

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

ADDENDUM “A”

(1) Description of the Nature of the Action

On April 11, 2012, the United States (the “Government”) brought a civil antitrust action against defendants Apple, Inc., and several book publishers arising out of alleged conduct that resulted in a change in the business model under which the defendant book publishers sell their copyrighted e-books to e-retailers of e-books.

Previously, book publishers sold e-books to e-retailers on a “retail” basis, charging a wholesale price and allowing each e-retailer to charge consumers whatever retail price it determines for the re-sale of the e-books. After the change, book publishers began selling e-books directly to consumers using an “agency” model. Under this model, the e-retailers become agents of the book publishers, selling e-books at prices established by the book publishers and retaining an agency commission with respect to each sale. The Government has not contended, and the District Court has not ruled, that the agency model constitutes a violation of Federal antitrust laws. The Complaint alleges that, in connection with the change from the retail to the agency model, the book publishers had an “opportunity” to discuss pricing models with each other at certain meetings and during certain telephone calls. The Complaint also alleges that defendant Apple, Inc., who initially recommended the agency model to the book publishers, engaged in conduct that facilitated the book publisher’s change to the agency model. The Complaint alleges that the Defendants’ conduct constituted a violation of Federal antitrust laws.

On the day the Government filed its Complaint, it had announced a proposed Final Judgment, which set forth the settlement of the antitrust claims in the action with respect to several defendants. Entry of the proposed Final Judgment was subject to a determination by a District Court that such judgment is “in the public interest” pursuant to 15 U.S.C. 16 (the “Tunney Act”), provisions with which the Government was required to first comply, including a 60-day period during which it was obligated to solicit and consider comments on the proposed Final Judgment submitted by members of the public.

The Government received 868 comments during such period, more than 90 percent of which opposed entry of the Final Judgment.

(2) The Result Below

On August 3, 2012, the Government filed a motion for entry of the proposed Final Judgment. By Order dated September 5, 2012, the District Court held that the proposed Final Judgment was in the public interest and entered the Final Judgment the next day. On September 7, 2012, Appellant Bob Kohn—for whom the District Court had previously granted leave to participate as *amicus curiae* (by Order dated August 28, 2012)—filed a motion for leave to intervene for the sole purpose of appealing of the entry of Final Judgment.

By Order dated October 2, 2012, the District Court denied Mr. Kohn’s motion to intervene. That same day, Kohn filed a Notice of Appeal to appeal such Order, seeking reversal of such denial and, at the same time, appellate review of the District Court’s entry of such Final Judgment.

(3) Attachments

- a. **Copy of the Notice of Appeal (dated October 2, 2012)**
- b. **Current Copy of the Lower Court Docket Sheet**

(4) Other Attachments: Copies of All Relevant Opinions/Orders Forming the Basis for This Appeal

- a. **Opinion & Order Denying Motion for Leave to Intervene (October 2, 2012)**
- b. **Opinion & Order Granting the United States’ Motion for Entry of Final Judgment (September 5, 2012)**
- c. **Final Judgment (September 6, 2012)**
- d. **Opinion & Order Granting Motion to Participate as Amicus Curiae (August 28, 2012)**