

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

12 Civ. 2826 (DLC)

APPLE INC., *et al.*,

Defendants.
----- X

----- X
THE STATE OF TEXAS,
THE STATE OF CONNECTICUT, *et al.*,

Plaintiffs,

v.

12 Civ. 3394 (DLC)

PENGUIN GROUP (USA) INC., *et al.*,

Defendants.
----- X

APPLE INC.'S POST-TRIAL MEMORANDUM

Part 2 of 8



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray
HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314

December 10, 2009



Brian Murray
HarperCollins



On December 10 at 9:47, Mr. Murray sends an internal email concerning Mr. Cue



HarperCollins

PX-304

December 10, 2009



Brian Murray
HarperCollins



On December 10 at 9:52, Mr. Murray e-mails Mr. Dohle



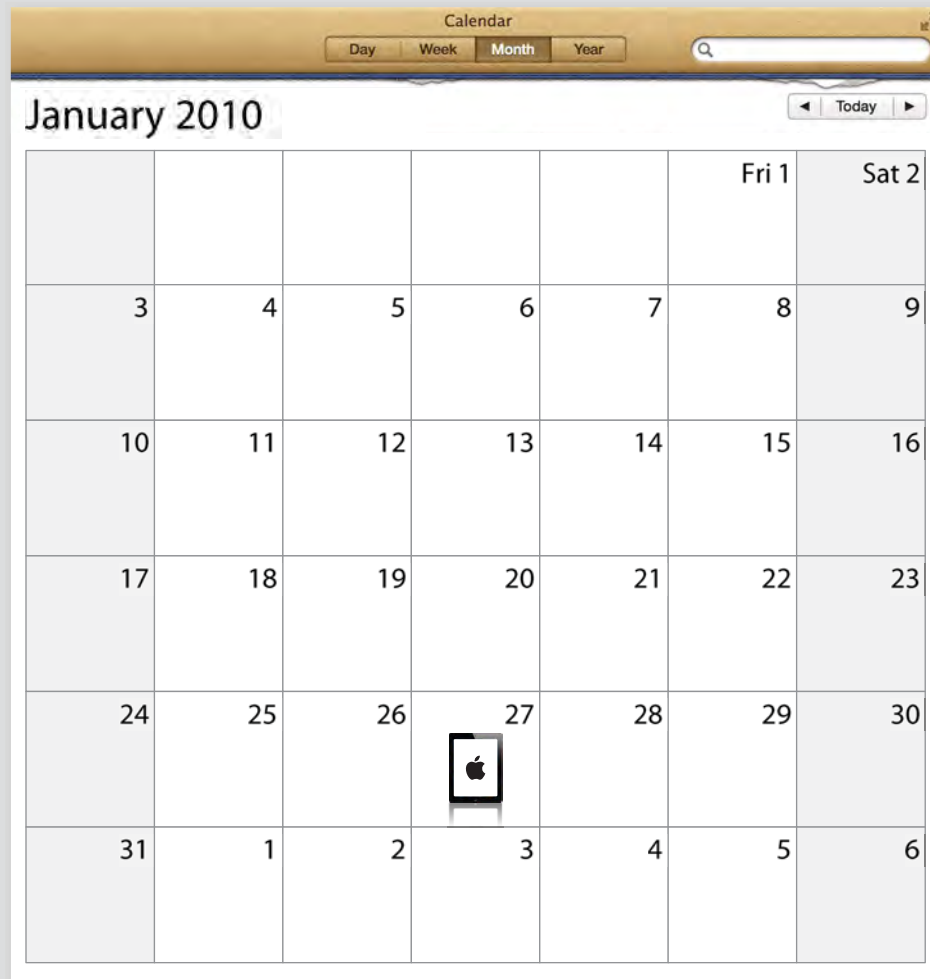
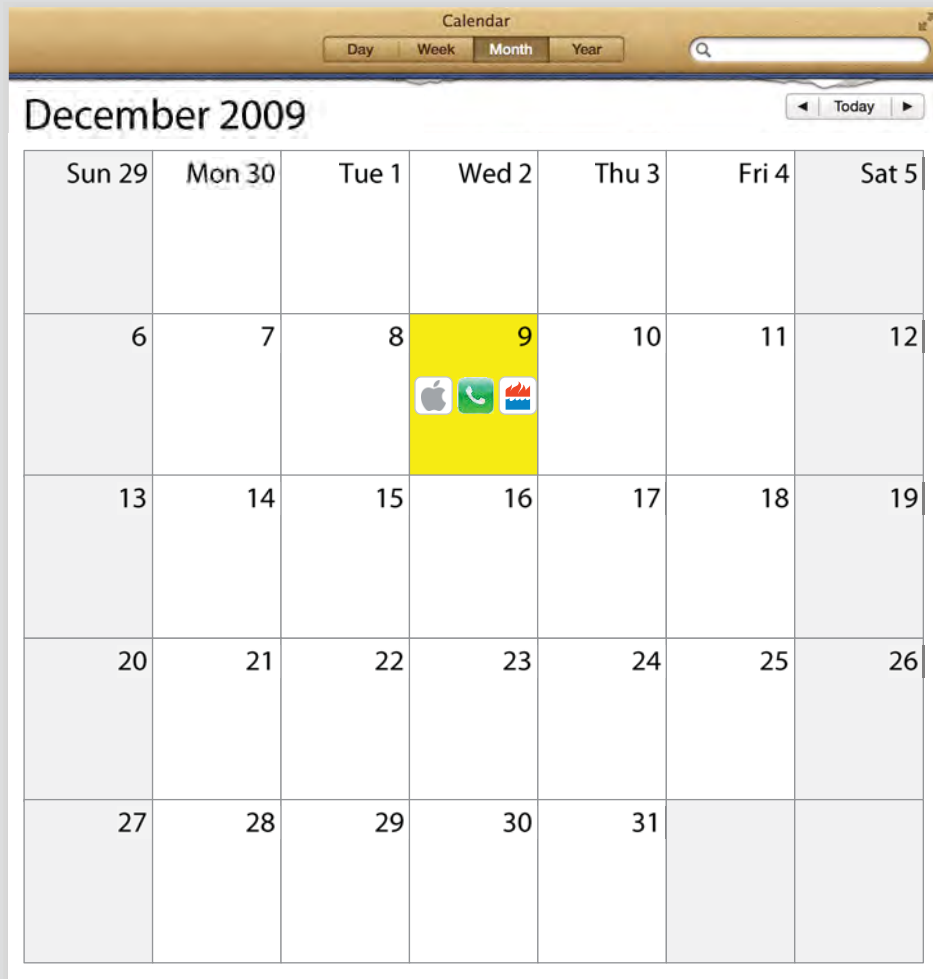
Markus Dohle



PX-0448

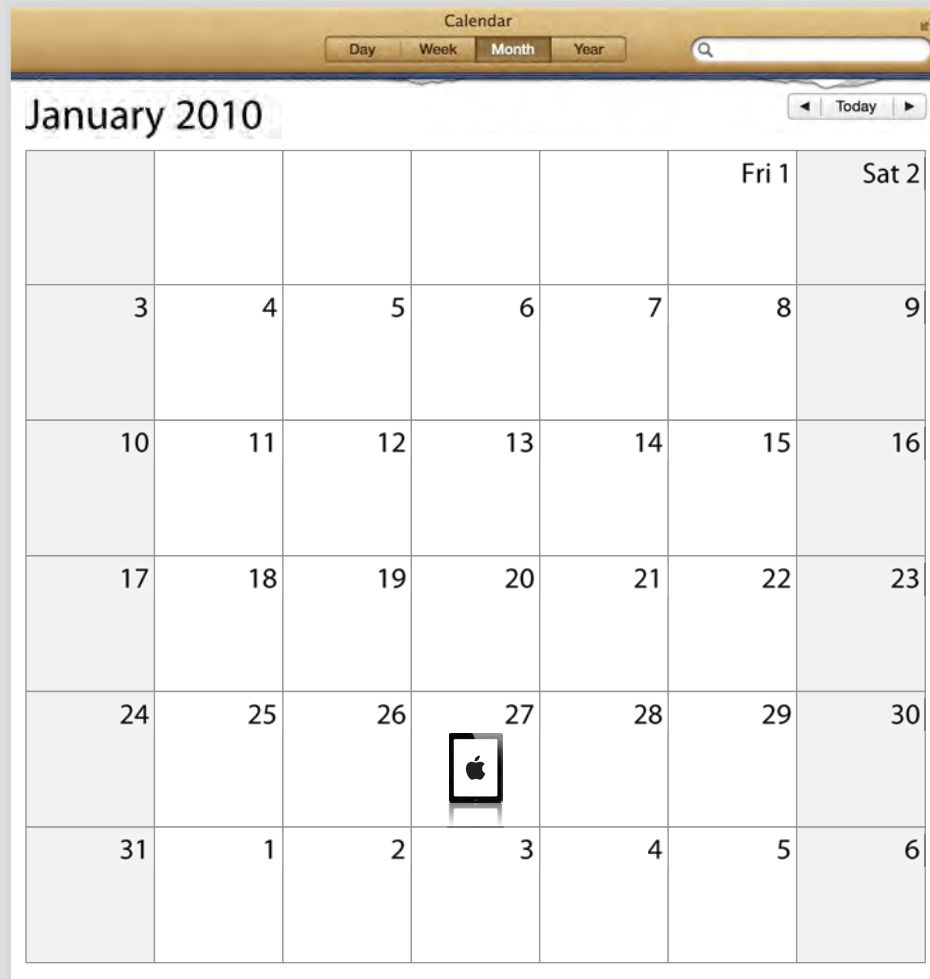
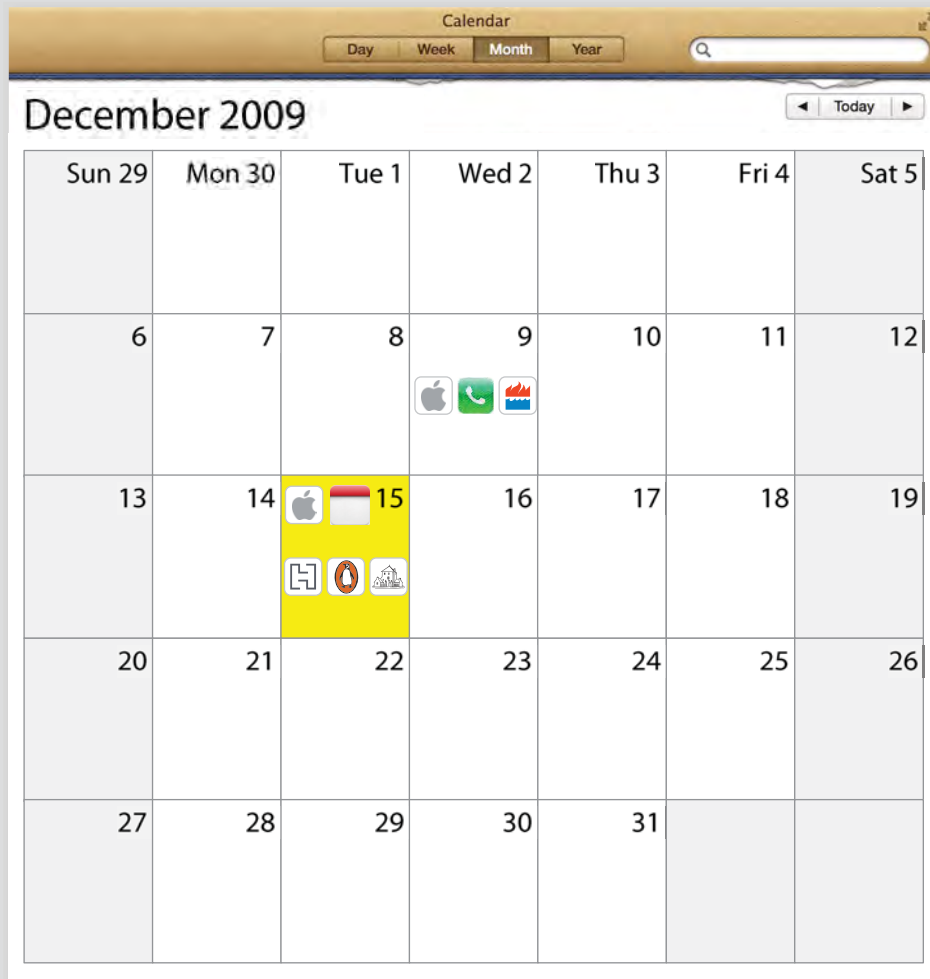
Government's Opening Statement

So on or about December 8th, Apple began reaching out to the CEOs of various publishers to discuss Apple's potential entry into the eBook market. And as the evidence will show, from the outset, Apple informed each publisher that it was speaking to its competitors, leading to a pattern of publisher communications between themselves.



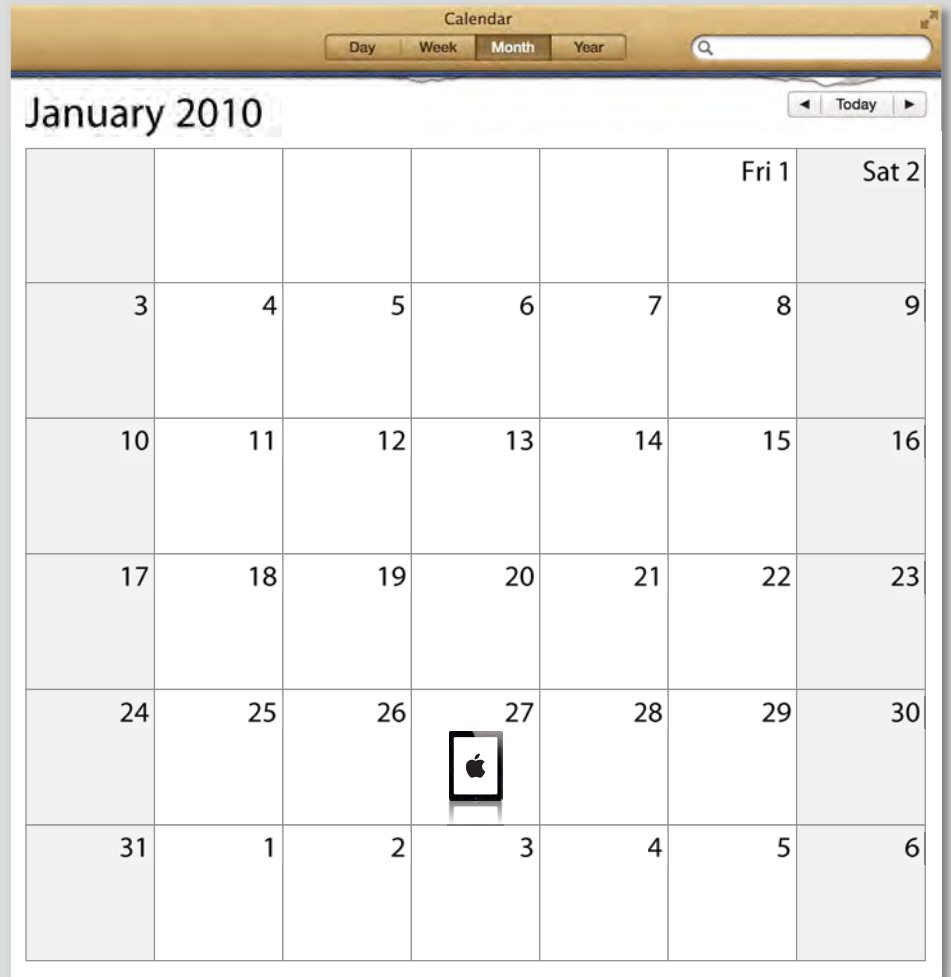
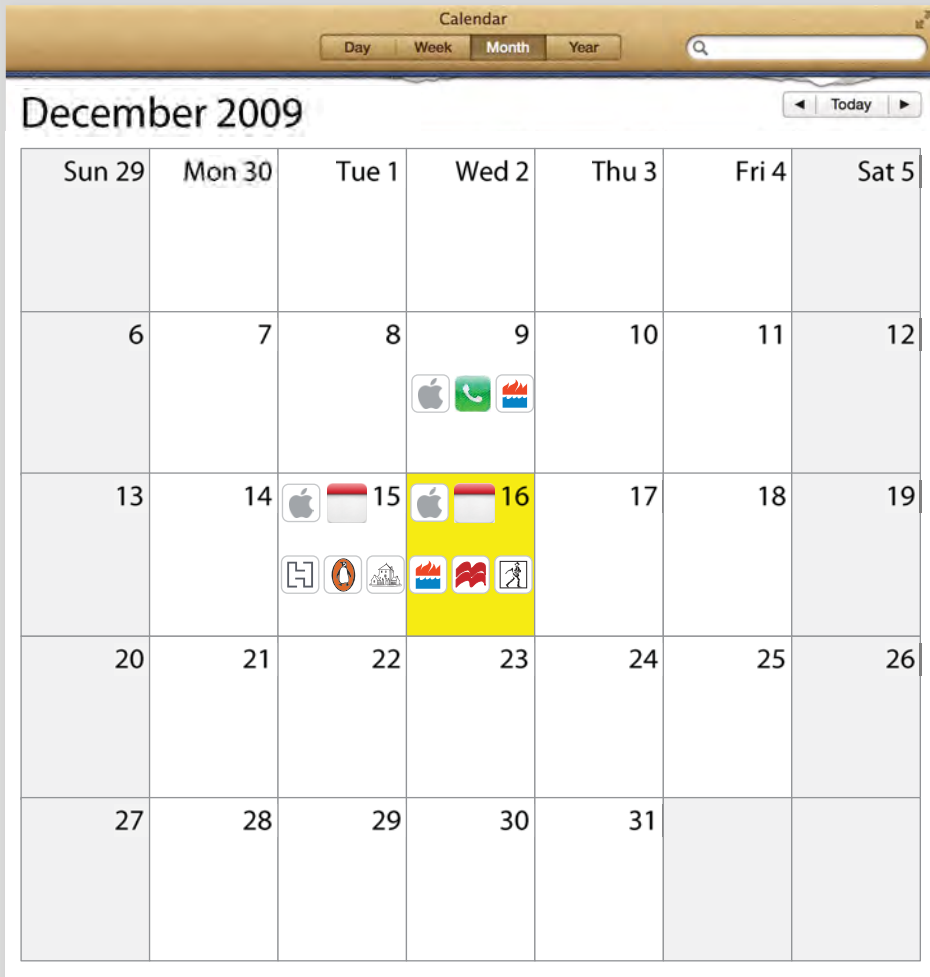
December 9, 2009





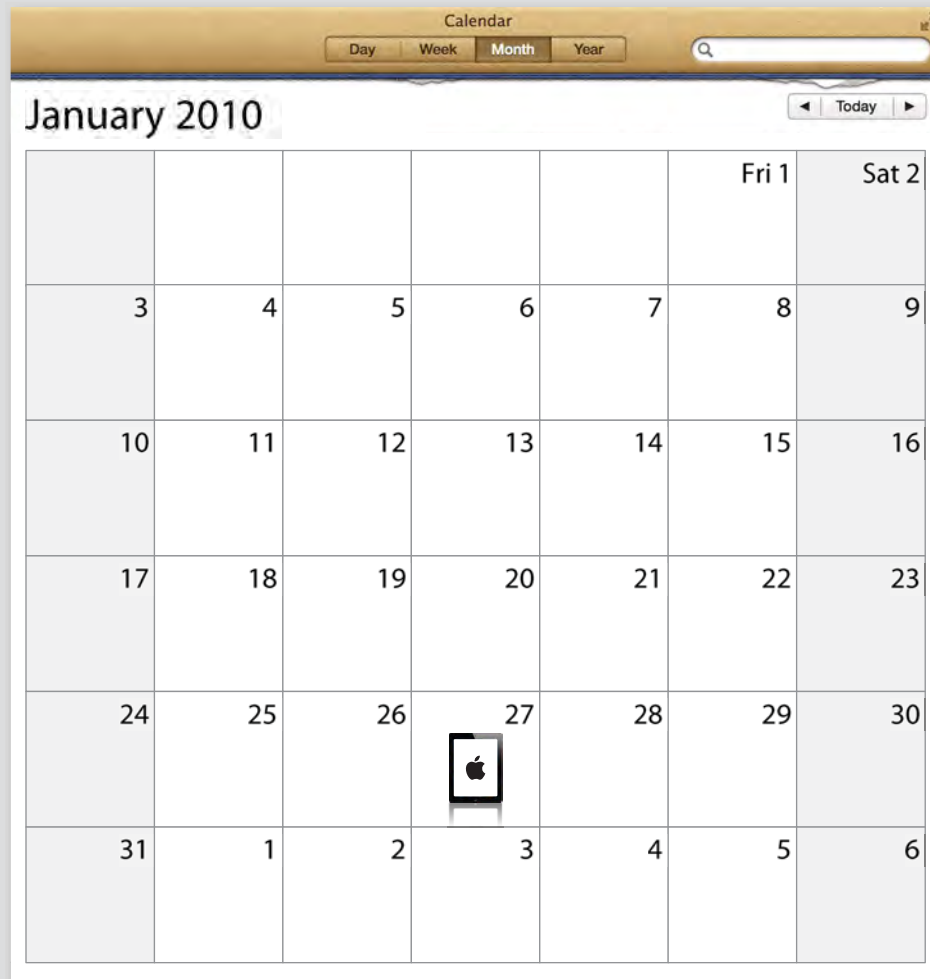
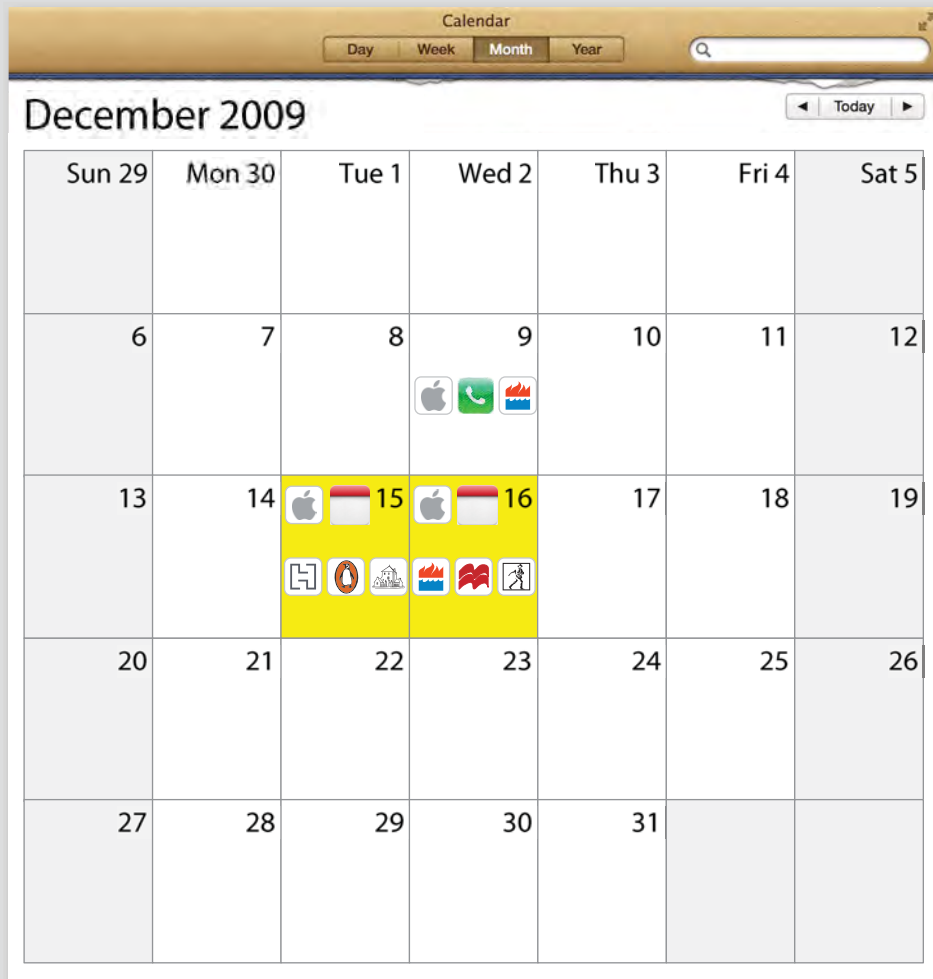
December 15, 2009





December 16, 2009







Declaration Of Eddy Cue ¶38

To learn more about the business, I had my team schedule separate meetings for Keith Moerer, Kevin Saul, and me with each of the six largest trade publishers in the U.S.—Hachette, HarperCollins, Macmillan, Penguin, Random House, and Simon & Schuster—in New York from December 15-17, 2009. This was a little over a month before Steve would announce the iPad. Apple had not yet decided whether it would actually launch an e-bookstore, but I wanted to introduce myself and start conversations that could lead to Apple opening an ebookstore with these publishers as our content partners.



Testimony Of David Shanks

Q. So at that first meeting, had Apple even decided whether it was going to open a bookstore?

A. I thought it was a fact finding – he was on a fact-finding mission. They wanted to – they were exploring the idea of whether it was feasible for them to go into the book business, into the bookstore business inside – when we were talking, we were talking about iTunes at the time.



Testimony Of David Young

Q. You had an initial meeting with Mr. Cue and other Apple representatives on December 15, 2009, correct?
I believe that's stated in your declaration.

A. That is correct.

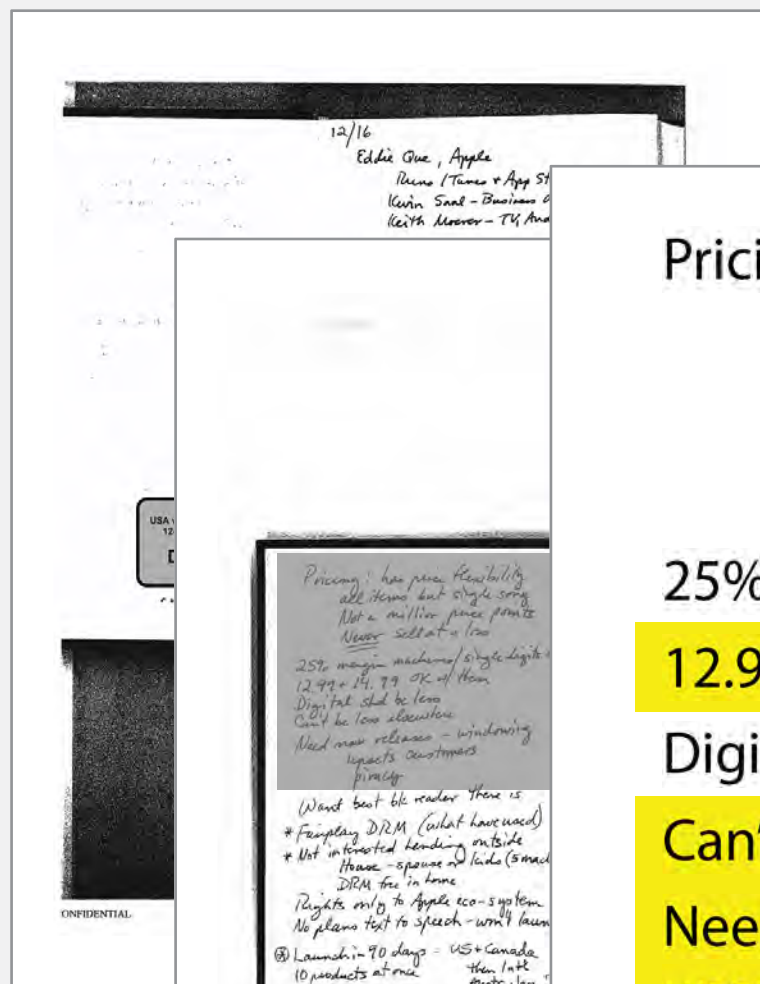
Q. And those – that began the series of negotiations that led to Hachette's signing the Apple agency agreement?

A. Mr. Cue, in that meeting, told us that they were investigating the possibility of establishing an iBookstore.

Government's Opening Statement

Now, as I mentioned a few moments ago, the first meetings with the publishers took place in New York, one after another, on December 15th and 16th, and as noted earlier, during the course of those meetings, Apple was informed by each publisher that it was unhappy with the 9.99 price point for New York Times best sellers and new releases *and was looking for Apple to solve the problem.*

DX-96: December 15, 2009 Reidy Notes



Pricing: has price flexibility
all items but single song
Not a million price points
Never sell at a loss

25% margin machines/single digits store

12.99 & 14.99 OK w/ them

Digital should be less

Can't be less elsewhere

Need new releases – windowing
upsets customers

Government's Opening Statement

So, your Honor, again, within a few days, Apple had adopted the exact rationale for the agency model and once again, as this document makes clear, Apple is aware that the publishers want higher prices and Apple is knowingly providing them with a means to accomplish that goal. In other words, knowledge and the conscious commitment to a common scheme to raise eBook prices.



Testimony Of Keith Moerer

- Q. And what was the impact, if any, in Apple's thinking in mid-December of the fact that the publishers were windowing books in connection with the wholesale model?
- A. We would not have done agreements with the publishers. We would not have launched the iBookstore if digital books – if new releases had been windowed.



Testimony Of Eddy Cue

- A. Well, we're not willing to lose money under any model History, for me, as a person who's run a lot of businesses, shows me that people that do businesses that lose money quickly, give them up over time or change them to make money.