

Subject: Re: eBook Agreement  
Date: Tue, 09 Mar 2010 12:00:10 -0800  
From: Kevin Saul <ksaul@apple.com>  
To: "Silver, Deirdre - Hoboken" <dsilver@wiley.com>  
Cc: Keith Moerer <kmoerer@apple.com>, Connie Tonicic <ctonicic@apple.com>, "Balis, Peter - Hoboken" <pbalis@wiley.com>  
Message-ID: <018D9E5A-B90C-48A9-86B3-B13E0472CB76@apple.com>

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Deidre, here are our comments:

On Mar 9, 2010, at 11:46 AM, Silver, Deirdre - Hoboken wrote:

> Kevin:

>

> Thanks for sending your comments. On quick review, it seems that there are three main issues that remain outstanding.

>

> On paragraph 5(b), your position is contrary to that Apple has taken with respect to every other material provision of the "agency" agreement. The essence of this agreement - as you have characterized it - is that the Publisher has the (self-interested) discretion to set the prices for eBooks - within the bands Apple has set forth in "Exhibit A". Just as you have asserted that you cannot take responsibility for the actions of third parties that you contract with (in paragraph 17(a)), we cannot control pricing by third parties to whom we sell eBooks on a "wholesale" basis. Our legal position in this respect is even stronger than yours as we of course can't legally control reseller pricing outside the agency context. This is why we can and must limit 5(b) to the pricing that we do control. Otherwise, 5 (b) carries the risk of distorting the "agency" pricing structure Apple says that it intends.

>

We cannot agree to your language. There are possible unilateral ways you can comply with our provision, such as get others on an agency model, or withhold content. Others have agreed to this and we cannot make any changes. We would be willing however to give you a phase-in period in order to become compliant with this language.

> On paragraph 5(f), how can we be responsible for indemnifying Apple from claims from tax authorities if we don't have evidence that taxes are being properly remitted?

Since you are the principal you are responsible "to the tax authority" for payment of taxes, even though we are doing the collecting and remitting. It needs to read this way. You can however come after us if we breach our responsibility to collect and remit.

>

> On paragraph 11(a), your request to change the language back to "eBooks are" seems to belie your assurance that this provision is about individual encryption hacks as opposed to global ones addressed by 11(b). If 11(a) is meant to apply to more than just individual encryption hacks, then

the long time frame for cure is unacceptable.

A breach cannot be based on a single eBook being stripped of the security solution, that's why we say eBooks. We can agree to say eBook if you agree to say "...and having a material adverse effect on the commercial purpose of this Agreement".

>  
> (I also would suggest in 14(c) that we change "confirmed to have arisen" with "reasonably determined to have arisen".)

That's fine.

>  
> Let me know your thoughts on the above before address the issues you raise more broadly with our internal decision makers.

>  
> Deirdre

>  
> -----Original Message-----  
> From: Kevin Saul [mailto:ksaul@apple.com]  
> Sent: Tuesday, March 09, 2010 11:31 AM  
> To: Silver, Deirdre - Hoboken; Balis, Peter - Hoboken  
> Cc: Keith Moerer; Connie Tonic  
> Subject: Re: eBook Agreement

>  
> Here are comments to your draft. You can incorporate them into the agreement or provide comments below. These are pretty much as far as we are willing to go. We're close.

>  
> Feel free to call me at 408 398-0453 cell with anything.

>  
> Thanks!  
> Kevin

>  
>  
> 5(b) We cannot agree to your proposed changes. It needs to be if there is a lower price out there then you will match it.

>  
> 5(c) Minimum threshold is \$150, so we should be fine.

>  
> 5(f) We are working on being able to provide evidence of remittance but it is not enabled yet so we can say we will do it in the future.

>  
> 6(b) We can say we will take steps aimed at compliance but we can't outright commit to it. For example, we use credit card billing address verification to administer the geographic limitation.

>  
> 11(a) Needs to say eBooks not single eBook.

>  
> 14(a) We can say except to the extent the harm would not have occurred but for a defect in Apple's hardware or software.

>  
> 14(c) We cannot confirm the root cause of the problem since will be doing by phone. We need to

let our trained experts in customer service diagnose the issue.

>

> 17(a) Strike the "all" in commercially reasonable efforts.

>

> On Mar 9, 2010, at 7:07 AM, Silver, Deirdre - Hoboken wrote:

>

>> Here is the revised draft for our discussion today.

>>

>> -----Original Message-----

>> From: Kevin Saul [mailto:ksaul@apple.com]

>> Sent: Monday, March 08, 2010 9:47 PM

>> To: Keith Moerer; Connie Tonic

>> Cc: Silver, Deirdre - Hoboken; Balis, Peter - Hoboken

>> Subject: Re: Limited Use

>>

>> adding my asst Connie

>>

>> On Mar 8, 2010, at 6:09 PM, Keith Moerer wrote:

>>

>>> Will we be using this number and code again?

>>>

>>> 800-917-9796 code: 030844

>>>

>>>

>>> On Mar 8, 2010, at 4:34 PM, Silver, Deirdre - Hoboken wrote:

>>>

>>>> Can you guys do a call tomorrow at 11:30 EST?

>>>>

>>>>

>>>>

>>>> <Apple Redline 3.9.10.docx>

>

```
<?xml version="1.0" encoding="UTF-8"?>
<!DOCTYPE plist PUBLIC "-//Apple//DTD PLIST 1.0//EN"
"http://www.apple.com/DTDs/PropertyList-1.0.dtd">
<plist version="1.0">
<dict>
<key>color</key>
<string>000000</string>
<key>date-sent</key>
<real>1268164810</real>
<key>flags</key>
<integer>33815681</integer>
<key>original-mailbox</key>
<string>imap://kmoerer@mail.apple.com/INBOX</string>
<key>remote-id</key>
<string>353862</string>
<key>subject</key>
<string>Re: eBook Agreement</string>
```

</dict>  
</plist>

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