

Exhibit 5

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 APPLE INC.
 9

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION
 13

14 THE APPLE IPOD iTUNES ANTI-TRUST
 LITIGATION.
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Case No. C 05-00037 JW (HRL)
C 06-04457 JW (HRL)

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

21
 22 I, Eddy Cue, declare as follows:

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.
 28

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.

