

KAYE SCHOLER LLP

Amanda C. Croushore
212.836.8251
amanda.croushore@kayescholer.com

425 Park Avenue
New York, New York 10022-3598
212.836.8000
Fax 212.836.6317
www.kayescholer.com

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6/19/13

June 4, 2013

BY HAND DELIVERY

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 1610
New York, NY 10007

RECEIVED
RANDOM HOUSE

6/19/13

Re: United States v. Apple Inc., 12 Civ. 2826 (DLC), Texas v. Penguin Group (USA), Inc., 12 Civ. 3394 (DLC): Non-Party Random House, Inc.'s Proposed Redactions to Documents That the Parties Have Identified as Potential Trial Exhibits

Dear Judge Cote:

We represent non-party Random House, Inc. ("Random House") in connection with the referenced action. With your Honor's permission, as directed in court this morning, we respectfully submit this letter to explain Random House's position regarding the confidentiality of one Random House document (RH-USDOJ-00017229) that the government has informed us it intends to use as an exhibit at trial.

The parties originally sent to us nearly one hundred Random House documents on the parties' exhibit lists, and through an extensive meet-and-confer process, we were able to agree on all but ten documents by the time the Court requested our original submission on these matters, which we submitted to your Honor on May 23, 2013. Since then, we further narrowed the issue to one document, a copy of which is enclosed (with Random House's proposed redactions in yellow, for your Honor's *in camera* review).

The document at issues is an August 10, 2010 email exchange entirely internal to Random House. In it, Markus Dohle, CEO of Random House, Madeline McIntosh, COO of Random House, and Anne Davis, who had been the CFO of Random House until she passed away in November 2012, discuss detailed negotiation strategies they were contemplating – and which continue to be relevant today – regarding one of their existing business partners, Barnes &

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Hon. Denise L. Cote
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Noble. The exchange provides direct insight into Random House's negotiations with Barnes & Noble, which is also not a party to this litigation. Disclosing such information to Barnes & Noble, other resellers such as Amazon and Apple, and to Random House's competitors, would compromise Random House's ability to negotiate with its resellers in competition with other publishers.

Random House respectfully submits that the considerable potential damage to its business interests that would come from disclosure of the contents of this entirely internal discussion – in a case in which it is not a party and is accused of no wrongdoing – far outweighs any potential benefit to the general public of having access to it for the purpose of understanding the issues in the referenced case or the ultimate question of whether the plaintiffs' allegations or Apple's defenses are meritorious. For that reason, Random House respectfully requests that the Court rule that our proposed redactions in the enclosed document be respected and withheld from the public record in the event that the Court determines to admit the document into evidence and consider it in evaluating the parties' respective positions. Random House takes no position with respect to whether the document is relevant or admissible for any purpose in the trial itself.

We are available to discuss these proposed redactions at your Honor's convenience. In addition, as the Court is aware, Madeline McIntosh, Random House's Chief Operating Officer and a participant in the email discussion set forth in the document, is scheduled to testify at trial sometime tomorrow. If the Court would like to explore the confidentiality issue further, Ms. McIntosh would certainly be able to explain her concerns about the sensitivity of the information in the document.

Respectfully submitted,



Amanda C. Croushore

Enclosures

Copies to Stephanie Fleming, Esq., United States Department of Justice
Lisa Rubin, Esq., Gibson, Dunn & Crutcher LLP, Counsel for Apple, Inc.