

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE INC., *et al.*,

Defendants.
----- X

12 Civ. 2826 (DLC)

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

Plaintiffs,

v.

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

Defendants.
----- X

12 Civ. 3394 (DLC)

APPLE INC.'S POST-TRIAL MEMORANDUM

Part 3 of 8



Testimony Of Eddy Cue

- Q. Why was it not true that you pitched the publishers that your agency deal was a way to change the entire industry?
- A. I was – my focus is thinking about this from an Apple point of view. I'm not interested in their business or how they do business with the – with anybody else.

Calendar

Day Week Month Year

December 2009

Today


Sun 29	Mon 30	Tue 1	Wed 2	Thu 3	Fri 4	Sat 5
6	7	8	9	10	11	12
			  			
13	14	 	 	17	18	19
		  	  			
20	  21	22	23	24	25	26
	  					
27	28	29	30	31		

Calendar

Day Week Month Year

January 2010

Today

					Fri 1	Sat 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
						
31	1	2	3	4	5	6

December 21, 2009





Apple & Publisher Conspiracy Commences



**December 21
10:33 a.m.**



Speak for
10 minutes and
45 seconds



 **SIMON &
SCHUSTER**

Carolyn Reidy



 **Apple**

Eddy Cue

PX-0788



**December 21
12:17 p.m.**



Speak for
17 minutes and
37 seconds



 **RANDOM HOUSE**

Markus Dohle



 **Apple**

Eddy Cue

PX-0788



**December 21
12:48 p.m.**



Speak for
11 minutes



 **MACMILLAN**

John Sargent



 **Apple**

Eddy Cue

PX-0788



Declaration Of Eddy Cue ¶61

It was also important to us that the prices in our e-bookstore be competitive with other retailers' e-book prices. This is why Steve and I initially thought all publishers should move to agency with all e-book retailers selling their new releases. Our thinking at the time was that this would ensure that the publishers would treat Apple similarly to their other retailers at least with regard to pricing their most visible e-books.

Calendar

Day Week Month Year

December 2009

Today

Sun 29	Mon 30	Tue 1	Wed 2	Thu 3	Fri 4	Sat 5
6	7	8	9 Apple, Phone, Fire	10	11	12
13	14 Apple, Fire	15 Apple, Fire	16 Apple, Fire	17	18	19
20 Apple, Phone	21 Apple, Phone, Fire	22	23	24	25	26
27	28	29	30	31		

Calendar

Day Week Month Year

January 2010

Today

					Fri 1	Sat 2
3 Apple, Fire	4 Apple, Fire	5 Apple, Fire	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27 Apple	28	29	30
31	1	2	3	4	5	6

December 15, 2009 – January 4, 2010

No Communication Of Any Kind With Penguin, Hachette Or HarperCollins

The image displays two screenshots of a calendar application. The left screenshot shows December 2009, and the right screenshot shows January 2010. Both calendars feature a search bar and navigation buttons (Day, Week, Month, Year). The December 2009 calendar shows events on Dec 9, 14, 15, and 16, with cancellations marked by 'X' on Dec 17-19, 20-26, and 27-31. The January 2010 calendar shows cancellations on Jan 3, 4, 5, 8, and 9, and an event on Jan 27.

December 2009						
Sun 29	Mon 30	Tue 1	Wed 2	Thu 3	Fri 4	Sat 5
6	7	8	9 Apple, Phone, Fire	10	11	12
13	14 Apple, Penguin	15 Apple, Penguin	16 Apple, Penguin, Fire, Books, Person	17	18	19
20	21 Apple, Phone, Penguin, Books, Person	22	23	24	25	26
27	28	29	30	31		

January 2010						
					Fri 1	Sat 2
3	4 Apple, Books, Penguin, Fire, Books, Person	5 Apple, Books	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27 Apple	28	29	30
31	1	2	3	4	5	6

PX-99: December 21, 2009 Email From Sargent To Cue

Subject: RE: iTunes
Date: Mon, 21 Dec 2009 15:50:23 -0800
From: "Sargent, John" <john.sargent@macmillan.com>
To: Eddy Cue <cue@apple.com>
Cc: "Napack, Brian" <brian.napack@macmillan.com>
Message-ID:
26128D0D00E4B1A166D16A0D0A1206C4E756

Plaintiff's Exhibit
US v Apple
Case No. 09-0204
PX-0099

Hey Eddy. Have been thinking. Consider this completely blue sky, just a bit of brainstorming.

One of the problems we face is that most companies have contracts under the discount model. So what happens if we actually have two terms of sale. 1) 30% agency model with no windowing. 2) Discount model that includes windowing (essentially no change from the current terms we offer)? Everyone decides which model to buy under.

Price points: The concept would be that we would price books at around half of the price of the hardcover. That would put the majority of new releases at the 14.95 or 12.95 price points.

New release hardcover: 19.95, 16.95, 14.95, 12.95, (higher prices for very expensive books).

Post release, or original paperback: 9.95, 7.95, 4.95, 2.95

Want to reinforce these are just some thoughts to kick around.

Confidential

RECEIVED BY Sargent
1/27/13

APPLETX00018087



Testimony Of David Shanks

Q. And, in fact, when Mr. Cue sent you his initial proposal, you were angry, were you not?

A. I was.

DX-551: January 4, 2010 Email From McCall To Moerer

From: McCall, Tim
To: 'Keith Moerer'
Sent: 1/4/2010 11:02:01 PM
Subject: RE: follow up
Attachments: Apple Boilerplate Agreement.doc

Penguin's boilerplate

Hi Keith -- I understand you may not have Penguin's boilerplate, so I've attached it here. I'll speak with you soon,

PGI will sell to APPLE the Ebooks for resale purposes.

7.1 PGI will sell to APPLE the Ebooks for resale purposes. APPLE shall be entitled to set the resale price of the Ebooks in its sole discretion having regard to the List Price. The List Price for each Ebook may be varied and updated by PGI in its sole discretion from time to time during the Term.

Confidential & Proprietary

7.4.2 the total number of Ebooks sold per title for the Payment Period and for the life of the title to date, and the amount payable by APPLE for such sales, the PGI account number (as provided by PGI) and the relevant purchase order number;

(Sections 7.4.1 and 7.4.2 together being the "Sales Statement").

12

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PEN075914



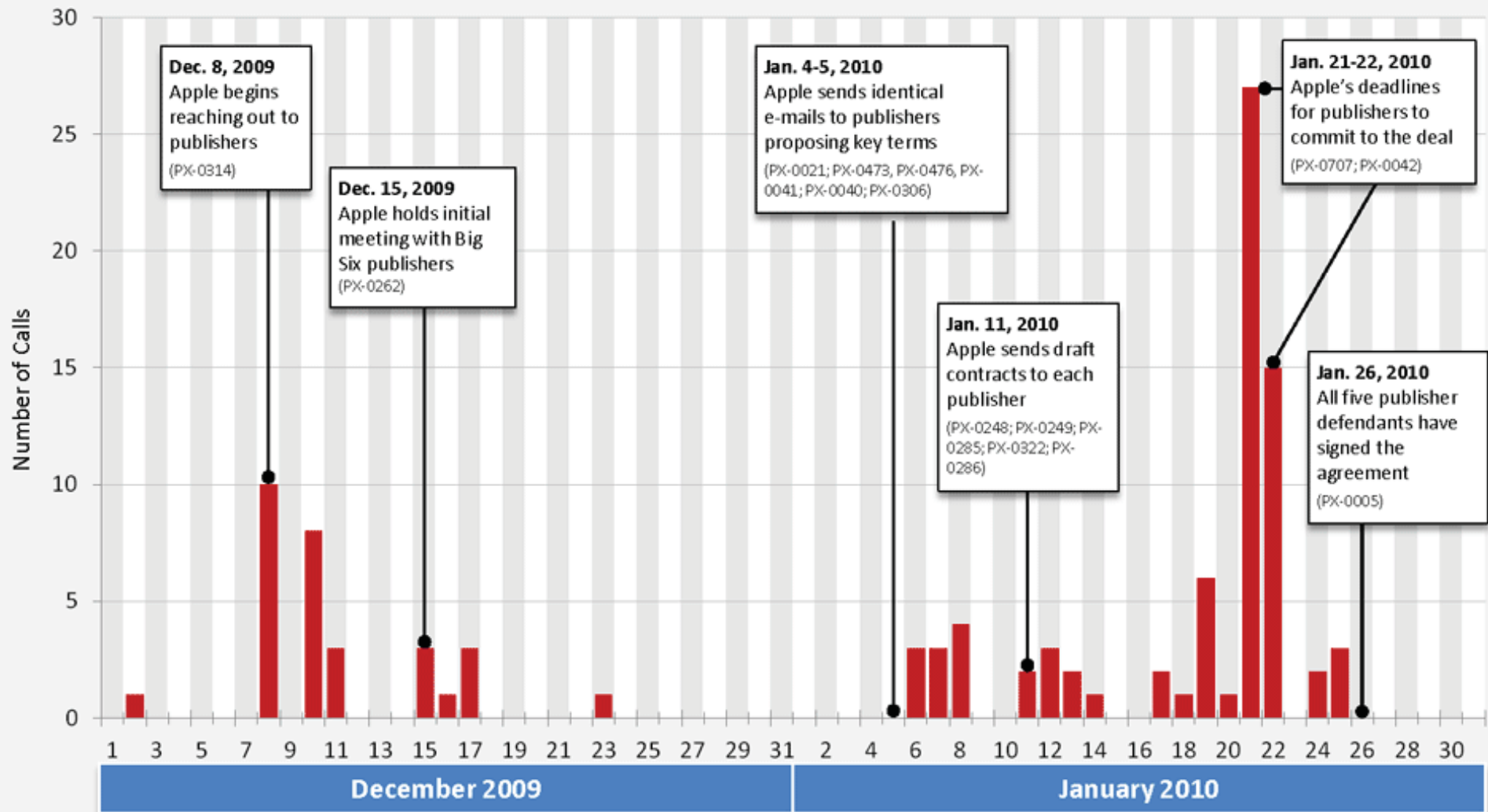
Testimony Of David Shanks

Q. So the time that Apple was proposing an agency model to Penguin, Penguin was proposing a wholesale model to Apple; is that correct?

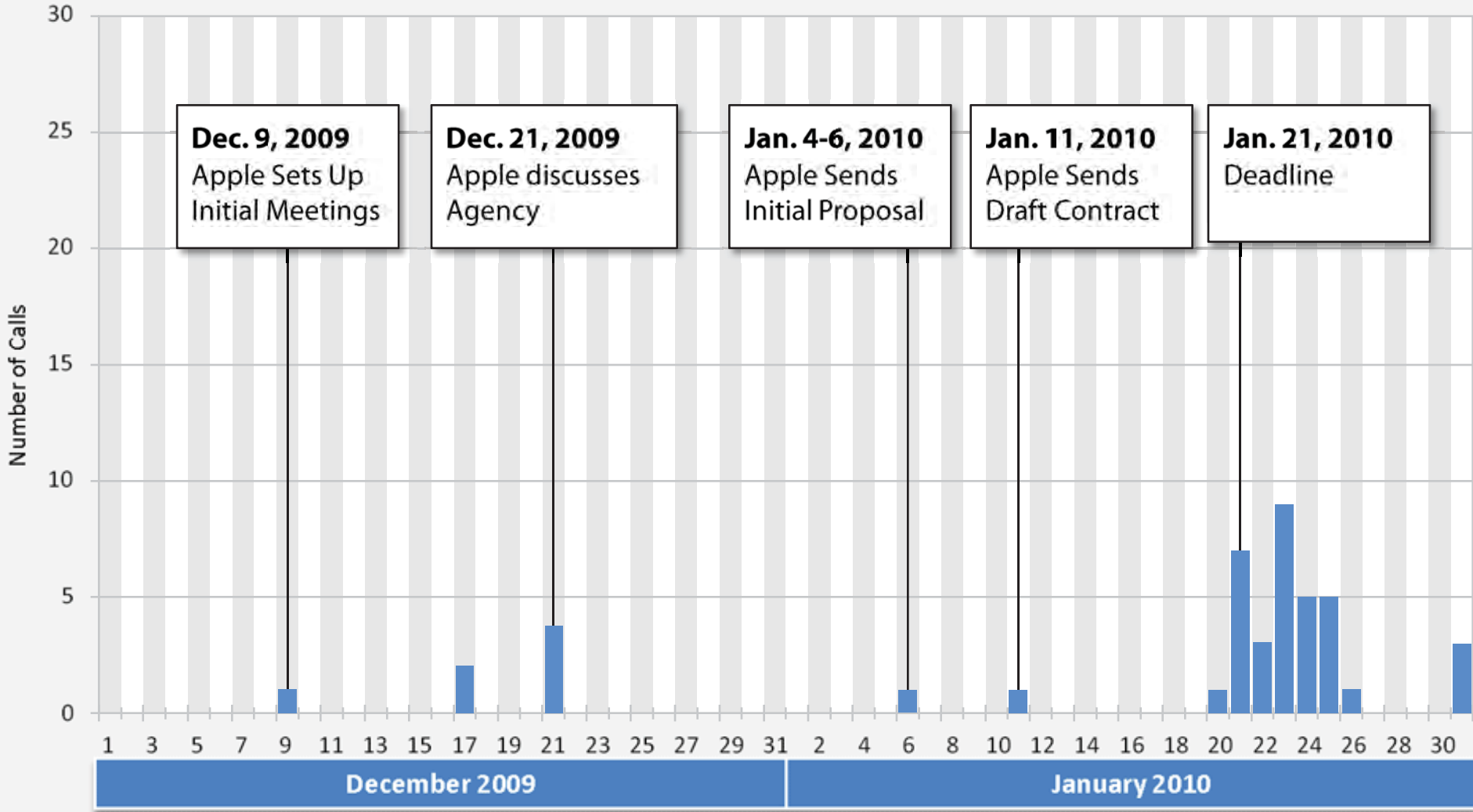
A. Yes.



Calls Between Publisher Defendant CEOs from December 1, 2009 to January 31, 2010

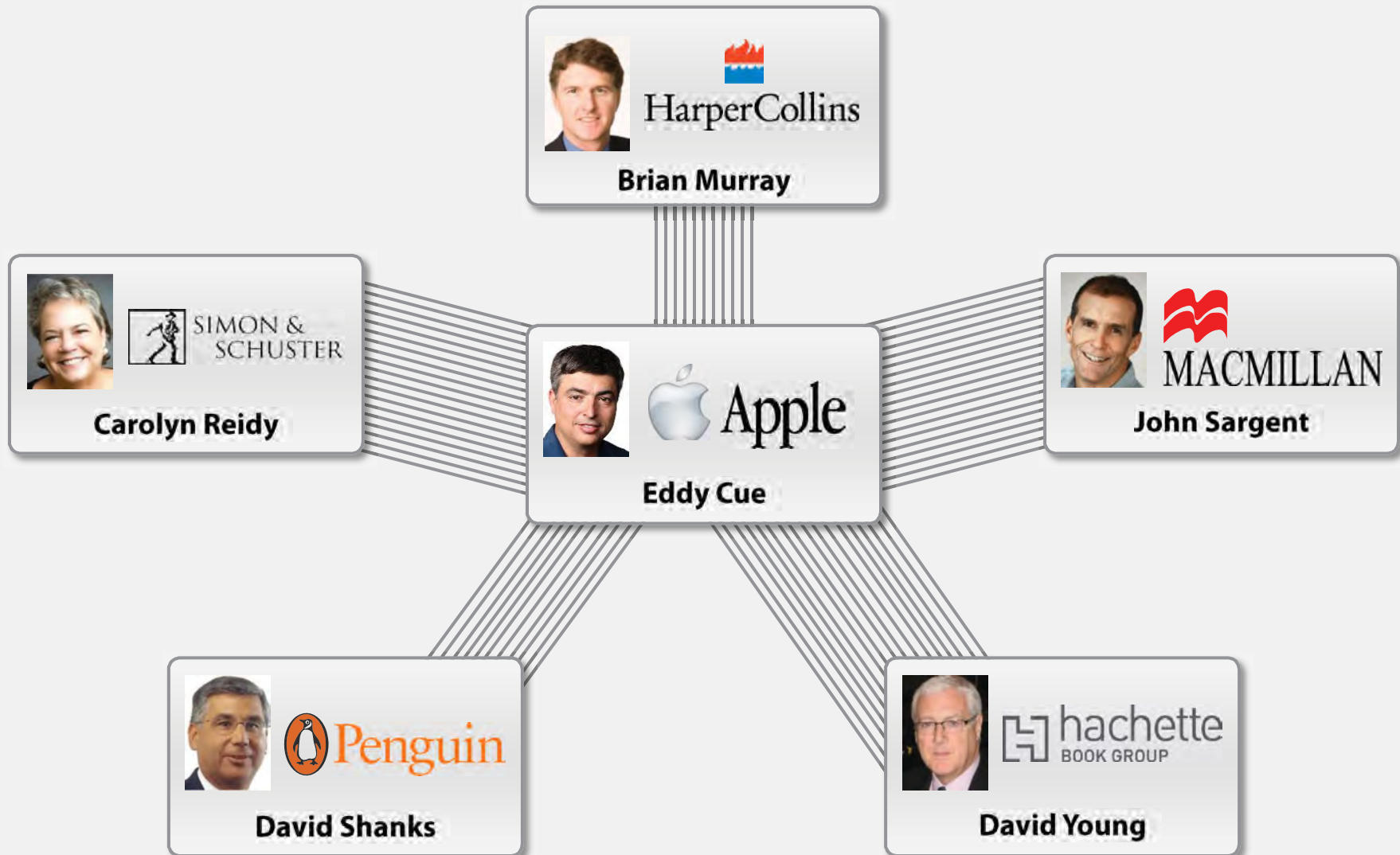


Calls 1 Minute Or Longer Between Publisher Defendant CEOs And Apple From December 1, 2009 to January 31, 2010





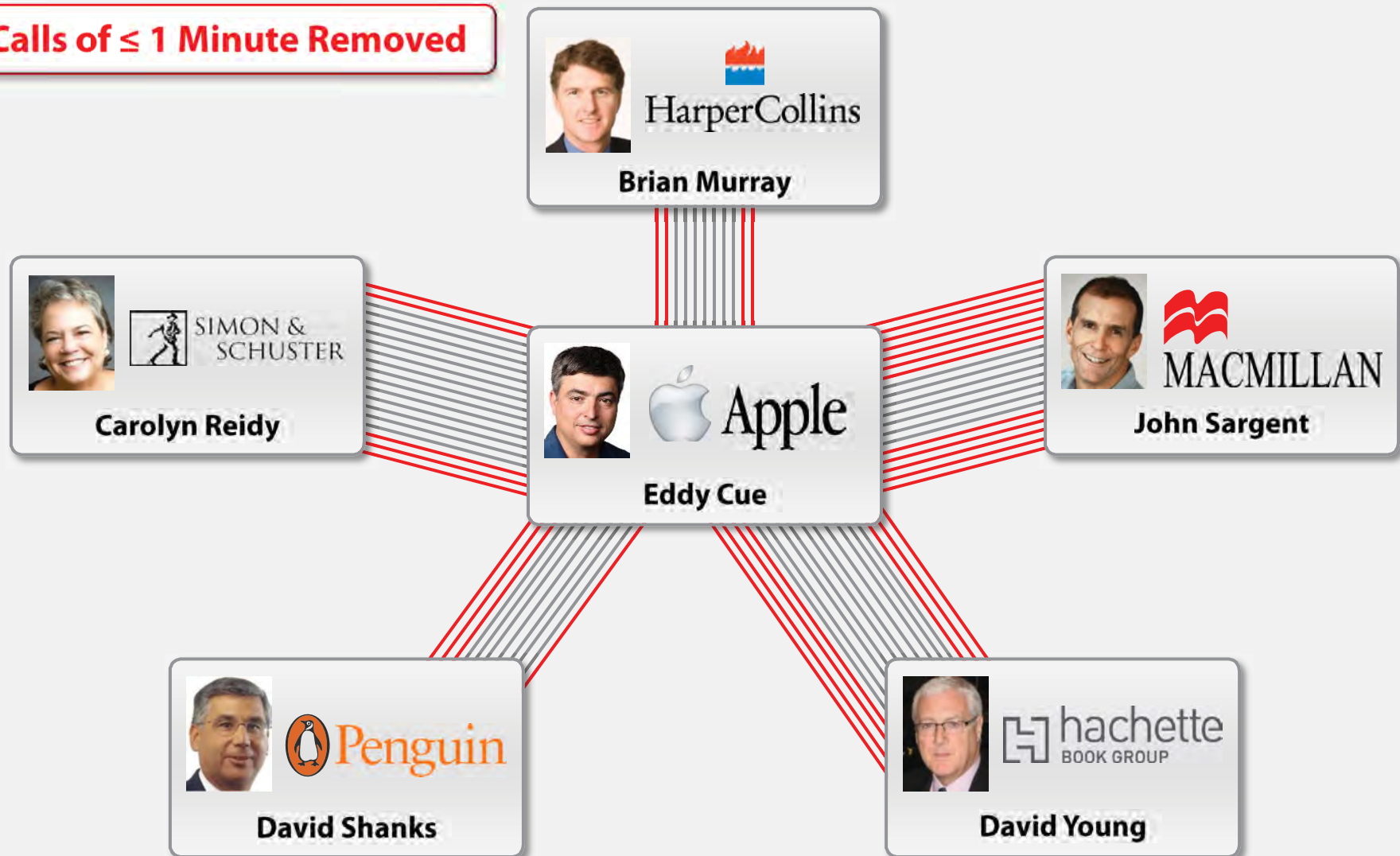
Phone Calls Between Eddy Cue and Publisher Defendant CEOs in December and January





Phone Calls Between Eddy Cue and Publisher Defendant CEOs in December and January

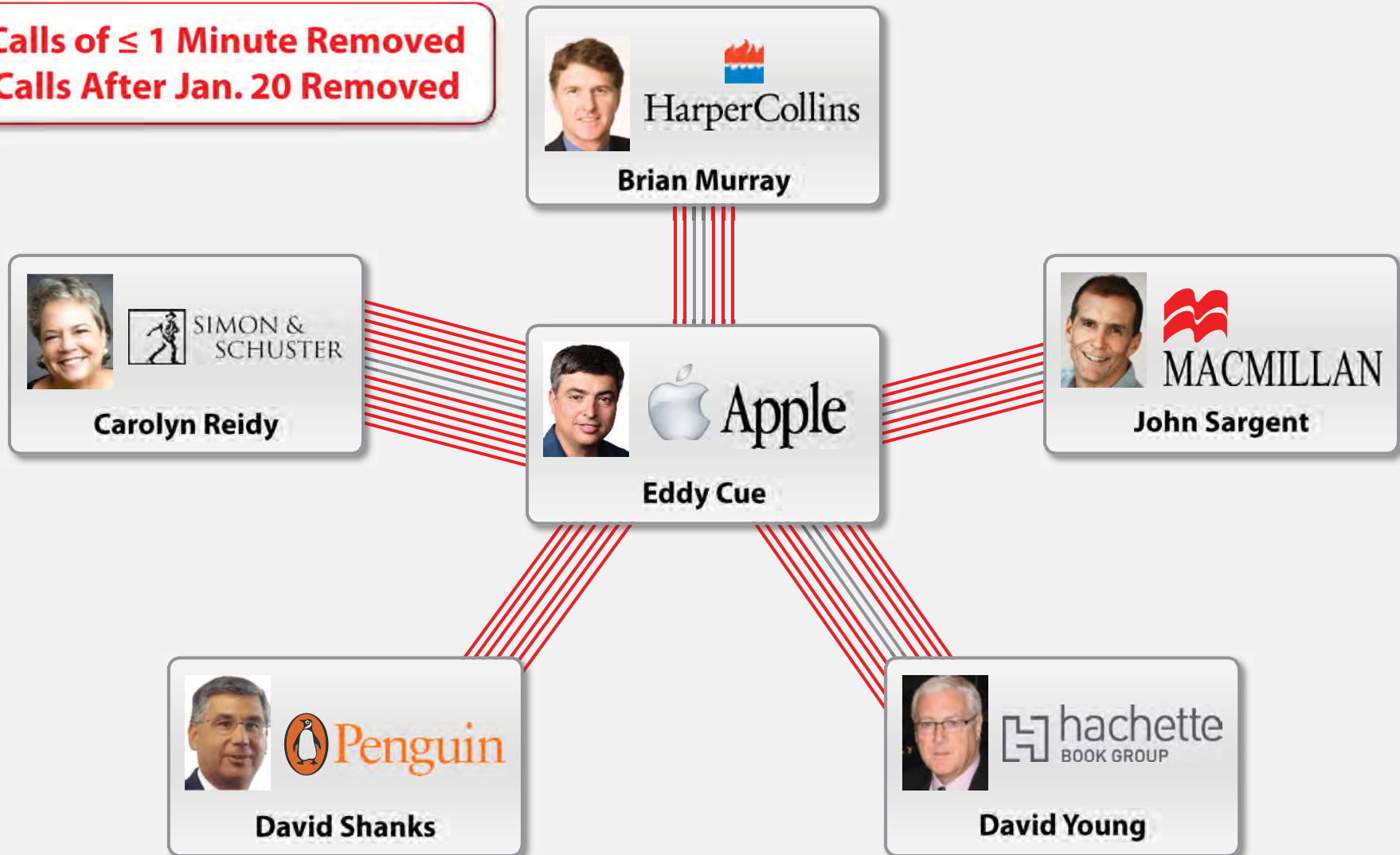
Calls of ≤ 1 Minute Removed





Phone Calls Between Eddy Cue and Publisher Defendant CEOs in December and January

**Calls of ≤ 1 Minute Removed
Calls After Jan. 20 Removed**





Phone Calls Between Eddy Cue and Publisher Defendant CEOs in December and January

