giant win to keep pushing the MFN and forcing people off the amazon model and onto ours. If anything, the place to give is the pricing -- long run, the mfn is more important. The interesting insight in the meeting was Eddy's explanation that it doesn't have to be that broad -- any decent MFN forces the model. Possible to claim that we don't really need the MFN in DE and FR, but then, it shouldn't be hard for the guys there to sign up to it.

Publishers in UK: Hachette, Penguin, Macmillan
Publishers in DE: Holtzbrinck, Bonnaier, Drömer/Knaur
Publishers in FR: Hachette, Editis (Planeta), Flammarion (RCS)

Why would we stop at 3? Seems like we should go a bit broader to ensure success (I would count). We should negotiate with Random House in the EU -- might be a different reaction -- they'll want the attention. We should also go after Oxford in a big way to get the UPs moving -- lots of titles there. We should work with Faber and the Alliance to see if we can shake all of them loose.

Re programming, let's talk about it. Need to get your thoughts in more detail.

As for negotiation, it would be great to have your support on the front end. With you and I and Corinna, we come in with three different perspectives. After we bag a couple, the existing partners become the third man, plus I'll start to internalize your perspective, as well as Corinna's.

Talk to you in the morning.

Pete

On Apr 12, 2010, at 8:44 PM, Oliver Schusser wrote:

Good meeting, we now have clarity on:

- launch date end of May
- launch countries UK, DE and FR
- standardized Euro pricing across Europe

EXH 10
DATE 4-20-10
WITNESS
PATRICK L. HARRIS
CSC 101 3408

Highly Confidential

APPLEBOOK-00369198

PX-0065 / 1

PX-0065



"I feel like it's a giant win to keep pushing the MFN and forcing people off the amazon model and onto ours."

"The interesting insight in the meeting was Eddy's explanation that it doesn't have to be that broad -- any decent MFN forces the model."



PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Photocopy Exhibit
US v Apple
Lit. No. 09-000
PX-0540

I will play with this today...30% margin will be steep...30% to them - [REDACTED] to the author and then [REDACTED] to us - based on a \$12.99 price...much less than we get now. I realize we can't keep what we have but this will be a real big change...more to come.

From: Reidy, Carolyn
To: Eulau, Dennis; Selleck, Michael; Rivlin, Elisa; Hirschhorn, Elinor H.
Sent: Mon Dec 21 12:03:33 2009
Subject: Apple -- CONFIDENTIAL

Eddy Cue phoned me this morning (rather than come in for a visit). He wanted to relay his conclusions, having met with all the major publishers and looked at the online retailing market once he got home. He had four points:

1. It is important that Apple make "at least some money" on the endeavor of selling eBooks, so a 30% margin, like they have in the APP Store, is essential to them; they "need that".
2. It is important to Apple that there be "some level of reasonable pricing." They feel the only way to get this is for the industry to go to the agency model, like with the APP store - so the publisher sets the prices to the consumer; they feel it's a "better way to do it", unlike our usual terms of sale.
3. When he looked at sales in the "physical world", he noticed new releases were being sold for \$8-15 (I don't know if he means physical books being sold online or physical books being sold in physical outlets, but a quick check of three of our titles on Amazon agrees with this conclusion for their current book pricing of bestsellers.) Therefore they feel that new release eBooks should be priced at \$12.99 - this is for "normal books" that have a SRP of \$25-30 in the physical form. Thus they'd be sold for "a little less than the real world".

Obviously publishers would make less than in the physical world, but we'd also remove costs and perhaps sell more. Would we make the same, he asked? I told him our models, worked on this summer, implied that pricing to the consumer would be around that price.

I asked if that meant Apple thought all eBooks should be priced the same. He said no, he thought pricing could vary from 99 cents to \$12.99 but he thought only "specialized" books, including books with color in them, which they hoped to sell, could/should be higher. I explained our thinking on Stephen King (not wanting to penalize the paper book reader), but didn't get a specific reaction.

When I asked, "so you see no retail discounting," he said: "You are doing the discounting, you are directly offering the consumer a bargain."

When they thought it through, they didn't think anything else would keep the market from its current pricing "craziness."

4. We would have to "get everyone else to go to the agency model." When I said, "but of course we can't talk to our competitors," he said he didn't mean other publishers, but our accounts - to which I replied, if we make these our terms, then they are our terms.

In conclusion he asked that after we've had time to digest and discuss this, we/I write him an email with our reactions and thoughts.

"We would have to 'get everyone else to go to the agency model.' When I said, 'but of course we can't talk to our competitors,' he said he didn't mean other publishers, but our accounts - to which I replied, if we make these our terms, then they are our terms."

CONFIDENTIAL

SS00028855



PX-0026

Plaintiff Exhibit
In re Apple
Litigation
PX-0026

Subject: Book Publisher Update
Date: Wed, 13 Jan 2010 08:26:46 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Kevin Saul <ksaul@apple.com>, Keith Moerer <kmoerer@apple.com>
Message-ID: <042C7E35-8C63-4FCA-BB8E-BFAAFF46195C@apple.com>

We met with 3 book publishers (Penguin, Hachette and Harper Collins) yesterday. One of them, we are meeting again today because the CEO became unavailable.

The response from both Penguin and Hachette was very similar -

- willing to do an agency model
- go agency model for new releases with everyone else
- agree that digital books should be cheaper than physical but
- need a higher tier(s)

They want to work with us and think we would be great for the industry and customers but if the only choice is take \$5-6 less for an ebook than today, they would prefer to holdback on Amazon and play that out.

Today, we are meeting with 3 other publishers and I will let you know what they say.

Eddy

----- end message -----

“The response from both Penguin and Hachette was very similar –

- willing to do an agency model
- go agency model for new releases with everyone else”

Exhibit 28
Cue
03/12/13

K. Schroeder
per Mr. Cue

Confidential

APPLEBOOK-00012481



PX-0058

Subject: Book Pricing update
Date: Sat, 03 Apr 2010 03:13:41 -0700
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Message-ID: <7BB78A4B-013A-47CF-A66F-EA71CSEDB312@apple.com>

Plausibility Exhibit
US v. Apple
Ex-00058
PX-0058

We have reviewed all the books on Amazon and they have switched to agency with the publishers. Here is what they look like on Amazon. Note the disclaimer on each product detail page below ("This price was set by the publisher").

We are changing a bunch of Penguin titles to \$9.99 as I write this to because they didn't get their Amazon deal done.

Overall, our NYT bestsellers and new releases are the same as Amazon.

--- Eddy

----- end message -----

Exhibit 48
Cue
03/13/13
K. Schroeder
cc: rrr rrr

confidential

APPLEBOOK-00002151

“We have reviewed all the books on Amazon and they have switched to agency with the publishers.”



PX-0055

From: Steve Jobs <sjobs@apple.com>
To: Eddy Cue <cue@apple.com>
Subject: Re: Book Prices Thoughts
Received(Date): Thu, 14 Jan 2010 18:23:08 -0800

Plaintiff's Exhibit
US v Apple
1/14/10
PX-0055

I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don't, I'm not sure we can be competitive...
Steve

if they are offering a \$26 book to Amazon
On Jan 14, 2010, at 6:04 PM, Eddy Cue wrote:

Here is the pricing I think will push them to very edge and still have a credible offering in the market. These are the highest individual iTunes prices as each publisher can choose a lower price if they want.

List Price Wholesale iTunes 70% Diff
\$20.01-22.50 \$10.00-11.25 \$9.99 \$7.00 \$3.00-4.25
\$22.51-25.00 \$11.25-12.50 \$10.99 \$7.70 \$3.56-4.80
\$25.01-27.50 \$12.50-13.75 \$12.99 \$9.10 \$3.40-4.65
\$27.51-30.00 \$13.76-15.00 \$14.99 \$10.50 \$3.25-4.50
\$30.01-35.00 \$15.01-17.50 \$16.99 \$11.90 \$3.10-5.60
\$35.01-40.00 \$17.51-20.00 \$19.99 \$14.00 \$3.51-6.00

The other point I want to get is lowering the price while the book is on the NYT Bestseller List. This will be hard to get because they will be losing an additional \$1.40, but we should try.
When a book that list for \$30 or less is in the NYT Bestseller List than the iTunes price will be no greater than \$12.99. Between \$30.01-35 in the NYT Bestseller List, the price will be no greater than \$14.99.

--- Eddy

“I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don't, I'm not sure we can be competitive...”

Exhibit 30
Cue
03/12/13

K. Schroeder
csr. rnr. CCR

Highly Confidential

APPLEBOOK-03345509



Publishers Recognize MFN Forces Them to Agency

January 20, 2010



John Sargent



MACMILLAN



Meeting



Russ Grandinetti



PX-0482

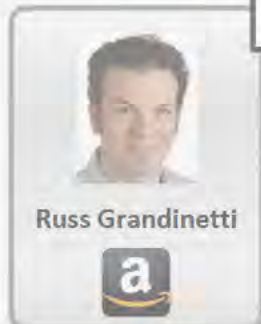


Publishers Recognize MFN Forces Them to Agency

January 20, 2010



Meeting



PX-0482

- Jan 27th: Brian sent an e-mail saying they have decided to go to the agency model.

"In the interest of 'no surprises', I wanted to let you know that we decided to change our ebook model for new releases to an agency model. Late last night we reached an agreement with our first agent, Apple. This wasn't a simple or easy decision but we've made it. I know that you are considering the implications of these changes. We will be ready to discuss this with you as soon as you are ready."

Macmillan:

Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model.

Jan 21st: John and Russ by phone. John indicated that the Apple contract required him to only offer the agency model only and wanted to explore other options with Russ. Russ indicatedXXXXXXXXXX

Jan 22nd: John and Russ by phone. Russ indicatedXXXXXXXXXX

John is coming to Seattle for meeting.

"Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model."

Penguin:

No meetings or conversations about agency models. We have reached out but not been called back.

Hachette:

Jan 20th in NY. Laura met with Maja Thomas (head of digital for US who reports to David Young) Maja said they were looking at agency models but hadn't spoken to us about them assuming we would be uninterested. Stated that their lawyers had told them that they could only offer one model (either agency or reseller) but not both.

PRIVILEGED AND CONFIDENTIAL

January 27, 2010

AMZN-MDL-0161086
HIGHLY CONFIDENTIAL

PX-0482



Publishers Recognize MFN Forces Them to Agency

January 20, 2010



John Sargent



MACMILLAN



Meeting



Russ Grandinetti



PX-0482



John Sargent



MACMILLAN



Dinner



Eddy Cue



PX-0037, PX-0712



Apple Insists Macmillan Go to Agency with Everyone

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



John Sargent



Dinner



Eddy Cue



PX-0037, PX-0712

January 21, 2010



John Sargent



E-Mail



Eddy Cue



PX-0037



Apple Insists Macmillan Go to Agency with Everyone

January 20,

Subject: Re: iTunes
From: "Eddy Cue" <cue@apple.com>
To: "Sargent, John" <john.sargent@macmillan.com>
Cc: "Brian Napack" <brian.napack@macmillan.com>

Plaintiff's Exhibit
Case No. Apple
12-cv-0037
PX-0037



John Sargent



MACMILLAN

"I am willing to give up on many...points.... The stumbling block is the single large issue that we clearly had a misunderstanding about."

> being absolutely reasonable to ask for (remarkable that you guys just
> say no to everything and still appear somehow to be reasonable!). The
> stumbling block is the single large issue that we clearly had a
> misunderstanding about. I was clear in my head with what your position
> was. Brian was clear as well after his discussion with Kieth. Somehow,



Eddy Cue



"I understand. I don't believe we are asking you to do anything, you haven't told us you are doing. We are just trying to get a commitment."

Russ Grandinetti



PX-0482

> I asked Kevin to send changes we discussed to Brian tonight. Please try
> to make your guys available tomorrow for Kevin as I think it will help a
> lot and we running out of time.
>
> Eddy

Exhibit 34
Cue
03/13/13

K. Schroeder
csr, rpr, ccr

Confidential

APPLEBOOK-01274492

PX-0037



Apple Insists Macmillan Go to Agency with Everyone

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



John Sargent



Dinner



Eddy Cue



PX-0037, PX-0712



John Sargent



E-Mail



Eddy Cue



PX-0037

January 21, 2010



John Sargent



Phone Call



Russ Grandinetti



PX-0482



Apple MFN Requires Macmillan to Move Amazon to Agency

January 20

January 21, 2010



John Sargent



MACMILLAN



Meeting



Russ Grandinetti



PX-0482

From:
Sent:
To:
Cc:
Subject:
Attachm

- Jan 27th: Brian sent an e-mail saying they have decided to go to the agency model.

"In the interest of 'no surprises', I wanted to let you know that we decided to change our ebook model for new releases to an agency model. Late last night we reached an agreement with our first agent, Apple. This wasn't a simple or easy decision but we've made it. I know that you are considering the implications of these changes. We will be ready to discuss this with you as soon as you are ready."

Macmillan:

Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model.

Jan 21st: John and Russ by phone. John realized that the Apple contract required him to only offer the agency model only and wanted to talk through options with Russ. Russ indicatedXXXXXXXXXX

Jan 22nd: John and RussXXXXXXXXXX
coming to Seattle for meeting.

"Jan 21st: John and Russ by phone. John realized that the Apple contract required him to only offer the agency model only and wanted to talk through options with Russ."

Penguin:

No meetings or conversations about agency models. We have reached out but not been called back.

Hachette:

Jan 20th in NY. Laura met with Maja Thomas (head of digital for US who reports to David Young) Maja said they were looking at agency models but hadn't spoken to us about them assuming we would be uninterested. Stated that their lawyers had told them that they could only offer one model (either agency or reseller) but not both.

PRIVILEGED AND CONFIDENTIAL

January 27, 2010

AMZN-MDL-0161086
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PX-0482



John Sargent



MACMILLAN



Phone Call



Russ Grandinetti



PX-0482



Apple Enlists Publishers to Convince Other Publishers



3:07 p.m.



Brian Murray



HarperCollins



E-mail from HarperCollins
CEO Brian Murray to
Mr. Cue indicating that he
cannot do the deal with
the pricing MFN



Eddy Cue



PX-0310

From: Redmayne, Charlie
Sent: Thursday, January 21, 2010 3:30 PM
To: Murray, Brian (HarperCollins US)
Subject: Re:

Plumtree Exhibit
US v Apple
Exhibit
PX-0310

We'll you've pulled the pin :) - but I think this is spot on.

From: Murray, Brian (HarperCollins US)
To: Redmayne, Charlie; Hulse, Leslie; Zaffir's, Robert; Alessi, Ana Maria
Sent: Thu Jan 21 20:10:04 2010
Subject: FW:

From: Murray, Brian (HarperCollins US)
Sent: Thursday, January 21, 2010 3:07 PM
To: Eddy Cue
Subject:

Eddy,
We very much appreciate and want to support your efforts to bring ebooks to consumers on your platform. Having said that, the terms of your current proposal have widespread implications for our business, authors and trading partners, particularly as it relates to hardcover releases. If we followed your proposal we have potential for backlash from consumer, authors and current retailers. I really don't feel that I have the time I need to work through the issues on your timeline.

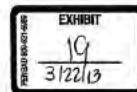
However, in the interest of getting a deal on your short timeline, we have two separate proposals that we can do now:

- 1) For all titles greater than three months old:
 - 38% commission
 - No MFN to catalog, usage rules or timing
 - And we'll work with you further on how to include new frontlist. I can't make promises when I haven't had time to work out the implications of your deal.

OR

- 2) For the entire catalog:
 - 10% commission on new Hardcovers
 - No MFN to catalog, usage rules or timing
 - Shorten the time period during which we need to match the lowest customer price in the marketplace to two monthsThe 10% commission solves many of the issues I have to work out.

For both, we want to be sure that there's flexibility in the pricing grid to price according to market conditions -- a surprise hit that we keep in hardcover for a long time, for example. As written it appears quite rigid. Leslie will discuss with Kevin.



IGHLY CONFIDENTIAL

HC-DOJ-0198805

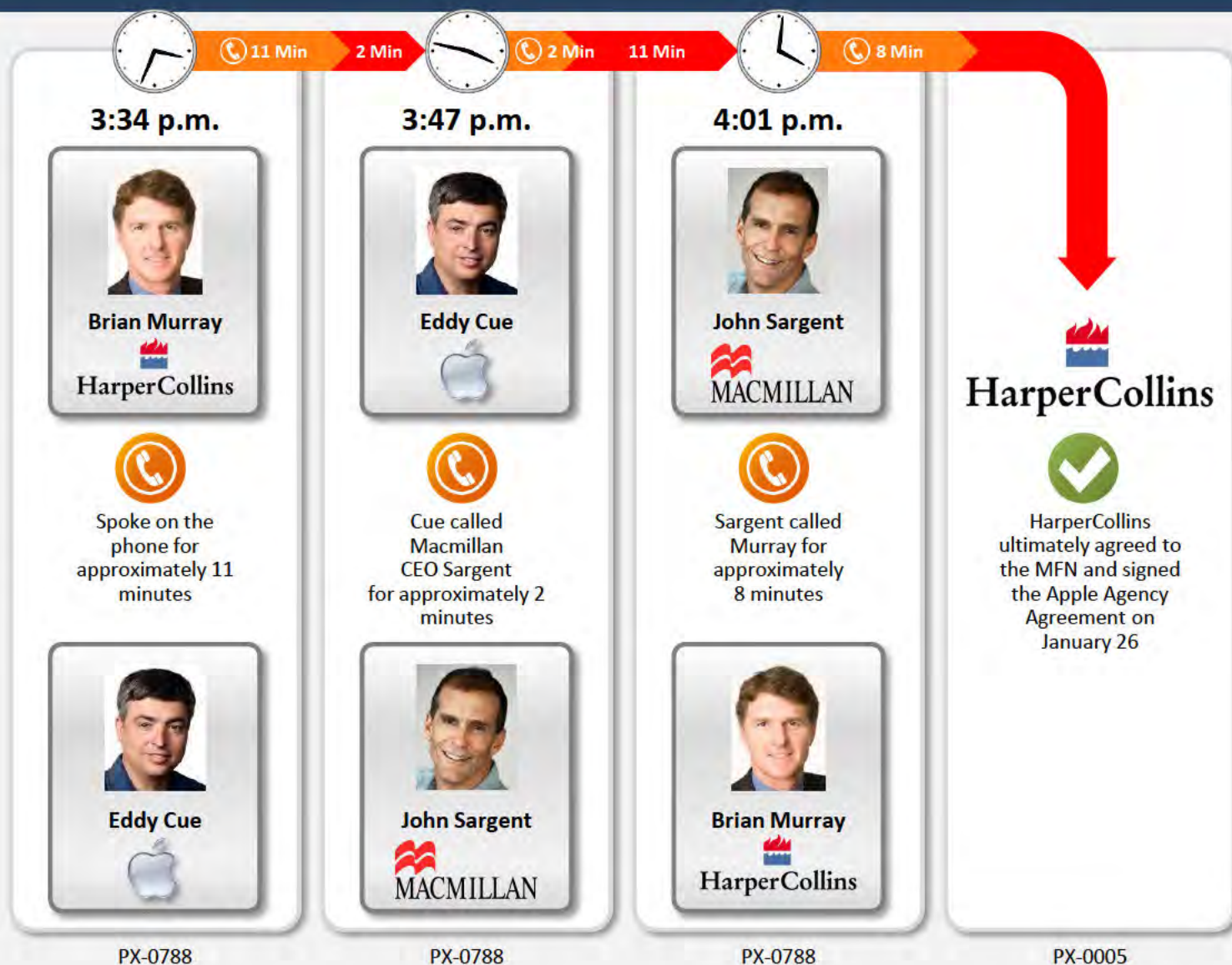
PX-0310 / 1

PX-0310



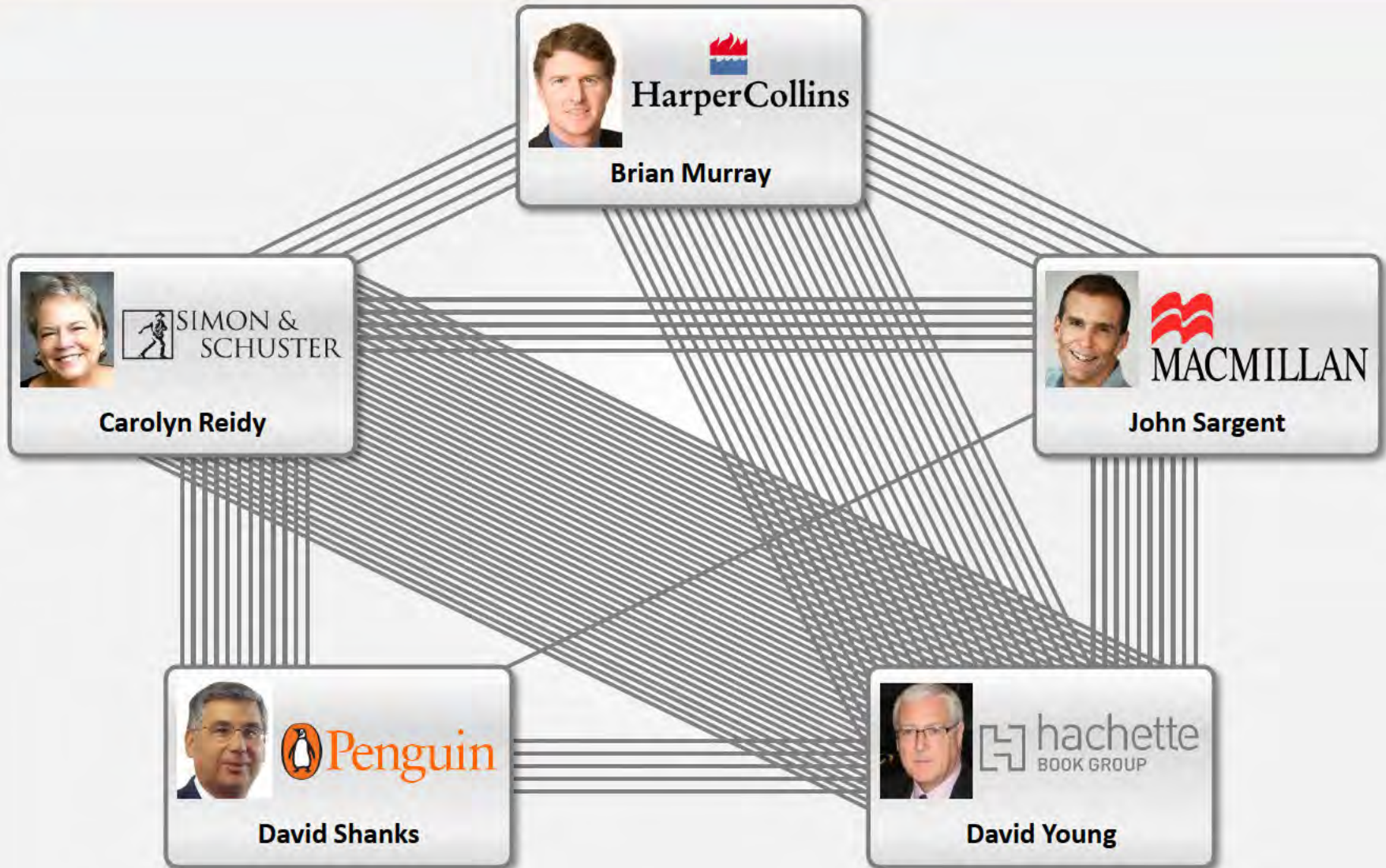


Apple Enlists Publishers to Convince Other Publishers





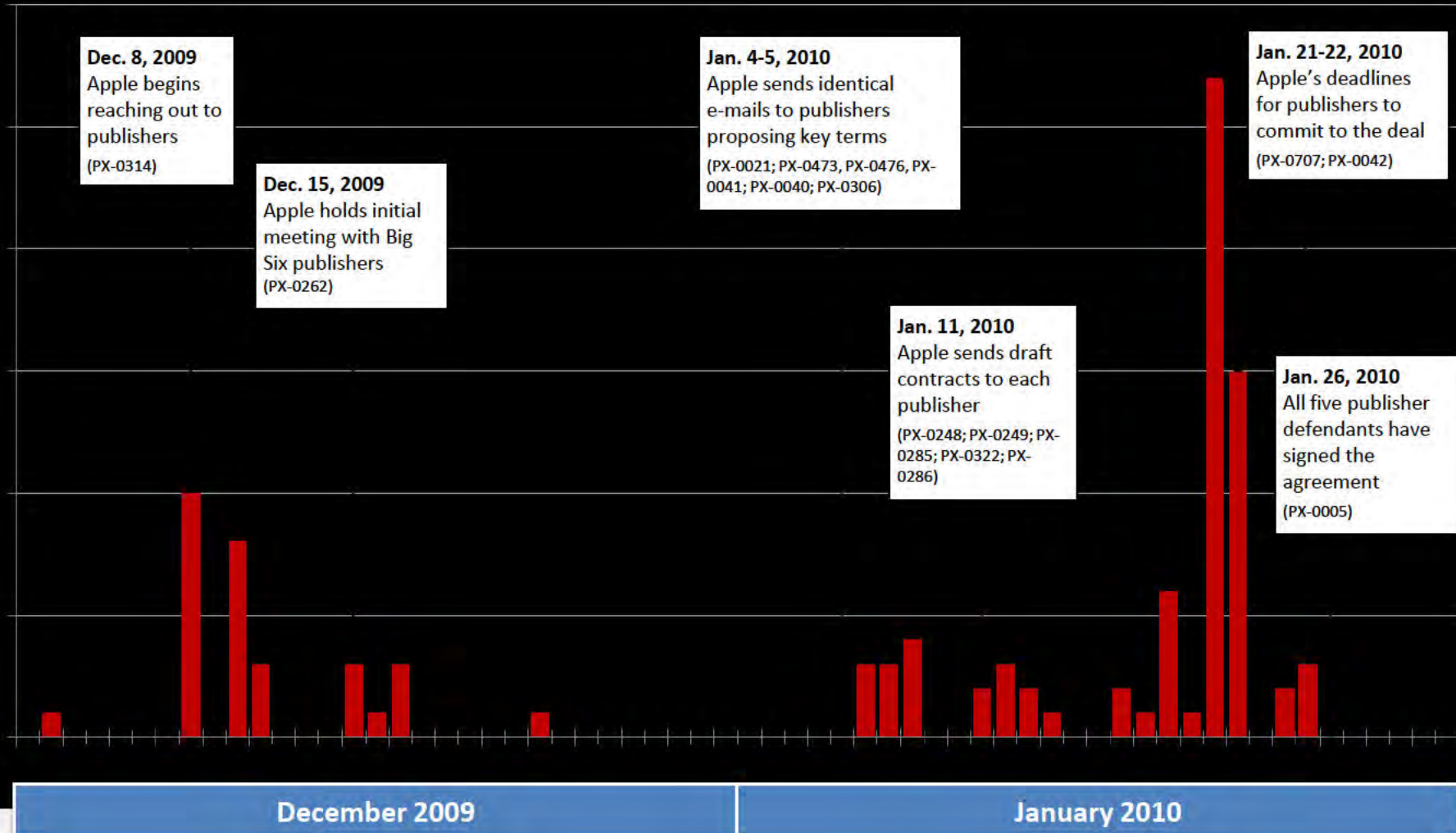
Phone Calls Between Publisher Defendant CEOs in December and January





Calls Between Publisher Defendant CEOs from December 1, 2009 to January 31, 2010

Number of Calls





PX-0020

From: Eddy Cue <cue@apple.com>
Sent: Saturday, January 23, 2010 8:35 PM (GMT)
To: Sargent, John <John.Sargent@macmillan.com>
Subject: Re: Update

Plastic Exhibit
PX-Apple
12-007503
PX-0020

give me a call on my cell [REDACTED]

eddy

On Jan 23, 2010, at 3:30 PM, Sargent, John wrote:



John Sargent



“Hey, do you have any more in, or still at 3?”

eddy



Eddy Cue



“give me a call on my cell [REDACTED].”

Exhibit 40
Cue
03/13/13
K. Schroeder
csr, rpr, ccrr

Confidentiality requested by Sidley Austin LLP
pursuant to Tex. Bus. & Com. Code, Section 15.10(i)
and any other applicable state laws

MAC 0043609



PX-0029

Plaintiff's Exhibit
US v Apple
PX-0029

Subject: Re: Announcement
From: "Eddy Cue" <cue@apple.com>
To: "Shanks, David" <david.shanks@us.penguinroup.com>
Date: Fri, 22 Jan 2010 18:54:02 +0000

Hopefully this is not an issue but if it is I will call you at 4pm. It would be a huge mistake to miss this if we have 3.



David Shanks



Penguin

"My orders from London. You must have the fourth major or we can't be in the announcement."



Eddy Cue



"Hopefully this is not an issue but if it is I will call you at 4pm. It would be a huge mistake to miss this if we have 3."

Exhibit 38
Cue
03/13/13

K. Schroeder
csr, rpr, ccr

Confidential

APPLEBOOK-01274684



PX-0718

Planned Exhibit
1/23/2010
PX-0718

Subject: Book Publisher Update
Date: Sat, 23 Jan 2010 16:22:27 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Message-ID: <88CADBD3-EB70-4DC6-80F9-9D1C3FC884C6@apple.com>

None were signed today though all publishers worked on them. At this point, there are no material issues with the agreements but that can obviously change until they get signed. The process is very slow because they have never done an agreement like this and given all the issues they have had with their existing partners, they want to make sure they don't make a huge mistake. In addition, all these guys use external lawyers to review what their internal ones do so it makes everything slower. I know we are way past where we should be with them getting signed, but I am pushing them really hard (even to the point of killing the deal). I hope we can get signed tomorrow because all of them at this point are really close. In my mind, I have an absolute drop-dead of Mon!

â's Simon & Schuster

We have gone through two red lines today. We expect their final version late tonight. I have also talked to the CEO, Carolyn, several times today and there are no issues.

â's Penguin

No change here, he is waiting for the others to sign. We have executables ready to sign but he wants an assurance that he is 1 of 4 before signing (not in the contract).

â's MacMillan

We just got a redline from them so we are about to go through it. I also talked to the CEO, John, several times today and there are no issues.

â's Hachette

Got the redline at noon and just finished a face to face meeting. Both sides believe we are done so we are sending a clean version by late tonight to the CEO. He will have a call with France in the morning.

X Harper Collins

I reached out to him and told him we had 4 done and he should really re-consider. Here was his response -

Congratulations. You've accomplished a lot in a week or two.

I will discuss with my team tomorrow. I can't promise that anything will change.

Is four out of six enough for you to launch the store? I'd assume so.

I am not going to answer him since they are not signed yet, but maybe he will change his mind with the news and Murdoch pushing.

X Random House

No conversations are occurring but will try one more time when i have 4 signatures in hand.

--- Eddy

“Penguin

No change here, he is waiting for the others to sign. We have executables ready to sign but he wants an assurance that he is 1 of 4 before signing (not in the contract).”



DX-239

Subject: Book Publisher Update
Date: Sun, 24 Jan 2010 21:50:27 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Keith Moerer <kmoerer@apple.com>, Kevin Saul <ksaul@apple.com>
Message-ID: <439D6117-ECA9-4FC2-9379-25865C1594B6@apple.com>

I signed, 3 to go.... TOMORROW IS BIG DAY!!!

â's Hachette
Signed.

Simon & Schuster
We are scheduled to sign at 10am tomorrow at their offices.

MacMillan
We are scheduled to sign at noon tomorrow at their offices.

Penguin
Once previous two are signed, I will head to their offices to get this one signed.

X Harper Collins
I got a call from Jonathan Miller asking me my thoughts because he had to James Murdoch. I have educated him and he said James and him are getting together with Rupert tomorrow to discuss. Jonathan will call me after his meeting. In the meantime, their book CEO, Brian Murray, sent me a proposal that actually got worse than the previous I told him to send. I actually think he is idiot. I'm guessing he is reaching out because of pressure from James.

X Random House
No conversations are occurring.

--- Eddy

----- end message -----

“Penguin

Once previous two are signed, I
will head to their offices to get this
one signed.”



PX-0032

From: Steve Jobs <sjobs@apple.com>
To: Eddy Cue <ecu@apple.com>
Subject: Fwd: HarperCollins
Received(Date): Sun, 24 Jan 2010 22:31:31 -0800

Plaintiff's Exhibit
TS v Apple
Unsub'd
PX-0032

My last email to James Murdoch.

Sent from my iPhone

Begin forwarded message:

From: Steve Jobs <sjobs@apple.com>
Date: January 24, 2010 11:31:24 AM PST
To: James Murdoch <jm@newsint.co.uk>
Cc: Steve Jobs <sjobs@apple.com>
Subject: Re: HarperCollins

James,

Our proposal does set the upper limit for ebook retail pricing based on the hardcover price of each book. The reason we are doing this is that, with our experience selling a lot of content online, we simply don't think the ebook market can be successful with pricing higher than \$12.99 or \$14.99. Heck, Amazon is selling these books at \$9.99, and who knows, maybe they are right and we will fail even at \$12.99. But we're willing to try at the prices we've proposed. We are not willing to try at higher prices because we are pretty sure we'll all fail.

As I see it, HC has the following choices:

1. Throw in with Apple and see if we can all make a go of this to create a real mainstream ebooks market at \$12.99 and \$14.99.
2. Keep going with Amazon at \$9.99. You will make a bit more money in the short term, but in the medium term Amazon will tell you they will be paying you 70% of \$9.99. They have shareholders too.
3. Hold back your books from Amazon. Without a way for customers to buy your ebooks, they will steal them. This will be the start of piracy and once started there will be no stopping it. Trust me, I've seen this happen with my own eyes.

Maybe I'm missing something, but I don't see any other alternatives. Do you?

Regards,
Steve

Exhibit 45
Cue
03/13/13
K. Schroeder
tsr. rre. ccr

Highly Confidential

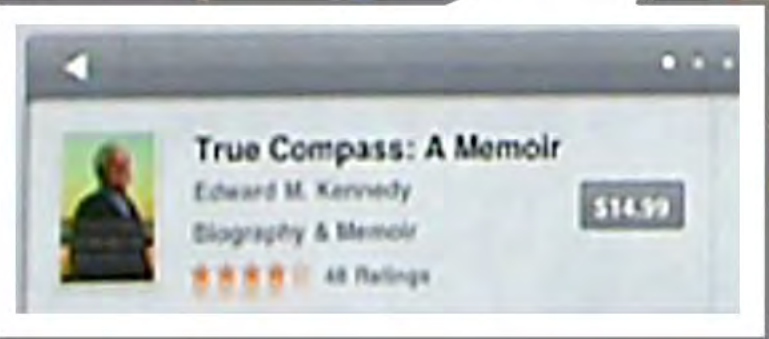
APPLEBOOK-03345078

“Throw in with Apple and see if we can all make a go of this to create a real mainstream ebooks market at \$12.99 and \$14.99.”





iPad Launches with Best-Selling e-Books at \$14.99





Amazon Prices Its Best Sellers at \$9.99



http://www.amazon.com/True-Compass-A-Memoir-ebook/dp/B002ZL3BNA Go

12 captures
1 Jan 10 - 14 Jun 12

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2009 23 2010 2012

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PX-0607

From: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Sent: Friday, January 29, 2010 9:43 PM
To: Rivlin, Elisa <Elisa.Rivlin@Simonandschuster.com>
Subject: Re: Privileged and Confidential: Apple

Privileged/Confidential
1/29/2010
PX-0607

Yeah, right.

From: Rivlin, Elisa
To: Reidy, Carolyn; Rothberg, Adam
Sent: Friday, January 29, 2010 10:15:05 PM

Further to our own reports on how publishers hope/expect to the deploy the agency model of selling terms broadly across their ebook accounts to relax some measure of control over the pricing of new releases, Apple's Steve Jobs essentially confirmed the plan to the WSJ's Walt Mossberg in a brief video interview.

Mossberg wondered why someone "should buy a [b]book for \$14.99 when you can buy one from Amazon for \$9.99 on the Kindle or Barnes & Noble?" A confident Jobs replies, "That won't be the case.... The prices will be the same." How in the world will prices be the same? Because if you want to carry brand-new ebook releases, you will carry on the publishers' new selling terms. Or as Steve puts it, "publishers will actually withhold their [e]books from Amazon...because they are not happy with the price."

CONFIDENTIALITY NOTICE:

“Mossberg wondered why someone ‘should buy a [b]book for \$14.99 when you can buy one from Amazon for \$9.99 on the Kindle or Barnes & Noble?’ A confident Jobs replies, ‘That won’t be the case.... The prices will be the same.’”

Subject: RE: Apple

Yes, he did say it. I have gotten one minor blog query, which I have so far not answered, so far that's all, but I expect more[]

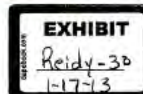
“I cannot believe that Jobs made the statement below. Incredibly stupid.”

From: Rivlin, Elisa
Sent: Friday, January 29, 2010 12:38 PM
To: Reidy, Carolyn
Cc: Rothberg, Adam
Subject: Apple

I cannot believe that Jobs made the statement below. Incredibly stupid.

Steve Jobs Makes It Quite Clear How This Will Work

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CONFIDENTIAL

SS00032638



PX-0053

Plaintiff Exhibit
US v Apple
12-cv-00319
PX-0053

Subject: Re: URGENT!!

2010 15:52:35 -0800

ccue@apple.com>

"<john.sargent@macmillan.com>

CE876-1C6F-4F03-9E17-886E0D65EB5F@apple.com>

Subject: Re: URGENT!!

I just tried. Call me on my cell [REDACTED]

Sent from my iPhone



John Sargent



Hi Eddy. I am gonna need to figure out our final agency terms of sale tonight. Can you call me please?



Eddy Cue



"I just tried. Call me on my cell [REDACTED]."

K. Schroeder
for Mr. [REDACTED]

Confidential

APPLEBOOK-00012809

PX-0053 / 1

PX-0053





PX-0514

The iPad

503

linked nature of the web were sacrificed. Apps were not as easily linked or searchable. Because the iPad allowed the use of both apps and web browsing, it was not at war with the web model. But it did offer an alternative, for both the consumers and the creators of content.

Publishing and Journalism

With the iPad and its app, Jobs was trying to join the world of books and the world of music. There was a price, in the approach, that came in the company's books. Jobs were big. "That was him that same." The books on books.

Amazon started they had to be the app the rest of the world.

504

WALTER ISAACSON

cheaper than we are, then we can sell them at the lower price too. So they went to Amazon and said, "You're going to sign an agency contract or we're not going to give you the books."

Jobs acknowledged that he was trying to have it both ways when it came to music and books. He had refused to offer the music companies the agency model and allow them to set their own prices. Why? Because he didn't have to. But with books he did. "We were not the first people in the books business," he said. "Given the situation that existed, what was best for us was to do this akido move and end up with the agency model. And we pulled it off."

Right after the iPad launch event, Jobs traveled to New York in February 2010 to meet with executives in the journalism business. In two days he saw Rupert Murdoch, his son James, and the management of their *Wall Street Journal*; Arthur Sulzberger Jr. and the top executives at the *New York Times*; and executives at *Time*, *Fortune*, and other Time Inc. magazines. "I would love to help quality journalism," he later said. "We can't depend on bloggers for our news. We need real reporting and editorial oversight more than ever. So I'd love to find a way to help people create digital products where they actually can make money." Since he had gotten people to pay for music, he hoped he could do the same for journalism.

Publishers, however, turned out to be leery of his lifeline. It meant that they would have to give 30% of their revenue to Apple, but that wasn't the biggest problem. More important, the publishers feared that, under his system, they would no longer have a direct relationship with their subscribers; they wouldn't have their email address and credit card number so they could bill them, communicate with them, and market new products to them. Instead Apple would own the customers, bill them, and have their information in its own database. And because of its privacy policy, Apple would not share this information unless a customer gave explicit permission to do so.

Jobs was particularly interested in striking a deal with the *New York Times*, which he felt was a great newspaper in danger of declining because it had not figured out how to charge for digital content. "One of

"But we also asked for a guarantee that if anybody else is selling the books cheaper than we are, then we can sell them at the lower price too. So they went to Amazon and said, 'You're going to sign an agency contract or we're not going to give you the books.'"



PX-0284

Subject: Re: Amazon

Plaintiffs' Exhibit
US v Apple
Exhibit
PX-0284



"I wanted to tell you before you read it on line that we have finally reached an agreement with Amazon on our new terms of sale....The playing field is now level."

* * *

"Please keep this to yourself until the announcement."



"Great news and congratulations!!!"

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PX-0284 / 1

PX-0284

APPLEBOOK-00015074

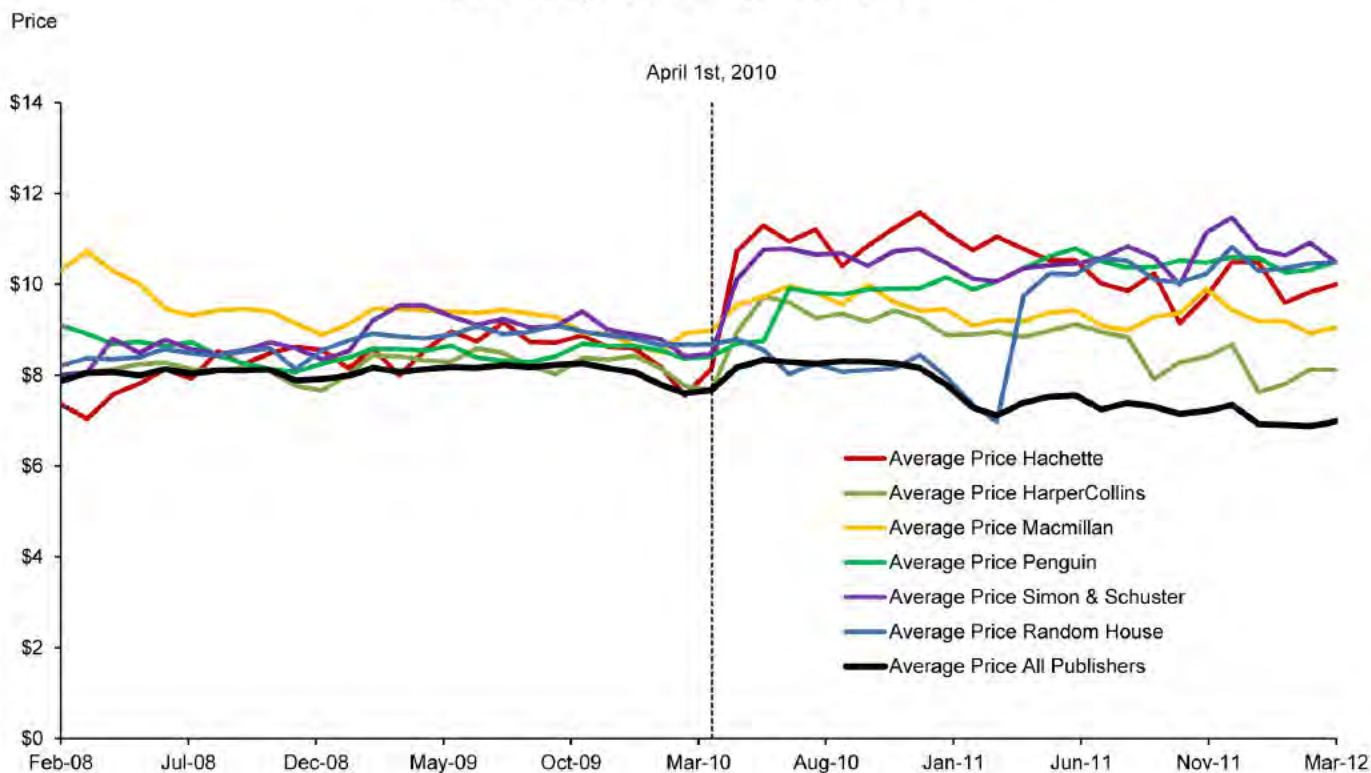




DX-434

CONTAINS MATERIAL DESIGNATED AS HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER

**Average eBook Retail Prices for Sony, Amazon, Barnes & Noble, Apple,
Google, Books-A-Million, and Kobo**
February 2008 – March 2012



Source: Sony Transactions Data, Amazon Transactions Data, Barnes & Noble Transactions Data, Apple Transactions Data, Google Transactions Data, Books-A-Million Transactions Data, Kobo Transactions Data

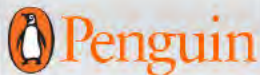


PX-0542

“The other point that came out of the conversation was [REDACTED] view that Indigo and the major publishers all have a massive stake in ensuring that the success of the physical book as a format continues (they are not making money out of ebook sales in the present price wars with Amazon) and that [REDACTED] would welcome a combined meeting on how we might achieve this in Canada.”

We would never meet with Barnes and all our competitors. The Government would be all over that. We would meet separately with Indigo being the facilitator and go between. That is how we worked with Apple and the government is still looking into that.

From: Brian Affin



David Shanks

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How do we feel about this? Is this the sort of meeting that might happen with B&N? Would we welcome a broad forum with Indigo with our competitors?

Highly Confidential

PEN-LIT-00199145

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