

EBOOK AGENCY DISTRIBUTION AGREEMENT

United States / Canada

MS# _____

Plaintiffs' Exhibit

US v Apple

12-cv-02826

PX-0003

This Agreement is between Apple Inc. ("Apple"), having its principal place of business at 1 Infinite Loop, Cupertino, California 95014, and Holtzbrinck Publishers, LLC, doing business as Macmillan, ("Publisher"), having its principal place of business at 175 Fifth Avenue, New York, NY 10010, and is effective on the date signed by both Parties (the "Effective Date").

Apple desires to be appointed as Publisher's agent for sales and delivery of digital books under certain conditions, and in exchange for a fee, on behalf of principal Publisher's account, and Publisher is willing to appoint Apple as its agent under such conditions and pay Apple a fee.

In consideration of mutual promises, Apple and Publisher (each a "Party" and collectively, "Parties") hereby agree as follows:

1. Definitions.

The following terms shall have the following meanings for purposes of this Agreement:

- (a) "Artwork" means cover art, photos, drawings, illustrations and any other artwork that is included in physical copies of Publisher Content, and which has been provided by or on behalf of Publisher to Apple for its use under this Agreement. For clarity, Publisher may, in its discretion, exclude any cover art, photos, drawings, illustrations, artwork, content other than text, and/or third party material from any Publisher Content provided to Apple, provided that Publisher must provide Apple with any such materials to the extent generally provided to any other eBook distributor. All Artwork provided to Apple shall have been cleared for Apple's use as contemplated herein.
- (b) "Content File" means a digital file comprising at least an item of Publisher Content, associated Artwork (if any), and metadata.
- (c) "Customer Price" means the price displayed to the end-user on the Online Store, as set by Publisher for each eBook by selecting from the prices set forth in Exhibit A using iTunes Connect.
- (d) "eBook" means each copy of Publisher Content, and its associated Artwork (if any), Extras (if any) and metadata in a form authorized for download on the Online Store.
- (e) "Insert Content" means any Artwork or other content provided to Apple for promotional purposes by or on behalf of Publisher and associated with Publisher Content, such as book reviews, author bios, and similar content, and which Publisher must provide Apple to the extent generally provided to any other

eBook distributor for use in online eBook promotion.

- (f) "iTunes Connect" means the proprietary content and account management tool known as iTunes Connect, provided by Apple to Publisher during the Term for use by Publisher and its affiliates in furtherance of the purposes of this Agreement. Despite anything to the contrary in this Agreement or any iTunes Connect user license, the terms of use for iTunes Connect applicable to Publisher shall be no more restrictive and shall impose no additional material obligations or requirements than its terms as of the Effective Date; and iTunes Connect licensee shall be deemed to include Publisher's affiliates, contractors and service providers who perform services in furtherance of this Agreement and whom are under Publisher's control or supervision.
- (g) "Launch Date" means the date that the Online Store first starts making eBooks available, targeted for March 2010.
- (h) "New Release" means an adult trade fiction hardcover book or adult trade non-fiction hardcover book (excluding art books, other heavily-illustrated books and cookbooks) during whichever of the following periods ends earlier; seven (7) months from its first generally available commercial publication in any format; and such time as the book is available only in hardcover (if at all).
- (i) "Online Store" means an electronic store owned or controlled by Apple or an Apple affiliate that specifically and primarily targets the United States market.
- (j) "Preview" means at least 5% or one full-chapter excerpt from each item of Publisher Content, as selected by Publisher in the metadata, excluding (i) prior to publication of the title, Previews for titles for which Publisher is not making any content available pre-publication and (ii) Previews objected to by authors or licensors of the corresponding eBook or other creator of the Preview, their executors, administrators or heirs. The Parties agree that Previews need not be protected using the Security Solution or be subject to any content usage rules other than limited for personal, non-commercial use.
- (k) "Publisher Content" means textual and graphical book content (excluding educational, scholarly and audio-book titles) owned or controlled by Publisher that has been cleared for distribution by or with Publisher's authority in digital form in the Territory.
- (l) "Publisher Materials" means, collectively, materials furnished by or on behalf of Publisher to Apple in furtherance of its appointment, including Publisher Content, Artwork, metadata, Insert Content, Previews and any extra bonus-type audio, video or audio-visual content ("Extras").
- (m) "Security Solution" means Apple's proprietary digital rights management solution marketed as "Fairplay", as set forth in the

Fairplay Specification attached as Exhibit C.

- (n) "Term" means the period beginning on the Effective Date and continuing until this Agreement is terminated pursuant to the terms of this Agreement.
- (o) "Territory" means the United States and its territories and possessions (collectively, "United States"), except that if Publisher specifies in the metadata that it controls the right to distribute particular eBooks in Canada, the Territory with respect to those eBooks will include Canada.

2. Agency Appointment.

(a) Publisher hereby appoints Apple during the Term as its non-exclusive agent for the marketing and delivery of Publisher's and its United States affiliates' eBooks through the Online Store on Publisher's behalf in the Territory to end-users for their personal, non-commercial use, and Apple accepts such appointment. Subject to all of the terms of this Agreement, including Publisher's obligations, Publisher shall have the right to include in this appointment some or all of the eBooks of any of its or its affiliates' distributees. For clarity, the parties acknowledge that this appointment does not include educational, scholarly and/or audio-book titles or trade titles published by the Palgrave Macmillan (scholarly book) division of St. Martin's Press, LLC.

(b) In furtherance of such appointment, Apple may, subject to the terms of this Agreement:

- i. Market, solicit and obtain orders on Publisher's behalf for eBooks from end-users, including delivery of copies of Previews (if provided by Publisher) for free to potential eBook customers;
- ii. Make copies of, format, and otherwise prepare Content Files as eBooks for download by end-users;
- iii. Provide storage, searching, and hosting services to Publisher so end-users may search for, obtain recommendations for, and acquire eBooks from Publisher by electronic download through the Online Store;
- iv. Issue invoices for the purchase price payable by end-users for eBooks;
- v. Use Insert Content, as well as other images and materials as provided by Publisher to Apple for promotional use, associated with an eBook in marketing materials and gift cards for that eBook; and
- vi. Apple may modify metadata as reasonably necessary to correct errors.

- (c) All rights not granted herein are reserved by Publisher. Apple will not use eBooks, or any copies made from them, and will not distribute or make eBooks available other than as expressly authorized herein. Apple will not make use of all or any portion of the Publisher Materials (excluding any portions thereof that are in the public domain in the United States) except as expressly authorized herein without permission from the applicable rightsholder. Nothing herein limits Publisher's, its affiliates or its or their distributees' rights to distribute eBooks themselves and/or through other third-parties.

3. Publisher Obligations.

- (a) Publisher shall make the following categories of books (including revisions, re-printings, updates etc.) for which Publisher owns or controls electronic distribution rights in the Territory available to Apple under its appointment: (i) all New Releases; and (ii) all other Publisher Content that it provides to any other electronic distributor of Publisher's content in digital form. Publisher shall endeavor to deliver to Apple as many Content Files for the above categories of books as reasonably possible so as to enable Apple to make them available by the Launch Date. Notwithstanding the foregoing, Publisher may withhold for any period of time or withdraw any Publisher Content, including New Releases, from Apple's appointment in the case of a "Clearance Issue" (as defined in Section 6(g)), in the case of Publisher Content for which Publisher does not have a digital file, or if requested to do so by the author, licensor or other creator of any portion of the withheld Publisher Content, their executors, administrators or heirs. In the event that Publisher has withheld Publisher Content because Publisher does not have it in a digital file, Publisher shall, upon Apple's request, create and deliver such digital file to Apple and Apple shall bear Publisher's out-of-pocket expenses for the creation and delivery of such file.
- (b) Publisher shall not discriminate against Apple with respect to the permitted usage rules, functionality, and quality of any Publisher Content, except for variances arising from platform functionality or as otherwise permitted herein.
- (c) Subject to the last sentence of Section 3(a), and except for limited-time, one-off promotions for particular items of Publisher Content, Publisher shall provide and make New Releases for which Publisher owns or controls electronic distribution rights in the Territory and whose first publication is on or after the Launch Date available to Apple under its appointment on the same day and date and for as long as it remains a New Release and Publisher makes that New Release available to end users in any format, including physical copies.
- (d) Publisher shall deliver Content Files to Apple, at Publisher's expense, in ePub (using XHTML vocabulary) if it has a Content File in that format and, if it does not have a Content File in that format, then OEBPS, and if

OEBPS is not available then in PDF format using iTunes Connect. Publisher Content will be delivered to a server in California by means of telecommunications or via "load & leave" per California regulation 1502.

- (e) Publisher shall not include any digital watermark or similar technologies in the Content File.

4. Royalties.

Publisher shall be responsible for any royalties or license fees owed to authors, illustrators, artists, talent and other rights holders or contributors (if any) arising from the use of any Publisher Materials in furtherance of Apple's appointment, and the Content Usage Rules, consistent with this Agreement, including any payments required under collective bargaining agreements.

5. Agency Commission; Tax; and Reporting.

- (a) For each sale of an eBook pursuant to this Agreement, Apple shall be entitled to a commission of thirty percent (30%) of the Customer Price for the eBook. The "eBooks Proceeds" for each sale of an eBook shall mean Publisher's seventy percent (70%) share of the Customer Price (i.e., the Customer Price less Apple's commission). The "sale" of an eBook shall occur when an eBook is first delivered to an end user.
- (b) If, for any particular New Release whose first publication is on or after the Launch Date, the then-current Customer Price at any time while it is still a New Release is or becomes higher than a customer price then offered by any other provider of that New Release in e-book form ("Other Customer Price"), then Publisher shall designate a Customer Price for that New Release that ends in "--.99" and is less than \$1.00 above such lower Other Customer Price. The foregoing Publisher matching obligation shall not apply in the event that (i) the Other Customer Price is a pre-order price such that the New Release will be but is not yet available, or (ii) the Other Customer Price is offered by a provider that has not been directly or indirectly authorized by Publisher to make the New Release available in eBook form.
- (c) Apple shall remit to Publisher, by electronic funds transfer ("EFT") the eBooks Proceeds on all sales of eBooks made during each calendar month no later than forty-five (45) days following the end of that month. Payment shall be made in United States dollars (US\$). Such payment shall be accompanied by a statement in a format approved by Publisher that specifies for each eBook: the ISBN of the digital edition supplied by Publisher, the number of copies sold by Apple to end-users (for the month and cumulatively for the calendar year) by ISBN, as well as the total due and owing from Apple for Publisher for the month with respect to all eBooks. In addition, sales by ISBN, customer country code, state or province (as applicable), and zip code will be available through Apple's reporting systems.

- (d) Using iTunes Connect, Apple shall make available and Publisher shall have access to an updated sales report including itemized sales of eBooks by ISBN.
- (e) Publisher is responsible for any fees (e.g., wire transfer and EFT fees) charged by Publisher's bank or any intermediary banks. Publisher shall provide Apple with Publisher's banking information using iTunes Connect.
- (f) Publisher shall supply Apple the criteria on which Apple shall rely in order to collect any applicable sales, use, excise, gross receipts or other taxes, including tax nexus information. In turn, Apple will cause the Online Store to charge the appropriate tax to customers, will collect the tax from customers, and will be responsible for remitting all such collections to the appropriate tax authority.
- (g) Publisher shall indemnify and hold Apple harmless against any and all claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon resulting from Publisher's provision of inaccurate taxability criteria, including nexus. Publisher is responsible for all audits related to the tax, and Apple agrees to provide reasonable levels of cooperation with respect to any such audits.

6. Apple Obligations.

- (a) Apple shall condition use of eBooks on an end user's acknowledgement of terms of use, which terms shall state that any use of eBooks is for personal and non-commercial use only, that the sale of eBooks does not provide any commercial or promotional use rights in any eBook, and that end-users may not burn to disk copies of all or any portion of the eBook. Apple shall not make available any product or technology designed to enable print (including print to PDF or to other digital format), burn or copy/paste functionality for eBooks.
- (b) Apple shall be responsible for all marketing, storage, hosting and delivery costs associated with Apple's appointment activities.
- (c) Apple shall be responsible for providing end-user technical assistance and product support with respect to each eBook. For clarity, this obligation does not extend to end-user product liability claims arising from any Publisher Content.
- (d) Apple shall sell each eBook only as an entire book and only as a separate single title for sale, and not in any other format, including without limitation bundled with other books or products, as part of a subscription, or as single chapters or other parts of a book, without the prior written approval of Publisher in its sole discretion.

- (e) With respect to all Publisher Materials or any portion thereof that Apple sells or makes accessible (including, without limitation, pursuant to Section 2(b)(v)), Apple shall not make any changes, additions or deletions to the contents of the Publisher Materials as delivered by Publisher. Apple shall, however, substitute any revised version of all or any portion of any Publisher Materials that Publisher provides; and Apple shall include the title, author, and copyright notice with each eBook.
- (f) Apple shall screen and block purchases and delivery of Publisher Content outside the Territory by using the end-user's credit card bill-to address. Apple shall use technology to administer territorial restrictions for Publisher's eBooks that is no less restrictive than Apple uses for any other content provider on the Online Store.
- (g) If Publisher notifies Apple (i) that it lost rights so that it is no longer able to authorize Apple to use certain rights permitted under its appointment, (ii) that Apple's exercise of its rights will cause Publisher to violate the rights of a third party, (iii) that, in the good faith opinion of Publisher's legal counsel, Apple's exercise of its rights will pose a substantial risk of legal action or liability, or (iv) that for any other reason Publisher has decided to cease distributing any particular Publisher Materials in print and digital form (each of (i)-(iv) a "Clearance Issue"), then Publisher may withdraw such authorization, in which case Apple shall cease promotion and sales of eBooks using such withdrawn rights within three (3) business days of such notice. Publisher shall not discriminate against Apple regarding any withdrawal requests.

7. Parental Advisory.

Publisher shall, if and to the extent Publisher otherwise provides "explicit" content ratings for any Publisher Content, indicate to Apple which Publisher Content (if any) may be inappropriate for children using such "explicit" content ratings, which Apple may use to notify potential end users of such rating and control access to such content.

8. Names and Likenesses; Promotional Use and Opportunities.

- (a) Apple may use the names and authorized likenesses of, and biographical material for, any eBook author, illustrator or other talent only to designate his or her role (i.e., as author) in the creation of that eBook and may use any Previews or Insert Content for any eBook only to promote that eBook. Further written approval from Publisher shall be required if any name, likeness or identifying material is otherwise used as an endorsement of Apple, the Online Store, or other products.
- (b) Subject to Section 8(a), for the avoidance of doubt, generally, except with respect to any limitations regarding the use of Publisher Materials, Apple may promote the Online Store and content on the Online Store in its sole discretion.

9. Copyright Notices; Ownership.

- (a) Publisher shall provide an appropriate copyright notice in the Content File, which Apple shall display for each eBook.
- (b) As between the Parties, subject to any pre-existing rights of Apple, all right, title and interest in and to (i) Publisher Content, (ii) Artwork, (iii) Previews, (iv) Insert Content, (v) other Publisher Materials, (vi) any other materials furnished by Publisher, and (vii) all copyrights and other rights embodied therein shall remain the property of Publisher; nonetheless, Apple shall not have any lesser rights than it would otherwise have as a member of the public.

10. Press Release.

Each Party agrees not to make or issue any public statement or press release regarding this Agreement or its subject matter without prior written approval from the other Party.

11. Data Protection.

- (a) Apple shall protect materials furnished by Publisher in a manner no less restrictive than Apple protects materials furnished by any other book publisher, including the use of the Security Solution, and the implementation and enforcement of Content Usage Rules, as set forth in Exhibit B. If the Security Solution or other security technology is compromised such that eBooks are being made widely available without restriction or are capable of being printed, burnt or copied/pasted, having a material adverse effect on the commercial purpose of the appointment and this Agreement, then Apple shall promptly notify Publisher of the compromise and shall use commercially reasonable efforts to cure such compromise. If the breach is not substantially cured in Publisher's reasonable judgment within thirty (30) days, then Publisher may stop providing additional New Releases to Apple, and if the breach is not substantially cured in Publisher's reasonable judgment within sixty (60) days, then Publisher may suspend Apple's appointment until cured.
- (b) In the event of a security breach of the Online Store servers such that unauthorized access to Publisher Content becomes available, then Apple will promptly notify Publisher of the breach and will disable all access to such servers or destroy content on such servers within twenty-four (24) hours.
- (c) Publisher Materials in Apple's control or possession shall reside only on secure network servers or equivalent devices owned or controlled by Apple or its contractors with restricted access.
- (d) Apple will comply with all applicable laws and regulations, and with the terms of its applicable privacy policies, with respect to the security and use of any personally-identifiable information of purchasers of eBooks

pursuant to this Agreement (“PII”) in Apple’s possession. Apple will not disclose or use any PII other than in furtherance of its obligations under this Agreement or as permitted under its privacy policy. Apple will use physical, administrative and technical security measures to protect PII that are at least industry standard and no less protective than those it uses for other personally-identifiable information in its possession. Publisher will have the right to perform a reasonable technical audit of Apple’s applicable systems during normal business hours on reasonable advance notice. Apple will be responsible for any notification or other corrective actions arising from the leakage of any PII from Apple’s systems. The provisions of this Section 11(d) will also apply to any third party with which Apple contracts that maintains or has access to PII.

12. Record-Keeping and Audit.

- (a) Apple shall maintain complete records regarding sales of eBooks and proceeds payable to Publisher for at least three (3) years following the end of the calendar year to which the records pertain.
- (b) Upon no less than thirty (30) days advance written notice, and within two (2) years following the applicable monthly sales period (the “Audit Period”), Publisher, at its expense, may audit directly applicable records of Apple at Apple’s principal place of business in the Territory for the sole purpose of verifying proceeds due Publisher. Such audit will be at Publisher’s expense unless errors exceeding 5% or more of the sums paid to Publisher for the period(s) audited are found, in which case Apple will reimburse Publisher for the reasonable costs thereof. An audit shall take place during regular business hours, and shall not occur more than once during any twelve (12) month period. The person doing the auditing should not be engaged in an audit of Apple, or be doing the audit hereunder on a contingency-fee basis, and must provide to Apple a confidentiality agreement that protects Apple’s confidential information no less than the terms of this Agreement or Publisher protects its own similar information. Notwithstanding anything herein to the contrary, Publisher may disclose to authors and non-author licensors, their executors, administrators, or heirs, and the agents and representatives of the foregoing, solely for the purpose of communicating the effect of the audit on Publisher’s royalty or other payment obligations to them, only the fact that an audit was conducted, in general terms, the results of the audit, and the results specifically pertaining to their eBooks. Publisher may audit a record only once, and no audit shall be conducted for a period spanning less than six (6) months.
- (c) Unless Publisher provides a detailed objection within two (2) years following the applicable monthly sales period, Publisher shall be deemed to consent to all reports relating to that sales period, and such reports shall not be subject to objection by Publisher for any reason Publisher agrees that Apple’s books and records contain “Confidential Information” (as defined below).

13. Termination and Effect of Termination.

- (a) Either Party shall have the right to terminate this Agreement (I) effective at any time on or after the first anniversary of the Effective Date, at will for any reason or no reason upon advance written notice of not less than thirty (30) days or (II) upon written notice, effective immediately, if the other Party (i) becomes insolvent, (ii) files a petition in bankruptcy, (iii) makes an assignment for the benefit of creditors, (iv) breaches a material term of this Agreement, unless such breach is cured within thirty (30) days from notice, or if not able to be so cured, then resolved to the other Party's reasonable satisfaction.
- (b) Sections 1, 4, 5, 6, 9(b), 11, 12, 13, 14, 15, 16, and 17 shall remain in full force and effect following the termination or expiration of this Agreement.
- (c) If this Agreement terminates or expires, then Publisher Materials in Apple's possession or control shall be promptly destroyed, excluding copies necessary for Apple's standard customer support practices, eg, re-downloads (subject to applicable terms in this Agreement), or required to be maintained by applicable law, rule or regulation. Upon Publisher's request, Apple will provide Publisher with written documentation of such destruction.
- (d) Apple may, subject to the terms of this Agreement, allow customers who purchased eBooks during the Term to download new copies of those eBooks without charge if and to the extent consistent with Apple's general practices. However, notwithstanding anything herein to the contrary, Apple will not provide end-users with re-downloads of eBooks purchased prior to termination in the following circumstances: (i) with respect to all eBooks, if this Agreement is terminated or suspended pursuant to Section 11 or if Publisher terminates this Agreement pursuant to Section 13(II) and (ii) with respect to any particular eBook, if Publisher notifies Apple of a Clearance Issue with respect to that eBook.

14. Indemnification and Limitation of Liability.

- (a) Publisher shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, third-party claims arising from the Publisher Materials and/or their use by any end-user, including, but not limited to: (i) claims of breach of warranty; (ii) product liability claims; and (iii) claims that any of the Publisher Materials and/or the end-user's possession or use of those materials infringes the copyright or other intellectual property rights of any third party in the Territory.
- (b) Apple may, if it deems appropriate to resolve any customer-satisfaction issue, allow any end-user to terminate his or her license to use an eBook and give that customer a refund of the Customer Price of that eBook. If Apple so refunds the Customer Price of an eBook, Apple will be entitled

to a credit in the amount of the eBook Proceeds from the purchase of that eBook by that customer.

- (c) Apple will indemnify, hold harmless, and defend, Publisher, and its affiliates (meaning those United States entities that the assigning Party controls, is controlled by, or is under common control with) and their respective directors, officers and employees from and against any and all losses, liabilities, damages, costs and expenses (including, if Apple elects not to defend the claim with counsel selected and paid for by it, reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Apple under this Agreement; or any claim that the technology used by Apple in its appointment infringes the intellectual property rights of another party.
- (d) Publisher will indemnify, hold harmless, and defend, Apple and its affiliates (meaning those United States entities that the assigning Party controls, is controlled by, or is under common control with) and their respective directors, officers and employees from and against any and all losses, liabilities, damages, costs and expenses (including, if Publisher elects not to defend the claim with counsel selected and paid for by it, reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of a breach of any warranty, representation, covenant or obligation of Publisher under this Agreement; or any claim by a third party that Publisher Materials infringes the intellectual property rights in the Territory of another party. Notwithstanding the foregoing, Publisher will have no obligation to indemnify Apple with respect to claims arising from:
 - i. Any distribution of, or access to any portion of the contents of, any eBook outside the Territory;
 - ii. Any distribution or use of any Publisher Materials or any portion of the contents thereof not authorized by this Agreement;
 - iii. Any distribution or use of any eBook or any portion of the contents thereof after Publisher's withdrawal of authorization pursuant to Section 6(g) or
 - iv. Any distribution or use of any eBook or any portion of the contents thereof more than 5 business days after Publisher has provided Apple with a revised version thereof pursuant to Section 6(e) insofar as the claim arises from material that is changed or removed in the revised version.
- (e) Each Party will promptly notify the other Party of any claim for which it is seeking indemnification from the other Party pursuant to this Agreement, provided that the failure to give such notice shall not relieve the indemnifying party of its indemnification obligations unless such failure materially prejudices the defense of the claim. With respect to any claim subject to indemnification under any provision of this Agreement, the indemnifying Party will have the right to defend the claim with counsel selected by it and to settle the claim, provided that any settlement that imposes any obligation on the indemnified Party (other than, if Publisher

is the indemnifying Party, to cease use of any Publisher Content) shall be subject to the reasonable approval of the indemnified Party. The indemnified Party shall have the right to participate in the defense of the claim with counsel selected and paid by it and to settle the claim on its own behalf at its own expense.

- (f) EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF PROFITS OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY.
- (g) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF CONDITION, QUALITY, DURABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF NONINFRINGEMENT.

15. Confidentiality.

Each Party acknowledges that by reason of this Agreement it may have access to certain information and materials concerning the other Party's business plans, customers, technology and products that are confidential and of substantial value to such Party, which value would be impaired if such information were disclosed to third parties or used for purposes other than as expressly permitted by this Agreement (referred to in this Agreement as "Confidential Information"). Each Party agrees during the Term hereof and for a period of two (2) years after the termination of this Agreement to maintain any and all Confidential Information received from the other, in confidence, and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing Party. Each Party agrees that Confidential Information may be disclosed to its employees, attorneys, accountants, consultants, lenders, potential lenders and financial, tax, technical and other advisors and other personnel under its control and supervision, and those of its affiliates, for purposes of performing under this Agreement solely on a need-to-know basis in furtherance of this Agreement, and solely to those individuals who agree to keep it confidential, unless required by law, or court or governmental order, or pursuant to a subpoena or other legal process, and as needed on tax returns or in connection with any examination or audit thereof. The Parties agree that they will, to the extent legally permitted, notify each other in writing of the receipt of any subpoena, court order or administrative order requiring the disclosure of Confidential Information and give the disclosing Party a reasonable opportunity to object to the subpoena, court order or administrative order. Confidential Information shall be deemed to include (i) information marked confidential, if conveyed in writing, and (ii) information identified orally as confidential, if conveyed orally. Confidential Information shall not be deemed to include any information which (a) is publicly known at the time

of the disclosure, (b) becomes publicly known other than by breach of the terms of this section, (c) becomes known to the receiving Party or any of its affiliates, without restriction, from a source which, in the receiving Party's or its affiliate's reasonable belief, is free of any obligation of confidentiality and without breach of this section, (d) is independently developed by the receiving Party or any of its affiliates, or (e) is or was in the receiving Party's or any of its affiliates' possession at the time of disclosure.

16. Additional Representations and Warranties of the Parties.

- (a) The Parties agree that the nature of their relationship is that of Publisher as principal and Apple as agent.
- (b) Apple shall not pledge, mortgage or otherwise encumber any part of the Publisher Materials.
- (c) Each Party agrees that it has full authority to enter into this Agreement, and to fully perform in a professional and competent manner.
- (d) Each Party agrees that it owns or controls the necessary rights in order to make the grant of rights herein, and that exercising such rights in accordance with the terms of this Agreement shall not violate or infringe the rights of any third party in the Territory.
- (e) Each Party agrees to perform in compliance with any applicable law, rule and regulation.

17. General Provisions.

- (a) **Contractors.** Apple may contract with third parties in furtherance of Apple's appointment, provided such third parties are subject to terms no less restrictive than the terms Apple is subject to under this Agreement. Apple shall be responsible for the performance of such third parties while under Apple's control and supervision.
- (b) **Entire Agreement, Modification, Waiver.** This Agreement, including any schedules and exhibits, contains the entire understanding of the Parties relating to its subject matter, and supersedes all previous understandings between the Parties. This Agreement cannot be changed or modified except by a writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties.
- (c) **Binding on Successors.** This Agreement shall be binding on the assigns, heirs, executors, administrators, and successors (whether through merger, consolidation, reorganization, sale of all or substantially all of its assets, operation of law, or otherwise) of the Parties. Either Party may assign or

transfer any part of this Agreement to any U.S. affiliate (meaning those United States entities that the assigning Party controls, is controlled by, or is under common control with) without the other Party's consent. Any prohibited assignment hereunder shall be deemed null and void.

- (d) Notices. Any notice under this Agreement shall be given in writing and shall be deemed to have been delivered and given: (i) on the delivery date if delivered personally; (ii) upon delivery by confirmed-receipt facsimile; (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five (5) business days after the mailing date, whether or not actually received, if sent by certified mail, return receipt requested, postage and charges prepaid.

If to Publisher, to the contact specified by Publisher via iTunes Connect, with a copy to the Legal contact specified below:

Publisher
General Counsel
175 Fifth Avenue
New York, NY 10010
Fax: 212-529-0594

If to Apple, to:
Associate General Counsel, iTunes
Apple Inc.
1 Infinite Loop, MS 3-ITS
Cupertino, CA 95014
Fax: 408-974-9105

- (e) Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of laws. The Parties agree that any proceeding relating to this Agreement will take place in the No. District of California; and both Parties hereby waive the right to object to that choice of law, personal jurisdiction or venue.
- (f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- (g) Remedies. To the extent permitted by applicable law, the rights and remedies of the Parties provided under this Agreement are cumulative and in addition to any other rights and remedies of the Parties at law or equity.
- (h) Headings. The titles used in this Agreement are for convenience only and are not to be considered in construing or interpreting the Agreement.
- (i) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their authorized successors and permitted assigns. Nothing is intended to confer upon any person or entity, other than the Parties and

their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

Apple INC.

Publisher

By: Eddy Cue

By: [Signature]
- Signature

Name: Eddy Cue
Title: VP, Internet Services
Date: 1/25/10

Name: John Sargent
Title: CEO
Date: Jan 25, 2010

EXHIBIT A

Definitions

“List Price, or Lists” means the publishers suggested retail pricing of the corresponding physical book.

NYT Bestseller List shall mean the Hardcover (adult) Fiction and Hardcover (adult) Nonfiction and Hardback Advice bestseller lists as published on the New York Times website, excluding the below the line “Also Selling” titles also known as the “Expanded List”, as compiled and displayed by the New York Times as of the Effective Date, with such subsequent immaterially-changed version(s) in how any of the lists are compiled and displayed as are agreed to by the Parties, which agreement shall not be unreasonably withheld.

Customer Pricing

1. The maximum prices for New Release hardback books:

List Price	Customer Price	70%
\$20.01-22.00	\$9.99	\$7.00
\$22.01-24.00	\$10.99	\$7.70
\$24.01-25.00	\$11.99	\$8.40
\$25.01-27.50	\$12.99	\$9.10
\$27.51-30.00	\$14.99	\$10.50
\$30.01-35.00	\$16.99	\$11.90
\$35.01-40.00	\$19.99	\$14.00

*All prices are in U.S. dollars.

2. In addition, when a book that Lists for \$30 or less is in the NYT Bestseller List then the Customer Price will be no greater than \$12.99; and when a book that Lists between \$30.01 and \$35.00 is in the NYT Bestseller List, then the Customer Price will be no greater than \$14.99.

3. For non-hardback books, the Customer Price will be no greater than \$9.99, unless the non-hardback List Price is greater than \$22, in which case Publisher shall set the Customer Price in its discretion, which book Apple may carry.

4. For eBooks for which there is no corresponding physical product and for books that have a List Price greater than \$40, Publisher shall set the Customer Price in its discretion, which book Apple may carry.

5. Notwithstanding the foregoing, if a New Release hits the NYT Bestseller lists for Fiction, Non-Fiction, or Hardcover Advice, then for so long as the New Release maintains such position on the applicable list, the Customer Price shall be no greater than \$12.99 for the corresponding eBook version of such New Release, and if the List Price of such New Release is between \$30.01 - \$35.00, the Customer Price will be no greater than \$14.99,

6. All iTunes prices shall end in "\$~.99".

7. From time to time, subject to good faith discussions and mutual agreement, Apple and Publisher may explore limited pricing tests for which there is a compelling mutually beneficial business justification.

EXHIBIT B

Content Usage Rules

1. Definitions.

(a) “Non-Transfer Device” means a device (including, without limitation, a digital content rendering device or mobile phone) that uses the Security Solution, but cannot transfer an eBook along with their usage rights keys to any other device, except if that other device is already authorized for the Online Store account used to acquire that eBook.

(b) “Transfer Device” means a computer that uses the Security Solution, and can transfer eBooks along with their usage rights keys to any other device.

2. Usage Rules.

End users acquiring eBooks may (solely for the end-user’s personal and non-commercial use):

- (a) Use eBooks on up to five (5) Transfer Devices and an unlimited number of Non-Transfer Devices at the same time; and
- (b) Re-download previously purchased eBooks from the Online Store subject to the provisions and exceptions in Section 13(d).

EXHIBIT C -

"FAIRPLAY" SPECIFICATIONS -

FairPlay™ White Paper

Version 3.1

APPLE NEEDS TO KNOW CONFIDENTIAL

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Introduction

This document provides a high level description of FairPlay architecture and the mechanisms used to support Apple's digital content protection, which content being purchased via Apple iTunes Store (iTTS). The principal motto is to make it easy and convenient for customers to stay within their personal rights, and to make it difficult and inconvenient for people with bad intentions to stay outside the bounds of these rights.

Overview

Customers have the rights and ability to:

1. Copy and use their purchased content on up to 5 transfer devices (e.g., authorized computer);
2. Copy and use their purchased content on non-transfer devices (e.g., iPods); and

The service relies on the following underlying mechanism:

1. Store content on the transfer devices or on the non-transfer devices is protected in a proprietary file format;
2. Encrypted file format for video is at least 5%. The encrypted video data is spread approximately evenly throughout the file.
3. Encrypted chapter format for eBook is 100%
4. iTunes, QuickTime, and eBook reader manage the file format. FairPlay only allows access to the video, and eBook content for Apple playback applications. (i.e., QuickTime Player, iTunes, etc.);
5. Only FairPlay removes the content protection before playback;
6. The transfer devices are authorized to obtain the FairPlay material from the online service. This authorization step is only performed once per computer owned by the customer;
7. FairPlay checks the locally stored FairPlay material before playing back the protected content.

Registration and Key Distribution

The customer completes a one time online registration with the service to create the account and the account credential: “Username” and “Password”. The registration may not require a valid credit card number, the customer must agree to terms of use.

At the time of the purchase and on the regular basis, a random value is generated by the service and then assigned to the account as the Account Key. The service stores the Account Keys. The service sends them to customer transferable device and it is stored in a local single container: “*The Keybag*”. The Account Key protects the content. iTunes and QuickTime, invoking FairPlay. They use the Keybag for further playback of the content (see “Authorization” below). The customer never deals directly with the Account Keys. It is used behind the scenes to make sure that the content stored in iTunes or QuickTime library is encrypted and it can’t simply be copied into other applications (e.g., LimeWire or Kazaa).

FairPlay identifies the appropriate Account Key using the “Account ID” and the Key ID that makes the Account Key unique in the Keybag. This feature allows a given user to have multiple Account Keys, each of them protecting one or more pieces of content as required by the downloading process.

Authorization

Each computer system owned by the customer has a local Keybag, which is maintained by FairPlay. The Keybag is a hidden protected file. The Keybag contains a list of Account IDs, which indicate that this transferable device is authorized to access content purchased by that account.

In addition, the Keybag stores the Global Unique ID (GUID) for that transferable device (e.g., the Ethernet MAC address). The GUID is the unique signature of the transferable device. It is used to tie the Keybag to that transferable device. Figure 1 conceptually represents the transferable device Keybag.

Along with the Keybag, FairPlay uses second container: “The Diversity Bag” that contains cryptography elements to make the instance of FairPlay of transferable device unique. FairPlay ties the Diversity Bag to a transferable device using the GUID.

The service maintains a server database, which stores the GUIDs of authorized computers for each customer account, as well as the Account Keys and the element of the Diversity Bag.

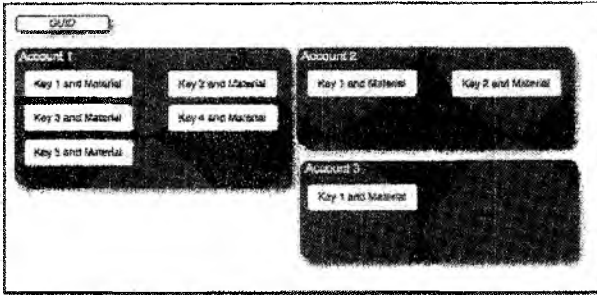


Figure 1 - Keybag Description

The Keybag and the Diversity Bag are both encrypted on persistent memory. The cryptosolution and the appropriate keys to protect and unprotect the Keybag and the Diversity Bag are algorithmically derived and they are different on every transferable device.

De-commissioning

If the customer breaks, sells or otherwise stops using one of his/her transferable device, s/he needs a way of “*de-authorizing*” it. In other words, taking it off the list of authorized transferable devices recorded on the servers. Like the authorization, the customer de-authorizes the transferable device by going online with the service. After completion of the process, the GUID is removed from the slot in the server database and the related account (including the Account Keys) is removed from the Keybag. In order to prevent abuse, the service could set a limit on how often a user can de-commission a transferable device.

Purchase and Download

The customer is logged into the service using the credential (which could be stored on the user’s system for automatic login). Once the customer has found and selected a piece of content to purchase, the transaction is a “one-click” buy, since the credit card information was previously entered at registration time. Note ITS allows the purchase with shopping cart.

The content is stored in encrypted and encoded form on the server. The crypto-system uses AES-128 algorithm as a primary algorithm. Each piece of content may have multiple tracks,

which are individually encrypted with their own unique content key. It is important to notice the any content encryption occurs on Apple servers.

Protection

The content files protection consists of:

1. The Account Key located in the Keybag is the vector to access the content key that encrypts the content. The content key is a different key and value than the Account key. This forms a level of indirection allows multiple downloads of the same file to have different data stored on disk even from the same account.
2. The service sends Account Key to the customer transferable device and it has both integrity and privacy features that use cryptography functions.
3. The purchasers account information is stored in the file in a way that it can be displayed without decrypting the file. However, attempts to remove or alter this account information results in a non-playable file.

Storage

Video Storage

The encrypted and encoded video is packaged using MPEG-4 container format or it's equivalent.

This file contains:

1. The account information;
2. The FairPlay material;
3. The meta-information about the content (title, artist, etc.); and
4. The encoded and encrypted content.

eBook Storage

FairPlay protection applies to the ePub open standard file format. The first of these formats, OCF 1.0 has intrinsic support for file encryption and DRM as well as digital signatures. Apple eBook storage for protecting eBook content complies with the provisioning DRM support provided with OCF 1.0.

An ePub file in OCF 1.0 is a ZIP archive of a directory structure containing the eBook data . At the root is a reserved directory called “META-INF” that contains the control information. This directory contains some mandatory and optional XML files that describe the properties of the ePub file and must not be encrypted.

The OCF standard describes how the files “encryption.xml” and “rights.xml” in the “META-INF” directory may be used to describe the encryption and DRM properties of the remaining files in the archive. The encryption.xml contains a list of encrypted files and rights.xml stores the content key(s).

Other type of formats are supported as long as they can be protected with the FairPlay protection rules.

Playback and Reading

iTunes, QuickTime or eBook reader recognizes the file format. iTunes, QuickTime or the eBook reader passes to FairPlay the FairPlay material that starts the FairPlay session. With “Account ID” and the associated KeyID, FairPlay fetches the appropriate Account Key in the Keybag. FairPlay then verifies the Account Key and the retrieves the plaintext value of the Account Key using the Diversity Bag. FairPlay includes the GUID of the transferable device in the process to avoid any Keybag lifting. That prevents the Account Key or the Keybag to be unhidden then dragged and dropped onto another transferable device. FairPlay then uses plaintext Account Key to recover the content key and finally decrypt the content. If the Account ID or the Key ID does not appear in the Keybag, or the file appears to have been altered, then FairPlay does not provide any resources to decrypt the content.

Non-Transfer Devices

The iPod or iPhone is not a transferable device but the level of content protection remains compatible with the one of the transferable device. The content from the transferable device is loaded to iPod or iPhone without cryptographic process. In other words, FairPlay does not decrypt and then re-encrypts the content or the FairPlay material for the target iPod/iPhone. In addition, when the customer synchronizes the iPod/iPhone with a transferable device, Keybag is merged into the iPod/iPhone Keybag, which gives the access to the Account Keys needed to play

back the content. The iPod/iPhone's Keybag implements the iPod/iPhone's-GUID, which is used to prevent moving the iPod/iPhone's Keybag to another iPod.

When the purchases are directly done from the iPhone, the service sends the appropriate FairPlay key material directly to the iPhone with the same protection.

FairPlay is a registered trademark of Apple Inc.