UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. APPLE, INC., et al., Defendants.	Civil Action No. 12-cv-2826 (DLC)
IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION	Civil Action No. 11-md-02293 (DLC)
This document relates to: ALL ACTIONS	CLASS ACTION
THE STATE OF TEXAS; THE STATE OF CONNECTICUT; et al Plaintiffs, v. PENGUIN GROUP (USA) INC. et al, Defendants.	Civil Action No. 12-cv-03394 (DLC)

JOINT INITIAL REPORT – REVISED JULY 6, 2012

Pursuant to section I(A) of the Standing Order for the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York ("Pilot Project Standing Order"), which, by order of this Court, governs pretrial procedures in this matter, all parties in the above-referenced actions submit this Initial Report. Unless explicitly stated, nothing in this Initial Report shall be construed to create, limit, or waive any rights, privileges, or defenses, including the attorney-client or any other applicable privileges and any defense based on lack of personal jurisdiction or improper venue.

If one or more of the proposed settlements pending before the Court is not approved or otherwise is not finalized, or if any settlement in one of the above-referenced actions does not dispose of all claims against all Settling Defendants for all plaintiffs in that action, the parties will meet and confer promptly to determine whether any provisions of this Initial Report should be amended.

The original Initial Report (filed June 15, 2012) included a number of objections and disputes by the parties (which are preserved in the record). Since that time, those objections and disputes have been adjudicated by the Court, and those rulings are reflected herein.

1. DEFINITIONS

Throughout this Initial Report, the following terms will be used:

(a) "actions" refers collectively to all the above-captioned actions;

(b) "DOJ Action" refers to United States v. Apple, Inc. et al, Civil Action No. 12-cv-2826 (DLC) and "DOJ" refers to the United States Department of Justice;

(c) "Class Action" refers to the multidistrict litigation titled In re Electronic Books Antitrust Litigation, Civil Action No. 11-md-02293 (DLC);

(d) "State Action" refers to Texas et al v. Penguin Group (USA) Inc., et al, Civil Action No. 12-cv-03394 (DLC) and "States" refers to the State Action Plaintiffs;

(e) "ebook investigation" means DOJ's investigation, formal or informal, of Defendants; the States' investigation, formal or informal, of Defendants; or any other investigation, whether formal or informal, by any regulatory or governmental authority relating to any of the activities or conduct alleged in the DOJ Action or State Action;

(f) "parties" refers collectively to all parties to the actions as of the date of this Initial Report (even if any such party is or becomes a Settling Defendant) and those who later join as parties, and "party" refers to any individual member of that group, with (for the purposes of case management only) Penguin Group (USA), Inc. and The Penguin Group, a Division of Pearson PLC being considered together as one "party;" Holtzbrinck Publishers, LLC d/b/a Macmillan and Verlagsgruppe Georg Von Holtzbrinck GmBH being considered together as one "party"; Hachette Book Group, Inc., Hachette Digital, Inc., and Hachette Livre SA[1] being considered together as one "party"; Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. being considered together as one "party"; all Class Action plaintiffs being considered together as one "party"; and all State Action plaintiffs being considered together as one "party";

[1] Hachette Livre SA was only recently served in the Class Action and was not a party to either the first Joint Initial Report and ESI Report or defendants' motions to dismiss. Reference to Hachette Livre SA above is solely for definitional purposes; the company reserves all available rights and defenses.

(g) "Plaintiffs" refers collectively to all Plaintiff parties in the actions as of the date of this Initial Report and those who later join as Plaintiff parties, and "Plaintiff" refers to any individual member of that group;

(h) "Defendants" refers collectively to all Defendant parties in the actions as of the date of this Initial Report (even if any such Defendant is or becomes a Settling Defendant) and those who later join as Defendant parties, and "Defendant" refers to any individual member of that group;

(i) "Settling Defendants" refers collectively to those Defendants who have entered into a final and approved settlement with one or more Plaintiffs or whose proposed settlement with one or more Plaintiffs is pending with the Court, and "Settling Defendant" refers to any individual member of that group;

(j) "Non-Settling Defendants" refers collectively to those Defendants who have no proposed settlement pending with the Court, and "Non-Settling Defendant" refers to any individual member of that group; and

(k) "non-parties" refers collectively to persons or entities who were not parties in any of the actions as of the date of this Initial Report and have not since joined as parties, and "non-party" refers to any individual member of that group.

Once any Defendant has received final judgment(s) or dismissal(s), or has reached final and approved settlement(s), in a manner that disposes of all claims against it in all the actions as to all Plaintiffs, that Defendant will no longer be considered a party, a Defendant, a Settling Defendant, or Non-Settling Defendant for purposes of this Initial Report, and is relieved of any obligations herein. However, in such a circumstance, if the time for discovery has not ended,

any such former Defendant may continue to be served with discovery requests under those provisions of the Federal Rules of Civil Procedure relevant to non-parties, and each Defendant agrees to remain under the jurisdiction of this Court with respect to such discovery.

2. SCHEDULE

The parties will follow the schedule ordered by the Court on June 25, 2012. Attachment A provides a schedule consistent with the Court's order along with interim dates agreed to by the parties.

To the extent any dates in the schedule (are affected by any Court-ordered stay or extensions thereof, the parties will meet and confer to determine reasonable alternative dates applicable to any parties included under the stay, as necessary, and, if necessary, seek approval of the Court.

3. COORDINATION OF THE ACTIONS

The parties agree that, to improve the efficiency of discovery in the actions, maintain the proposed schedule, and reduce the burden on any party or non-party responding to discovery requests, all parties will observe the following rules:

(a) Party Participation in Discovery Meetings: A representative of each party (including Settling Defendants) must attend and participate in discovery planning meetings or phone calls with other parties, when requested, as well as any meet-and-confer sessions convened to discuss a discovery dispute involving that party.

(b) Discovery Shared with All Parties: Except as otherwise provided in this Initial Report or other applicable stipulation, law, rule, or order: (1) Parties who produce discovery in any of the actions must produce it to all parties, and (2) If a non-

party produces discovery to a party in any of the actions, the receiving party must provide it promptly to all other parties.

(c) Cross-Use of Discovery: All initial disclosures and discovery produced in response to a discovery request or subpoena in any of the actions (even if that action is later stayed, settled, dismissed, or otherwise ceases to be active, or the producing party has settled or been dismissed from any of the actions), including testimony of deposition witnesses, is deemed produced in and may be used, subject to the Federal Rules of Evidence, in the other actions.

(d) Court's Jurisdiction: As confirmed by the Court at the June 22, 2012 conference, to the full extent allowed by law, the Court intends to exercise jurisdiction to hear any discovery disputes regarding non-party subpoenas served in connection with the actions, including motions to quash or modify and motions to compel.

(e) Foreign Documents and Witnesses:

(1) Each party's litigation counsel in the actions will accept service of discovery requests on its behalf for documents or information located outside the United States if such documents or information are in the possession, custody, or control of the party, the party's subsidiary, or an affiliate of the party which the party controls or for which the party is authorized to accept service, without requiring additional or different procedures to be followed pursuant to the Hague Evidence Convention, the Hague Service Convention, or any other applicable convention, treaty, law, or rule. The party served with any such discovery request retains the

right to object to the request on any appropriate ground other than improper service.

(2) Each party agrees to negotiate in good faith to establish a protocol for identifying the documents and information described in paragraph 3(e)(i) above that can be produced in these actions consistent with any applicable foreign laws or regulations concerning privacy or confidentiality or otherwise affecting their production in the United States, or any convention such as the Hague Evidence Convention, including reasonable steps to facilitate production, including but not necessarily limited to obtaining consents to disclosure from a limited number of custodians in senior management involved in relevant issues, and by meeting and conferring with other parties to narrow the scope of the documents and information requested for production. If a party believes in good faith that, notwithstanding the process described in this paragraph, such documents or information cannot be produced in the United States without violating an applicable foreign law or regulation, it must promptly notify the other parties and meet and confer to reach a resolution of the issue.

(3) Each party agrees that its litigation counsel in the actions will accept service of a deposition notice on its behalf for any witness who is a managing agent of a party, the party's subsidiary, or an affiliate of the party which the party controls or for which the party is authorized to accept service and who resides or is located outside the United States,

without requiring additional or different procedures to be followed pursuant to the Hague Evidence Convention, the Hague Service Convention, or any other applicable convention, treaty, law, or rule. In addition, each party agrees to make each such witness available for deposition in New York, NY or another place in the United States determined by agreement of the parties, and that deposition will be conducted under applicable United States law. The parties will use their best efforts to schedule any such deposition to coincide with U.S. travel planned by the witness. The party served with any such deposition notice retains the right to object to the notice on any appropriate ground other than improper service.

4. INITIAL DISCLOSURES

The parties will dispense with the initial disclosures described in Federal Rule of Civil Procedure 26(a)(1), and in place of such disclosures, will exchange the following information:

(a) All Parties – Custodian Lists: By June 20, 2012, each party must serve on all other parties a list of all its employees (current and former) and agents (current and former) who the party proposes to include as document custodians in the actions (the "Custodian List"). For each individual listed, the Custodian List must include: (i) the person's name; (ii) the person's employer and city, state, and country of employment; (iii) the person's current title, if any, with that party and any other title he or she has had with the party since November 1, 2007; (iv) a statement as to whether the person is currently employed by or an agent of the

party and, if not, the person's last known phone number(s), address(es), and email address(es); and (v) a brief statement explaining the nature of the person's relevance to the actions or the relevance of the documents in his or her possession. If any party objects to the sufficiency of another party's Custodian List, the parties will meet and confer in an attempt to resolve their disagreement, consistent with the procedures described in section 10(b) of this Initial Report. To the extent any Defendant has been granted a stay by the Court, that Defendant's Custodian List must be served within 21 days of the expiration of that stay or any extension thereof.

(b) All Parties – Rule 26(a)(1)(A)(i) Disclosures: All parties agree to produce to the other parties the disclosures described in Federal Rule of Civil Procedure 26(a)(1)(A)(i) by July 2, 2012, except that the States and Class Plaintiffs may limit their disclosures to information that is not duplicative of DOJ's disclosures, and may produce that information by July 9, 2012. To the extent any Defendant has been granted a stay by the Court, that Defendant's disclosures as described in this paragraph must be served within 21 days of the expiration of that stay or any extension thereof.

(c) Other DOJ and States Initial Productions: DOJ and the States will use their best efforts to produce to all other parties by June 22, 2012 or as soon as possible thereafter: (i) the civil investigative demands ("CIDs") regarding ebooks that DOJ or the States served in connection with their ebooks investigations; (ii) the transcripts and exhibits from any depositions taken by DOJ or the States pursuant

to those CIDs; (iii) a list of individuals interviewed by DOJ or the States during their ebooks investigations, (iv) all documents produced to DOJ or the States by parties or non-parties in response to those CIDs, unless the party or non-party originally producing these documents informs DOJ and/or the States that it will instead agree to reproduce those documents to the other parties itself, in which case it must use its best efforts to reproduce them by June 22, 2012, and (v) any interrogatory responses and white papers received by DOJ or the States from the parties or non-parties relating to the ebooks investigations.

(d) Other Non-Settling Defendant Initial Productions: Each Non-Settling Defendant will use its best efforts to produce to all other parties by June 22, 2012 or as soon as possible thereafter, to the extent not already produced, and without waiving any objections to future foreign discovery: (i) all documents and data previously produced (either voluntarily or involuntarily) to any regulatory or governmental authority outside the United States as part of any ebooks investigation, unless, despite the parties' compliance with the provisions relating to foreign discovery stated in section 3(e) above, production of any portion of these documents or data cannot take place without violating an applicable foreign law or rule, in which case the Non-Settling Defendant must, subject to any applicable privilege, produce such portion promptly upon resolution of the issue, and (ii) to the extent maintained in the normal course of the Non-Settling Defendant's business, organizational charts and personnel directories for the Non-Settling Defendant as a whole and for each of its facilities or divisions involved with ebooks or print

books (excluding textbooks), including but not limited to organizational charts showing the relationship of the company to any foreign parent entities, from November 1, 2007 to the present. (Plaintiffs and Macmillan continue to discuss Macmillan's production of organizational charts in connection with the development of custodian lists. Plaintiffs will notify Macmillan by July 16, 2012 whether they believe that they require additional materials pursuant to subsection (ii) beyond those already produced. If Plaintiffs do seek any such additional materials, the parties will promptly meet and confer to resolve the issue.)

(e) Other Settling Defendant Initial Productions: Within 21 days of the expiration of any stay in the actions granted by the Court or extension thereof, each Settling Defendant will produce the initial disclosures applicable to Non-Settling Defendants, described above in subsections (a), (b), and (d).

5. DOCUMENT PRODUCTION, INCLUDING ESI

The parties have prepared a separate proposed order regarding the logistics of document discovery in the actions, which includes initial provisions for the collection and production of electronically stored information ("ESI"). See Attachment B.

6. DISCOVERY LIMITATIONS

Party Discovery

(a) Settling Defendants' Status: At all times during the pendency of the actions, Settling Defendants will accept service of and respond to discovery requests, including deposition notices, pursuant to those Federal Rules of Civil Procedure governing party discovery, with the limitations set forth in the Initial Report.

Settling Defendants will not require different or additional service of discovery requests by subpoena or otherwise rely upon or seek the protections of those provisions of the Federal Rules of Civil Procedure relating to discovery on non-parties, including Rule 45.

(b) Effect of Stay: No discovery of any kind may be served on Settling Defendants during the pendency of any discovery stay issued by the Court, with the exception of requests for transactional sales data.

(c) Consultation: Each Plaintiff must consult the other Plaintiffs, and each Defendant must consult the other Defendants, before serving any discovery request on a party for the purpose of ensuring that the parties do not serve unnecessarily duplicative requests and, for deposition notices, to allow Plaintiffs (or Defendants) to confer on the number of notices needed.

(d) Document Requests: Each party may serve an unlimited number of document requests to any other party(-ies). Settling Defendants may serve document requests only on Class Plaintiffs, any Non-Settling Defendant, or any other Settling Defendant. Settling Defendants may be served with document requests by any Plaintiff, any Non-Settling Defendant, or any other Settling Defendant.

(e) Interrogatories: Each party except Settling Defendants may serve up to a total of 25 interrogatories (to any one party, or divided among multiple parties), with no more than 10 of those interrogatories being contention interrogatories. For purposes of the Class Action only, Class Plaintiffs may serve up to a total of 25 additional interrogatories on the Settling Defendants (to any one party, or divided

among multiple parties) and Settling Defendants may serve up to a total of 25 interrogatories on Class Plaintiffs and/or Non-Settling Defendants (to any one party, or divided among multiple parties). Settling Defendants may not serve, and may not be served with, any other interrogatories in any of the actions.

(f) Contention Interrogatories: Interrogatories of the kind described in Southern District of New York's Local Rule 33.3(b) may be served beginning 60 days before the end of fact discovery.

(g) Requests for Admission: Each party except Settling Defendants may serve up to a total of 25 requests for admission (to any one party, or divided among multiple parties), except for requests for admission made pursuant to Federal Rule of Civil Procedure 36(a)(1)(B) relating to the genuineness or admissibility of documents, which are unlimited. For purposes of the Class Action only, Class Plaintiffs may serve up to a total of 25 additional requests for admission on the Settling Defendants (to any one party, or divided among multiple parties) and each of the Settling Defendants may serve up to a total of 25 requests for admission on Class Plaintiffs and/or Non-Settling Defendants (to any one party, or divided among multiple parties). Settling Defendants may not serve, and may not be served with, any other requests for admission in any of the actions. The parties must observe the limitations on length stated in section II(F) of the Pilot Project Standing Order.

(h) Party Fact Depositions: Plaintiffs (collectively) and Non-Settling Defendants (collectively) may notice the deposition of up to 60 party fact witnesses pursuant to Federal Rule of Civil Procedure 30(b)(1) or party witnesses pursuant to Rule

30(b)(6), including any witnesses controlled by a Settling Defendant. If no Settling Defendant remains a party to any of the actions, or if the Court finds that Settling Defendants have entered into sufficiently broad settlement(s) such that the interests of most eBook consumers in the country are represented by the settlement(s), the number of party fact witnesses that may be noticed by Plaintiffs (collectively) and Non-Settling Defendants (collectively) will be 40. For 30(b)(6) depositions, each 7-hour period of deposition (whether with a single witness or multiple witnesses, and whether on a single noticed topic or multiple noticed topics) will count as one deposition against the total allotment for party depositions provided in this paragraph.

(i) Party Fact Depositions by Settling Defendants: For purposes of the Class Action only, each Settling Defendant may depose up to 5 party fact witnesses pursuant to Federal Rule of Civil Procedure 30(b)(1) or party witnesses pursuant to Rule 30(b)(6) (the latter to be counted per 7-hour period of deposition, as stated in paragraph 6(g) above), except that Settling Defendants may not serve such notices to any Plaintiff other than Class Plaintiffs. Settling Defendants may not serve any other party deposition notices in any of the actions.

(j) Treatment of States: Discovery requests directed to any of the States may be directed to any individual State or to the States as a whole. For the latter, each such request will be counted as a single request, for purposes of the allotment of requests as provided herein, and the States may choose to provide a single joint

response or multiple responses. If the States choose to provide multiple responses, each State must clearly indicate which response it provides or joins.

(k) Treatment of Class Action Plaintiffs: Discovery requests directed to any of the Class Action Plaintiffs may be directed to any individual Class Action Plaintiff, or to the Class Action Plaintiffs as a whole. For the latter, each such request will be counted as a single request, for purposes of the allotment of requests as provided herein, and the Class Action Plaintiffs may choose to provide a single joint response or multiple responses. If the Class Action Plaintiffs choose to provide multiple responses, each Class Action Plaintiff must clearly indicate which response he or she provides or joins.

(l) Identical Requests: Each discovery request, even if identical to a request served on a different party, will count against the total allotment of such requests as provided herein, except as provided in subsections (j) and (k) above.

(m) Exceptions: The limitations on the number of discovery requests set forth under this subheading ("Party Discovery") do not apply to (1) discovery requests made by a Plaintiff to another Plaintiff or a Defendant to a Non-Settling Defendant; (2) depositions taken solely to (i) establish the authenticity or admissibility of documents, (ii) lay the foundation for a possible objection to a claim of privilege, (iii) ascertain compliance with a subpoena, or (iv) lay foundation for a possible motion to compel; (3) depositions taken of individuals who provide declarations, affidavits, or affirmations, as described in section 7(n) below; and (4) depositions of witnesses on a party's trial witness list, as described in section 7(o) below.

Non-Party Discovery

(n) Joint Requests Only: No discovery request (whether a document request, deposition notice, or other) may be served on any non-party except by joint subpoena of the Plaintiffs collectively or Defendants collectively.

(o) Limitations: Plaintiffs (collectively) and Defendants (collectively) each may (i) serve no more than two subpoena duces tecum on any particular non-party, with the total number of non-parties subpoenaed to remain unlimited, and (ii) depose up to 35 non-party witnesses, pursuant to subpoenas ad testificandum or otherwise. If the identity of the particular non-party witness to be deposed is not stated in the subpoena and the non-party offers the deposition of more than one witness in response to the subpoena, each 7-hour period of deposition will count as one deposition against the total allotment for non-party depositions provided in this paragraph.

(p) Contact with Subpoenaed Non-Parties: Each party must provide the other parties with: (1) a copy of the party's written communications (including email) with any non-party containing any substantive content concerning the subpoena or the subpoenaed non-party's response to or compliance therewith, within 24 hours of the communication; (2) a written record of any oral or written modifications to the subpoena, within 24 hours of the modification; (3) notice that the party has received any documents or data from the non-party in response to the subpoena, within 24 hours of receipt; and (4) a copy of such documents or data, promptly upon receipt.

Further Discovery Stipulations

(q) Accounting of Discovery Requests/Subpoenas: From time to time, the parties must meet and confer on the calculation of the number of allotted discovery requests and subpoenas that each believes has been used.

(r) Withdrawal of Deposition Notices: Upon giving reasonable notice, a party (including Plaintiffs collectively or Defendants collectively) may withdraw a deposition notice at any time prior to the deposition, and that deposition will not count against the party for purposes of the number of depositions allotted herein.

(s) Rights Reserved: Nothing in this section prohibits a party or non-party from objecting to or moving to quash or modify any particular discovery request or subpoena it receives, or from seeking a protective order from the court, on any appropriate ground, including that the discovery requests noticed to it are cumulative or unfairly burdensome. In addition, for good cause shown, any party may seek relief from the Court from the limitations set forth under this section heading ("Discovery Limitations").

7. FACT DEPOSITIONS

Attendance & Scheduling

(a) All parties may attend any deposition noticed in any of the actions. Parties must provide reasonable notice of the number and identity of attendees prior to each scheduled deposition.

(b) Within one week of service of any party deposition notice, the noticed party must notify all other parties that the noticed deposition date is acceptable or offer an

alternative date within 7 days of the of the noticed date. Parties noticing a deposition must make reasonable efforts to choose a date for the deposition that is convenient for the witness and, when possible, all attending parties.

(c) Depositions conducted solely to inquire of a witness regarding document or data location, management, or preservation may be taken at any time during the fact discovery period beginning 30 days after the filing of this Revised Joint Initial Report. All other fact depositions may be taken starting on the date provided in the case schedule.

Time

(d) Except for the depositions described in paragraph 7(e) below, depositions will proceed for no more than 7 hours of on-the-record time.

i. Any party who noticed the deposition (including Plaintiffs collectively or Defendants collectively, for non-party depositions) is entitled to question the witness for 6 of the 7 hours of on-the-record time, or an equivalent portion of any deposition scheduled to last more or less than 7 hours on-the-record.

ii. A Plaintiff noticing a deposition may cede some or all of its examination time to another Plaintiff, and the deposition will count against the allotment of depositions provided in section 6 above for only the noticing Plaintiff. A Defendant noticing a deposition may cede some or all of its examination time to another Defendant, and the deposition will count

against the allotment of depositions provided in section 6 above for only the noticing Defendant.

iii. During the time remaining after the noticing party or parties have finished their examination, any other parties attending the deposition (including the party defending the deposition, or, if none, the witness's counsel) may question the witness, with a reasonable division of this time to be determined among them.

iv. For non-party depositions noticed by the Plaintiffs collectively or Defendants collectively, the member parties of the noticing group must meet and confer to determine how the allotted time for the deposition will be used among them.

(e) Depositions may proceed for longer than 7 hours of on-the-record time when (1) more than one party has served a notice for the same party witness's deposition, or both Plaintiffs (collectively) and Defendants (collectively) have served a subpoena for the same non-party witness's deposition, in which case the witness will sit for one deposition of a length to be determined by the parties, after consideration of the burden on the witness; (2) a witness is designated to serve as a 30(b)(6) witness and also has been served with a deposition notice in his or her individual capacity, in which case the witness will sit for one deposition of a length to be determined by the parties; (3) an agreement for a longer duration is reached between the party taking the deposition and the party defending the deposition (or, if the witness is not represented by any party, the witness's

counsel), in light of all parties' recognition that depositions of some fact witnesses may reasonably require more than one day and their agreement to negotiate such extensions of deposition time in good faith; or (4) by order of the Court.

Questioning & Objections

(f) In the event of multiple notices for the same deposition, the noticing parties will meet and confer to determine the order of examination and appropriate reservation of time. The order of notices does not create any presumption as to the order of examination or amount of time reserved for questioning by the noticing parties (subject to any limitations herein).

(g) An objection or motion to strike made by any party at a deposition will be preserved for all other parties and need not be explicitly joined.

Logistics & Costs

(h) The parties will meet and confer to determine if they can reasonably agree on use of a single national court reporting service or otherwise share costs.

(i) The first party to notice the deposition will be responsible for arranging for the deposition space, court reporter, and (if necessary) videographer.

(j) Each party is responsible for ordering and paying for its own copies of the transcripts or video from the court reporter or videographer, unless the parties agree to share these costs.

30(b)(6) Depositions

(k) A party served with a notice for deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) may designate one person to testify on more than one noticed topic, or may designate more than one witness to testify on a single noticed topic.

(l) For a witness who may act both as an individual and 30(b)(6) witness, the parties will make reasonable efforts to address all topics relevant to the witness in one deposition.

Additional Depositions

(m) On the date set forth in the case schedule, each party must serve on the others a preliminary list of fact witnesses that, in the good-faith assessment of the party, it will call to testify at trial in its case-in-chief. For each such witness under that party's control, the party will make reasonable efforts to secure the witness's attendance at a deposition promptly, if so noticed by any party pursuant to this Initial Report.

(n) Any person not serving as a party's external legal counsel in the actions who submits a declaration, affidavit, or affirmation in support of any motion, letter to court, or other submission by a party in one or more of the actions, at any time, may be deposed thereafter by any party.

(o) Any witness appearing on a party's final trial witness list who has not previously been deposed in the actions and who was not previously identified as a potential witness may be deposed prior to trial (or, if the parties agree, during trial).

8. EXPERTS

(a) The parties will make all disclosures required by Federal Rule of Civil Procedure 26(a)(2), as modified or limited herein, at the times and in the manner provided below and in the schedule found at Attachment A. The term "expert" as used herein refers to a witness a party may use to present evidence under Federal Rule of Evidence 702, 703, or 705.

(b) Expert Identity and Subject Matter: On the date provided in the case schedule, each party bearing the burden on an issue and that intends to offer the testimony of one or more experts on that issue must disclose to the other parties: (i) each expert's name and employer or associated organization, and (ii) the general subject matter of the expert's expected testimony.

(c) Opening Expert Reports and Summaries: On the date provided in the case schedule, each party bearing the burden on an issue and that intends to offer the testimony of one or more experts on that issue, excluding any testimony described in Federal Rule of Civil Procedure 26(a)(2)(D)(ii), must serve an expert report (or, as applicable, a summary for each expert in compliance with Federal Rule of Civil Procedure 26(a)(2)(B) and (C)), provided, however, that the term "considered" as used in Federal Rule of Civil Procedure 26(a)(2)(B)(ii) and 26(b)(4)(C)(ii) shall be interpreted as "relied upon" for purposes of this section 8.

(d) Rebuttal Expert Reports and Summaries: On the date provided in the case schedule, each party must serve any rebuttal expert reports responding to one or more of the opening expert reports, pursuant to Federal Rule of Civil Procedure

26(a)(2)(D)(ii), or rebuttal summaries in compliance with Rules 26(a)(2)(B) or (C). No further expert reports or summaries are allowed without leave of Court.

(e) Associated Documents and Data: Within 2 business days of service of any expert report, the serving party must produce to all other parties a copy of all documents or data referred to therein, except for any documents or data that have been produced previously in the actions, which can instead be referred to by Bates number. To the extent the disclosures in an expert report include, rely upon, or describe exhibits, information, or data processed or modeled by a computer at the direction of an expert in the course of forming the expert's opinions, the party offering the expert's opinions must produce machine-readable copies of the data along with the appropriate programs, software, and instructions, except that no party need produce programs, software, or instructions that are commercially available at a reasonable cost. No party need produce databases, programs, and software that (i) are used in the ordinary course of a party's business and (ii) are not practicable to copy, as long as the party offering the expert's opinion provides timely and reasonable access for purposes of replication or analysis of disclosed results.

(f) Expert Discovery Limitations: The provisions of Federal Rule of Civil Procedure 26(b)(4)(C), as modified or limited herein, will apply to expert discovery in the actions. No expert or party is required to produce or describe on a privilege log and no party may seek discovery of by any method (including by deposition): (1) any communication between an expert (including his or her assistants,

employees, or agents) and a party offering the testimony of such expert (including the party's employees, agents, consultants, and counsel, and their employees or agents); (2) any communication between an expert and his or her employees, assistants, or agents; (3) drafts of any report, exhibit, study, work paper, computation, calculation, compilation, or any other material prepared by, for, or at the direction of an expert, regardless of the form in which the draft is recorded; or (4) any notes or other writings made by, for, or at the direction of an expert. Nothing in this paragraph relieves an expert or party from the duty to identify the facts, data, and assumptions that the expert relied upon in forming his or her opinions.

(g) Depositions: The parties have not waived expert depositions. An expert may be deposed for up to 2 days (14 hours of on-the-record time).

(h) Finality of Expert Evidence: Subject to the duty to correct under Federal Rule of Civil Procedure 26(a)(2)(E) and Rule 26(e)(2), no expert report, summary, or other expert evidence may be supplemented, and no expert evidence may be offered or admitted that has not been timely and properly disclosed, except by leave of Court.

9. **STAY OF DISCOVERY:** The parties recognize this Court has stayed the actions as against Hachette Book Group, Inc., Hachette Digital, Inc., Hachette Livre SA, HarperCollins Publishers LLC, Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc., through August 10, 2012.

10. DISPUTES & MOTIONS

(a) Future Discovery Disputes: If discovery disputes arise between the parties, the parties must follow the procedures for seeking resolution of such disputes set forth in this Court's Individual Practices in Civil Cases at section 2(c).

(b) Non-Discovery Motions: Section 3(A) of this Court's Individual Practices in Civil Cases (which dispenses with the pre-motion conference requirement for all motions except discovery motions), and not section III(A) of the Pilot Project Standing Order, governs non-discovery motion practice in the actions. Otherwise, section III of the Pilot Project Standing Order governs non-discovery motion practice in the actions.

(c) Rule 56.1 Statements: If any party intends to file a motion for summary judgment under Federal Rule of Civil Procedure 56, that party will notify all other parties in the relevant action(s) sufficiently in advance to determine whether the parties will recommend to the Court, pursuant to section III(D) of the Pilot Project Standing Order, that no party will file a Statement of Material Facts as described in Southern District of New York Local Rule 56.1.

11. ADR/MEDIATION

By the date set forth in the case schedule, the parties will contact the chambers of the Honorable Kimba Wood to schedule settlement discussions to begin no later than Fall 2012.

12. TRIAL

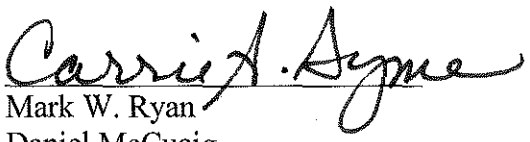
(a) Magistrate Trial: The parties do not consent to trial by magistrate.

(b) Pretrial Order: The parties do not consent to waive the pretrial order. The pretrial order shall be drafted as stated in the Court's June 25, 2012 Scheduling Order.

Attachment A: Schedule
Attachment B: Joint Electronic Discovery Submission No. 1 (Revised)

STIPULATED AND AGREED TO:

Dated: July 6, 2012

By: 

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On Behalf of the Plaintiff States

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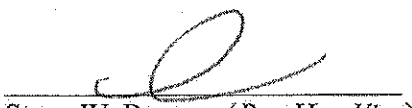
By: 

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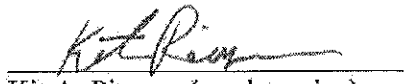
By: 

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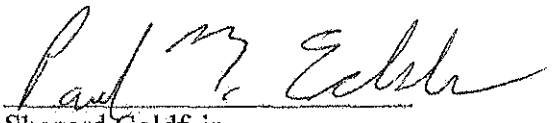
By: 

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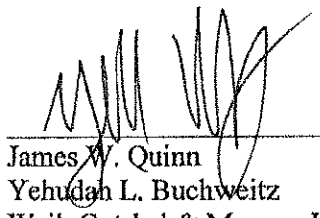
By: 

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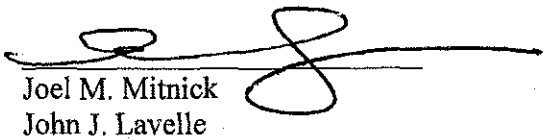
By: 

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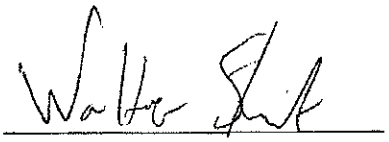
On behalf of Defendants Holtzbrinck Publishers, LLC d/b/a Macmillan and Verlagsgruppe Georg von Holtzbrinck GmbH

By: 

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On behalf of Defendants Hachette Book Group, Inc. and Hachette Digital, Inc.

ATTACHMENT A: SCHEDULE

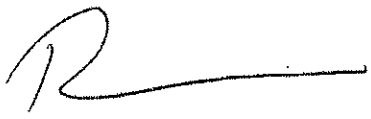
Roman type indicates dates ordered by the Court. Italic type indicates additional dates agreed to by the parties.

All dates remain subject to Court discretion. State Plaintiffs requested by letter dated June 26, 2012 to have all issues of liability and injunctive relief in the State Action tried to the Court concurrently with the DOJ Action.

Joint Initial Report and Joint Electronic Discovery Submission No. 1 and [Proposed] Order ("ESI Order") filed	June 15, 2012 (refiled as amended July 6, 2012)
Custodian Lists served	*June 20, 2012*
Initial disclosures served (on or about)	*June 22, 2012*
Answers to Second Amended Complaint in State Action filed	*June 22, 2012*
Court status conference	June 22, 2012
Parties serve objections to any other party's document production plan (ESI Order, item 6(a)) and Custodian List	*July 6, 2012*
Last date to complete the meet-and-confer process on document production plan objections	*July 18, 2012*
Parties to contact chambers of the Honorable Kimba Wood to schedule settlement discussions	July 20, 2012
Parties to complete initial document collection and provide information set forth in ESI Order at 6(a)	*July 31, 2012*
[Interim dates for rolling document production and check-in conferences]	*[TBA]*
DOJ to file motion for proposed final judgment against Settling Defendants (Tunney Act Motion)	August 3, 2012
Stay as to Settling Defendants expires	August 10, 2012
Oppositions to Tunney Act Motion	August 15, 2012

States to file motion for preliminary approval of settlement with Settling Defendants	August 20, 2012
DOJ Reply on Tunney Act Motion	August 22, 2012
Fact depositions may begin	*September 17, 2012*
Initial trial witness lists due	*December 18, 2012*
Parties to identify experts and testimony subject matter pursuant to Joint Initial Report 8(b)	November 16, 2012
Opening class certification brief served	November 16, 2012
Opposition to class certification brief served	December 14, 2012
Reply brief on class certification brief served	January 18, 2013
Privilege logs served	*January 9, 2013*
Opening expert reports served	January 25, 2013
Rebuttal expert reports served	February 15, 2013
End of fact and expert discovery	March 22, 2013
Dates below apply to the DOJ Action only, unless ordered otherwise by the Court	
Joint Preliminary Trial Report (including Proposed Findings of Fact, Conclusions of Law, Memoranda of Law, direct testimony affidavits, and deposition designations) filed or served, as stated in Court's June 25, 2012 Scheduling Order	April 26, 2013
In limine motions filed	April 26, 2013
Parties to file list of affiants to be cross-examined	May 1, 2013
Parties to file responsive memoranda of law (if any)	May 3, 2013
In limine motion oppositions filed	May 3, 2013
In limine motion replies filed	May 8, 2013

Final Pretrial Conference	May 24, 2013
Trial	June 3, 2013
Dates below apply to the State Action and Class Action only, unless ordered otherwise by the Court	
Summary judgment motions filed	September 13, 2013
Summary judgment motion oppositions filed	October 4, 2013
Summary judgment motion replies filed	October 18, 2013

By: 

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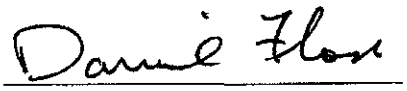
On behalf of Defendants Penguin Group (USA), Inc. and the Penguin Group

By: 

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On behalf of Defendant Apple, Inc.

ATTACHMENT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. APPLE, INC., et al., Defendants.	Civil Action No. 12-cv-2826 (DLC)
IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION	Civil Action No. 11-md-02293 (DLC)
This document relates to: ALL ACTIONS	CLASS ACTION
THE STATE OF TEXAS; THE STATE OF CONNECTICUT; et al. Plaintiffs, v. PENGUIN GROUP (USA) INC., et al, Defendants.	Civil Action No. 12-cv-03394 (DLC)

JOINT ELECTRONIC DISCOVERY SUBMISSION No. 1
AND [PROPOSED] ORDER – REVISED JULY 6, 2012

One or more of the parties to this litigation have indicated that they believe that relevant information may exist or is stored in electronic format, and that this content is potentially responsive to current or anticipated discovery requests. This Joint Electronic Discovery Submission and [Proposed] Order (and any subsequent ones) shall be the governing document(s) by which the parties and the Court manage the electronic discovery process in this action. The parties and the Court recognize that this Joint Electronic Discovery Submission No. 1 and [Proposed] Order is based on facts and circumstances as they are currently known to each party, that the electronic discovery process is iterative, and that additions and modifications to this Submission may become necessary as more information becomes known to the parties.

General Provisions

Throughout this Joint Electronic Discovery Submission and [Proposed] Order, text located in boxes are statements of the parties.

At several places in this document, where noted, each party has been asked to supply a unilateral statement regarding its ESI resources, plans for collection and review, and related issues. Those statements have been included here unchanged, and no party makes any representations regarding the accuracy of another party's unilateral statement. Nothing in a party's unilateral statement binds any other party in any way, limits any discovery that may be sought, or limits any objections that any other party may have in future proceedings and negotiations in the actions.

The parties agree that the provisions of this document apply to Settling Defendants, who are currently subject to a Court-ordered stay, except with respect to the document collection activities and reporting described in the parties' joint response at section 6(a) below, at item (3). Settling Defendants' document collection activities and reporting will be rescheduled after the expiration of the stay, by agreement of the parties. Settling Defendants agree to participate in further ESI planning for the remaining parties as described in this document, including by submitting their comments and objections to other parties' Custodian Lists, document collection and review plans, and the draft Specifications for Production of ESI and Hard Copy Documents, and participating in discovery planning meet-and-confer sessions where necessary.

1. Brief Joint Statement Describing the Action

This matter consists of three sets of actions: the "DOJ Action" (United States v. Apple, Inc. et al, Civil Action No. 12-cv-2826(DLC)), brought by the Department of Justice, Antitrust Division ("DOJ") against Apple, Inc. and seven publisher defendants alleging violation of the Sherman Act; the "Class Action" (In re Electronic Books Antitrust Litigation, Civil Action No. 11-md-02293 (DLC)), a set of private antitrust actions brought by individual plaintiffs against Apple, Inc. and publishers, which has been combined into a multidistrict litigation and for which the plaintiffs seek class action status; and the "State Action" (Texas et al v. Penguin Group (USA) Inc., et al,

Civil Action No. 12-cv-03394 (DLC)), in which the Attorneys General in 33 states allege violations of the Sherman Act and various state antitrust and trade laws.

All three sets of actions (referred to as the "actions" hereafter) are premised on the allegation that Apple, Inc. and publishers unlawfully conspired to raise the prices of electronic books ("ebooks") and end retail ebook price competition in the United States. Plaintiffs in the Class Action and State Action seek equitable relief and monetary damages; DOJ seeks only equitable relief.

(a) Estimated amount of Plaintiff(s)' Claims (Class Action and State Action):

___ Less than $100,000
___ Between $100,000 and $999,999
___ Between $1,000,000 and $49,999,999
_X_ More than $50,000,000
_X_ Equitable Relief
Other (if so, specify) _____

(b) Estimated amount of Defendant(s)' Counterclaim/Cross-Claims:

___ Less than $100,000
___ Between $100,000 and $999,999
___ Between $1,000,000 and $49,999,999
___ More than $50,000,000
___ Equitable Relief
___ Other (if so, specify): **N/A – No Counterclaims or Cross-Claims**

2. Competence. Counsel certify that they are sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

3. Meet and Confer. Pursuant to Fed. R. Civ. P. 26(f), counsel are required to meet and confer regarding certain matters relating to electronic discovery before the Initial Pretrial Conference (the Rule 16 Conference). Counsel hereby certify that they have met and conferred to discuss these issues.

Dates of parties' meet and confer conferences: May 15, 2012 (in-person conference), June 8, 2012 (conference call), June 13, 2012 (conference call). On each occasion, all parties were represented.

4. Unresolved Issues. After the meet-and-confer conferences taking place on the aforementioned dates, the following issues remain outstanding or require court intervention: ___ Preservation; ___ Search and Review; ___ Source(s) of Production; ___ Form(s) of

Production; ___ Identification or Logging of Privileged Material; ___ Inadvertent Production of Privileged Material; ___ Cost Allocation; and/or ___Other (if so, specify). To the extent specific details are needed about one or more issues in dispute, describe briefly below.

All outstanding disputes were resolved by the parties or the Court as of June 22, 2012.

As set forth below, to date, the parties have addressed the following issues:

5. Preservation.

(a) The parties have discussed the obligation to preserve potentially relevant electronically stored information and agree to the following scope and methods for preservation, including but not limited to: retention of electronic data and implementation of a data preservation plan; identification of potentially relevant data; disclosure of the programs and manner in which the data is maintained; identification of computer system(s) utilized; and identification of the individual(s) responsible for data preservation, etc.

The parties agree that: 1. Each party will take reasonable and good faith steps to prevent the loss, destruction, alteration, overwriting, deletion, shredding, incineration, or theft of any document or data the party knows, or reasonably should know, falls within the scope of Fed. R. Civ. P. 26(b)(l). This includes all documents and data in the party's possession, custody, or control, except as noted in the following paragraph. 2. No party needs to preserve the following types of information, unless that party has a policy that results in routine preservation of such information: (a) Transitory information such as Internet history, cookie files, cache files, and temporary files; and (b) data stored on a personal digital assistant (Blackberry, e.g.), including email, calendar data, contact data, and notes, provided that a copy of such information is routinely saved elsewhere. Below, the parties provide the specific information requested in this item 5(a):	
DOJ	DOJ has implemented a litigation hold notice describing the information in the possession, custody, and control of DOJ that may be discoverable in the actions. This written notice instructs all recipients to retain and not to destroy this information, and provides instructions on preserving the information where it can be collected for production. This hold notice was given to key personnel, including all

	members of the investigation team. All recipients were required to affirmatively respond to the notice stating whether they have documents or data covered by the notice and that they have complied with its instructions. In addition, DOJ sends periodic reminders of the hold requirements to the recipients. DOJ is also subject to the requirements of the Federal Records Act and Antitrust Division Directive 2710.1(Procedures for Handling Division Document and Information), the provisions of which apply notwithstanding (or, where applicable, in addition to) any litigation hold notice. The potentially relevant information that DOJ maintains consists of the information it collected during its 2010-2012 ebooks investigation, which includes Civil Investigative Demands ("CIDs"); documents and testimony produced from the Defendants and non-parties in response to those CIDs; and associated communications, including email. This information resides in: (1) a Summation Enterprise database, which contains image and data files, primarily for documents produced to DOJ by recipients of CIDs; (2) DOJ's email server (Microsoft Exchange 2003) which contains both discoverable and privileged/work-product communications; (3) a network document storage system (iManage), which contains exclusively or almost exclusively privileged/work-product documents; and (4) a set of shared document storage drives (R:), which (in relevant portion) contains primarily data produced to DOJ by recipients of CIDs. All these sources reside on live servers in DOJ's Washington, D.C. offices. The individual at DOJ with primary responsibility for the preservation of material discoverable in these actions is Stephen Fairchild, a Trial Attorney with the Antitrust Division.
Class Plaintiffs	Class Plaintiffs have received written notice instructing preservation of all relevant documents that are related to the case, including electronically stored information, that are in their possession, custody and control. Class Counsel will continue to remind the Class Plaintiffs of their obligations to preserve relevant documents. Each Class Plaintiff is primarily responsible for the preservation of material in his or her possession that is discovery in these actions.

State Plaintiffs	The States of Texas and Connecticut have implemented litigation hold notices describing the information in their possession, custody, and control that may be discoverable in the actions. These notices instruct all recipients to retain and not destroy this information. These hold notices were given to key personnel, including members of the respective States' investigation team(s). The remaining State Plaintiffs are not likely to possess any documents or information that is not duplicative of Texas's and Connecticut's, and therefore would not have information that would be discoverable in the actions.
Apple	Apple has provided relevant custodians (which includes the custodians identified during the DOJ investigation phase as well as additional individuals) with a legal hold notice instructing recipients of their obligation to retain potentially relevant information. Except for a database of documents collected during the DOJ investigation, Apple does not have a central repository of documents specific to this litigation or to ebooks in general. Potentially relevant ESI at Apple will vary by custodian, but may include emails, calendar information, spreadsheets, databases (including but not limited to Filemaker Pro documents), internal servers, and other electronic or hard copy documents relating to ebooks. Apple's search and collection of potentially relevant ESI will vary for each Apple custodian. Therefore, Apple cannot specify at this juncture specific locations or volume of ESI. For example, the number and location of shared drives, if any, depends on the specific custodians identified for this litigation, In general, potentially relevant ESI may reside in (1) a hosted document review platform containing documents collected from Apple custodians during the DOJ investigation phase; (2) Apple's email servers; (3) email server back-up disks and tapes; (4) hard drives of Apple custodians' work computers; (5) back-ups of hard drives; (6) external drives potentially utilized by Apple custodians; (7) shared drives potentially utilized by Apple custodians; (8) back-ups of shared drives; (9) mobile devices, such as iPads, iPhones, and/or iPods; (10) internal servers potentially utilized by Apple custodians; (11) back-ups of internal servers potentially utilized by Apple custodians; and (12) instant message (iChat) conversations.

	Apple does not intend to search email server back-ups because compressed data from back-up disks or tapes cannot be restored without additional processing and costs. Other back-up systems, such as for hard drives, share drives, and mobile devices will vary by custodian. Most of the sources identified above are located in California, though relevant ESI may be located throughout Apple offices. The sources identified above likely contain a mix of material protected by the attorney-client privilege and the work-product doctrine, as well as non-privileged material. The individual responsible for the preservation of discoverable material in this action is Beth Kellermann, litigation e-discovery manager at Apple.
Hachette	Hachette Book Group, Inc. and Hachette Digital, Inc. ("Hachette") has issued a litigation hold notice and regular reminders describing the documents and data that are potentially relevant to this litigation and the previous federal and state government investigations. This notice has been provided to all personnel who may have relevant data as well as all personnel responsible for the electronically stored information routinely generated and stored by Hachette. The hold notice is updated regularly. The notice has been circulated to a distribution list that is far broader than the set of custodians likely to have information relevant to the actions. The hold notice calls for recipients to retain any and all documents related to e-book related pricing lists, plans, market studies, forecasts, surveys, strategies, analysis and e-book pricing and distribution decisions, including but not limited to, documents that reflect a broad list of topics and categories of documents. The hold notice also defines "document" broadly, including but not limited to, a list of medium on which information can be stored. Potentially relevant ESI at Hachette primarily exists in the form of emails, memoranda, reports, spreadsheets, presentations, calendar information, and related materials maintained by individual custodians. Potentially relevant ESI is stored in many different databases and applications. Potentially relevant ESI generally is likely to be stored on Hachette's email servers, custodians' personal

	computer hard drives, and location-specific shared drives. Potentially relevant ESI also may be stored on other storage devices maintained by individual custodians, such as external hard drives, portable storage drives, mobile devices, or Internet-based document repositories. All of the sources identified above are generally located throughout Hachette's offices or on its servers and likely contain material protected by the attorney-client privilege and the work-product doctrine (in addition to non-privileged material). The individuals responsible for the preservation of discoverable material in this action are Carol Ross, General Counsel at Hachette Book Group, Inc. and Elise Solomon, Senior Counsel at Hachette Book Group, Inc.
HarperCollins	Upon receipt of a CID from the State of Texas, HarperCollins provided potentially relevant custodians with a legal hold notice instructing recipients of their obligation to retain potentially relevant information. Since the initial distribution of that notice, HarperCollins has updated the recipient list and circulated periodic reminders as appropriate (including upon receipt of a CID from the DOJ and the service of complaints in the actions). All such notices and reminders have been circulated to a distribution list that is far broader than the set of custodians likely to have information relevant to the actions, and required those recipients to retain any and all documents (including memoranda, correspondence, e-mails, computer files, audio recordings, and handwritten notes) dating from January 1, 2008 related to, among other things, the creation, marketing, sale, distribution, costs, or pricing of e-books. Potentially relevant ESI at HarperCollins primarily exists in the form of emails, memoranda, reports, spreadsheets, presentations, calendar appointments and invitations, and related materials maintained by individual custodians. Other than any databases of documents collected during the governmental investigations, HarperCollins does not maintain a centralized document storage system. Potentially relevant ESI generally is likely to be stored on HarperCollins email servers, the personal computer hard drives of custodians, and location- and department-specific shared drives. Potentially relevant ESI also may be stored on storage devices maintained by individual custodians, such as

	external hard drives, portable storage drives, mobile devices, or Internet-based document repositories. All of the sources identified above are located throughout HarperCollins' offices and likely contain material protected by the attorney-client privilege and the work-product doctrine (in addition to non-privileged material). The individual responsible for the preservation of discoverable material in this action is Trina Hunn, Assistant General Counsel at HarperCollins.
Macmillan (Holtzbrinck Publishers, LLC d/b/a Macmillan)	Macmillan implemented a written litigation hold notice upon receipt of the first CID it received from the State of Texas. Reminder notices have been circulated within the company at several junctures, including upon receipt of CIDs from the State of Connecticut and DOJ, and upon service of the first Class Action complaint and the complaints in the DOJ Action and State Action. All notices were circulated to a distribution list that is far broader than the set of custodians likely to have information relevant to the actions. The notices call for the preservation and retention of hard copy and electronic documents concerning a broad range of topics related to eBooks. The types of documents to be preserved and retained include, without limitation: correspondence, including e-mail and other electronic communications; information contained on computers and portable electronic devices; memoranda; reports; sales transaction records; data compilations; file folders and labels; calendars; diaries; telephone logs; handwritten notes; and information stored on removable media, such as discs or thumb drives. The documents being preserved and retained are found in: (1) an email server (Microsoft Exchange 2010[1]), which contains both discoverable and privileged/work-product communications; (2) two network document storage servers, NYFile01 and NYFile09, both of which house a number of shared document storage drives, some containing discoverable material and some (such as Interwoven) containing privileged/work-product documents primarily because the drives are used

[1] Macmillan recently upgraded its email server from Microsoft Exchange 2003 to Microsoft 2010. No data or documents were lost during the upgrade.

	exclusively by the Legal Department; (3) a shared storage drive named FileSite, which resides on a separate server and contains privileged/work-product documents primarily because the drive is used exclusively by the Legal Department; and (4) individual document storage drives (C: and D:) and personal computers, portable devices, and removable media as described above, all of which contain both discoverable and privileged/work-product documents. Apart from the portable media which have no fixed location, all servers and databases reside in New York City. The individuals responsible for data preservation are Amy Wolosoff and various IT personnel at Macmillan and Joel Mitnick and Alexandra Shear at Sidley Austin LLP.
Verlagsgruppe Georg von Holtzbrinck GmbH (VGvH)	VGvH implemented a litigation hold that instructs personnel to preserve documents and data that are potentially relevant to the subject of these actions. The notice was circulated to a distribution list that is broader than the set of custodians likely to have information relevant to the actions. The documents being preserved and retained primarily are found in: (1) an email server, EXCHANGE07, which contains both discoverable and privileged/work-product communications; (2) a central file server, NASPSERV, which houses a number of shared document storage drives containing both discoverable and privileged/work-product communications; (3) individual document storage drives (C: and D:), local mail archives (PST files) stored on personal computers (some of which may also be stored on NASPSERV, the central file server), and personal computers, portable devices, and removable media, all of which contain both discoverable and privileged/work-product documents. Apart from the portable media which have no fixed location, the servers and databases described above are located in Stuttgart, Germany. Additional documents have been preserved on servers located in Munich, Cologne, Frankfurt,

	and the Hamburg area (including Reinbek), Germany. The individuals responsible for data preservation are Dr. Anka Reich, counsel for VGvH at Noerr LLP, and various IT personnel.
Penguin	Penguin issued a litigation hold notice and reminders which describe documents and data that are potentially relevant to this litigation and the previous federal and state government investigations. The litigation hold was sent to a broader group of people than the identified custodians including personnel responsible for the electronically stored information routinely generated and stored by Penguin. The potentially relevant information that Penguin has identified to date include documents and data, both hard copy and ESI, collected over the previous investigations in response to federal and state government CIDs. This information is currently stored in a Ringtail Database , a document management application, as well as on peripheral storage devices. Hard copy documents are stored in file storage areas. This material is in the control of Penguin's counsel and, to the extent that it is ESI, resides on computer servers and peripherals located at the Washington, DC office of Penguin's counsel. The potentially responsive documents and data include information both discoverable and subject to privilege. Potentially relevant documents and data, within the possession, custody, and control of Penguin, which has not yet been collected resides in the computer systems of Penguin, the personal hard drives and peripherals of the document custodians, as it is regularly kept in the course of business, as well as Penguin's various office hard copy storage facilities. Penguin has a Microsoft Office environment and its employees use the Office Suite of applications, as well as SQL and Access. Following its standard procedures at the issuance of a litigation hold, identified custodians' ESI storage areas were copied and the copied ESI was retained, pending the termination of the hold. Document custodians are responsible for the retention of all materials described by the litigation notice. Documents are retained within the custodians' existing folder structure. File Shares and system drives

	subject to the litigation hold are treated in the same manner. A full tape backup of the Microsoft Exchange servers and databases is conducted every night. There is no segregation of email accounts in this backup and it includes all objects within Outlook. A 30-day tape rotation cycle is used and, at the end of 30 days, a monthly tape is moved offsite and retained. Non- Exchange servers are subject to a monthly backup. Backup media is moved off-site and retained. The retention period is currently "in perpetuity." It was previously 7 years; the change took place in 2007. The individual with the primary responsibility for the preservation of relevant information is Greg Granitto, counsel for Penguin.
Simon & Schuster	Simon & Schuster ("S&S") has issued a legal hold notice to potentially relevant custodians instructing recipients of their obligation to retain potentially relevant information. This hold notice has been regularly redistributed, and has been updated as appropriate. The notice has been circulated to a distribution list that is broader than the set of custodians likely to have information relevant to the actions. The hold notice calls for recipients to retain any and all documents dating from January 1, 2008, related to the creation, marketing, sale, distribution or pricing of e-books, including, but not limited to, documents that reflect a broad list of categories of documents. The hold notice also broadly defines "document" to include any medium on which information can be stored. Potentially relevant ESI at S&S primarily exists in the form of emails, memoranda, reports, spreadsheets, presentations, calendar information, and related materials maintained by individual custodians. Other than any databases of documents collected during the DOJ investigation, S&S does not maintain a centralized document storage system. Potentially relevant ESI generally is likely to be stored on S&S email servers, custodians' personal computer hard drives, and location-specific shared drives. Potentially relevant ESI also may be stored on other storage devices maintained by individual custodians, such as external hard drives, portable storage drives, mobile devices, or Internet-based document repositories.

	All of the sources identified above are located throughout S&S's offices and likely contain material protected by the attorney-client privilege and the work-product doctrine (in addition to non-privileged material). The individual responsible for the preservation of discoverable material in this action is Emily Remes, Deputy General Counsel at Simon & Schuster.

(b) State the extent to which the parties have disclosed or have agreed to disclose the dates, contents, and/or recipients of "litigation hold" communications.

Currently, the parties agree that no party needs to disclose the date, specific content, or specific recipients of their respective litigation hold communications, although the nature of those communications is generally described above. However, each party reserves the right to demand such disclosure in the future, if a dispute arises as to the adequacy of another party's document preservation or production, potential spoliation, or the propriety of a claim of privilege or work product, or if other circumstances arise justifying such disclosure.

(c) The parties anticipate the need for judicial intervention regarding the following issues concerning the duty to preserve, the scope, or the method(s) of preserving electronically stored information:

None at this time.

6. Search and Review

(a) The parties have discussed methodologies or protocols for the search and review of electronically stored information, as well as the disclosure of techniques to be used. Some of the approaches that may be considered include: the use and exchange of keyword search lists, "hit reports," and/or responsiveness rates; concept search; machine learning, or other advanced analytical tools; limitations on the fields or file types to be searched; date restrictions; limitations on whether back-up, archival, legacy, or deleted electronically stored information will be searched; testing; sampling; etc. To the extent the parties have reached agreement as to search and review methods, provide details below.

Each party has agreed to describe this information below.

Furthermore, the parties agree to review this information and work cooperatively to ensure that each party's plan for the identification, culling, search, review, and production of ESI in the actions is thorough, reasonable, and comports with all applicable rules. Toward that end:

(1) By July 6, 2012, the parties will exchange objections or requests for modification of any party's general plan stated in this Joint Electronic Discovery Submission No. 1 for the identification, culling, search, review, or production of ESI;

(2) The parties will meet and confer promptly thereafter to resolve any disagreements on those issues, and will complete the meet and confer process by July 18, 2012, unless the Court's intervention is required and, if necessary, submit an additional or revised Joint Electronic Discovery Submission;

(3) By July 31, 2012, each party that intends to use keyword search terms to produce ESI in the actions must (i) complete its collection of ESI from the custodians listed in its Custodian List and from any additional locations of potential responsive ESI (including shared drives and other shared resources), and (ii) provide a report of its document collection efforts and detailed search and review plan, including:

(a) the total amount of data collected;

(b) the amount of data collected per custodian;

(c) the approximate number or percentage of documents collected that are written (partially or entirely) in a language other than English, and an identification of all the foreign languages likely to be found in the collection;

(c) for parties intending to use keyword searches to cull potentially relevant documents for review or production, (i) a tally list of all terms that appear in the collection and the frequency with which the terms appear in the collection (both the total number of appearances and the number of documents in which each word appears); (ii) where necessary to understand any of these terms (such as project or code words related to ebooks), a glossary; (iii) a detailed description of the party's planned search methodology, including a full list of keyword terms to be used, stem searches, and combination (or Boolean) searches; and (iv) a description of the applications that will be used to execute the search; and

Macmillan and VGvH intend to use a predictive coding process to search for and review ESI in the actions. By July 31, 2012, Macmillan and VGvH will provide

additional information as outlined below. (4) With this information, the parties will then meet and confer as needed to (a) finalize each party's ESI search, review, and production plan, and (b) develop a rolling document production schedule, discussed further in response to item 7(b) below.	
DOJ	Because DOJ possesses only a limited universe of documents and data that may be discoverable in the actions, much of which was produced by parties and non-parties during its ebooks investigation, it will not need to use any keyword searching or other non-manual techniques to identify or produce potentially responsive material. When review is necessary to cull privileged or work-product documents from the productions, this will be done by manual review by attorneys and staff.
Class Plaintiffs	Class Plaintiffs possess only very limited documents and data – if any – that may be discoverable in the actions. Therefore, they will not need to use keyword searching or other non-manual techniques to identify or produce potentially responsive material. When review is necessary to cull privileged or work-product documents or duplicates from the productions, this will be done by manual review by attorneys and staff.
State Plaintiffs	The State Plaintiffs, in particular Texas and Connecticut, possess only a limited universe of documents and data that may be discoverable in the actions, much of which was produced by parties and non-parties during the investigation. As a result, no keyword searching or other non-manual techniques will be utilized to identify or produce potentially responsive material. When a review is necessary to cull privileged or work-product documents or duplicates from the productions, State Plaintiffs will engage in such a review manually.
Apple	Each Apple custodian likely possesses a substantial number of emails, other electronic documents, and/or hard copy documents Apple will interview custodians and other Apple personnel to identify the locations of discoverable documents and data within Apple's possession, custody, and control. Apple will collect hard copy documents from on-site and off-site storage locations identified by custodians. Apple will collect ESI in a forensically sound method.

	Because of the potential large volume of ESI, Apple will use a document search software to search by keyword and other limits (such as date ranges) to identify the universe of potentially responsive documents among Apple custodians, subject to further disclosure to the parties. In some circumstances, Apple may also use a proprietary search tool to locate discoverable documents. Apple will use a document hosting vendor to apply non-manual techniques to cull duplicates and material previously produced to the DOJ, including but not limited to the MD5 Hash standard within custodians. Apple will then manually review documents for attorney-client privilege, work-product, and responsiveness as well as to prepare documents for production.
Hachette	The documents already produced by Hachette during the investigations were extensive, burdensome to produce, the subject of negotiation, and we understand will be re-produced by the DOJ to all parties. Accordingly, Hachette does not believe that additional productions are necessary or merited without good cause shown. Each Hachette relevant custodian likely possesses a large volume of documents, the majority of which are likely to be irrelevant to this case. Hachette expects to employ Applied Discovery, Inc. an e-discovery vendor, to assist with the collection of any potentially responsive ESI from relevant custodians (to the extent appropriate and as necessary given the already-significant document productions made by Hachette during the course of the governmental investigations). Hachette also expects to use the same e-discovery vendor to perform non-manual keyword searching to identify any potentially responsive documents and to exclude documents previously produced to the DOJ. Hachette then expects to manually review such documents for privilege and responsiveness prior to any production.
HarperCollins	HarperCollins has already undertaken extensive and burdensome document searches, reviews and productions during the governmental investigations, all of which were the subject of extensive negotiation between HarperCollins and the relevant governmental authorities. It is HarperCollins' understanding that all documents produced in the course of these investigations will be re-produced by DOJ to all parties in the actions. As such, HarperCollins does not believe that further searches and productions are necessary or justifiable without good cause shown.

	Each HarperCollins custodian likely possesses a large volume of documents, the majority of which are likely to be irrelevant to these actions. To the extent appropriate and necessary given the already-significant document productions made by HarperCollins during the course of the governmental investigations, HarperCollins would likely employ FTI, an e-discovery vendor, to assist with the collection of any potentially responsive ESI from relevant custodians. HarperCollins would also likely use the same e-discovery vendor to perform non-manual keyword searches to identify any potentially responsive documents and to isolate duplicate documents and documents previously produced to the DOJ. HarperCollins would then manually review such documents for privilege and responsiveness prior to any production.
Macmillan (Holtzbrinck Publishers, LLC d/b/a Macmillan)	Macmillan intends to use a predictive coding process to search for and review electronic documents in these cases. Macmillan is considering retaining a vendor named Epiq, subject to negotiation of an acceptable engagement agreement. Epiq uses a predictive coding technology called Equivio Relevance. By the close of business on June 21, 2012, Macmillan will provide the parties with a brochure from Epiq summarizing its workflow for using the product and a Power Point presentation, entitled Equivio>Relevance Application Architecture, which provides additional background about the technology. Additionally, if Macmillan retains Epiq, Macmillan will promptly communicate to the parties a workflow chart that will specify each step of the process of Equivio Relevance as Macmillan proposes to use that program to produce ESI in the actions. This workflow chart should be produced as soon as it is available, but no later than June 29, 2012. Thereafter, from time to time, Macmillan will meet and confer with the parties to exchange relevant information concerning the processes by which it will use predictive coding in the actions, including by identifying (i) the relevant document universe and how the seed set for the review process will be selected, (ii) whether, at various stages, documents will be reviewed by human reviewers or using sampling or automated techniques, (iii) how documents will be processed by the selection algorithm, (iv) how the training rounds will be conducted, (v) how exceptions and unreadable or unprocessable documents will be handled, and (vi) any statistical tests or confidence levels to be used.

Verlagsgruppe Georg von Holtzbrinck (VGvH)	Like Macmillan, VGvH intends to use a predictive coding process to search for and review electronic documents in these cases, including any review necessary for purposes of identifying documents subject to any applicable privilege and to ensure that any production is made in compliance with foreign data privacy laws. VGvH is considering retaining a vendor named Epiq, subject to negotiation of an acceptable engagement agreement. Epiq uses a predictive coding technology called Equivio Relevance. By the close of business on June 21, 2012, VGvH will provide the parties with a brochure from Epiq summarizing its workflow for using the product and a Power Point presentation, entitled Equivio>Relevance Application Architecture, which provides additional background about the technology. Additionally, if VGvH retains Epiq, VGvH will promptly communicate to the parties a workflow chart that will specify each step of the process of Equivio Relevance as VGvH proposes to use that program to produce ESI in the actions. This workflow chart should be produced as soon as it is available, but no later than June 29, 2012. Thereafter, from time to time, VGvH will meet and confer with the parties to exchange relevant information concerning the processes by which it will use predictive coding in the actions, including by identifying (i) the relevant document universe and how the seed set for the review process will be selected, (ii) whether, at various stages, documents will be reviewed by human reviewers or using sampling or automated techniques, (iii) how documents will be processed by the selection algorithm, (iv) how the training rounds will be conducted, (v) how exceptions and unreadable or unprocessable documents will be handled, and (vi) any statistical tests or confidence levels to be used.
Penguin	Penguin anticipates the need to search a considerable volume of ESI, hard copy documents, and data. Penguin will conduct interviews of document custodians and Penguin personnel to ascertain the locations of discoverable documents and data within its possession, custody, and control. Hard copy documents will be collected from file storage locations identified by custodians. ESI will be collected using a forensically sound methodology from the Penguin computer system, shared drives, databases, hard drives and peripherals

	identified by custodians. ESI will be subject to date restrictions, as agreed by counsel, and will be de-duped by custodian using a MD5 Hash standard. ESI will be subjected to word search criteria using NUIX, a software application. Word search data and statistics will be provided per the ESI specifications agreed upon by all parties. All available metadata will be retained and produced in accordance with ESI specification agreed upon by all parties. Back-up, archival, and legacy will not be searched but will be retained during the pending litigation. Documents and data will be reviewed by attorneys employed by Penguin to identify responsive, non-privileged information for production. Penguin will produce documents per agreed specifications.
Simon & Schuster	The documents already produced by S&S during the investigations were extensive, burdensome to produce, the subject of negotiation, and we understand will be re-produced by DOJ to all parties. Accordingly, S&S does not believe that additional productions are necessary or justifiable without good cause shown. Each S&S relevant custodian likely possesses a large volume of documents, the majority of which are likely to be irrelevant to this case. To the extent appropriate and as necessary given the already-significant document productions made by S&S during the course of the governmental investigations, S&S expects to employ OmniX, an e-discovery vendor, to assist with the collection of any additional potentially responsive ESI from relevant custodians. If additional discovery is necessary, S&S would likely use the same e-discovery vendor to perform non-manual keyword searching to identify any potentially responsive documents and to cull duplicate documents and documents previously produced to the DOJ. S&S would then manually review such documents for privilege and responsiveness prior to any production.

(b) The parties anticipate the need for judicial intervention regarding the following issues concerning the search and review of electronically stored information:

None at this time.

7. Production

(a) **Source(s) of Electronically Stored Information.** The parties anticipate that discovery may occur from one or more of the following potential source(s) of electronically stored information [e.g., email, word processing documents, spreadsheets, presentations, databases, instant messages, web sites, blogs, social media, ephemeral data, etc.]:

The parties agree to search and produce responsive documents and data from all of the following sources, to the extent those sources exist within the party's possession, custody, and control, or that of its individual custodians: document servers, email servers and programs (including any calendar, contact, note, and task information residing therein, and including personal email accounts), instant messaging servers, databases, Internet-based document repositories such as Sharepoint, repositories for audio and video records (including voicemail records, call logs, and text messages), local electronic devices (such as hard drives and disk drives of employees' desktop or laptop computers), portable devices (such as mobile phones, PDAs, iPads and tablets, thumb drives, portable hard drives, disks, CDs, and DVDs), and third-party hosted storage or platforms, including cloud storage. Nothing in this paragraph shall modify any provisions in the Initial Report concerning discovery of foreign documents or data.

If any party concludes that any of the sources of information listed above is inaccessible or that collection from or search of any of those sources would be unduly burdensome, the parties will meet and confer in an attempt to resolve the matter. Parties will use their best efforts to raise any such objections as soon as possible, so that they may be resolved in time to allow the affected parties to meet the July 31, 2012 deadline discussed at item 3 of the parties' joint response at section 6(a) above.

With respect to archive sources that may contain discoverable and responsive documents and data (whether residing on archive servers, backup tapes, or otherwise), the parties agree to describe such sources in this Joint Electronic Discovery Submission No.1 (in Item 5(a) above), including how such sources may be accessed and searched, even if the party objects to including such sources in its document collection and production. Plaintiffs reserve the right to demand collection and production from archive sources when warranted under applicable law and rules.

In addition to these sources of ESI, the parties agree to search and produce discoverable and responsive documents and data that exist in hard copy form,

wherever they may reside, including libraries, filing and records departments, desks, cabinets, and warehouses or other archives.

In addition, the parties agree to ask each of their document custodians whether he or she maintains potentially responsive documents or data in any of the electronic or hard-copy sources listed above, whether at the person's office, home, or online.

(b) **Limitations on Production.** The parties have discussed factors relating to the scope of production, including but not limited to: (i) number of custodians; (ii) identity of custodians; (iii) date ranges for which potentially relevant data will be drawn; (iv) locations of data; (v) timing of productions (including phased discovery or rolling productions); and (vi) electronically stored information in the custody or control of non-parties. To the extent the parties have reached agreements related to any of these factors, they are described below:

Custodians: On June 20, 2012, the parties will exchange Custodian Lists, as described in section 4(a) of the Joint Initial Report. Each party will state any initial objections to any other party's Custodian List by July 6, 2012, and the parties will seek to resolve those objections by July 18, 2012. To the extent any Defendant has been granted a stay by the Court, that Defendant's Custodian List must be served within 21 days of the expiration of that stay or any extension thereof. As discovery continues, the parties agree to modify their Custodian Lists as necessary, and each party retains the right to object to the inclusion or exclusion of any custodian based on developing information.

Date Range: The default date range of discoverable documents and data in the actions is January 1, 2008 to April 11, 2012. However, the parties agree that any party may propose a different date range for any particular custodian or type of documents or data, when warranted. Any party proposing a different date range will inform the other parties of the new date range and state to which documents or custodian it proposes the new date range to apply, and the parties will seek to resolve any disputes on that issue.

Locations of Data; Timing of Productions: As noted above in response to Item 6(a), the parties intend to hold a series of meet-and-confer sessions to determine the appropriate limits of ESI collection and production, finalize each party's plan, and develop a schedule for the rolling production of documents intended to facilitate an orderly and manageable production and maintain the proposed case schedule.

Non-Party Productions: Discoverable and responsive documents and data in the possession, custody, and control of non-parties may be demanded by subpoena pursuant to Federal Rule of Civil Procedure 45. However, the parties agree that, subject to the provisions of the Initial Report and this Joint Electronic Discovery

Submission No.1, discoverable and responsive documents and data in the possession, custody, and control of their attorneys will be produced by the parties in response to document requests directed to the parties, without need for a subpoena to the attorneys.

(c) **Form(s) of Production:**

1) The parties have reached the following agreements regarding the form(s) of production:

The parties have a working draft of the Specifications for Production of ESI and Hard Copy Documents. During the upcoming negotiations concerning document collection and production, the parties will work toward finalizing these specifications and alert the Court to any disputes arising therefrom.

All parties have agreed to produce documents and data according to these Specifications, when finalized. To the extent a party finds that production of any particular document or data according to the Specifications is impossible, impracticable, or entails significantly greater burden than expected, the party will inform the other parties and seek agreement to an acceptable alternative format.

2) Please specify any exceptions to the form(s) of production indicated above (e.g., word processing documents in TIFF with load files, but spreadsheets in native form):

When finalized, the Specifications for Production of ESI and Hard Copy Documents will address this issue.

3) The parties anticipate the need for judicial intervention regarding the following issues concerning the form(s) of production:

None at this time.

(d) Privileged Material

1) **Identification.** The parties have agreed to the following method(s) for the identification (including the logging, if any, or alternatively, the disclosure of the number of documents withheld), and the redaction of privileged documents, including documents located outside the United States that would be privileged under United States law:

On the date specified in the case schedule, each party agrees to serve all other parties with a log of all documents withheld from its production or produced in redacted form on ground of attorney-client privilege, attorney work-product, or other applicable privilege ("privilege log"). Such privilege log may consist of certain metadata fields for each of the listed documents, as long as it comports with all requirements herein. In addition, each party will serve a revised version of any privilege log served on DOJ or the States during a prior ebooks investigation, or certify that the party's previously produced privilege log remains accurate and complete.

Privilege logs must conform to Federal Rule of Civil Procedure 26(b)(5) and section II(E) of the Pilot Project Standing Order and must include columns with at least the following information: (1) document date, (2) all document authors/senders and recipients; (3) form of the document (e.g., email, memo, letter); (4) brief description of the subject matter of the document, sufficient to enable another party's evaluation of the claim of privilege; (5) privilege claimed and basis therefor; and (6) for documents redacted rather than withheld entirely, the Bates number of the produced version. The logs must also contain a key identifying by name, position, and employer all attorneys and attorneys' agents (such as paralegals and litigation support staff) whose names appear on the logs. The privilege logs must be produced in text-searchable format.

If a party produces a privilege log based in whole or in part on metadata for the listed documents, it may redact any metadata information that discloses privileged information.

The parties agree that the following documents need not be produced or described on a privilege log, if those documents are protected from disclosure in the actions by the attorney-client privilege, work-product protection, or other applicable privilege:

> (1) as of April 7, 2010, a party's communications with or between its in-house or external litigation counsel or their employees or agents concerning any regulatory or governmental investigation concerning ebooks or the actions;

(2) as of April 7, 2010, work product created by a party's in-house or external litigation counsel or their employees or agents in anticipation of litigation with any governmental or private party concerning ebooks;

(3) internal communications (including email) between or among DOJ attorneys, staff, and consultants working at the direction of those attorneys, or State attorneys, staff, and consultants working at the direction of those attorneys;

(4) internal memoranda, status reports, notes, and other work product created by DOJ attorneys, staff, and consultants working at the direction of those attorneys, or State attorneys, staff, and consultants working at the direction of those attorneys;

(5) drafts of documents such as pleadings, other filings, discovery requests and responses, correspondence, and other intermediate work product created by DOJ attorneys, staff, and consultants working at the direction of those attorneys; State attorneys, staff, and consultants working at the direction of those attorneys; Class Action attorneys, staff, and consultants working at the direction of those attorneys; or Defendants' in-house counsel and external attorneys, staff, and consultants working at the direction of those attorneys;

(6) communications between DOJ attorneys, staff, and consultants working at the direction of those attorneys; State attorneys, staff, and consultants working at the direction of those attorneys; and /or Class Action attorneys, staff, and consultants working at the direction of those attorneys.

Nothing in the provisions above prevents any party from challenging any claim of privilege or other protection asserted by another party. The parties further agree that these provisions supersede the provisions of section II(D) of the Pilot Project Standing Order.

2) **Inadvertent Production / Claw-Back Agreements.** Pursuant to Fed R. Civ. Proc. 26(b)(5) and F.R.E. 502(e), the parties have agreed to the following concerning the inadvertent production of privileged documents (e.g. "quick-peek" agreements, on-site examinations, nonwaiver agreements or orders pursuant to F.R.E. 502(d), etc.):

See the parties' Stipulated Protective Order (Docket 149), at section 12.

3) The parties have discussed a 502(d) Order. Yes_X_; No__.

The provisions of any such proposed Order shall be set forth in a separate document and presented to the Court for its consideration.

No party proposes any 502(d) Order.

(e) **Cost of Production.** The parties have analyzed their clients' data repositories and have estimated the costs associated with the production of electronically stored information. The factors and components underlying these costs are estimated as follows:

i. **Costs:**

DOJ	DOJ will incur costs in terms of time spent by its attorneys and staff in preparing documents for production, and in the partial dedication of shared resources (such as server space). However, the cost of DOJ's litigation production is not "billed" or readily communicated in terms of dollars, nor DOJ does routinely calculate such cost per litigation.
Class Plaintiffs	Class Plaintiffs anticipate minimal costs associated with the production of electronically stored information.
State Plaintiffs	The State Plaintiffs will incur costs in terms of time spent by its attorneys and staff in preparing documents for production, and in the partial dedication of shared resources (such as server space). However, the cost of the State Plaintiffs' litigation production is not "billed" or readily communicated in terms of dollars, nor do the State Plaintiffs routinely calculate such cost per litigation.
Apple	Apple expects to incur significant costs associated with the production of ESI. While the precise amount is unknown because it is unclear what, if any, additional ESI Apple will need to produce, the total cost would include document hosting fees for a document hosting vendor, time and fees for vendors, staff, and attorneys collecting additional ESI, and time and fees spent by attorneys and staff in reviewing and preparing documents for production. Other costs, such as staffing and other resource allocations internal to Apple

	are not readily communicated in terms of dollars.
Hachette	Hachette has already incurred significant costs as a result of the government investigations. Hachette is unable to provide a future cost estimate at this time given that it has already produced a significant volume of documents during the governmental investigations and the volume of additional non-duplicative documents that may be sought by plaintiffs from Hachette, if any, remains unclear. The documents already produced by Hachette during the investigations were extensive, burdensome to produce, the subject of negotiation, and we understand will be re-produced by Hachette to all parties. Accordingly, Hachette does not believe that additional productions are necessary or merited without good cause shown. Nevertheless, it is likely Hachette will face significant costs in this litigation. The total cost largely depends on the amount of additional ESI that may be collected, reviewed, and produced. Costs associated with these tasks include document hosting fees assessed by a document hosting vendor, time and fees for vendors, staff, and attorneys collecting additional ESI, and time and fees spent by attorneys and staff in reviewing and preparing documents for production. Costs in the form of internal burden on Hachette are also uncertain, but are also likely to be substantial.
HarperCollins	HarperCollins has already incurred significant costs as a result of the government investigations. The document searches, reviews and productions by HarperCollins during those investigations were extensive, burdensome, and the subject of considerable negotiation. All documents produced during those investigations are expected to be re-produced by DOJ to all parties in the actions. Accordingly, HarperCollins does not believe that additional productions are necessary without good cause shown. Nevertheless, it is likely HarperCollins will face significant costs in this litigation. The total cost, which HarperCollins is unable to estimate at this time, largely depends on the volume of additional non-duplicative documents (if any) that may be sought by plaintiffs from HarperCollins and the corresponding amount of additional ESI that may be identified, collected, reviewed, and produced in response to any such requests. Costs associated with these tasks include document hosting fees assessed by a document

	hosting vendor, time and fees for vendors, staff, and attorneys collecting additional ESI, and time and fees spent by attorneys and staff in reviewing and preparing documents for production. Some of these same tasks are also likely to impose substantial costs on HarperCollins' business, particularly as they require the dedication of time and effort from potentially relevant custodians.
Macmillan (Holtzbrinck Publishers, LLC d/b/a Macmillan)	Macmillan will incur costs in terms of time spent by in-house counsel and IT support personnel related to the identification, preservation, collection, and transmission of responsive information. Macmillan will incur similar costs in terms of time spent by outside counsel and IT support personnel employed by counsel, as well as by third-party vendors. Macmillan will incur substantial costs in terms of attorney time spent to review responsive material and to prepare such material for production. These costs will be billed to Macmillan periodically as both flat-fee charges and hourly billed charges, depending on the nature and source of the particular charge.
Verlagsgruppe Georg von Holtzbrinck (VGvH)	VGvH will incur costs in terms of time spent by in-house counsel and IT support personnel related to the identification, preservation, collection, and transmission of responsive information. VGvH will incur similar costs in terms of time spent by outside counsel and IT support personnel employed by counsel, as well as by third-party vendors. VGvH will incur substantial costs in terms of attorney time spent to review responsive material and to prepare such material for production, including substantial legal fees that will be incurred in connection with efforts to produce foreign documents in the United States while complying with all applicable foreign privacy laws. These costs will be billed to VGvH periodically as both flat-fee charges and hourly billed charges, depending on the nature and source of the particular charge.
Penguin	Penguin has already incurred significant costs as a result of the government investigation, and will incur significant expense associated with further discovery, including collection, processing, review, and production of ESI, as well as the logging of privileged material. Penguin can only estimate these costs at this point and has initially budgeted $500,000 for these expenses.

Simon & Schuster	S&S has already incurred significant costs as a result of the government investigations. S&S is unable to provide a future cost estimate at this time given that it has already produced a significant volume of documents during the governmental investigations and the volume of additional non-duplicative documents that may be sought by plaintiffs from S&S, if any, remains unclear. The documents already produced by S&S during the investigations were extensive, burdensome to produce, the subject of negotiation, and we understand will be re-produced by DOJ to all parties. Accordingly, S&S does not believe that additional productions are necessary or justifiable without good cause shown. The total cost for any additional productions largely depends on the amount of additional non-duplicative ESI that may be sought from S&S, and the volume of material that may be identified, collected, reviewed, and produced. Costs associated with these tasks would include document hosting fees assessed by a document hosting vendor, time and fees for vendors, staff, and attorneys collecting additional ESI, and time and fees spent by attorneys and staff in reviewing and preparing documents for production. Such tasks are likely to impose substantial costs.

ii. **Cost Allocation.** The parties have considered cost-shifting or cost-sharing and have reached the following agreements, if any:

Each party agrees to bear its own costs of discovery, without prejudice to any application for costs pursuant to 15 U.S.C. §§ 15, 15a, or 15c.

iii. **Cost Savings.** The parties have considered cost-saving measures, such as the use of a common electronic discovery vendor or a shared document repository, and have reached the following agreements, if any:

The parties have briefly discussed the idea of using a common electronic discovery vendor or a shared document repository, but no party has put forth any specific proposal for such an arrangement. DOJ security policy does not typically allow it to join in such arrangements. DOJ believes that such an arrangement in this case, at

least involving DOJ, is likely to be unworkable.

(f) The parties anticipate the need for judicial intervention regarding the following issues concerning the production of electronically stored information:

All outstanding disputes were resolved by the parties or the Court as of June 22, 2012.

8. Other Issues:

None at this time.

The preceding constitutes the agreement(s) reached, and disputes existing, (if any) between the parties to certain matters concerning electronic discovery as of this date. To the extent additional agreements are reached, modifications are necessary, or disputes are identified, they will be outlined in subsequent submissions or agreements and promptly presented to the Court. This Stipulation is effective upon execution by the parties, without regard to filing with the Court, and may be signed in counterparts.

The next scheduled meet-and-confer conference to address electronic discovery issues, including the status of electronic discovery and any issues or disputes that have arisen since the last conference or Order, shall take place: Shortly after July 6, 2012, at which time the parties will have served their objections to Custodian Lists and ESI plans, as provided above at section 6(a), item 1.

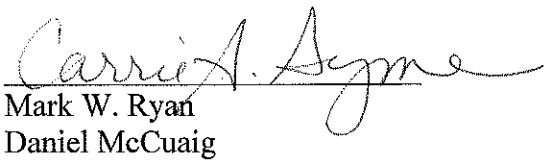
The next scheduled conference with the Court for purposes of updating the Court on electronic discovery issues has been scheduled for _____. Additional conferences, or written status reports, shall be set every 3 to 4 weeks, as determined by the parties and the Court, based on the complexity of the issues at hand. An agenda should be submitted to the Court four (4) days before such conference indicating the issues to be raised by the parties. The parties may jointly seek to adjourn the conference with the Court by telephone call 48 hours in advance of a scheduled conference, if the parties agree that there are no issues requiring Court intervention.

___ Check this box if the parties believe that there exist a sufficient number of e-discovery issues, or the factors at issue are sufficiently complex, that such issues may be most efficiently adjudicated before a Magistrate Judge.

Additional Instructions or Orders, if any:

STIPULATED AND AGREED TO:

Dated: July 6, 2012

By: 

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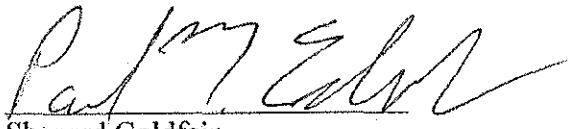
By: 

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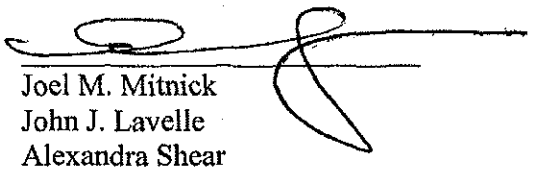
By: 

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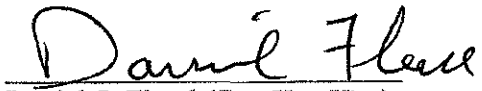
By: 

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On behalf of Defendant Apple, Inc.

Dated: _____, 20___

SO ORDERED:

_____
Denise L. Cote
United States District Judge