



D&F
6/19/13

June 16, 2013

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

Re: In re: Electronic Books Antitrust Litigation, No. 11-md-02293-DLC (S.D.N.Y)
 also file in: 12-cv-2826 (DLC)

Dear Judge Cote:

Amazon.com, Inc. has met and conferred extensively with counsel for Apple regarding certain charts and graphs based on Amazon's Highly Confidential data that Apple intends to submit through expert testimony this week at trial. We have reached agreement with Apple on all disputes, but we submit this letter because we respectfully request that the Court file public versions of four exhibits that differ from the versions Apple will present to the Court.¹ Apple does not oppose having the modified exhibits in the public record, so long as the Court may review the exhibits in their original form. Copies of these exhibits (in their original form and as modified for public filing) are attached for the Court's *in camera* review.

DX-436 and DX-460: DX-436 and DX-460 in their original unredacted form reveal the actual volume of ebooks sold by Amazon from early 2008 through 2011. This is information that Amazon has never made public. Moreover, competitors could extrapolate from these figures to current sales volumes. To resolve this concern, Apple has prepared modified versions of these exhibits in which the data is aggregated across retailers so it is not possible to determine the sales volume of any particular retailer. Amazon proposes that only the modified version of each exhibit be filed publicly.

DX-462: DX-462 would reveal the specific volume of self published ebooks sold by Amazon from early 2008 through April 2012. This is non-public information and its disclosure would permit Amazon's competitors to extrapolate the current volume of self-published books sold by Amazon, a line of business in which Amazon competes with companies such as Apple

¹ To avoid repeating arguments, Amazon respectfully incorporates the arguments from its earlier letters to the Court, including particularly its letter of June 10.

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and Google. The exhibit is apparently offered to compare pre- and post-agency sales figures. It is therefore the relation between the two periods that matters; actual sales volumes are not necessary to that comparison. Amazon proposes (and Apple agrees to) the same process that was followed as to the two exhibits from Plaintiffs' experts that the Court reviewed in connection with our June 10 letter, i.e., that the Y-axis be redacted from the publicly-filed version.

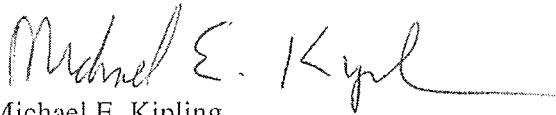
DX-441: This is a chart that purports to contain the "Total Number of Publishers" selling ebooks at Amazon. Apple has confirmed that its expert has included in this total all authors who self-publish books through Amazon's KDP (self-publishing) platform. As such, the unredacted chart would reveal the number of authors Amazon has successfully recruited for its KDP platform. Again, this is competitively sensitive information that Amazon has never publicly disclosed. It would be relatively easy from this figure to extrapolate to current volumes. Apple has prepared a modified version of this graph to be publicly filed, in lieu of the original DX-441. The modified version:

- "scales" the number of "publishers" reflected in the table, so that in each period it reveals the extent to which the number of "publishers" has grown relative to the total number in the initial time period (April 2007 – September 2007); and
- likewise "scales" the share % in the left-side Y-axis, so that the share in subsequent time periods is expressed in relation to the share in the initial time period.

If the Court would like additional argument on these exhibits, Amazon will ask its local counsel to appear at trial on Monday.

Sincerely,

KIPLING LAW GROUP PLLC



Michael E. Kipling
Counsel for Non-Party Amazon.com, Inc.

cc: Counsel for All Parties