

1 Robert A. Mittelstaedt #60359  
 ramittelstaedt@jonesday.com  
 2 Craig E. Stewart #129530  
 cestewart@jonesday.com  
 3 David C. Kiernan #215335  
 dkiernan@jonesday.com  
 4 Michael T. Scott #255282  
 michaelscott@jonesday.com  
 5 JONES DAY  
 555 California Street, 26th Floor  
 6 San Francisco, CA 94104  
 Telephone: (415) 626-3939  
 7 Facsimile: (415) 875-5700

8 Attorneys for Defendant  
 9 APPLE INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

14 THE APPLE IPOD iTUNES ANTI-TRUST  
 15 LITIGATION.

Case No. C 05-00037 JW (HRL)  
 C 06-04457 JW (HRL)

16 **DECLARATION OF EDDY CUE IN**  
 17 **SUPPORT OF DEFENDANT'S**  
 18 **RESPONSE TO PLAINTIFFS'**  
 19 **ADMINISTRATIVE MOTION TO SEAL**

21 I, Eddy Cue, declare as follows:

22  
 23 1. I am Vice President, Internet Services at Apple Inc ("Apple"). I have held this  
 24 position since August 2008. I have had responsibility for the iTunes Store since 2003. I make  
 25 this declaration in support of Defendant's Response to Plaintiffs' Administrative Motion to File  
 26 Under Seal (Doc. 343). The facts stated in this declaration are true and based upon my own  
 27 personal knowledge, and if called to testify to them, I would competently do so.

1           2.       Plaintiffs' Memorandum In Opposition To Apple's Motion To Dismiss Or,  
2 Alternatively, For Summary Judgment, and the Roach and Merrick Declarations in support  
3 thereof, include highly confidential and commercially sensitive business information, including  
4 sensitive terms of Apple's agreements with the record labels and Hewlett-Packard ("HP") and  
5 information regarding the operation of Apple's FairPlay technology.

6           3.       Apple's agreements with record labels and HP (exhibits 2, 3, and 7 to the Merrick  
7 declaration) are subject to confidentiality provisions and have not been disclosed outside of Apple  
8 except to plaintiffs pursuant to the Stipulation and Protective Order Regarding Confidential  
9 Information entered June 13, 2007 ("Protective Order," Doc. 112). This information is non-  
10 public information from a public company that should remain confidential. Harm to Apple would  
11 result from the public disclosure of this highly confidential information. For example, the  
12 disclosure of confidential contract terms and communications regarding those terms would  
13 adversely impact Apple's bargaining position in future dealings with current and potential  
14 business partners.

15           4.       Exhibits 2 and 3 also contain information regarding Apple's FairPlay technology.  
16 Apple's practices are that such information is to be kept highly confidential and must not be  
17 publicly disclosed. Apple's FairPlay technology is a highly protected trade secret, and Apple uses  
18 physical and electronic controls to protect it. The efficacy of FairPlay is dependent on the  
19 confidentiality of information regarding its operation and maintenance. Information regarding  
20 FairPlay is non-public, proprietary information from a public company that should remain  
21 confidential. Harm to Apple, including potential use of the information by hackers attempting to  
22 circumvent FairPlay, would result from the public disclosure of the information.

23           5.       Exhibits 4 and 5 are internal Apple e-mails containing highly confidential and  
24 commercially sensitive business information, including discussions regarding potential public  
25 comments regarding RealNetworks' Harmony technology and updates to FairPlay to stop a hack.  
26 This information is non-public information that has been kept highly confidential and has not  
27 been disclosed outside of Apple except to plaintiffs pursuant to the Protective Order. Harm to  
28 Apple would result from the public disclosure of this information.

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6. Exhibit 9 is an internal Apple email regarding updates to iTunes and FairPlay, which is kept highly confidential and has not been disclosed outside of Apple except to plaintiffs pursuant to the Protective Order. As discussed above, disclosure of the details of FairPlay would cause harm to Apple.

Executed this ~~29~~ day of March, 2010 in Cupertino, California.

*Eddy Cue*  
Eddy Cue

I, as filer, attest that Eddy Cue has concurred in the filing of this document pursuant to General Order No. 45.

/s/ David Kiernan  
David Kiernan

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