

ATTACHMENT B

PARTIES' CURRENT DISPUTES

1. Joint Nature of Case Schedule

The parties disagree whether the Court should order a schedule in the actions that joins all fact discovery in all three actions as well as class certification briefing.

Plaintiffs' Position: Plaintiffs seek a case schedule that allows for full fact discovery in all three actions, as well as class certification briefing, to take place simultaneously and on the same schedule. See Attachment A, Plaintiffs' Proposed Schedule. Plaintiffs also seek a stipulation or order with the following language:

Plaintiffs anticipate that all the actions will proceed simultaneously on the schedule provided in Attachment A to the Initial Report at least through fact discovery, if not beyond. At least 30 days prior to the end of fact discovery, the parties will meet and confer to determine whether any obstacle or unforeseen circumstances merits any of the actions proceeding on a different schedule, or whether there are any necessary modifications to that schedule. The parties must provide a report to the Court regarding the same at or prior to the Case Management Conference.

Non-Settling Defendants' Position: Non-Settling Defendants oppose Plaintiffs' joint schedule. They instead propose that any fact discovery relating solely to issues unrelated to the DOJ Action (namely, damages discovery and class certification discovery) take place after fact discovery relevant to the DOJ Action has been completed, and that, at that point, the schedule otherwise allow the DOJ Action to continue on its own schedule to a trial before the Court. See Attachment A (Apple's Proposed Schedule and Penguin & Macmillan's Proposed Schedule).

Settling Defendants' Position: (None)

2. Dates for Case Schedule

Plaintiffs and Non-Settling Defendants disagree on several of the dates in the proposed case schedule, as shown in Attachment A. Settling Defendants take no position with respect to those proposed schedules.

3. Foreign Documents and Witnesses

The parties dispute the provisions to be made for discovery of documents and witnesses located outside the United States.

Plaintiffs' Position: Plaintiffs seek a stipulation or order providing the following:

(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 [] 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 solution on 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.

Non-Settling Defendants' Position: Non-Settling Defendants agree to Plaintiffs' provisions stated above.

Settling Defendants Position: Settling Defendants object to addressing these issues on an abstract level before any discovery requests relating to foreign documents or witnesses have been propounded. Settling Defendants are prepared to consider requests for foreign discovery in good faith, but object to being asked to prospectively waive rights of foreign affiliates and witnesses.

4. Initial Disclosures – Macmillan Organizational Charts

Macmillan disputes the scope of organizational charts that it must produce pursuant to section 4(d)(ii) of the Initial Report.

Plaintiffs' Position: Plaintiffs believe that Macmillan, like the other Defendants, should comply with section 4(d)(ii), which requires production of “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” to the extent maintained in the normal course of its business.

Macmillan's Position: Macmillan objects to the scope of Plaintiffs' request for an initial production of all organizational charts and personnel directories. Macmillan's position is that it has already produced relevant organizational charts and custodian information in the DOJ investigation that are sufficient to show the relevant corporate and international relationships and personnel involved in the relevant issues. Verlagsgruppe joins Macmillan's objection, and also objects insofar as production of the documents sought could violate any applicable privacy laws and regulations.

Other Defendants: (No position)

5. Initial Disclosures – Settling Defendants

The parties dispute the scope of the initial disclosures that each Settling Defendant must produce.

Plaintiffs' Position: Plaintiffs seek a stipulation or order stating that all Defendants (including Settling Defendants) must produce the materials described in section 4(d) of the Initial Report, including “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 best efforts of the Non-Settling Defendant, 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 produce such portion promptly upon resolution of the issue.” (Section 4(d)(i)) As noted in that section, Non-Settling Defendants have agreed to produce these materials.

Settling Defendants' Position: Of the initial disclosures set forth in section 4(d) of the Initial Report, Settling Defendants propose to produce those materials identified in 4(d)(ii) – namely,

the stated organizational charts. Settling Defendants object to producing the material identified in 4(d)(i) – namely, the documents and data produced to foreign authorities.

Non-Settling Defendants' Position: (No position)

6. Status of Settling Defendants in Discovery

The parties disagree as to whether Settling Defendants should generally be subject to the rules regarding party discovery or non-party discovery, assuming that their pending settlements in the DOJ Action and State Action are approved (in whole or in part) but they remain parties to at least the Class Action. (If, in the future, Settling Defendants are no longer a party to any action, the parties agree that Settling Defendants will generally be subject to the rules regarding non-party discovery.)

DOJ's and Class Plaintiffs' Position: Settling Defendants should generally be treated as parties in all actions (with the agreed-upon exceptions noted in the Initial Report) as long as they are parties in any of the actions. To make this clear, DOJ and the Class Plaintiffs seek a stipulation or order with the following language:

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.

States' Position: The Settling Defendants are not parties to the State Action. Accordingly, if the other parties agree to it or if it is ordered by the Court, the States do not object to the above provision regarding the treatment of Settling Defendants.

Non-Settling Defendants' Position: Agree with DOJ's and Class Plaintiffs' position.

Settling Defendants' Position: Settling Defendants believe that if they are not a party to a case they should be treated as a non-party in that case. Settling Defendants instead propose the following stipulation:

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 the Federal Rules of Civil Procedure, with the limitations set forth in the Initial

Report. Settling Defendants will not require different or additional service of discovery requests by subpoena.

7. Interrogatories

Although all parties agree that each party except Settling Defendants may serve up to a total of 25 interrogatories to the other parties, the parties dispute how many contention interrogatories each party should be able to serve and at what time. In addition, Class Plaintiffs and the Settling Defendants dispute how many additional interrogatories they may serve for purposes of the Class Action only.

Plaintiffs' Position: Plaintiffs seek a stipulation or order with the following language:

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 each Settling Defendant and Settling Defendants may serve up to a total of 25 interrogatories on Class Plaintiffs and/or Non-Settling Defendants. Settling Defendants may not serve, and may not be served with, any other interrogatories in any of the actions.

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.

Non-Settling Defendants' Position: Non-Settling Defendants agree with DOJ's and the States' proposed language above, except propose deleting (i) the provision in the first paragraph limiting contention interrogatories, and (ii) the second paragraph, relating to the timing of service, in its entirety.

Settling Defendants' Position: Settling Defendants oppose Class Plaintiffs' proposal to allow for 25 additional interrogatories that may be served by Class Plaintiffs to each Settling Defendant and vice versa (for purposes of the Class Action only). Settling Defendants' position is that Class Plaintiffs must use a portion of its standard 25 party interrogatories for this purpose. Otherwise, Settling Defendants agree to Plaintiffs' proposed language above.

8. Requests for Admission

The parties dispute how many requests for admission each party should be able to serve. In addition, Class Plaintiffs and the Settling Defendants dispute how many additional requests for admission they may serve for purposes of the Class Action only.

Plaintiffs' Position: Plaintiffs seek a stipulation or order with the following language:

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 each Settling Defendant 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. Settling Defendants may not serve, and may not be served with, any other requests for admission in any of the actions.

Non-Settling Defendants' Position: Non-Settling Defendants agree with Plaintiffs' proposal above, except the number of requests for admission stated in the first sentence, which they seek to increase to 50 per party.

Settling Defendants' Position: Settling Defendants oppose Class Plaintiffs' proposal to allow for 25 additional requests for admission that may be served by Class Plaintiffs to each Settling Defendant and vice versa (for purposes of the Class Action only). Settling Defendants' position is that Class Plaintiffs must use a portion of its standard 25 party requests for admission (as proposed by Plaintiffs) for this purpose. Otherwise, Settling Defendants agree to Plaintiffs' proposed language above.

9. Party Fact Depositions

The parties dispute how many depositions each party should be able to take of other parties.

Plaintiffs' Position: Plaintiffs seek a stipulation or order with the following language:

Each party (except Settling Defendants) may notice the deposition of up to 20 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.

Non-Settling Defendants' Position: Non-Settling Defendants agree with Plaintiffs' proposed language above, except seek to limit the number of depositions to 25 for Plaintiffs (collectively) and 25 for Defendants (collectively).

Settling Defendants' Position: Settling Defendants object to Plaintiffs' proposal, which potentially could allow up to 120 party depositions in the case, without some limitation as to how many depositions may be used upon each Settling Defendant's witnesses. Settling Defendants believe a total of four deposition days

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for each Settling Defendant's witnesses for a total of twelve deposition days from the Settling Defendants would be fair and reasonable.

10. Non-Party Depositions

The parties dispute how many deposition notices they should be able to serve on non-parties.

Plaintiffs' Position: Plaintiffs seek a stipulation or order with the following language:

Plaintiffs (collectively) and Defendants (collectively) each may (i) serve no more than two subpoenas duces tecum on any individual non-party, with the total number of non-parties subpoenaed to remain unlimited; and (ii) depose up to 40 non-party witnesses, pursuant to subpoenas ad testificandum or otherwise.

Non-Settling Defendants' Position: Non-Settling Defendants agree with Plaintiffs' proposal above, except the number of non-party depositions allotted, which Apple seeks to limit to 20 each for Plaintiffs collectively and Defendants collectively, and Penguin and Macmillan seek to limit to 35 each for Plaintiffs collectively and Defendants collectively.

Settling Defendants' Position: (No position)

END