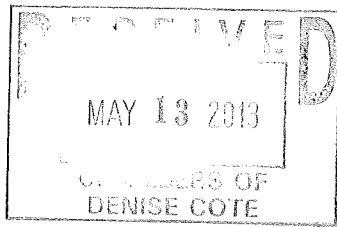


GIBSON DUNN



May 13, 2013

VIA ELECTRONIC MAIL

The Honorable Denise L. Cote
 United States District Judge
 United States District Court for the Southern District of New York
 500 Pearl Street, Room 1610
 New York, New York 10007-1312

Re: United States v. Apple Inc., 12 Civ. 2826 (DLC), Texas v. Penguin Group (USA) Inc., 12 Civ. 3394 (DLC)

Dear Judge Cote:

We represent Apple. All parties share the goal of publicly filing the pre-trial submissions—the proposed findings of fact and conclusions of law, pre-trial memoranda, and all briefs concerning their motions in limine—as soon as possible. On May 8, 2013, Your Honor directed the Department of Justice to coordinate a “coherent process . . . that would allow [Your Honor] to address any redaction requests next week that affect the findings of fact and conclusions of law and trial memoranda and the motions in limine.” See Ex. A (excerpts of transcript of May 8, 2013 hearing) at 48. The parties conducted a telephone conference on May 9 to discuss this issue. Unfortunately, the parties disagree about how best and most efficiently to accomplish this goal. We therefore seek the Court’s guidance.

Pursuant to Your Honor’s directive, by today, all third parties must provide the litigating parties with any requests to redact their trial exhibits. *Id.* at 47. Upon receipt of those requests, the parties will determine the extent to which, if at all, any proposed redaction involves material cited or quoted in their pre-trial submissions. If a proposed redaction affects the pre-trial submissions, we believe that the appropriate procedure is for the third party making the request to submit the relevant exhibit to the Court for examination, consistent with Rule 4A of Your Honor’s Individual Practices in Civil Cases (the procedure followed by Google, with approval by this Court). Following that examination, the Court can render a prompt ruling on any redaction or confidentiality requests and direct the parties, if necessary, to redact their pretrial submissions to conform to the Court’s ruling. We believe that the procedure outlined above is consistent with the Court’s stated wishes at the May 8, 2013 conference and provides an efficient and smooth approach to addressing third-party confidentiality concerns.

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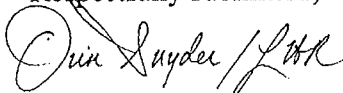
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The Department of Justice advocates a different procedure. Specifically, the DOJ suggests that the parties, after receiving all third-party confidentiality and redaction requests, should redact their pre-trial papers accordingly and submit them to Your Honor for a determination on the third-party confidentiality requests. According to the DOJ, the third parties may, but should not be required to, submit the underlying exhibits as to which the confidentiality request pertains. We do not understand how the Court can be expected to make highly fact-specific confidentiality determinations without examining the actual exhibit in question. As Your Honor is aware, district courts are obligated to carefully weigh third-party confidentiality requests against the “strong presumption of access that attaches” “where documents are used to determine litigants’ substantive legal rights.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 121 (2d Cir. 2006). Indeed, the public’s constitutional right of access applies to written documents “submitted in connection with judicial proceedings that themselves implicate the right of access.” *Id.* at 124.

For the Court’s information, all third parties except Amazon have submitted to Apple their proposed redactions to the trial exhibits, and we are pleased to inform the Court that *none of the proposed redactions to date affect or require any redaction to Apple’s pre-trial submissions*. Amazon is expected to submit its proposed redactions later today.

Accordingly, Apple respectfully requests that the Court issue an order (1) directing all third parties that wish to redact portions of trial exhibits affecting the pre-trial submissions to submit to the Court such exhibits, in both clean copy and with proposed redactions highlighted in yellow, by a date specified by the Court, and (2) directing the litigating parties to submit redacted copies of their pre-trial submissions to the Court for public filing within twenty-four (24) hours of the Court’s issuing an order redacting any third-party exhibit to the extent necessary to conform to the Court’s order.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Orin Snyder" followed by a stylized flourish or initials.

Orin Snyder

cc: All Counsel